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EFTAS OVERVÅKNINGSORGAN

Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til finansieringen av treningssenteret på Kippermoen idrettssenter **2010/EØS/35/01**

EFTAs overvåkningsorgan har ved vedtak 537/09/COL av 16. desember 2009, gjengitt på det opprinnelige språket etter dette sammendraget, innledet behandling i henhold til protokoll 3 del I artikkel 1 nr. 2 i avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol ("overvåknings- og domstolsavtalen"). Norske myndigheter er underrettet ved en kopi av vedtaket.

EFTAs overvåkningsorgan innbyr herved EFTA-statene, EU-medlemsstatene og interesserte parter til å sende sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort, til:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussels

Merknadene vil bli oversendt norske myndigheter. En part som ønsker å få sine merknader behandlet fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

Sammendrag

Norske myndigheter ga 27. januar 2009 melding om finansieringen av treningssenteret på Kippermoen idrettssenter (heretter kalt KIS) som et tiltak som ikke innebærer statsstøtte, for å klargjøre rettsstatus. Overvåkningsorganet sendte to anmodninger om nærmere opplysninger, som norske myndigheter har besvart.

KIS ble opprettet på 1970-tallet. Det ligger i Mosjøen i Vefsn kommune, i Nordland fylkeskommune, som er den nest nordligste fylkeskommunen i Norge. Senteret eies av Vefsn kommune og er ikke organisert som egen juridisk person.

Opprinnelig bestod senteret av en innendørs svømmehall, et solarium, en idrettshall og et treningssenter. I 1997 ble KIS (inkludert treningssenteret) modernisert og utvidet. Treningssenteret ble utvidet igjen i 2006 og 2007.

Ny eller eksisterende støtte

I den utstrekning finansieringen av treningssenteret på KIS innebærer statsstøtte, er spørsmålet om det dreier seg om ny eller eksisterende støtte.

KIS har vært finansiert direkte av Vefsn kommune siden det ble etablert tidlig på syttitallet. I tillegg til dette har KIS, helt siden det ble etablert, blitt finansiert ved inntekter fra forskjellige brukerbetalinger, fastsatt av kommunen. Denne finansieringsformen var etablert før EØS-avtalen trådte i kraft 1. januar 1994, og kan av den grunn synes å utgjøre eksisterende støtte i henhold til protokoll 3 del II artikkel 1 bokstav b) i).

I henhold til opplysningene som er mottatt, skulle utvidelsen i 2006/2007 finansieres på grunnlag av samme finansieringsmekanisme som for driftskostnadene, men Overvåkningsorganet har ikke mottatt tilstrekkelig konkret informasjon om hvordan utvidelsen i 1997 ble finansiert.

Videre er billettsystemet endret siden EØS-avtalen trådte i kraft. Endringene ser ut til å ha påvirket prisen, typene av billetter som tilbys og systemet for fordeling av billettinntekter. Overvåkningsorganet har ikke fått konkrete opplysninger om disse utviklingene, og har følgelig ikke kunnet utelukke at disse endringene ikke innebærer en ny form for støtte.

Når det gjelder støttemottakeren, var treningssenteret, ut fra de opplysninger Overvåkningsorganet har fått, relativt sparsomt utrustet. Spørsmålet er om anleggene som eksisterte på 1970-tallet bare er blitt oppdatert i henhold til tidens krav, eller om det nye treningssenteret må anses som et nytt anlegg. Det er Overvåkningsorganets forståelse at det nåværende treningssenteret ikke bare er betydelig større, men også tilbyr langt flere treningsaktiviteter enn det gamle, sparsomt utrustede treningssenteret. I denne forbindelse er Overvåkningsorganet i tvil om utvidelsene i 1997 og/eller 2006/2007, som fant sted etter at EØS-avtalen trådte i kraft, endret driften av treningssenteret i vesentlig grad. I henhold til sakspraksis innebærer ikke utvidelse av aktivitetene generelt at tiltaket omfatter ny støtte. Med tanke på de tilsynelatende omfattende endringene i og utvidelsen av aktivitetene i treningssenteret([1]), har Overvåkningsorganet imidlertid ikke kunnet utelukke at klassifiseringen av støtten kan ha blitt endret.

Om det foreligger statsstøtte

Fordeler som innebærer statsmidler gitt til et foretak

Vefsn kommune dekker hele det årlige underskuddet i KIS. Kommunale ressurser er statsmidler i betydningen av EØS-avtalens artikkel 61([2]). Treningssenteret er blitt finansiert med brukerbetaling fastsatt og fordelt av kommunen på en slik måte at denne delen går med overskudd, mens resten av KIS går med underskudd. Ettersom det ikke er noen klart atskilt bokføring, kan Overvåkningsorganet ikke utelukke at det har funnet sted kryssubsidiering av treningssenteret.

Treningssenteret har også mottatt midler fra Norsk Tipping AS, et tippeselskap som er heleid av den norske stat og underlagt Kirke- og kulturdepartementet([3]). Spillemidlene samles inn, administreres og distribueres under statlig kontroll, og utgjør følgelig statsmidler i betydningen av EØS-avtalens artikkel 61 nr. 1.

Videre kan treningssenteret også ha blitt finansiert av ressurser fra Nordland fylke.

Treningssenteret som er del av KIS drives i hovedsak som et vanlig treningssenter, og synes i den sammenheng å utgjøre et foretak. Selv om norske myndigheter har argumentert med at det ikke gis statsstøtte til treningssenteret i henhold til sakspraksis fra *Altmark*-saken, kan Overvåkningsorganet på dette tidspunkt ikke utelukket at finansieringen av treningssenteret på KIS gir dette en fordel.

Vridning av konkurransen og påvirkning av samhandelen mellom avtalepartene

Fordelen som gis til treningssenteret på KIS synes å true med å vri konkurransen i markedet for treningssentre. Overvåkningsorganet er imidlertid i tvil om tiltaket truer med å påvirke samhandelen i EØS i henhold til EØS-avtalens artikkel 61 nr. 1. Treningssentre tilbyr generelt en tjeneste som i utgangspunktet i begrenset grad trekker til seg kunder langveisfra. Treningssenteret på KIS ser ikke ut til å være så spesielt at det burde trekke til seg kunder langveisfra. Det befinner seg i Norges nest nordligste fylke, ca. 60 km kjøring fra nærmeste grense mot Sverige. Enkelte foretak som er involvert i samhandel i EØS er imidlertid aktive på det norske markedet for treningssentre. På den annen side etablerer slike foretak seg tilsynelatende oftest i mer tettbefolkede områder av Norge.

Støttens forenlighet

Overvåkningsorganet er i tvil om driften av det som i stor grad ser ut til å være et vanlig treningsstudio, kan utgjøre en tjeneste av allmenn økonomisk interesse i henhold til EØS-avtalens artikkel 59 nr. 2.

([1]) Jf. kommisjonsmelding om anvendelsen av reglene for statsstøtte i forbindelse med allmennkringkasting, EUT C 257 av 27.10.2009, s. 1, nr. 25–31 og 80 ff.

([2]) Jf. Overvåkningsorganets vedtak nr. 55/05/COL avsnitt II.3 nr. 19 med nærmere referanser, offentliggjort i EUT L 324 av 23.11.2006, s. 11, og EØS-tillegget nr. 56 av 23.11.2006, s. 1.

([3]) Års- og samfunnsrapport for *Norsk Tipping AS* for 2008, s. 3. Tilgjengelig på https://www.norsk-tipping.no/page?id=207.

Videre er Overvåkningsorganet i tvil om finansieringen av treningssenteret kan være i samsvar med EØS-avtalens fordi det faller inn under unntaket for kultur som følger av artikkel 61 nr. 3 bokstav c), slik norske myndigheter framholder.

Avslutningsvis er Overvåkningsorganet i tvil om finansieringen av utvidelsene i 1997 og 2006/2007 kan, helt eller delvis, være i samsvar med EØS-avtalen på grunnlag av artikkel 61 nr. 3 bokstav c) og kapitlene i Overvåkningsorganets retningslinjer for regionalstøtte.

Konklusjon

I lys av de ovenstående betraktninger har Overvåkningsorganet besluttet å innlede formell undersøkelse i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til midler tildelt fra Vefsn kommune til treningssenteret på KIS. Interesserte parter innbys til å sende inn sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort i *Den europeiske unions tidende*.

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

Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til Asker kommunes salg av tomt til Asker Brygge AS

2010/EØS/35/02

EFTAs overvåkningsorgan har ved vedtak 538/09/COL av 16. september 2009, gjengitt på det opprinnelige språket etter dette sammendraget, innledet behandling i henhold til protokoll 3 del I artikkel 1 nr. 2 i avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol ("overvåknings- og domstolsavtalen"). Norske myndigheter er underrettet ved en kopi av vedtaket.

EFTAs overvåkningsorgan innbyr herved EFTA-statene, EU-medlemsstatene og interesserte parter til å sende sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort, til:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussels

Merknadene vil bli oversendt norske myndigheter. En part som ønsker å få sine merknader behandlet fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

Sammendrag

Norske myndigheter har ved brev mottatt av Overvåkningsorganet 13. februar 2009 gitt melding om salg av en tomt fra Asker kommune til foretaket Asker Brygge AS.

I 2001 inngikk Asker kommune og Asker Brygge en avtale som ga Asker Brygge en opsjon på kjøp av tomt inntil 31. desember 2009 for en fast sum på NOK 8 millioner, regulert i forhold til konsumprisindeksen. I 2005 meldte Asker Brygge at de ville gjøre bruk av opsjonen. Etter forhandlinger ble partene enige om en salgspris på NOK 8 727 462, og inngikk 21. mars 2007 en salgsavtale. Tomten ble overført til Asker Brygge samme dag, selv om salgssummen skulle betales i to avdrag, som allerede fastsatt i opsjonsavtalen av 2001. Det andre avdraget utgjør 70 % av salgssummen (NOK 6 109 223) og forfaller til betaling senest 31. desember 2011. Asker kommune vil ikke beregne renter på dette andre avdraget.

Overvåkningsorganet er i tvil om transaksjonen i forbindelse med salget av tomten har foregått i samsvar med prinsippet om normal markedsatferd. Vilkårene for det sistnevnte salget ble fastsatt i opsjonsavtalen som ble undertegnet i 2001. Følgelig har Overvåkningsorganet vurdert om opsjonsavtalen av 2001 ble inngått på markedsmessige vilkår. Overvåkningsorganet stiller spørsmål ved om Asker Brygge betalte for opsjonen som sådan, og om de gunstige vilkårene for kjøperen oppveies av tilsvarende forpliktelser for kjøperen eller rettigheter for selgeren. Opsjonsavtalen ga ikke bare Asker Brygge rett til å kjøpe eiendommen til enhver gitt tid i de kommende årene, men fastsatte også prisen for en slik senere transaksjon. Opsjonen innebar dermed en mulighet for Asker Brygge til å observere utviklingen i eiendomsprisene over flere år, og deretter gjøre bruk av opsjonen og kjøpe tomten for prisen som ble avtalt i 2001. På den annen side var kommunen forhindret fra å selge eiendommen til andre i den samme perioden. Videre gjorde det Asker Brygge i stand til aktivt å ta kontakt med kommunen for å få omregulert eiendommen til formål som kunne øke markedsverdien. Kommunen ville heller ikke motta noen betaling i tilfelle opsjonen ikke førte til salg.

Opsjonsavtalen omfattet også andre elementer som synes å kunne øke verdien av opsjonen, bl.a. hadde Asker Brygge rett til å be om reforhandling av prisen dersom tomteprisene skulle falle betydelig, mens kommunen ikke hadde tilsvarende rett til reforhandling; prisen ble justert i forhold til konsumprisindeksen selv om tomtepriser ikke inngår i denne indeksen; Asker kommune godtok å utsette betaling av 70 % av den avtalte salgsprisen uten å kreve renter, selv om fullt eierskap til tomten ble overført umiddelbart.

Av disse grunner er Overvåkningsorganet i tvil om en privat markedsaktør ville inngått en såpass langvarig opsjonsavtale på tilsvarende vilkår som Asker kommune, uten å kreve vederlag for opsjonen og de gunstige vilkårene i seg selv.

Ettersom det ikke kan fastslås på dette tidspunkt om opsjonsavtalen er i samsvar med prinsippet om normal markedsatferd, må Overvåkningsorganet videre undersøke om eiendommen ble overført til en pris som lå under markedsverdien i 2007 da salget faktisk ble utført, og om Asker Brygge ved dette mottok statsstøtte i henhold til EØS-avtalens artikkel 61. Overvåkningsorganet har sammenlignet prisen på NOK 8 727 462 som Asker Brygge betalte, med tilgjengelige opplysninger om eiendommens markedsverdi på salgstidspunktet. Norske myndigheter har oversendt tre vurderinger av eiendommens verdi. Den første rapporten, datert 30. juni 2006, beregnet tomtens verdi i 2001, det tidspunktet opsjonsavtalen ble inngått, til NOK 9,6 millioner, med en mulig variasjon på +/– 15 %. En annen rapport datert 18. januar 2008 vurderte markedsverdien av tomten i 2007 til NOK 26 millioner, som tilsvarer NOK 17 millioner i 2001. Den tredje rapporten, datert 16. juni 2008, var fra det samme takstfirmaet, men korrigerte verdien til NOK 14 millioner i 2007 og NOK 8 millioner i 2001, etter å ha tatt hensyn til en verdireduksjon gjennom en ytterligere forpliktelse pålagt Asker Brygge ved at Slependen Båtforening AS hadde bruksrett til del av eiendommen.

Overvåkningsorganet er i tvil om hvilken, om noen, av rapportene som gir den korrekte verdien for eiendommen gnr 32 bnr 17, og stiller spørsmål ved om det ble betalt markedspris for eiendommen, og om en privat markedsinvestor ville godtatt utsatt betaling av salgssummen uten renter.

Støttetiltak som rammes av EØS-avtalens artikkel 61 nr. 1 er generelt uforenlige med EØS-avtalens virkemåte, så sant de ikke faller inn under unntakene i EØS-avtalens artikkel 61 nr. 2 eller nr. 3. Overvåkningsorganet betviler at transaksjonen som er under vurdering, kan rettferdiggjøres under EØS-avtalens bestemmelser om statsstøtte.

Konklusjon

I lys av de ovenstående betraktninger har Overvåkningsorganet besluttet å innlede formell undersøkelse i henhold til EØS-avtalens artikkel 1 nr. 2. Interesserte parter innbys til å sende inn sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort i *Den europeiske unions tidende*.

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.

2.1.3. The market value of the property at the time of the sales agreement

In 2005, Asker Brygge called upon the option and negotiations started with the municipality. Although the conditions for the sale were laid down in the 2001 option agreement, the sales contract was concluded in 2007.

In the following, the Authority will therefore compare the price of NOK 8 727 462 paid by Asker Brygge with the market value of the property at the time of the sale.

2.1.3.1 The value of the plot of land gbnr 32/17

According to the Authority's State Aid Guidelines on sale of land, a sale of land and buildings following a sufficiently well-publicised and unconditional bidding procedure, comparable to an auction, accepting the best or only bid, is by definition at market value and consequently does not contain state aid. Alternatively, to exclude the existence of aid when a sale of land is conducted without an unconditional bidding procedure, an independent valuation should be carried out by one or more independent asset valuers prior to sales negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The valuer should be independent in the execution of his tasks, i.e. public authorities should not be entitled to issue orders as regards the result of the valuation. In the case at hand, the municipality of Asker did not arrange for an unconditional bidding procedure nor collect an independent expert evaluation before entering into the agreement. Thus, the existence of state aid cannot automatically be excluded.

In the notification, the Norwegian authorities have submitted 3 value assessments of the property in question. None of the value assessments were conducted before the option agreement was entered into in 2001.

The first report dated 30 June 2006 was conducted by licensed property surveyors of Verditakst AS, Takst Senteret and Agdestein ([9]). According to this report the estimated value of the land in 2001, the time the option contract was entered into, was NOK 9.6 million, with a possible variation of +/– 15 %. However, this appears to be a very approximate estimation.

The Norwegian authorities enclosed with the notification two additional value assessments which TJB Eiendomstaksering–Ek & Mosveen AS–Bjørn Aarvik had carried out on behalf of the municipality. In the first report dated 18 January 2008 ([10]), the market value of the land in 2007 was estimated at NOK 26 million. As the contract between the municipality and Asker Brygge was entered into in 2001, this price was discounted to 2001 values. The discounted value of NOK 26 million of 2007 using a rate of 5.5 % over 7.5 years was NOK 17 million in 2001.

In the second report dated 16 June 2008 ([11]), TJB Eiendomstaksering–Ek & Mosveen AS–Bjørn Aarvik estimated the market value of the land in 2007 at NOK 12 million. The discounted value of NOK 12 million of 2007 using the same discount rate as before (*i.e.* 5.5 % over 7.5 years) corresponded to NOK 8 million in 2001. Thus, the discrepancy between the two reports is NOK 9 million for the value of the property in 2001 and NOK 14 million for the value of the property in 2007.

The Norwegian authorities have explained that this difference is based on the estimated value reduction of an additional obligation put upon Asker Brygge with regard to the use of part of the property by Slependen Båtforening AS ([12]). The option agreement of 2001 includes a clause saying that a part of the property is let to Slependen Båtforening as a marina for small boats and that Asker Brygge would have to compensate for their right to a small-boat marina/compensation vis-à-vis the municipality of Asker if development of the property started before the rental contract expires. The rental contract expired in June 2009. Furthermore, in clause 3 of the option

([9]) Enclosure 9 to the notification.
([10]) Enclosure 5 to the notification.
([11]) Enclosure 3 to the notification.
([12]) Hereinafter referred to as Slependen Båtforening.

agreement it is stated that Asker Brygge will, together with the municipality of Asker, reach a satisfying solution regarding the needs of Slependen Båtforening within the scope of the activity at the time of the agreement.

When the option agreement was entered into in 2001, Slependen Båtforening paid an annual lease of NOK 19 500 to the municipality of Asker ([13]). Although it was difficult to state the exact economic consequence of the obligation for Asker Brygge at the time the option agreement was entered into, Asker Brygge and Slependen Båtforening signed an agreement on 1 June 2006 according to which the latter was to pay NOK 850 000 (cf. clause 2.4 in the agreement). According to the explanations provided by the Norwegian authorities, the value assessment from January 2008 was based on an incorrect interpretation of an agreement between Asker Brygge and Slependen Båtforening since it did not reflect the obligation to pay NOK 850 000. The asset valuers interpreted the clause in the option agreement in such a way that Slependen Båtforening would have had the right to rent or buy the boat places at market price after the expiry of the rental contract. However, the Norwegian authorities are of the opinion that the sum of NOK 850 000, which represents the fulfilment of the obligation towards Slependen Båtforening, had to be taken into consideration when the market value of the property was assessed for 2001 and 2007. Thus, the municipality of Asker instructed TJB Eiendomstaksering–Ek & Mosveen AS–Bjørn Aarvik to use NOK 850 000 as the basis for the value estimation of Slependen Båtforenings's 65 boat places in their assessment dated 16 June 2008. The Authority considers that this sum is relevant for the assessment of the 2007 property value, as this was known information at the time.

The Authority has doubts as to which of the reports correctly determine the value of the property gbnr 32/17. Furthermore, the Authority notes that the estimations of the different value assessments are not only very different but are also more uncertain due to the fact that they were carried out several years after the option agreement was entered into, and two of them, the year after the sales agreement was entered into. The latest value assessment, the second report, dated 16 June 2008 ([14]), carried out by TJB Eiendomstaksering–Ek & Mosveen AS–Bjørn Aarvik, estimated the market value of the land in 2007 at NOK 12 million, which is NOK 3 272 538 more than the price paid. This is an indication that the sale was not carried out at market price and also that the consumer price index was not the correct adjustment index. Thus, the Authority questions whether market price was paid for the property.

2.1.3.2 The value of the interest advantage of the soft loan

According to the Norwegian authorities the interest rate advantage is taken into consideration by the property surveyors in the report of 2006. However, as far as the Authority can see, the interest rate advantage is not mentioned or discussed in the report referred to, nor is it mentioned in any of the other reports.

In the opinion of the Authority, the municipality might have therefore forgone interest payments that a private market player would normally have required. Thus, the Authority has doubts as to whether a private market investor would have accepted the long deferral of payment without interest.

2.1.4. Conclusion on the market investor principle

For the above-mentioned reasons, the Authority has doubts regarding the price agreed upon in the option agreement and whether it corresponded to the market price for such an agreement, which should reflect the property value at the time of the agreement combined with the value of the option and the special arrangements granted to the buyer. Moreover, the Authority has doubts regarding the actual price agreed upon in the sales agreement and whether it corresponded to the market price of the property at the time the sales agreement was concluded. Therefore, on the basis of the information provided by the Norwegian authorities, the Authority cannot conclude that the sale of the concerned plot of land gbnr. 32/17 to Asker Brygge AS for the sales price of NOK 8 727 462 was carried out in accordance with the market investor principle.

([13]) This sum was determined on the basis of an agreement signed in 1999 between the Municipality of Asker and Slependen Båtforening. Enclosure 8 to the letter dated 11.5.2009.

([14]) Enclosure 3 to the notification.

2.2. State resources

In order to qualify as state aid, the measure must be granted by the State or through state resources. The concept of State does not only refer to the central government but embraces all levels of the state administration (including municipalities) as well as public undertakings.

If the municipality sold the land below its market price, it would have foregone income. In such circumstances, Asker Brygge should have paid more for the land and therefore there is a transfer of resources from the municipality.

For these reasons, the Authority considers that if the sale did not take place in accordance with market conditions, state resources within the meaning of Article 61(1) of the EEA Agreement would be involved.

2.3. Favouring certain undertakings or the production of certain goods

First, the measure must confer on Asker Brygge advantages that relieve the undertaking of charges that are normally borne from its budget. If the transaction was carried out under favourable terms, in the sense that Asker Brygge would most likely have had to pay a higher price for the property if the sale of land had been conducted according to the market investor principle, and to have paid market interest rates for the loan if it was to borrow the same amount from a bank, the company would have received an advantage within the meaning of the state aid rules.

Second, the measure must be selective in that it favours *"certain undertakings or the production of certain goods"*. There is only one possible beneficiary of the measure under assessment, i.e. Asker Brygge. The measure is thus selective.

2.4. Distortion of competition and effect on trade between Contracting Parties

The aid must distort competition and affect trade between the Contracting Parties of the EEA Agreement.

A support measure granted by the State would strengthen the position of Asker Brygge vis-à-vis other undertakings that are competitors active in the same business areas of real estate and property development. Any grant of aid strengthens the position of the beneficiary vis-à-vis its competitors and accordingly distorts competition within the meaning of Article 61(1) of the EEA Agreement. To the extent that the company is active in areas subject to intra-EEA trade, the requirements of Article 61(1) of the EEA Agreement for a measure to constitute state aid are fulfilled.

2.5. Conclusion

For the above mentioned reasons, the Authority has doubts as to whether or not the transaction concerning the sale of the plot of land gbnr 32/17 to Asker Brygge as laid down in the option agreement signed in 2001 and later agreements entail the grant of state aid.

3. Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, "*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. […] The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*".

The Norwegian authorities submitted a notification of the sale of land on 13 February 2009 (Event No 508884). However, the municipality had, in 2001, already entered into an option agreement which determined the future conditions for the sale in March 2007. Moreover, the property was transferred and a soft loan granted to Asker Brygge in March 2007, when the sales agreement was signed, the transaction accomplished and the payment in instalments was agreed. Therefore, the

Authority concludes that if the measure constitutes state aid, the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

4. Compatibility of the aid

Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation in Article 61(2) or (3) of the EEA Agreement.

The derogation of Article 61(2) is not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision. Nor does Article 61(3)(a) or Article 61(3)(b) of the EEA Agreement apply to the case at hand. Further, the area where the property is located cannot benefit from any regional aid within the meaning of Article 61(3)(c) of the EEA Agreement.

The Authority therefore doubts that the transaction under assessment can be justified under the state aid provisions of the EEA Agreement.

5. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority has doubts as to whether or not Asker Brygge has received unlawful state aid within the meaning of Article 61(1) of the EEA Agreement in the context of the transaction regarding the sale of a plot of land.

The Authority has moreover doubts that this state aid can be regarded as complying with Article 61(3)(c) of the EEA Agreement.

Consequently, and in accordance 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 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 said transaction.

It invites the Norwegian authorities to forward a copy of this decision to Asker Brygge 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 transaction concerning the sale of the plot of land gbnr 32/17 to the company Asker Brygge AS by the municipality of Asker.

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

EF-ORGANER

KOMMISJONEN

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/03**

(Sak COMP/M.5741 – CDC/Veolia Environnement/Transdev/Veolia Transport)

1. Kommisjonen mottok 25. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der de franske foretakene Veolia Environnement ("Veolia Environnement") og Caisse des Dépôts et Consignations ("CDC") ved kjøp av aksjer i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over de franske foretakene Transdev ("Transdev") og Veolia Transport ("Veolia Transport"), og oppretter et nytt foretak, Veolia Transdev.

2. De berørte foretakene har virksomhet på følgende områder:

   – Veolia Environnement: internasjonalt konsern aktivt innen i) delegert drift av vann- og sanitærtjenester, ii) rense- og vannrensetjenester, iii) energitjenester og iv) delegert drift av transporttjenester.

   – Veolia Transport: datterselskap av Veolia Environnement som spesialiserer seg på offentlig passasjertransport og delegert drift av bynett, regionalnett og nasjonale nett for alle typer kjøretøy (busser, tog, metro, trikk osv.) i internasjonal skala.

   – CDC: offentlig foretak som er ansvarlig for oppgaver av allmenn interesse som består av i) forvaltning av private midler som myndighetene ønsker å beskytte særskilt, og ii) utlån til eller investering i oppgaver av allmenn interesse. DCD er følgelig aktive på områdene personforsikring, transport, fast eiendom og utvikling av foretak og tjenester.

   – Transdev: datterselskap av CDC som er ansvarlig for urban og intraurban persontransport med tog, trikk, metro, buss, trolleybuss, vannbuss, bildeling og sykkel, hovedsakelig i Europa.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 176 av 2.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5741 – CDC/Veolia Environnement/Transdev/Veolia Transport, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/04**

(Sak COMP/M.5774 – Holtzbrinck/Bertelsmann/JV)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 28. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der de tyske foretakene Georg von Holtzbrinck GmbH & Co. KG ("Holtzbrinck") og Bertelsmann AG ("Bertelsmann") i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over det tyske foretaket Premium Vertriebs GmbH ("Premium") ved kjøp av aksjer i et nystiftet fellesforetak.

2. De berørte foretakene har virksomhet på følgende områder:

   – Holtzbrinck: internasjonalt medieforetak som er aktivt i bransjepublisering, utdanning og vitenskap, aviser og blader, samt elektroniske medier og tjenester

   – Bertelsmann: internasjonalt medieforetak som er aktivt i TV, radio, publikasjon og andre medie- og kommunikasjonstjenester

   – Premium: nettbasert distribusjonsplattform for alle typer bøker, særlig digitalt publiserte produkter (e-bøker) på tysk

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretaks-sammenslutninger etter fusjonsforordningen([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 182 av 7.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5774 – Holtzbrinck/Bertelsmann/JV, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 56 av 5.3.2005, s. 32 ("Melding om behandling etter forenklet framgangsmåte").

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/05**

(Sak COMP/M.5875 – Lactalis/Puleva Dairy)

1. Kommisjonen mottok 2. juli 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der det franske foretaket Groupe Lactalis ("Lactalis") ved kjøp av aksjer og eiendeler overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele det spanske foretaket Puleva Dairy ("Puleva Dairy").

2. De berørte foretakene har virksomhet på følgende områder:

   – Lactalis: produksjon og salg av meieriprodukter

   – Puleva Dairy: produksjon og salg av meieriprodukter

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 185 av 9.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5875 – Lactalis/Puleva Dairy, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/06**

(Sak COMP/M.5891 – CVC/SCPEL/AGT)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 24. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der CVC Capital Partners SICAV-FIS S.A. (”CVC”, Luxembourg) og Standard Chartered Private Equity Limited (”SCPEL”, Hongkong), som opptrer gjennom datterselskaper, ved kjøp av aksjer i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over den globale elektronikk- og handelsavdelingen (”GEC”, Singapore) og den globale avdelingen for skjulte festemidler (”Avdel”, Det forente kongerike) til Acument Global Technologies, Inc. (Foretakene som overtas omtales i fellesskap som ”målforetaket”.)

2. De berørte foretakene har virksomhet på følgende områder:

   – CVC: rådgivning til og forvaltning av investeringsfond

   – SCPEL: aksjeinvesteringer

   – Målforetaket: framstilling av mekaniske festeprodukter og -løsninger

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter fusjonsforordningen([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 178 av 3.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5891 – CVC/SCPEL/AGT, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).
([2]) EUT C 56 av 5.3.2005, s. 32 (”Melding om behandling etter forenklet framgangsmåte”).

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/07**

(Sak COMP/M.5896 – Barclays/Credit Suisse/Ionbond Group)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 28. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der det britiske foretaket Barclays Plc ("Barclays") og det sveitsiske foretaket Credit Suisse Group AG ("Credit Suisse") ved kjøp av aksjer i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele det sveitsiske foretaket SSCP Coatings SARL ("Ionbond Group").

2. De berørte foretakene har virksomhet på følgende områder:

   – Barclays: globale finanstjenester, detalj- og forretningsbank, kredittkort, investeringsbank, investeringsrådgivning og -forvaltning

   – Credit Suisse: globale finanstjenester, detalj- og forretningsbank, investeringsbank, investeringsrådgivning og -forvaltning

   – Ionbond Group: overflatebehandling, særlig av metalldeler, med henblikk på å forbedre visse egenskaper, som en komponents friksjon og slitestrke, forbedret motstand mot korrosjon, endring av komponentens fysiske egenskaper osv.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter fusjonsforordningen([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 178 av 3.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5896 – Barclays/Credit Suisse/Ionbond Group, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 56 av 5.3.2005, s. 32 ("Melding om behandling etter forenklet framgangsmåte").

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/08**

(Sak COMP/M.5901 – Montagu/GIP/Greenstar)

1. Kommisjonen mottok 30. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretakene Montagu (”Montagu”, Det forente kongerike) og Global Infrastructure Partners (”GIP”, USA), som kontrolleres i fellesskap av General Electric Company (”GE”, USA), Credit Suisse Groupe (”CSG”, Sveits) og Global Infrastructure Management Participation LLC (”GIMP”, USA), ved kjøp av aksjer i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over det britiske foretaket Greenstar Holdings Ltd og dets datterselskaper (”Greenstar”), som nå tilhører det irske foretaket NTR (”NTR”).

2. De berørte foretakene har virksomhet på følgende områder:

   – Montagu: aksjeinvesteringer

   – GIP: investeringer i infrastruktur

   – GE: diversifisert teknologi og tjenester

   – CSG: investeringsbank, privatbank, investeringsforvaltning og andre finanstjenester

   – GIMP: holdingselskap i forbindelse med investeringsforvaltningstjenester

   – Greenstar: avfallshåndtering

   – NTR: internasjonalt konsern innen fornybar energi

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 187 av 10.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5901 – Montagu/GIP/Greenstar, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2010/EØS/35/09**

(Sak COMP/M.5908 – Honeywell/Sperian)

1. Kommisjonen mottok 30. juni 2010 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der det amerikanske foretaket Honeywell International Inc. ("Honeywell") ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele det franske foretaket Sperian Protection SA ("Sperian").

2. De berørte foretakene har virksomhet på følgende områder:

   – Honeywell: global produsent som er aktiv innen forskjellige forretningsområder (energi, sikkerhet og trygghet), deriblant personlig verneutstyr

   – Sperian: global produsent av personlig verneutstyr

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr interesserte parter til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 184 av 8.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post, med referanse COMP/M.5908 – Honeywell/Sperian, til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Bruxelles/Brussel

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").

Innledning av behandling **2010/EØS/35/10**

(Sak COMP/M.5675 – Syngenta/Monsanto's Sunflower Seed Business)

Kommisjonen vedtok 21. juni 2010 å innlede behandling i ovennevnte sak, etter at den hadde fastslått at den meldte foretakssammenslutningen reiser alvorlig tvil med hensyn til dens forenlighet med det felles marked. Innledningen av behandling markerer åpningen av annen fase av undersøkelsen av den meldte foretakssammenslutningen. Vedtaket er hjemlet i artikkel 6 nr. 1 bokstav c) i rådsforordning (EØF) nr. 139/2004.

Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

For at de skal kunne tas i betraktning under saksbehandlingen, må merknadene være Kommisjonen i hende senest 15 dager etter at dette ble offentliggjort i EUT C 182 av 7.7.2010. Merknadene sendes til Kommisjonen per faks (faksnr. +32 22 96 43 01 eller 22 96 72 44) eller med post, med referanse COMP/M.5675 – Syngenta/Monsanto's Sunflower Seed Business, til følgende adresse:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Kommisjonsmelding i forbindelse med gjennomføring av artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av ruteflyging i Fellesskapet **2010/EØS/35/11**

Innføring av forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging mellom Elba Marina di Campo og Firenze (og omvendt) og Elba Marina di Campo og Pisa (og omvendt)

Medlemsstat	Italia
Aktuelle ruter	Elba Marina di Campo–Firenze og omvendt Elba Marina di Campo–Pisa og omvendt
Ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	180 dager etter at meldingen er kunngjort i EUT (1.7.2010)
Adresse der eventuell relevant informasjon og/eller dokumentasjon i forbindelse med forpliktelsen til å yte offentlig tjeneste kan fås gratis	ENAC Ente nazionale per l'aviazione civile (Italian Civil Aviation Authority) Direzione centrale sviluppo economico Direzione sviluppo trasporto aereo Viale del Castro Pretorio 118 00185 Roma RM ITALIA http://www.enac.gov.it E-post: osp@enac.gov.it

Kommisjonsmelding i forbindelse med gjennomføring av artikkel 17 nr. 5 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av ruteflyging i Fellesskapet

2010/EØS/35/12

Anbudsinnbydelse i forbindelse med plikt til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Italia
Aktuelle ruter	Elba Marina di Campo–Firenze og omvendt Elba Marina di Campo–Pisa og omvendt
Kontraktens gyldighetsperiode	Ett år (fra datoen forpliktelsen trer i kraft)
Frist for innsending av anbud	To måneder fra kunngjøringen av denne meldingen (publisert 1.7.2010)
Adresse der den fullstendige anbudsinnbydelsen og eventuell relevant informasjon og/eller dokumentasjon i forbindelse med anbudet og forpliktelsen til å yte offentlig tjeneste kan fås gratis	ENAC — Ente nazionale per l'aviazione civile (Italian Civil Aviation Authority) Direzione centrale sviluppo economico Direzione sviluppo trasporto aereo Viale del Castro Pretorio 118 00185 Roma RM ITALIA http://www.enac.gov.it E-post: osp@enac.gov.it

Melding fra den franske regjering i henhold til europaparlaments- og rådsdirektiv 94/22/EF om vilkårene for tildeling og bruk av tillatelser til å drive leting etter og utvinning av hydrokarboner([1])

2010/EØS/35/13

(Kunngjøring i forbindelse med søknader om enerett til leting etter flytende og gassholdige hydrokarboner, kalt "Meaux-lisensen")

Den 19. november 2009 søkte foretaket Realm Energy International, som har forretningskontor i 2nd Floor, Berkeley Square House, Berkeley Square, London W1J 6BD, United Kingdom, om enerett til leting etter olje og gass, kalt "Meaux-lisensen", i en periode på fem år i et ca. 825 km^2 stort område som omfatter deler av departementene Aisne, Oise og Seine-et-Marne.

Området som dekkes av denne tillatelsen ligger innenfor en perimeter avgrenset av lengde- og breddegrader som møtes i punktene definert under ved deres geografiske koordinater, der basismeridianen går gjennom Paris.

Punkt	Lengdegrad °Ø	Breddegrad °N
A	0,40	54,70
B	1,00	54,70
C	1,00	54,60
D	0,60	54,60
E	0,60	54,50
F	0,70	54,50
G	0,70	54,36

([1]) EFT L 164 av 30.6.1994, s. 3.

Punkt	Lengdegrad °Ø	Breddegrad °N
H	0,66	54,36
I	0,66	54,35
J	0,64	54,35
K	0,64	54,30
L	0,54	54,30
M	0,54	54,33
N	0,53	54,33
O	0,53	54,35
P	0,51	54,35
Q	0,51	54,36
R	0,50	54,36
S	0,50	54,37
T	0,49	54,37
U	0,49	54,39
V	0,48	54,39
W	0,48	54,40
X	0,40	54,40

Innsending av søknader og kriterier for tildeling

Den opprinnelige søkeren og eventuelle andre søkere må dokumentere at de oppfyller kravene for tillatelse som fastsatt i artikkel 4 og 5 i dekret 2006-648 av 2. juni 2006 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

Foretak som ønsker det kan sende inn en konkurrerende søknad innen 90 dager etter at denne melding ble kunngjort (17.6.2010), etter framgangsmåten beskrevet i en kunngjøring om tildeling av tillatelser til utvinning av hydrokarboner i Frankrike, offentliggjort i *De europeiske fellesskaps tidende* C 374 av 30.12.1994, s. 11, og fastsatt ved dekret 2006-648 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

Eventuelle konkurrerende søknader må sendes til den ansvarlige ministeren for gruvedrift på adressen som er oppgitt nedenfor.Beslutninger om den innledende søknaden og eventuelle konkurrerende søknader vil bli truffet innen to år fra datoen der de franske myndigheter mottok den opprinnelige søknaden, dvs. senest **20. november 2011**.

Krav og vilkår i forbindelse med drift og opphør av drift

Søkere henvises til den franske gruvelovens artikkel 79 og 79.1 og til dekret 2006-649 av 2. juni 2006 om gruvedrift, underjordisk lagring og regler i den forbindelse (fransk rettstidende av 3. juni 2006).

Ytterligere opplysninger kan fås ved henvendelse til Ministère de l'écologie, de l'énergie, du développement durable et de la mer: Direction générale de l'énergie et du climat, Direction de l'énergie, Sous-direction de la sécurité d'approvisionnement et nouveaux produits énergétiques, Grande Arche/Paroi Nord, F-92055 La Défense Cedex, France. Tlf. +33 1 408 195 29.

De ovennevnte lover og forskrifter er tilgjengelige på Légifrance:

http://www.legifrance.gouv.fr

vil bli truffet innen to år fra datoen der de franske myndigheter mottok den opprinnelige søknaden, dvs. senest 14. mai 2011 for Pays de Bray-lisensen og senest 19. august 2011 for Pays de Bray-Sud-lisensen.

Krav og vilkår i forbindelse med drift og opphør av drift

Søkere henvises til den franske gruvelovens artikkel 79 og 79.1 og til dekret 2006-649 av 2. juni 2006 om gruvedrift, underjordisk lagring og regler i den forbindelse (fransk rettstidende av 3. juni 2006).

Ytterligere opplysninger kan fås ved henvendelse til Ministère de l'écologie, de l'énergie, du développement durable et de la mer: Direction générale de l'énergie et du climat, Direction de l'énergie, Sous-direction de la sécurité d'approvisionnement et nouveaux produits énergétiques Grande Arche/Paroi Nord, F-92055 La Défense Cedex, France. Tlf. +33 1 408 195 29.

De ovennevnte lover og forskrifter er tilgjengelige på Légifrance:

http://www.legifrance.gouv.fr/

Melding fra den franske regjering i henhold til europaparlaments- og rådsdirektiv 94/22/EF om vilkårene for tildeling og bruk av tillatelser til å drive leting etter og utvinning av hydrokarboner([1]) 2010/EØS/35/15

(Kunngjøring i forbindelse med søknader om enerett til leting etter flytende og gassholdige hydrokarboner, kalt "Chailley-lisensen")

Den 13. februar 2009 søkte foretaket Thermopyles SAS, som har forretningskontor i 50, rue du Midi, F-94300 Vincennes (Frankrike), om enerett til leting etter olje og gass, kalt "Chailley-lisensen", i en periode på fem år i et ca. 671 km^2 stort område som omfatter deler av departementene Yonne og Aube.

Området som dekkes av denne tillatelsen ligger innenfor en perimeter avgrenset av lengde- og breddegrader som møtes i punktene definert under ved deres geografiske koordinater, der basismeridianen går gjennom Paris.

Punkt	Lengdegrad °Ø	Breddegrad °N
A	1,80	53,50
B	1,30	53,50
C	1,30	53,30
D	1,80	53,30

Innsending av søknader og kriterier for tildeling

Den opprinnelige søkeren og eventuelle andre søkere må dokumentere at de oppfyller kravene for tillatelse som fastsatt i artikkel 4 og 5 i dekret 2006-648 av 2. juni 2006 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

Foretak som ønsker det kan sende inn en konkurrerende søknad innen 90 dager etter at denne melding ble kunngjort (17.6.2010), etter framgangsmåten beskrevet i en kunngjøring om tildeling av tillatelser til utvinning av hydrokarboner i Frankrike, offentliggjort i *De europeiske fellesskaps tidende* C 374 av 30.12.1994, s. 11, og fastsatt ved dekret 2006-648 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

([1]) EFT L 164 av 30.6.1994, s. 3.

Eventuelle konkurrerende søknader må sendes til den ansvarlige ministeren for gruvedrift på adressen som er oppgitt nedenfor. Beslutninger om den innledende søknaden og eventuelle konkurrerende søknader vil bli truffet innen to år fra datoen der de franske myndigheter mottar søknaden, dvs. senest **18. februar 2011**.

Krav og vilkår i forbindelse med drift og opphør av drift

Søkere henvises til den franske gruvelovens artikkel 79 og 79.1 og til dekret 2006-649 av 2. juni 2006 om gruvedrift, underjordisk lagring og regler i den forbindelse (fransk rettstidende av 3. juni 2006).

Ytterligere opplysninger kan fås ved henvendelse til Ministère de l'écologie, de l'énergie, du développement durable et de la mer: Direction générale de l'énergie et du climat, Direction de l'énergie, Sous-direction de la sécurité d'approvisionnement et nouveaux produits énergétiques, Grande Arche de la Défense/Paroi Nord, F-92055 La Défense Cedex, France. Tlf. +33 1 408 195 29.

De ovennevnte lover og forskrifter er tilgjengelige på Légifrance:

http://www.legifrance.gouv.fr/

Melding fra den franske regjering i henhold til europaparlaments- og rådsdirektiv 94/22/EF om vilkårene for tildeling og bruk av tillatelser til å drive leting etter og utvinning av hydrokarboner([1]) **2010/EØS/35/14**

(Kunngjøring i forbindelse med søknad om enerett til leting etter flytende og gassholdige hydrokarboner, kalt "Pays de Bray-lisensen" og "Pays de Bray-Sud-lisensen")

Den 21. april og 19. august 2009 søkte foretaket POROS SAS, som har forretningskontor i 145 rue Michel Carré, BP 73, 95100 Argenteuil Cedex, Frankrike, om to lisenser til enerett til leting etter olje og gass, kalt "Pays de Bray-lisensen" og "Pays de Bray-Sud-lisensen" i en periode på fem år.

Området som dekkes av disse søknadene ligger innenfor en perimeter avgrenset av lengde- og breddegrader som møtes i punktene definert under ved deres geografiske koordinater, der basismeridianen går gjennom Paris:

Pays de Bray-lisensen, som omfatter ca. 587 km^2 i departementene Oise og Seine-Maritime

Punkt	Breddegrad °N	Lengdegrad °V
A	55,10	0,70
B	55,10	0,30
C	54,80	0,30
D	54,80	0,40
E	54,90	0,40
F	54,90	0,70

Pays de Bray-Sud-lisensen, som omfatter ca. 261 km^2 i departementet Oise

Punkt	Breddegrad °N	Lengdegrad °V
A	54,90	0,30
B	54,90	0,10
C	54,80	0,10
D	54,80	0,00
E	54,70	0,00
F	54,70	0,20
G	54,80	0,20
H	54,80	0,30

Innsending av søknader og kriterier for tildeling

Den opprinnelige søkeren og eventuelle andre søkere må dokumentere at de oppfyller kravene for tillatelse som fastsatt i artikkel 4 og 5 i dekret 2006-648 av 2. juni 2006 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

Foretak som ønsker det kan sende inn en konkurrerende søknad innen 90 dager etter at denne melding ble kunngjort (17.6.2010), etter framgangsmåten beskrevet i en kunngjøring om tildeling av tillatelser til utvinning av hydrokarboner i Frankrike, offentliggjort i *De europeiske fellesskaps tidende* C 374 av 30.12.1994, s. 11, og fastsatt ved dekret 2006-648 om rettigheter til gruvedrift og underjordisk lagring (fransk rettstidende av 3. juni 2006).

Eventuelle konkurrerende søknader må sendes til den ansvarlige ministeren for gruvedrift på adressen som er oppgitt nedenfor. Beslutninger om den innledende søknaden og eventuelle konkurrerende søknader

([1]) EFT L 164 av 30.6.1994, s. 3.

Kommisjonsmelding i forbindelse med gjennomføringen av rådsdirektiv 89/686/EØF av 21. desember 1989 om tilnærming av medlemsstatenes lover om personlig verneutstyr **2010/EØS/35/16**

(Offentliggjøring av titler og referanser for harmoniserte standarder i henhold til direktivet)

ESO([1])	Standardens referanse og tittel (samt referansedokument)	Første publisering i EUT	Referanse til den erstattede standard	Opphørsdato for antakelse om samsvar med den erstattede standard Note 1
CEN	EN 132:1998 Åndedrettsvern – Definisjoner av termer og piktogrammer	4.6.1999	EN 132:1990 Note 2.1	Dato utløpt (30.6.1999)
CEN	EN 133:2001 Åndedrettsvern – Klassifikasjon	10.8.2002	EN 133:1990 Note 2.1	Dato utløpt (10.8.2002)
CEN	EN 134:1998 Åndedrettsvern – Terminologi for komponenter	13.6.1998	EN 134:1990 Note 2.1	Dato utløpt (31.7.1998)
CEN	EN 135:1998 Åndedrettsvern – Liste over likeverdige termer	4.6.1999	EN 135:1990 Note 2.1	Dato utløpt (30.6.1999)
CEN	EN 136:1998 Åndedrettsvern – Helmasker – Krav, prøving, merking (innbefattet rettelsesblad AC:1999 og AC:2003)	13.6.1998	EN 136:1989 EN 136-10:1992 Note 2.1	Dato utløpt (31.7.1998)
	EN 136:1998/AC:1999	6.5.2010		
	EN 136:1998/AC:2003	6.5.2010		
CEN	EN 137:2006 Åndedrettsvern – Selvforsynt pusteutstyr med åpent kretsløp og luft under trykk – Krav, prøving, merking	23.11.2007	EN 137:1993 Note 2.1	Dato utløpt (23.11.2007)
CEN	EN 138:1994 Åndedrettsvern – Pusteutstyr med friskluftslange forbundet med helmaske, halvmaske eller munnstykkeanordning – Krav, prøving, merking	16.12.1994		
CEN	EN 140:1998 Åndedrettsvern – Halvmasker og kvartmasker – Krav, prøving, merking (innbefattet rettelsesblad AC:1999)	6.11.1998	EN 140:1989 Note 2.1	Dato utløpt (31.3.1999)
	EN 140:1998/AC:1999	6.5.2010		
CEN	EN 142:2002 Åndedrettsvern – Munnbittanordninger – Krav, prøving, merking	10.4.2003	EN 142:1989 Note 2.1	Dato utløpt (10.4.2003)
CEN	EN 143:2000 Åndedrettsvern – Partikkelfiltre – Krav, prøving, merking (innbefattet rettelsesblad AC:2002 og AC:2005)	24.1.2001	EN 143:1990 Note 2.1	Dato utløpt (24.1.2001)
	EN 143:2000/A1:2006	21.12.2006	Note 3	Dato utløpt (21.12.2006)
	EN 143:2000/AC:2005	6.5.2010		

ESO([1])	Standardens referanse og tittel (samt referansedokument)	Første publisering i EUT	Referanse til den erstattede standard	Opphørsdato for antakelse om samsvar med den erstattede standard Note 1
CEN	EN 144-1:2000 Åndedrettsvern – Ventiler for gassflasker – Del 1: Gjengeforbindelser for innsetningsstuss	24.1.2001	EN 144-1:1991 Note 2.1	Dato utløpt (24.1.2001)
	EN 144-1:2000/A1:2003	21.2.2004	Note 3	Dato utløpt (21.2.2004)
	EN 144-1:2000/A2:2005	6.10.2005	Note 3	Dato utløpt (31.12.2005)
CEN	EN 144-2:1998 Åndedrettsvern – Ventiler for gassflasker – Del 2: Utløpskoplinger	4.6.1999		
CEN	EN 144-3:2003 Åndedrettsvern – Ventiler for gassflasker – Del 3: Utløpskoplinger for nitrox og oksygen (innbefattet rettelsesblad AC:2003)	21.2.2004		
	EN 144-3:2003/AC:2003	6.5.2010		
CEN	EN 145:1997 Åndedrettsvern – Bærbart og selvforsynt kretsløpapparat med trykkoksygen eller trykkoksygen-nitrogen – Krav, prøving, merking	19.2.1998	EN 145:1988 EN 145-2:1992 Note 2.1	Dato utløpt (28.2.1998)
	EN 145:1997/A1:2000	24.1.2001	Note 3	Dato utløpt (24.1.2001)
CEN	EN 148-1:1999 Åndedrettsvern – Gjenger for masker og munnbitt – Del 1: Normert skrukopling	4.6.1999	EN 148-1:1987 Note 2.1	Dato utløpt (31.8.1999)
CEN	EN 148-2:1999 Åndedrettsvern – Gjenger for masker og munnbitt – Del 2: Sentralkopling	4.6.1999	EN 148-2:1987 Note 2.1	Dato utløpt (31.8.1999)
CEN	EN 148-3:1999 Åndedrettsvern – Gjenger for masker og munnbitt – Del 3: Skrukopling M 45 x 3	4.6.1999	EN 148-3:1992 Note 2.1	Dato utløpt (31.8.1999)
CEN	EN 149:2001+A1:2009 Åndedrettsvern – Filtrerende halvmasker til beskyttelse mot partikler – Krav, prøving, merking	6.5.2010	EN 149:2001 Note 2.1	Datoen for denne offentliggjøringen
CEN	EN 165:2005 Øyevern – Terminologi	19.4.2006	EN 165:1995 Note 2.1	Dato utløpt (31.5.2006)
CEN	EN 166:2001 Øyevern – Spesifikasjoner	10.8.2002	EN 166:1995 Note 2.1	Dato utløpt (10.8.2002)
CEN	EN 167:2001 Øyevern – Optiske prøvingsmetoder	10.8.2002	EN 167:1995 Note 2.1	Dato utløpt (10.8.2002)
CEN	EN 168:2001 Øyevern – Ikke-optiske prøvingsmetoder	10.8.2002	EN 168:1995 Note 2.1	Dato utløpt (10.8.2002)