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# EFTA-STOFNANIR

## EFTIRLITSSTOFNUN EFTA

**Auglýst eftir athugasemdum, í samræmi við ákvæði 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, sem varðar ríkisaðstoð, í tengslum við fjármögnun líkamsræktarstöðvar í Kippermoen-íþróttamiðstöðinni** **2010/EES/35/01**

Ákvörðun Eftirlitsstofnunar EFTA 537/09/COL frá 16. desember 2009, sem er birt á upprunalegu, fullgiltu tungumáli á eftir þessu ágripi, markar upphaf málsmeðferðar samkvæmt 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls. Stjórnvöldum í Noregi hefur verið tilkynnt um málsmeðferðina með afriti af ákvörðuninni.

Eftirlitsstofnun EFTA veitir EFTA-ríkjunum, aðildarríkjum Evrópusambandsins og áhugaaðilum eins mánaðar frest frá birtingardegi þessarar auglýsingar til að gera athugasemdir við ráðstöfunina sem um ræðir. Athugasemdirnar skal senda á eftirfarandi póstfang:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussel/Bruxelles

Athugasemdum, sem berast, verður komið á framfæri við stjórnvöld í Noregi. Þeim, sem leggja fram athugasemdir, er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

### ÁGRIP

Stjórnvöld í Noregi tilkynntu 27. janúar 2009 ráðstöfun til fjármögnunar á líkamsræktarstöð í Kippermoen-íþróttamiðstöðinni (sem nefnd er „íþróttamiðstöðin“ hér á eftir) sem þau töldu ekki fela í sér ríkisaðstoð en tilkynntu engu að síður til að gæta réttaröryggis. Eftirlitsstofnun EFTA sendi tvisvar beiðni um upplýsingar og fékk svör við þeim frá stjórnvöldum í Noregi.

Íþróttamiðstöðin var sett á fót á áttunda áratugnum. Hún er í bænum Mosjøen sem tilheyrir sveitarfélaginu Vefsn í Norðurlandsfylki, en það er annað norðlægasta fylki í Noregi. Miðstöðin er í eigu sveitarfélagsins Vefsn og er ekki sérstakur lögaðili.

Í íþróttamiðstöðinni voru upphaflega innanhússsundlaug, ljósabekkir, íþróttasalur og líkamsræktarstöð. Árið 1997 var miðstöðin (og þá einnig líkamsræktarstöðin) endurnýjuð og stækkuð. Líkamsræktarstöðin var stækkuð á ný á árunum 2006 og 2007.

**Ný eða yfirstandandi aðstoð**

Reynist fjármögnun líkamsræktarstöðvar í íþróttamiðstöðinni fela í sér ríkisaðstoð er spurningin þá hvort sú ráðstöfun sé ný eða yfirstandandi aðstoð.

Sveitarfélagið Vefsn hefur borið kostnað af rekstri íþróttamiðstöðvarinnar beint allt frá því að hún var sett á fót snemma á áttunda áratugnum. Að auki hefur miðstöðin allt frá stofnun haft tekjur af ýmsum aðgangsgjöldum samkvæmt gjaldskrá sveitarfélagsins. Þessi fjármögnunaraðferð var notuð fyrir gildistöku EES-samningsins 1. janúar 1994 og gæti því svo virst sem hún sé yfirstandandi aðstoð í skilningi stafl. b) í 1. gr. II. hluta bókunar 3 við samninginn um eftirlitsstofnun og dómstól.

Af fyrirliggjandi upplýsingum má ráða að stækkunina, sem fór fram á árunum 2006 og 2007, hafi átt að fjármagna á sama hátt og rekstrarkostnaðinn, en Eftirlitsstofnun EFTA hafa ekki borist nægilega ítarlegar upplýsingar um hvernig staðið var að fjármögnun stækkunarinnar árið 1997.

Þá hefur tilhögun miðasölu verið breytt eftir að EES-samningurinn öðlaðist gildi. Breytingarnar virðast hafa tekið til miðaverðs, miðategunda sem eru í boði og þess hvernig tekjur af miðasölu eru nýttar. Eftirlitsstofnun EFTA hefur ekki fengið í hendur nákvæmar upplýsingar um þessar breytingar og hefur því ekki getað útilokað að þær feli í sér nýja aðstoð af einhverju tagi.

Um þiggjanda aðstoðarinnar er það að segja, að því er húsnæðið varðar, að líkamsræktarstöðin var fremur sparlega búin tækjum í upphafi samkvæmt þeim upplýsingum sem Eftirlitsstofnun EFTA hafa borist. Óvissan snýr að því hvort íþróttaaðstaðan, sem sett var upp á áttunda áratugnum, hafi aðeins verið endurnýjuð til að bregðast við samtímakröfum eða nauðsynlegt sé að líta á núverandi líkamsræktarstöð sem nýja stöð. Eftirlitsstofnun EFTA hefur verið tjáð að líkamsræktarstöðin sé í núverandi mynd ekki aðeins mun stærri en áður heldur séu þar í boði miklu fjölbreyttari kostir til líkamsræktar en var í gömlu líkamsræktarstöðinni með þeim sparlega búnaði sem þar var. Í þessu tilliti telur stofnunin óljóst hvort stækkunin, sem átti sér stað fyrst árið 1997 og síðan á árunum 2006 og 2007, þ.e. eftir gildistöku EES-samningsins, hafi haft í för með sér breytingar á eðli starfseminnar sem fram fer í líkamsræktarstöðinni. Af dómaframkvæmd má ráða að þótt komið sé upp fjölbreyttari starfsemi leiðir það almennt ekki til þess að viðkomandi ráðstöfun teljist fela í sér nýja aðstoð. Í þessu tilviki ber þó að líta til þess að breytingarnar á líkamsræktarstöðinni, m.a. ný starfsemi sem þar fer fram, virðast vera nokkuð umfangsmiklar ([1]) og stofnunin hefur því ekki getað útilokað að aðstoðina beri nú að flokka á annan hátt.

**Er um ríkisaðstoð að ræða?**

***Hagræði sem fyrirtæki nýtur fyrir tilstuðlan nýtingar á ríkisfjármunum***

Sveitarfélagið Vefsn ber allan kostnað af taprekstri íþróttamiðstöðvarinnar. Fjármunir sveitarfélaga eru ríkisfjármunir í skilningi 61. gr. EES-samningsins. ([2]). Líkamsræktarstöðin hefur verið fjármögnuð með aðgangsgjöldum og hefur sveitarstjórnin hagað gjöldunum og nýtt tekjurnar af þeim þannig að líkamsræktarstöðin er rekin með afgangi en aðrar deildir íþróttamiðstöðvarinnar með tapi. Sökum þess að ekki hefur verið viðhafður skýr fjárhagslegur aðskilnaður telur Eftirlitsstofnun EFTA ekki loku fyrir það skotið að líkamsræktarstöðin hafi notið niðurgreiðslna sem voru ætlaðar öðrum deildum íþróttamiðstöðvarinnar.

Líkamsræktarstöðin hefur einnig notið styrkja frá *Norsk Tipping AS*, spilafyrirtæki sem er að fullu í eigu norska ríkisins og fellur undir menningar- og kirkjumálaráðuneytið ([3]). Innheimta, umsýsla og úthlutun tekna af spilastarfseminni er í höndum ríkisins og er því um ríkisfjármuni að ræða í skilningi 1. mgr. 61. gr. EES-samningsins.

Þá virðist sem líkamsræktarstöðin kunni að hafa fengið fjármuni frá fylkisstjórn Norðurlands.

Rekstur líkamsræktarstöðvarinnar, sem tilheyrir íþróttamiðstöðinni, fer að mestu leyti fram eins og í hverri annarri líkamsræktarstöð og virðist að því leyti vera fyrirtækjarekstur. Þótt stjórnvöld í Noregi hafi haldið því fram að líkamsræktarstöðin fái enga ríkisaðstoð í skilningi þeirrar dómaframkvæmdar sem mótaðist í *Altmark*-málinu getur Eftirlitsstofnun EFTA ekki útilokað að svo komnu máli að fjármögnun stöðvarinnar leiði til sérstaks hagræðis fyrir hana.

***Samkeppnisröskun og áhrif á viðskipti milli aðila að EES-samningnum***

Svo er að sjá sem hagræðið, sem líkamsræktarstöðin í íþróttamiðstöðinni nýtur, sé til þess fallið að raska samkeppni á líkamsræktarmarkaði. Aftur á móti telur Eftirlitsstofnun EFTA óljóst hvort ráðstöfunin sé til þess fallin að hafa áhrif á viðskipti milli aðildarríkja EES-samningsins í skilningi 1. mgr. 61. gr. EES-samningsins. Ætla má að þjónusta líkamsræktarstöðva sé almennt þess eðlis að aflasvæði þeirra sé lítið. Líkamsræktarstöðin í íþróttamiðstöðinni virðist ekki hafa neina þá sérstöðu að hún dragi til sín notendur um langan veg. Stöðin er rekin í öðru norðlægasta fylki Noregs í um 60 km akstursfjarlægð frá landamærunum við Svíþjóð þar sem styst er. Á líkamsræktarmarkaði í Noregi eru að vísu starfandi nokkur fyrirtæki sem stunda viðskipti milli EES-ríkja. Hins vegar virðast slík fyrirtæki fyrst og fremst koma upp starfsemi á þéttbýlli svæðum í Noregi.

([1]) Sbr. orðsendingu framkvæmdastjórnarinnar um beitingu ríkisaðstoðarreglna gagnvart rekstri almannaþjónustuútvarps, Stjtíð. ESB C 257 frá 27.10.2009, bls. 1, 25.–31. mgr. og 80. mgr. og áfram.

([2]) Sbr. ákvörðun Eftirlitsstofnunar EFTA 55/05/COL, undirkafla II.3, bls. 19, um frekari tilvísanir, en sú ákvörðun birtist í Stjtíð. ESB L 324, 23.11.2006, bls. 11, og í EES-viðbæti nr. 56, 23.11.2006, bls. 1.

([3]) Sjá árs- og félagsskýrslu *Norsk Tipping AS* fyrir árið 2008, bls. 3. Skýrsluna má finna á eftirfarandi slóð: https://www.norsk-tipping.no/page?id=207.

**Samrýmist aðstoðin samkeppnisreglum?**

Að áliti Eftirlitsstofnunar EFTA leikur vafi á því að rekstur fyrirtækis, sem virðist að miklu leyti vera eins og hver önnur líkamsræktarstöð, geti talist þjónusta sem hefur almenna efnahagslega þýðingu í skilningi 2. mgr. 59. gr. EES-samningsins.

Þá telur stofnunin óljóst hvort fjármögnun líkamsræktarstöðvarinnar getur talist samrýmanleg ákvæðum EES-samningsins með vísan til menningarlegra atriða á grundvelli stafl. c) í 3. mgr. 61. gr. EES-samningsins, eins og stjórnvöld í Noregi telja.

Loks telur Eftirlitsstofnun EFTA óljóst hvort fjármögnun stækkunar á stöðinni, fyrst árið 1997 og síðan á árunum 2006 og 2007, getur talist samrýmanleg framkvæmd EES-samningsins, að hluta til eða að fullu, með vísan til stafl. c) í 3. mgr. 61. gr. samningsins og ákvæða í leiðbeiningum stofnunarinnar um byggðaaðstoð.

**Niðurstaða**

Með hliðsjón af því sem hér hefur verið rakið hefur Eftirlitsstofnun EFTA ákveðið að hefja formlega rannsókn í samræmi við 2. mgr. 1. gr. I. hluta bókunar 3 við samninginn um eftirlitsstofnun og dómstól á fjárveitingum sveitarfélagsins Vefsn til rekstrar líkamsræktarstöðvarinnar í Kippermoen-íþróttamiðstöðinni. Áhugaaðilum er gefinn kostur á að leggja fram athugasemdir og skulu þær berast áður en mánuður er liðinn frá því að ákvörðun þessi birtist í *Stjórnartíðindum Evrópusambandsins* og EES-viðbæti við þau.

**EFTA SURVEILLANCE AUTHORITY DECISION**

**No 537/09/COL**

**of 16 December 2009**

**to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to the financing of the fitness centre at the Kippermoen Leisure Centre**

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ([1]),

HAVING REGARD to the Agreement on the European Economic Area ([2]), in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ([3]), in particular to Article 24 thereof,

HAVING REGARD to Article 1(2) of Part I and Articles 4(4) and 6 of Part II of Protocol 3 to the Surveillance and Court Agreement ([4]),

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ([5]), and in particular the Chapters on Public service compensation ([6]) and National Regional Aid ([7]) thereof,

HAVING REGARD to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 ([8]),

*Whereas:*

## I. FACTS

### 1. Procedure

By letter dated 27 January 2009, the Norwegian authorities notified a measure financing the publicly owned fitness centre at the Kippermoen Leisure Centre (KLC) (*Kippermoen Idrettssenter*), pursuant to Article 1(3) of Part I of Protocol 3. The letter was registered by the Authority the 28 January 2009 (Event No 506341).

By email dated 3 March 2009 (Event No 511153), the Norwegian Association for Fitness Centres (NAFC) (*Norsk Treningssenterforbund)* submitted comments to the notification.

([1]) Hereinafter referred to as the Authority.
([2]) Hereinafter referred to as the EEA Agreement.
([3]) Hereinafter referred to as the Surveillance and Court Agreement.
([4]) Hereinafter referred to as Protocol 3.
([5]) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1 as amended. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines.
([6]) Adopted by the Authority by Decision No 328/05/COL of 20.12.2005, published in OJ L 109, 26.4.2007, p. 44 and EEA Supplement No 20, 26.4.2007, p. 1.
([7]) The Chapter on National Regional Aid 2007-2013 was adopted by the Authority by Decision No 85/06/COL of 6.4.2006, published in OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1 and is applicable from 1 January 2007 onwards. Prior to that date, reference must be made to the provisions of the Chapter on National regional aid adopted by Decision No 316/98/COL of 4.11.1998, published in OJ L 111, 29.4.1999, p. 46 and EEA Supplement No 18, 29.4.1999, p. 1.
([8]) Decision No 195/04/COL of 14 July 2004 (published in OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1), as amended. A consolidated version of the Decision can be found on: www.eftasurv.int.

By letter dated 27 March 2009 (Event No 511172), the Authority forwarded the comments from NAFC to the Norwegian authorities and requested additional information. By letter dated 29 May 2009 (Event No 520013), the Norwegian authorities replied to the information request. By letter dated 29 July 2009 (Event No 525457), the Authority requested additional information from the Norwegian authorities. By letter dated 9 September 2009 (Event No 529846), the Norwegian authorities replied to the information request.

The Authority and the Norwegian authorities discussed the notification in a meeting in Oslo on 16 September 2009. By email dated 28 September 2009, the Authority requested further information and clarifications, to which the Norwegian authorities replied by email dated 29 September 2009 (the two emails are archived as Event No 531832).

## 2. The KLC

### *2.1. Overview of the development of the KLC*

The KLC was established in the 1970s. It is located in the city of Mosjøen which is part of the municipality of Vefsn, in the county of Nordland. The centre is owned by the municipality and is not organised as a separate legal entity.

Initially, the centre consisted of two separate buildings, one hall encompassing an indoor swimming pool with a solarium and a sports hall. Furthermore, the KLC housed a modestly equipped fitness centre.

The two halls of the KLC were managed separately until 1992, when the department of culture at Vefsn municipality started co-ordinating the management of the two halls. In the same year, the municipality of Vefsn initiated a project in co-operation with the county municipality of Nordland aiming to increase the physical activity of the general population in the county.

In 1997, as a consequence of a broadening of the co-operation with the county municipality under the so-called FYSAK programme, Vefsn municipality arranged for an expansion and renovation of the entire KLC, including the fitness centre.

In 2006 and 2007, the fitness centre was expanded with an annex (*Mellombygningen*) linking together the existing buildings of the KLC. Furthermore, squash courts were established at the KLC. Nowadays, the KLC comprises a combined football and multi-purpose hall (*Mosjøhallen*) and outdoors facilities such as a toboggan run and a shooting range, in addition to the sports hall and the hall with indoor swimming pool established in the early 1970s and the fitness centre. However, the notification submitted by the Norwegian authorities only concerns the fitness centre.

### *2.2. The financing of the KLC and its fitness centre*

Since its foundation in 1970s, the municipality of Vefsn has financed the KLC over the municipal budget. Moreover, since its foundation, the KLC has been financed by the revenues generated from fees levied on users. The prices are set by decisions of the municipal council of Vefsn. At the present time, individual users are charged a fee for the use of the fitness centre, squash courts, swimming pool and the solarium, and can choose among different types of season tickets and single tickets granting access to the various facilities. The Norwegian authorities have explained that the current system of allocation of ticket revenue entails that all revenue generated from the sale of all-access season tickets is allocated to the fitness centre. The revenue stemming from the various single tickets, including those granting access to the fitness centre, is allocated to the other facilities at the KLC. Groups of users, like local schools, seem to be charged for the use of the facilities at the KLC on a cost basis, where the compensation paid seems to be allocated to the relevant facility. In the years 2006-2008, the total annual revenue generated by user fees represented between NOK 3.6 and 3.7 million. The Norwegian authorities state that approximately NOK 2.6 million (approximately 70%) of this revenue has been allocated to the fitness centre ([9]).

([9]) See letter from Norwegian authorities dated 29.5.2009 (Event No 520013) p. 11.

From 2000, the municipality of Vefsn intended that the fitness centre part of the KLC was to be self-financed in the sense that the revenue generated from the fees levied on users of the fitness centre should cover all its costs. In order to ensure that the fitness centre part of the KLC is self-financed, the municipality has attempted to keep separate accounts for the fitness centre and the other activities of the KLC, where the fitness centre carries a proportionate share of common costs. However, a complete separation of accounts does not yet seem to be fully implemented ([10]).

According to the annual accounts of 2006-2008, the fitness centre at the KLC has operated with an annual profit of between NOK 700 000 to 900 000 on account of the revenue generated by the user fees. In contrast to the fitness centre, the KLC as a whole, operates with an annual deficit. This annual deficit is covered by the operating budget of the municipality of Vefsn.

According to the NAFC, the KLC has received grants from the county municipality of Nordland. Despite the request made by the Authority, the Norwegian authorities have not provided any information regarding whether, and in that case how, these funds have been allocated to KLC and whether they were spent for the fitness centre or for other premises within the KLC.

The two expansions of the whole KLC in 1997 and 2006/2007 have been financed through various sources. Regarding the 1997 expansion, it was mainly financed by a NOK 10 million loan. The Authority received no information on the identity of the lender, the terms of the loan or how it was serviced ([11]). Additionally, the expansion seems to have been financed by gaming funds granted by *Norsk Tipping AS* ([12]).

The 2006/2007 expansion was partly financed through a NOK 10 million bank loan with an interest based on three year government bonds plus one per cent ([13]), a proportionate part of which was intended to be serviced by the fitness centre. The expansion was further financed by NOK 4 million of gaming funds from *Norsk Tipping AS*, which were mainly, but apparently not exclusively, used to finance the expansion of other parts of the KLC ([14]).

### *2.3. Legal basis for the financing of the KLC*

The legal basis for the financing of the KLC including the fitness centre, seems to be decisions made by the municipal council of Vefsn. According to the budgetary decisions made by Vefsn municipality, ever since the KLC was established in 1970s the operating costs of the KLC have been partly covered by the municipality's operating budget. The two expansions of 1997 and 2006/2007 also seem to have been undertaken in accordance with decisions made by the municipality of Vefsn.

## 3. Comments by the Norwegian authorities

The Norwegian authorities argue that the fitness centre is run as a part of the municipal health care service and provides a service of general economic interest. Since 1997, the municipality of Vefsn has operated the KLC under the FYSAK programme – a programme managed by the county municipality of Nordland in order to aid the municipalities of Nordland in fulfilling their obligations to promote health in accordance with the Municipal Health Service Act ([15]). According to its Article 2-1 the municipality has a legal obligation to provide "necessary healthcare" to anyone residing or temporarily staying within the area of the municipality. According to Articles 1-2 and 1-4, the Norwegian municipalities shall prevent and treat diseases, injuries and other health problems, and when providing such services, the municipalities shall promote public health, public well-being and the quality of the general social environment.

([10]) Ibid p. 12.
([11]) See letter from the municipality of Vefsn to the Norwegian competition authorities dated 3.11.1998, p. 3 (added as sub-appendix 2 to appendix 2 of the letter from the Norwegian authorities dated 27.1.2009 (Event No 506341)). The expansion was apparently also financed through other sources, but these funds were seemingly ear-marked for areas of the KLC that were not connected to the fitness centre.
([12]) L.c.
([13]) For 2007 the interest rate on three year government bonds was 3.74%, consequently the interest rate for 2007 was (3.74% + 1%) 4.74%.
([14]) See letter from the Norwegian authorities dated 29.5.2009 (Event No 520013) p. 12.
([15]) *Lov om helsetjenesten i kommunene* of 19 November 1982 no 66. Hereinafter referred to as the MHS Act.

The Norwegian authorities hold that the financing of the fitness centre at the KLC merely represents compensation for services rendered by the fitness centre which is provided in line with the *Altmark* criteria ([16]). Consequently, it does not constitute aid within the meaning of Article 61(1) of the EEA Agreement.

In any event, the Norwegian authorities argue that the financing of the fitness centre at the KLC, as far as it could be held to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, must be considered compatible either as a public service compensation on the basis of Article 59(2) of the EEA Agreement, or alternatively as a cultural measure on the basis of Article 61(3)(c) of the EEA Agreement.

**4. Comments from the NAFC**

The NAFC has submitted comments to the notification. The association holds that the fitness centre at the KLC has received state aid within the meaning of Article 61 of the EEA Agreement. As to the sources of such aid, the NAFC claims that the fitness centre has been allocated state resources from the municipality of Vefsn, *Norsk Tipping AS* and the county municipality of Nordland.

The NAFC argues that the aid can neither be held to be compatible with the functioning of the EEA on the basis of Article 61(3)(c), nor constitute a service of general economic interest within the meaning of Article 59(2). Finally, the NAFC holds that the aid exceeds the *de minimis* threshold.

## II. ASSESSMENT

**1. Scope of the state aid assessment in this Decision**

As mentioned above under section I.2.2, the fitness centre at the KLC has received financing from different sources. It has been financed by the municipality of Vefsn on a regular basis since its establishment. Furthermore, the KLC has received funds from *Norsk Tipping AS* whereby the Norwegian authorities have not excluded that some of these funds were allocated to the fitness centre. Finally, the fitness centre has allegedly received funds stemming from the county municipality of Nordland.

***1.1. Funds stemming from the county municipality of Nordland***

The Authority received no information or documentation regarding the funds potentially received from the county municipality of Nordland. The Norwegian authorities are invited either to confirm that the fitness centre at the KLC did not receive any funds from the county municipality of Nordland or to provide the necessary information for the assessment of the state aid character of those funds and of the compatibility with the rules of the EEA Agreement.

***1.2. Funds stemming from Norsk Tipping AS***

The funds stemming from *Norsk Tipping AS* are gaming funds collected, administered and distributed on the basis of the Gaming Act from 1992 that entered into force on 1 January 1993 ([17]), before the entry into force of the EEA Agreement. The Ministry of Culture and Church Affairs has the general responsibility for the operation of *Norsk Tipping AS*, the company entrusted with the administration of the gaming funds.

([16]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747. See also case T-289/03 *BUPA* [2008] ECR II-81.

([17]) The Gaming Act replaced law No 92 of 20.12.1985 on Lotto.

The profit generated by the activities of *Norsk Tipping AS* was originally distributed by thirds: a third for sporting purposes, a third for cultural purposes and a third for scientific purposes ([18]). By Act No 37 of 21 June 2002, the distribution formula was amended to the effect that the profits were to be distributed equally between sports and cultural objectives.

In 2003, a bill was passed that gave *Norsk Tipping AS* an exclusive right to operate slot machines. In that connection, a new distribution formula set at 18% the allocation to non-sports related NGOs, 45.5% for sports and 36.5% for culture.

With reference to the case law cited in section II,1.3 below, the Authority considers that the introduction of a new group of recipients does not affect the classification of aid granted to culture and sports ([19]).

Accordingly, the Authority considers the activities of *Norsk Tipping AS* to constitute an existing system of state aid within the meaning of the provisions of the EEA Agreement.

Although *Norsk Tipping AS* only granted financing to the fitness centre at the KLC in 1997 and 2006/2007, the Authority considers that it benefited from the application of an existing system of state aid. Individual grants under an existing system do not qualify as new aid within the meaning of Article 1(c) of Part II of Protocol 3.

Thus, based on the above, the Authority considers that any gaming funds potentially allocated to the fitness centre at the KLC in connection with the 1997 or 2006/2007 expansions are grants stemming from a system of existing aid within the meaning of Article 62 of the EEA Agreement. For that reason, the compatibility with the functioning of the EEA Agreement of the grant of gaming funds from *Norsk Tipping AS* to the fitness centre at the KLC is not assessed in this Decision.

### *1.3. Funds stemming from the municipality of Vefsn*

In so far as the financing of the fitness centre at the KLC with resources from the municipality of Vefsn involves the grant of state aid, the question is whether this measure represents new or existing aid.

The KLC has been financed by the municipality of Vefsn since it was established in the early seventies. The annual deficit of the KLC has been covered by the municipal operating budget. In addition to this, the KLC has, ever since it was established, been financed by the revenue generated from various user fees, determined by the municipality. This method of financing was in place before the entry into force of the EEA Agreement on 1 January 1994, and would for these reasons as such seem to constitute existing aid within the meaning of Article 1(b)(i) of Part II of Protocol 3.

It follows from Article 1(c) to the same Protocol that alterations to existing aid constitute new aid. Moreover, it follows from the case law that where such alterations affect the actual substance of the original scheme the latter may be transformed into a new scheme. There can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme ([20]). In this regard, it is worth noting that the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amount in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered. Whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it ([21]).

Thus, the qualification of the financing mechanism as existing aid does not mean that the financing of an expansion or alteration of the KLC necessarily would be considered as existing

([18]) The funds for sporting purposes are distributed by the King (i.e. the Government), whereas the funds for other purposes are partly distributed by the Norwegian Parliament (*Stortinget*), in accordance with Article 10 of the Gaming Act and Regulation No 1056 adopted on 11.12.1992, which entered into force on 1.1.1993 *i.e.* before the entry into force of the EEA Agreement in Norway

([19]) The system is explained in the Preparatory Works to the amendment, Ot.prp. nr.44 (2002-2003) Chapter 4.6.2.

([20]) See case T-195/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309 paragraph 111.

([21]) See case C-44/93 *Namur-Les Assurances du Crédit SA* v *Office Nationale du Ducroire* [1994] ECR I-3829 paragraph 28.

aid. On the contrary, alterations that are not severable from the existing scheme and that affect its substance could entail that the scheme in its entirety is considered as new aid.

Regarding the financing of the fitness centre, the KLC was established in the 1970s, and has primarily been financed by the operating budget of the municipality of Vefsn and allocation of revenue generated by user fees. The method of financing the KLC seems to have been established by decisions of the municipal council of Vefsn in the early 1970s before it was constructed, and has essentially remained unchanged since then. The debts incurred by the 2006/2007 expansion were supposed to be serviced in line with this established method of financing, and accordingly the method of financing as such does not seem to have changed within the meaning of the above referenced case law. However, the Authority has not received sufficiently specific information on how the expansion of 1997 was financed. The Authority notes that the specific circumstances relating to the legal basis for the expansion and how the expansion was financed could represent changes entailing that it should be considered as alterations of existing aid.

Furthermore, the ticketing system has been changed since the entry into force of the EEA Agreement. The changes seem to have affected the price, the types of tickets offered and the system of allocation of ticket revenue. The Authority has not been provided with specific information concerning these developments, and has accordingly not been able to exclude that these changes involve a form of new aid.

Regarding the beneficiary, as far as the premises are concerned, according to the information made available to the Authority, the fitness centre was initially modestly equipped. The question is whether the sports facilities existing in the 1970s have been merely upgraded in accordance with new demands or whether the current fitness centre must be considered as a new facility. It is the Authority's understanding that the current fitness centre is not only significantly bigger but it also offers a much broader range of fitness activities than the old modestly equipped fitness centre. In this respect, the Authority has doubts as to whether the expansions of 1997 and/or 2006/2007, which took place after the entry into force of the EEA Agreement, changed the character of the operations of the fitness centre. According to case law, the enlargement of the scope of activities does generally not imply that the measure involves new aid. Nevertheless, given the apparently significant changes and expansion in the activities of the fitness centre ([22]) the Authority has not been able to exclude that the classification of the aid could have changed.

### *1.4. Conclusion – scope of the state aid assessment in this Decision*

Based on the lack of information regarding the funds that have allegedly been granted by the county municipality of Nordland to the fitness centre at the KLC, and the existing aid nature of the grants from *Norsk Tipping AS*, the following state aid assessment is confined to the financing of the fitness centre at the KLC with resources stemming from the municipality of Vefsn.

## 2. State aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

*"Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement."*

It follows from this provision that, for state aid within the meaning of the EEA Agreement to be present, the following conditions must be met:

– The aid must be granted through *state resources*;

([22]) See Communication from the Commission on the application of state aid rules to public service broadcasting, OJ C 257 of 27.10.2009, p. 1, paragraphs 25-31 and 80 ff.

– The aid must favour certain undertakings or the production of certain goods, *i.e.* the measure must confer a *selective economic advantage* upon the recipient;

– The recipient must constitute an *undertaking* within the meaning of the EEA Agreement;

– The aid must threaten to *distort competition* and *affect trade* between the Contracting Parties.

***2.1. Presence of state resources***

The measure must involve the consumption of state resources and/or be granted by the State. The State for the purpose of Article 61(1) of the EEA Agreement covers all bodies of the state administration, from the central government to the municipality level or the lowest administrative level as well as public undertakings and bodies.

The municipality of Vefsn covers the annual deficit of the KLC as a whole. Municipal resources are state resources within the meaning of Article 61 of the EEA Agreement ([23]).

From 2006 to 2008, the fitness centre at the KLC has operated with an annual surplus, which stems from the revenue generated by user fees ([24]). On the other hand, the KLC as a whole, has run with an annual deficit that has been covered by the operating budget of the municipality of Vefsn. The Authority notes that the municipality of Vefsn controls the ticketing system at the KLC; the prices, the types of tickets offered and the system of allocation of ticket revenue is determined by the municipal council. If the municipality allocates ticket revenues to the fitness centre beyond those collected from the actual users of the premises of the fitness centre, these ticket revenues will qualify as state resources within the meaning of Article 61(1) of the EEA Agreement. A system of allocation of ticket revenue, under the complete control of public authorities, can involve state aid where the principles of allocation do not correspond to the customers' use of the different facilities.

The criteria applied for the allocation of revenue generated by the sale of tickets granting admission to the KLC do not appear to be particularly exact. Under the current system, all revenues generated by the sale of all-access season tickets are allocated to the fitness centre although these tickets enable the holder to access other facilities of the KLC. All revenues stemming from the various single tickets, including single tickets giving access to the fitness centre, are allocated to the other facilities at the KLC. As described in section I.2.2 of this Decision, this entails that the fitness centre of the KLC receives about 70 per cent of the total ticket revenue. The Norwegian authorities state that this represents a correct allocation of revenue as an informal examination carried out in 2006 indicated that about 70 per cent of the adult visitors mainly use the fitness centre. However, in the absence of additional information and documentation, the Authority has doubts as to whether the current method of allocation corresponds to the customers' use of the different facilities thereby ensuring that there is no cross-subsidisation involving state resources from other parts of the KLC to the fitness centre.

As described under section I.2.2 of this Decision, the municipality has not maintained a clear and consistent separation of the accounts for the different activities of the KLC. On the basis of this, the Authority cannot exclude that a form of cross-subsidisation of the fitness centre occurs.

Furthermore, the 2006/2007 expansion was partly financed through a NOK 10 million bank loan. The fitness centre was intended to share the financing by servicing a proportionate part of the loan. However, its annual accounts from 2008 show that the fitness centre has only partially serviced its part of the loan according to the cost-allocation plan ([25]). In 2008, the fitness centre contributed NOK 185 000 in interest of the budgeted NOK 684 000, and an instalment of NOK 200 000 of the budgeted NOK 405 000. Thus, the fitness centre at the KLC only covered NOK 385 000 of the total NOK 1 089 000. The remaining part of the 2008 cost of the loan seems to have been serviced by the municipality of Vefsn. In light of this the Authority cannot to exclude that the 2006/2007 expansion of the fitness centre at the KLC has been financed with resources from the municipality.

([23]) See the Authority's Decision No 55/05/COL section II.3. p. 19 with further references, published in OJ L 324, 23.11.2006, p. 11 and EEA Supplement No 56, 23.11.2006, p. 1.
([24]) The Authority has not been provided with figures for earlier years.
([25]) This has been confirmed by Norwegian authorities in the letter dated 9.9.2009 (Event No 529846) p. 2-3.

***2.2. Favouring certain undertakings or the production of certain goods***

In order to constitute state aid within the meaning of Article 61 of the EEA Agreement the measure must confer a selective economic advantage upon an undertaking.

*2.2.1. The concept of undertaking*

Firstly, it is necessary to establish whether the fitness centre constitutes an undertaking within the meaning of Article 61 of the EEA Agreement. According to settled case law, an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way it is financed ([26]). Activities consisting in offering services on a given market qualify as economic activities ([27]), and entities carrying out such activities must be classified as undertakings. The fitness centre at the KLC offers its services to the general population in competition with other undertakings operating on the same market. In light of this, the fitness centre at the KLC seems to constitute an undertaking within the meaning of Article 61 of the EEA Agreement.

*2.2.2. Compensation for providing services of general economic interest*

As the fitness centre seems to constitute an undertaking, the Authority must assess whether it has received an economic advantage within the meaning of Article 61 of the EEA Agreement.

The Norwegian authorities argue that the fitness centre is run as a part of the municipal health care service and provides a service of general economic interest within this context, and that the financing of the fitness centre at the KLC merely represents compensation for services rendered provided in accordance with the *Altmark* criteria ([28]), and consequently does not constitute aid within the meaning of Article 61(1) of the EEA Agreement.

Indeed, a measure is not caught by Article 61(1) of the EEA Agreement where it "*must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them"* ([29]).

In the Altmark judgment the Court of Justice held that compensation for public service obligations does not constitute state aid when four cumulative criteria are met:

– First, the recipient undertaking must actually have public service obligations to discharge and such obligations must be clearly defined.

– Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.

– Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit.

– Finally, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred ([30]).

When these four criteria are met cumulatively, the state compensation does not confer an advantage upon the undertaking. As to the present case, the Authority is in doubt as to whether the fitness centre at the KLC is entrusted with a clearly defined public service obligation as required under

([26]) Case C-41/90 *Höfner and Elsner* v *Macrotron GmbH* [1991] ECR I-1979 paragraph 21.
([27]) Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851 paragraph 36.
([28]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg*, cited above.
([29]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg*, cited above, paragraph 87.
([30]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg*, cited above, paragraphs 89-93.

the first Altmark criterion ([31]). Furthermore, the Authority has doubts as to whether the method of calculating the compensation has been established in advance in an objective and transparent manner (the 2nd *Altmark* criterion). Moreover it cannot be determined at this stage on the basis of the information provided that it does not exceed what is necessary (the 3rd *Altmark* criterion) ([32]). Finally, the .Authority notes that the fitness centre at the KLC has not been selected in a public procurement procedure and that the Norwegian authorities have not provided the Authority with information enabling a verification of whether the costs incurred by the fitness centre at the KLC correspond to the costs of a typical undertaking, well run and adequately equipped as required by the 4th *Altmark* criterion. Thus, the Authority cannot exclude that the financing of the fitness centre at the KLC gives it an advantage.

Should an advantage have been granted to the fitness centre at the KLC, it would be selective as it only concerns this particular undertaking.

### *2.3. Distorting competition and affecting trade between Contracting Parties*

The aid measure must distort competition and affect trade between the Contracting Parties. Under settled case law, the mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, is enough to conclude that the measure is likely to affect trade between Contracting Parties and distort competition between undertakings established in other EEA States ([33]).

The state resources allocated to the fitness centre at the KLC seem to constitute an advantage that strengthens the fitness centre's position compared to that of other undertakings competing in the same market. Therefore, the measure seems to threaten to distort competition between undertakings.

The question is whether the financing of the fitness centre at the KLC threatens to affect intra-EEA trade.

A privately owned fitness centre, *Friskhuset Mosjøen* ([34]), a franchisee under the *Friskhuset* franchisor, is established in Mosjøen, the same city as the KLC. Based only on the available information, the Authority has not been able to determine whether the franchisor or the franchisee are involved in intra-EEA trade.

Regardless of this, the financing of the fitness centre at the KLC might threaten to affect intra-EEA trade in other ways. In the practice of the European Commission, the geographical attraction zone of a service has been held to be an important benchmark when establishing a measure's effect on intra-EEA trade ([35]). In the Authority's view, fitness centres, in general, seem to provide a service which by its very nature has a limited attraction zone. Based on the information made available to the Authority, the fitness centre at KLC does not seem to be so unique as to attract visitors from afar. Furthermore, the KLC is situated approximately 60 km (by road) from the nearest Swedish border. A distance of about 50 km from the closest EEA State was held to be sufficient to exclude impact on intra-EEA trade from the operation of a swimming pool in Dorsten, Germany ([36]).

Further indications of lack of effect on intra-EEA trade, held to be relevant in Commission practice, seem to be present. The fitness centre at the KLC does not belong to a wider group of undertakings ([37]). The information provided to the Authority does not indicate that the fitness centre at the KLC attracts investments to the region where it is established ([38]).

([31]) With regard to the question of whether the fitness centre at the KLC is entrusted with a clearly defined service obligation, see section II.4.1.

([32]) See section II.4.1.

([33]) Case 730/79 *Philip Morris Holland* [1980] ECR 2671 paragraphs 11-12.

([34]) The ownership of the privately owned fitness centre has changed over the years. It has been owned by *Centrum Fysikalske Institutt AS* which in the year 2000 merged with another undertaking and changed name to *Helsehuset Fysioterapi og Manuell Terapi Mosjøen AS*. From 2007 the fitness centre operated as a franchisee under the *Friskhuset* franchisor. The Authority has doubts as to whether any of the previous owners have been involved in intra-EEA trade.

([35]) See Notice from the Commission on a simplified procedure for treatment of certain types of state aid, published in OJ C 136, 16.6.2009, p. 3 paragraph 5(b) viii, footnote 6 which references the following Commission Decisions in cases N 258/200 (Germany, leisure pool Dorsten), N 486/2002 (Sweden, Aid in favour of a congress hall in Visby), N 610/2001 (Germany, Tourism infrastructure program Baden-Württemberg) and N 377/2007 (The Netherlands, Support to Bataviawerf).

([36]) See Commission Decision in case N 258/2000. See also Commission Decision in case N 610/2001 section 4.3.

([37]) See the criteria listed in the Notice from the Commission on a simplified procedure for treatment of certain types of state aid, published in OJ C 136, 16.6.2009, p. 3 paragraph 5(b) viii, footnote 6.L.c.

([38]) L.c.

Moreover, the Authority has not been provided with sufficient information relating to the market share of the fitness centre at the KLC to make a thorough assessment of the impact, or lack thereof, on intra-EEA trade ([39]).

It is worth noting that several of the undertakings active on the Norwegian fitness centre market are involved in intra-EEA trade. However, it seems that these undertakings tend to establish fitness centres in more densely populated areas than that of Vefsn municipality ([40]).

In light of the above, the Authority is in doubt as to whether the financing of the fitness centre at the KLC threatens to affect intra-EEA trade.

### *2.4. Conclusion on the presence of state aid*

The Authority consequently has doubts as to whether the measures under scrutiny involve state aid within the meaning of Article 61 of the EEA Agreement.

## 3. Notification requirement and standstill obligation

The Norwegian authorities submitted a notification of the financing of the fitness centre at the KLC on 27 January 2009 (Event No 506341). In so far as the financing of the fitness centre at the KLC may constitute state aid within the meaning of Article 61 of the EEA Agreement, and that this aid constitutes "new aid" within the meaning of Article 1(c) of Part II of Protocol 3, the Norwegian authorities should have notified the aid before putting it into effect pursuant to Article 1(3) of Part I of Protocol 3.

It should be recalled that any new aid which is unlawfully implemented and which is finally not declared compatible with the functioning of the EEA Agreement is subject to recovery in accordance with Article 14 of Part II of Protocol 3. However, the Authority notes that any state aid granted more than 10 years before any action is taken by the Authority is deemed to be existing aid not subject to recovery pursuant to Article 15 of Part II of Protocol 3.

## 4. Compatibility of the aid

The Norwegian authorities have argued that the financing of the fitness centre at the KLC, as far as it is held to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, must be considered to be compatible either as compensation for providing a service of general economic interest on the basis of Article 59(2) of the EEA Agreement, or alternatively as a cultural measure on the basis of Article 61(3)(c) of the EEA Agreement.

### *4.1. Service of general economic interest – Article 59(2) of the EEA Agreement*

Article 59(2) of the EEA Agreement reads as follows:

*"Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules do not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties."*

The Norwegian authorities consider that operating the fitness centre at the KLC, as such, constitutes a service of general economic interest ([41]). The Norwegian authorities argue that the purpose of operating the fitness centre at the KLC is to stimulate all the residents of the municipality of Vefsn to be more physically active and consequently improve the general health of the local population. However, there seems to be no specific mechanisms in place ensuring

([39]) L.c.

([40]) Vefsn municipality is located in the second northernmost county of Norway. The KLC is located in a region eligible for regional aid, see the Authority's Decision No 226/06/COL of 19.7.2006, published in OJ L 54, 28.2.2008, p. 21 and EEA Supplement No 11, 28.2.2008, p. 19.

([41]) See letter accompanying the notification of the measure dated 27.1.2009 (Event No 506341), p. 14-19, and letter from Norwegian authorities dated 29.5.2009 (Event No 520013) p. 3-7.

that the fitness centre at the KLC is available to as many users as possible. The so-called FYSAK pass seems to be available to everyone above the age of 15 at the same price, there seems to be no specific means-tested discount available to those of lesser means, although some discounts seem to be granted for young people below the age of 20 and senior citizens ([42]). The Norwegian authorities seem to acknowledge this by stating that "*(a) very small number of groups are excluded due to price*" ([43]). In that sense, the fitness centre seems to function, at least partly, as a normal fitness centre. Furthermore, the Authority questions whether there is a need to subsidise a fitness centre in the specific area of Mosjøen since a privately owned fitness centre has been operating in the same city for more than a decade.

The Authority acknowledges that the Norwegian authorities have a wide margin of discretion regarding the nature of services that could be classified as constituting services of general economic interest ([44]). However, in light of the above, the Authority has doubts as to whether the operation the fitness centre at the KLC can constitute a service of general economic interest within the meaning of Article 59(2) of the EEA Agreement.

In this respect, reference is made to the Authority's guidelines on state aid in the form of public service compensation ([45]). The following cumulative criteria must be fulfilled in order for a state aid measure to be considered compatible with the functioning of the EEA Agreement on the basis of Article 59(2) in conjunction with the public service guidelines:

– The service must constitute a genuine service of general economic interest;

– The undertaking must be entrusted with the operation of the service by way of one or more official acts;

– The amount of compensation must not exceed what is necessary to cover the costs incurred in discharging the service.

According to the information provided by the Norwegian authorities, the fitness centre seems to provide certain special preventive and convalescent services to individuals with specific needs in accordance with the municipality's obligations under Article 1-2 of the MHS Act. Such services seem to be provided to individuals with a so-called FYSAK prescription (*FYSAK Resept*) which can be obtained from a doctor, physical therapist or certain public bodies ([46]). However, the Authority has not received specific information pertaining to how the fitness centre at the KLC is compensated for providing such services, and cannot exclude that the compensation does not exceed what is necessary within the meaning of the public service guidelines.

At this stage, the Authority has not been able to assess whether the financing of the fitness centre at the KLC in part or in full can constitute compensation for a service of general economic interest that could be compatible with the functioning of the EEA within the meaning of Article 59(2).

### *4.2. Article 61(3)(c) of the EEA Agreement*

Article 61(3) of the EEA Agreement reads as follows:

*"The following may be considered to be compatible with the functioning of this Agreement: […] (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest."*

The Norwegian authorities hold that the aid granted to the fitness centre at the KLC should be considered compatible with the functioning of the EEA Agreement on the basis of the exemption in Article 61(3)(c) of the EEA Agreement, and more specifically that the operation of the fitness centre must be regarded as a measure to promote culture within the meaning of the provision in Article 107(3)(d) of the Treaty on the Functioning of the European Union.

([42]) See http://www.kippermoen.com/index.asp?side=priser.
([43]) See letter from Norwegian authorities dated 29.5.2009 (Event No 520013) p. 13.
([44]) See the public service guidelines paragraph 8.
([45]) Hereinafter referred to as the public service guidelines.
([46]) See http://www.kippermoen.com/index.asp?side=akt_res.

The EEA Agreement does not include a corresponding provision. The Authority nevertheless acknowledges that state aid measures may be approved on cultural grounds on the basis of Article 61(3)(c) of the EEA Agreement ([47]).

In this respect, reference must be made to the European Commission's White Paper on Sports ([48]), which acknowledges that sport is crucial to the well-being of European society. The vast majority of sporting activities take place in non-profit making structures, many of which depend on public support to provide access to sporting activities to all citizens.

However, based on the information available, the Authority has doubts as to whether the operation of the fitness centre at the KLC constitutes a cultural activity.

The Authority notes that the KLC is located in a region eligible for regional aid ([49]) and points to the fact that financing connected to the expansion of 2006/2007 could under certain circumstances be considered compatible with the functioning of the EEA Agreement ([50]). However, the information made available to the Authority during its preliminary examination of the financing of the fitness centre at the KLC does not enable it to make a definite assessment of this question.

## 5. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude the possibility that the funds received by the fitness centre at the KLC constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

As explained under section II.1.2 above, the Authority considers that the funds stemming from *Norsk Tipping AS* have been granted in accordance with an existing aid scheme, they are not covered by this Decision to open the formal investigation procedure

The Authority has doubts as to whether the financing of the fitness centre at the KLC with funds stemming from the municipality of Vefsn, in particular concerning those funds allocated on the basis of the two expansions in 1997 and 2006/2007, constitute "new aid", which pursuant to Article 1(3) of Part I of Protocol 3 should have been notified to the Authority prior to its implementation.

The Authority has doubts as to whether the aid granted is compatible with the functioning of the EEA Agreement, in accordance with Article 59(2) or Article 61(3)(c) of the EEA Agreement.

In accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the procedure provided for in Article 1(2) of Part I of Protocol 3. The Decision to open proceedings is without prejudice to the final Decision of the Authority, which may conclude that the measures in question do not constitute state aid, are to be classified as existing aid or are compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit their comments within one month of the date of receipt of this Decision.

In light of the foregoing considerations, within one month of receipt of this Decision, the Authority request the Norwegian authorities to provide all documents, information and data needed for assessment of the compatibility of the financing of the fitness centre at the KLC. In particular, the Authority invites the Norwegian authorities to provide detailed information regarding any funding from the county municipality of Nordland to the fitness centre at the KLC, as mentioned under section II.1.1 of this Decision.

([47]) See for example paragraph 7 (with further references) of the Chapter of the Authority's guidelines on state aid to cinematographic and other audiovisual work, adopted by the Authority by Decision No 774/08/COL of 17 December 2008, not yet published in the OJ or the EEA Supplement, available at the Authority's webpage at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines.

([48]) White paper on sport, COM (2007) 391 final.

([49]) See the regional aid maps of assisted areas for Norway registered in the Authority's Decision No 327/99/COL of 16.12.1999 and Decision No 226/06/COL of 19.7.2006.

([50]) For any aid granted after 1 January 2007, Chapter of the Authority's guidelines on National Regional Aid 2007-2013. For aid granted before that date, reference must be made to the provisions of the Chapter on National regional aid adopted by Decision No 319/98/COL of 4.11.1998.

It invites the Norwegian authorities to forward a copy of this Decision to the potential aid recipient of the aid immediately.

The Authority would like to remind the Norwegian authorities that, according to the provisions of Protocol 3, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered, unless this recovery would be contrary to the general principle of law.

HAS ADOPTED THIS DECISION:

*Article 1*

The EFTA Surveillance Authority has decided to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 against Norway regarding the financing of the fitness centre at the Kippermoen Leisure Centre.

*Article 2*

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

*Article 3*

The Norwegian authorities are requested to provide within one month from notification of this Decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

*Article 4*

This Decision is addressed to the Kingdom of Norway.

*Article 5*

Only the English version is authentic.

Done at Brussels, 16 December 2009.

For the EFTA Surveillance Authority

***Per Sanderud*** ***Kristján Andri Stefánsson***

President College Member

**Auglýst eftir athugasemdum, í samræmi við ákvæði 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, sem varðar ríkisaðstoð, í tengslum við sölu sveitarfélagsins Asker á lóð til Asker Brygge AS** **2010/EES/35/02**

Ákvörðun Eftirlitsstofnunar EFTA 538/09/COL frá 16. desember 2009, sem er birt á upprunalegu, fullgiltu tungumáli á eftir þessu ágripi, markar upphaf málsmeðferðar samkvæmt 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls. Stjórnvöldum í Noregi hefur verið tilkynnt um málsmeðferðina með afriti af ákvörðuninni.

Eftirlitsstofnun EFTA veitir EFTA-ríkjunum, aðildarríkjum Evrópusambandsins og áhugaaðilum eins mánaðar frest frá birtingardegi þessarar auglýsingar til að gera athugasemdir við ráðstöfunina sem um ræðir. Athugasemdirnar skal senda á eftirfarandi póstfang:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussel/Bruxelles

Athugasemdum, sem berast, verður komið á framfæri við stjórnvöld í Noregi. Þeim, sem leggja fram athugasemdir, er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

## ÁGRIP

Með bréfi, sem Eftirlitsstofnun EFTA barst 13. febrúar 2009, tilkynntu stjórnvöld í Noregi um sölu sveitarfélagsins Asker á lóð til félagsins Asker Brygge AS.

Sveitarfélagið Asker og Asker Brygge gerðu samning árið 2001 þar sem Asker Brygge var veittur réttur, fram til 31. desember 2009, til að kaupa lóð á föstu verði sem nemur 8 milljónum norskra króna, leiðréttu miðað við vísitölu neysluverðs. Asker Brygge ákvað 2005 að nýta sér réttinn til að kaupa lóðina. Að loknum samningaviðræðum komust aðilar að samkomulagi um söluverð að fjárhæð 8 727 462 norskra króna og gerðu samning um söluna hinn 21. mars 2007. Lóðin var færð á nafn Asker Brygge sama dag þó svo að söluandvirðið yrði greitt í tvennu lagi, eins og þegar hafði verið kveðið á um í kaupréttarsamningnum frá 2001. Síðari afborgunin svarar til 70 % af söluverðinu (6 109 223 norskra króna) og er á gjalddaga hinn 31. desember 2011. Sveitarfélagið Asker mun ekki innheimta vexti af síðari afborguninni.

Eftirlitsstofnun EFTA telur vafa leika á því hvort viðskiptin, sem snúa að sölu lóðarinnar, hafi farið fram í samræmi við markaðsfjárfestaregluna. Kveðið var á um skilyrðin fyrir sölunni síðar á kaupréttartímabilinu í samningnum frá 2001. Eftirlitsstofnun EFTA hefur metið hvort kaupréttarsamningurinn frá 2001 hafi verið gerður samkvæmt markaðsskilmálum. Stofnunin dregur í efa að Asker Brygge hafi greitt fyrir kaupréttinn sem slíkan og að á móti skilyrðum, sem voru ívilnandi fyrir kaupandann, hafi komið samsvarandi skuldbindingar fyrir kaupandann eða réttindi fyrir seljandann. Með kaupréttarsamningnum var Asker Brygge ekki aðeins veittur réttur til að kaupa eignina hvenær sem var á næstu árum á eftir heldur var einnig ákveðið verðið sem skyldi gilda í slíkum viðskiptum. Kauprétturinn gaf Asker Brygge þar með kost á að fylgjast með þróun fasteignaverðs á nokkurra ára tímabili til að nýta sér síðan kaupréttinn og kaupa eignina á verði sem samið var um 2001. Sveitarfélaginu var hins vegar meinað að selja öðrum aðila eignina á sama tímabili. Ennfremur gat Asker Brygge unnið skipulega að því að fá sveitarfélagið til að breyta reglum um nýtingu eignarinnar í þeim tilgangi að auka markaðsvirði hennar. Að auki fengi sveitarfélagið ekki greiðslu ef ekki yrði af sölunni.

Í kaupréttarsamningnum voru einnig aðrir þættir sem virtust til þess fallnir að auka virði kaupréttarins, m.a. átti Asker Brygge rétt á að óska eftir að samið yrði um verðið á ný, færi svo að fasteignaverð lækkaði umtalsvert, en sveitarfélagið átti ekki samsvarandi rétt á nýjum samningaviðræðum. Verðið var leiðrétt miðað við vísitölu neysluverðs, þótt fasteignaverð væri ekki inni í þeirri vísitölu. Sveitarfélagið Asker ákvað að fresta greiðslu á 70 % af umsömdu söluverði án þess að innheimta vexti vegna þeirrar frestunar, enda þótt lóðin hefði verið færð að fullu á nafn nýs eiganda þegar í stað.

Af þessum ástæðum telur Eftirlitsstofnun EFTA vafasamt að einkarekið fyrirtæki hefði gert kaupréttarsamning til svo langs tíma, með sambærilegum skilyrðum og sveitarfélagið Asker, án þess að krefjast endurgjalds fyrir kaupréttinn sem slíkan og hagstæð skilyrði sem í honum fólust.

Þar eð ekki er unnt, að svo komnu máli, að ákvarða hvort kaupréttarsamningurinn hafi uppfyllt skilyrði markaðsfjárfestareglunnar verður stofnunin að kanna frekar hvort eignin hafi verið yfirfærð á verði sem var undir markaðsverði 2007 þegar salan fór í raun fram og hvort Asker Brygge hafi þar með þegið ríkisaðstoð í skilningi 61. gr. EES-samningsins. Stofnunin hefur borið verðið, sem Asker Brygge greiddi, 8 727 462 norskra króna, saman við tiltækar upplýsingar um markaðsvirði eignarinnar á þeim tíma sem hún var seld. Stjórnvöld í Noregi hafa lagt fram þrjár skýrslur um verðmat á eigninni. Í fyrstu skýrslunni, dags. 30. júní 2006, er virði lóðarinnar 2001, á þeim tíma þegar kaupréttarsamningurinn var gerður, metið á 9,6 milljónir norskra króna, með hugsanlegu +/– 15 % fráviki. Í annarri skýrslunni, dags. 18. janúar 2008, er talið að markaðsvirði lóðarinnar 2007 hafi numið 26 milljónum norskra króna, sem samsvarar 17 milljónum norskra króna á árinu 2001. Í þriðju skýrslunni, dags. 16. júní 2008, sem sömu matsmenn gerðu, var virðið leiðrétt og metið á 14 milljónir norskra króna 2007 og 8 milljónir norskra króna 2001, að teknu tilliti til virðislækkunar vegna viðbótarskuldbindingar, sem lögð var á Asker Brygge í tengslum við notkun Slependen Båtforening AS á hluta eignarinnar.

Eftirlitsstofnun EFTA telur vafa leika á að rétt virði eignarinnar með auðkenninu 32/17 komi fram í neinni skýrslnanna þriggja og hefur efasemdir um að markaðsverð hafi verið greitt fyrir eignina og um að einkafjárfestir hefði fallist á að greiðslu söluverðsins yrði frestað án þess að vextir yrðu reiknaðir.

Stuðningsráðstafanir, sem falla undir ákvæði 1. mgr. 61. gr. EES-samningsins, eru í almennum atriðum ósamrýmanlegar framkvæmd EES-samningsins, nema þær fullnægi skilyrðum fyrir undanþágu samkvæmt ákvæðum 2. eða 3. mgr. 61. gr. samningsins. Eftirlitsstofnun EFTA efast aftur á móti um að viðskiptin, sem hér eru til athugunar, geti talist réttlætanleg með vísan til ákvæða EES-samningsins um ríkisaðstoð.

**Niðurstaða**

Með hliðsjón af því, sem hér hefur verið rakið, hefur Eftirlitsstofnun EFTA ákveðið að hefja formlega rannsókn í samræmi við 2. mgr. 1. gr. EES-samningsins. Áhugaaðilum er gefinn kostur á að leggja fram athugasemdir og skulu þær berast áður en mánuður er liðinn frá því að ákvörðun þessi birtist í *Stjórnartíðindum Evrópusambandsins* og EES-viðbæti við þau.

**EFTA SURVEILLANCE AUTHORITY DECISION**

**No 538/09/COL**

**of 16 December 2009**

**to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to the notification of sale of land in the municipality of Asker**

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ([1]),

HAVING REGARD to the Agreement on the European Economic Area ([2]), in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ([3]), in particular to Article 24 thereof,

HAVING REGARD to Article 1(2) of Part I and Articles 4(4) and 6 of Part II of Protocol 3 to the Surveillance and Court Agreement ([4]),

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ([5]), and in particular the chapter on state aid elements in sales of land and buildings by public authorities ([6]),

HAVING REGARD to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 ([7]).

*Whereas:*

## I. FACTS

### 1. Procedure

By letter of 15 December 2008 (Event No 508884), received by the Authority on 13 February 2009, the Norwegian authorities notified a sale of land by the municipality of Asker, pursuant to Article 1(3) of Part I of Protocol 3.

By letter dated 8 April 2009 (Event No 512188), the Authority requested additional information. The Norwegian authorities replied by letter dated 11 May 2009 (Event No 518079).

By letter of 7 July 2009 (Event No 521778), the Authority sent a second request for information. The Norwegian authorities responded by letter dated 14 August 2009 (Event No 527555).

### 2. Description of the notification

The Norwegian authorities have notified a sale of a plot of land by the municipality of Asker to the company Asker Brygge AS (hereinafter referred to as "Asker Brygge").

([1]) Hereinafter referred to as the Authority.
([2]) Hereinafter referred to as the EEA Agreement.
([3]) Hereinafter referred to as the Surveillance and Court Agreement.
([4]) Hereinafter referred to as Protocol 3.
([5]) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines.
([6]) Hereinafter referred to the Guidelines on sale of land.
([7]) Decision No 195/04/COL of 14 July 2004 (published in OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1), as amended. A consolidated version of the Decision can be found on: www.eftasurv.int.

The municipality of Asker and Asker Brygge entered into an agreement in 2001 (hereinafter referred to as the "option agreement"), according to which Asker Brygge was granted an option, lasting until 31 December 2009, to buy land for a fixed sum of NOK 8 million, adjusted according to the consumer price index. According to the option agreement the municipality intended to give Asker Brygge the option to buy the property at market price provided that Asker Brygge undertook extensive planning and research with the aim of obtaining a reregulation of the property and then developing the property.

In 2004 the option agreement was renewed, and the validity of the option was extended until 31 December 2014 under similar conditions regarding the progress of the reregulation work. In 2005, Asker Brygge called upon the option to buy the land. The property is registered in the Norwegian property register as *Nesøyveien 8*, *gnr. 32 bnr. 17* in the municipality of Asker and is approximately 9 700 $m^2$. After negotiations the parties agreed to a sales price of NOK 8 727 462 and entered into a sales agreement on 21 March 2007. The land was transferred to Asker Brygge on the same date although the sales sum was to be paid in two instalments. The first instalment of 30 % of the sales sum was paid in 2007 on the date of the transfer of the property. The second and largest instalment, 70 % of the sales sum (NOK 6 109 223), is due at the latest 31 December 2011. The municipality of Asker will not charge any interest rate on the second instalment.

The municipality of Asker and Asker Brygge are of the opinion that the sales contract does not entail any state aid because the sales price reflects the market value. The Norwegian authorities have nonetheless decided to notify the transaction for reasons of legal certainty.

## II. ASSESSMENT

### 1. The presence of state aid within the meaning of Article 61(1) EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

*"Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement".*

#### *2.1. Market investor principle*

##### *2.1.1. Introduction*

If the transaction was carried out in accordance with the market economy investor principle, i.e., if the municipality sold the land for its market value and the conditions of the transaction would have been acceptable for a private seller, the transaction would not involve the grant of state aid.

In the following the Authority will assess whether the municipality of Asker has granted illegal state aid to Asker Brygge in connection with the sale of the plot of land gbnr 32/17. The sale of land could qualify as state aid if the sale was not carried out at market price. As a point of departure, the assessment of whether a property has been sold at market value should be assessed at the time of the conclusion of the contract. The circumstances of this sale of land are somewhat particular in the sense that there exists several agreements concerning the sale: An option agreement from 2001, an extended option agreement from 2004 and a sales agreement from 2007.

The option agreement not only gave Asker Brygge a right to acquire the property at any given time over the years to come but also fixed the price for a later transfer. The option thereby entailed a possibility for Asker Brygge to observe the development of property prices over a number of years, thereafter to take up the option to buy the property for the price agreed in 2001. While the Authority fully recognises the right for public authorities also to operate in a market on commercial terms, it nevertheless finds reason to consider carefully whether a similar agreement would have been concluded by a private market operator. The Authority will in that

regard consider whether Asker Brygge paid for the option as such, and whether the favourable conditions for the buyer appear to be balanced by corresponding obligations for the buyer or rights for the seller.

If the option agreement as such cannot be said to comply with the private market investor principle, the Authority will assess whether the property was transferred at market value when the sales agreement was concluded in 2007. Thus, the Authority will in the following firstly assess the option agreement of 2001 (and the extension signed in 2004) and, secondly, whether the actual sale of land in 2007 was accomplished at market price.

*2.1.2. The market price of the option agreement signed in 2001*

As regards the option agreement, it has to be examined whether a private investor operating in a market economy would have chosen to enter into a similar agreement regarding the price and terms as the one signed between the municipality of Asker and Asker Brygge in 2001. In making that assessment, the Authority cannot replace the municipality's commercial judgement with its own, which implies that the municipality, as the seller of the plot of land, must enjoy a margin of judgement. There can be a number of commercially sound reasons to enter into an agreement under given conditions. When there is no plausible explanation for the municipality's choice the measure could qualify as state aid.

On the basis of the information available to the Authority, the conditions for the later sale were laid down in the option agreement signed in 2001. This agreement gave Asker Brygge a right, but not an obligation, to buy the property on pre-determined conditions at any given time until 31 December 2009. On the other hand, the municipality was barred from selling the property to someone else in the same period. The main features of the option agreement which are relevant for the state aid assessment are (i) the agreed price of NOK 8 million, adjusted in accordance with the consumer price index, (ii) the right of renegotiation agreed for Asker Brygge in case property prices should decrease considerably before the option was invoked (there was no corresponding right of renegotiation for the municipality should the property prices increase considerably), (iii) the payment in two instalments, whereby 70 % of the sales price would be paid before 31 December 2011 at the latest, but no interest would be charged for this delay. In 2004 the municipality and Asker Brygge prolonged the option agreement until 2014, but did not modify any of the other conditions for the transaction.

According to the information available to the Authority, the municipality carried out no value assessment of the property before it entered into the agreement with Asker Brygge in 2001. Thus, it is not clear to the Authority on which basis the municipality arrived at the agreed price of NOK 8 million for the sale of land gbnr. 32/17. In the information presented to the Authority, Asker municipality nevertheless appears to argue that this amount was indeed the market value of the property in 2001.

Even if it is assumed that NOK 8 million represented the market price for the property as such in 2001, the Authority questions whether the market value of the option agreement only corresponds to the value of the property or whether the market value of the other elements agreed upon should be taken into account. In the Authority's view, if only the market value for the property had to be considered, that would entail that Asker Brygge got the option as such for free. As mentioned above, this option enabled the company to observe the development of property prices for a number of years. Statistically, property prices tend to increase over time. Furthermore, Asker is located close to Oslo and has experienced a continuous growth in population, something that would usually influence property prices positively.

The option agreement barred the municipality from selling the property to another buyer, and thus tied up capital for which the municipality could have found alternative uses or received interest. Indeed, the extension in 2004 prolonged the option with an additional 5 years without remuneration. It enabled Asker Brygge to actively approach the municipality in order to reregulate the property for purposes that would increase the market value. Moreover, the municipality would not receive any payment in case of no subsequent sale.

Under the option agreement, some aspects of a possible future sales contract were also agreed upon. In particular, regarding the reregulation of the area, Asker Brygge had an obligation to finish the preparatory works that would lead to the reregulation process. If this condition was not met, the municipality of Asker could terminate the contract. The Norwegian authorities argue that there is an uncertainty or risk connected to the reregulation process. Nevertheless, the option agreement gave Asker Brygge the opportunity to work on it for several years before deciding to buy the property, which in the opinion of the Authority reduced the risk considerably. In addition, if the property was reregulated, this would increase the value of the property. Hence, the option agreement did not entail any real risk for Asker Brygge.

In the Authority's preliminary view, that option itself, independent of whether it was exercised or not, had a value in 2001 when the agreement was concluded. From the documentation and explanations the Authority has received so far, there is no information that the buyer paid for the option as such.

The option agreement also included other elements that appear to be capable of increasing the value of the option. The first element concerns the mechanism to regulate the price. Asker Brygge had the right to request renegotiations of the price if property prices in Asker should decrease considerably before the option was invoked. As mentioned above, the agreement did not provide a corresponding right of renegotiation for the municipality should the property prices increase considerably. According to the Norwegian authorities, the background for including a right for Asker Brygge to renegotiate the agreement was that the municipality of Asker considered the property to be difficult to develop, *inter alia* due to the short distance to the highway (E-18), and the transaction would therefore involve substantial economic risk. The Authority however, has doubts as to whether a private market investor would have entered into such an agreement without a mutual right to adjustment if property prices should increase or decrease considerably. In this regard, the right for the municipality to adjust the price in accordance with the consumer price index appears not to be sufficient to compensate for the lack of a corresponding right of renegotiation.

In addition, the Authority doubts that the consumer price index would be the correct index to use when adjusting for changes in property prices. The consumer price index is a measure estimating the change in the average price of consumer goods and services purchased by households, and does not reflect the price movements of the property market. Property prices develop at a different pattern than other prices, and real estate prices are therefore normally not taken into account when determining the consumer price index.

In addition, the municipality of Asker agreed to postpone the payment of 70 % of the agreed sales price until 31 December 2011 at the latest ([8]) without charging any interest for this deferral. According to the Norwegian authorities, the postponement of full payment without any interest was accepted because the property was considered difficult to develop. The Authority doubts that a private operator would have agreed to postpone the payment over such a long period of time without requiring any interest payments. Moreover, it doubts whether a private operator would have transferred full ownership of the property before full payment had been received.

For these reasons, the Authority doubts that a private operator would have entered into such a long option agreement, on similar conditions as the municipality of Asker without requiring remuneration for the option and the favourable conditions as such. By simply requiring a remuneration corresponding to the value of the property in 2001, the municipality of Asker ran the risk of granting state aid later if property prices should increase. It is therefore necessary to examine whether the property was transferred at a price below market value in 2007 and whether Asker Brygge thereby received state aid within the meaning of Article 61 EEA. The Authority will therefore in the following assess the available information regarding the market value in 2007.

([8]) According to the sales contract clause 3, the payment shall take place prior to any building activity starts and in any case within 31.12.2011.