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	I	**EØS-ORGANER**	
	1.	**EØS-komiteen**	
	II	**EFTA-ORGANER**	
	1.	**EFTA-statenes faste komité**	
	2.	**EFTAs overvåkningsorgan**	
2013/EØS/44/01		Informasjon meddelt av EFTA-statene om statsstøtte gitt i henhold til rettsakten omhandlet i EØS-avtalens vedlegg XV nr. 1j (kommisjonsforordning (EF) nr. 800/2008 om visse støttekategoriers forenlighet med det felles marked i henhold til traktatens artikkel 87 og 88) (forordning om alminnelige gruppeunntak) GBER 8/2013/REG	1
2013/EØS/44/02		Ikke statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 – Vedtak nr.: 144/13/COL	4
2013/EØS/44/03		Ikke statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 – Vedtak nr.: 145/13/COL	4
2013/EØS/44/04		Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til statsstøttetiltak i forbindelse med finansieringen av Harpa konserthus og konferansesenter – Vedtak nr. 128/2013/COL	5
2013/EØS/44/05		Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til statsstøtte i forbindelse med mulig støtte til Nasjonal digital læringsarena – Vedtak nr. 136/2013/COL	19
	3.	**EFTA-domstolen**	
	III	**EU-ORGANER**	
	1.	**Kommisjonen**	
2013/EØS/44/06		Forhåndsmelding om en foretakssammenslutning (Sak COMP/M.6863 – Avnet EMG/MSC Investoren)	31
2013/EØS/44/07		Forhåndsmelding om en foretakssammenslutning (Sak COMP/M.6966 – 3i Group/ Barclays Infrastructure Funds Management) – Sak som kan bli behandlet etter forenklet framgangsmåte	32

2013/EØS/44/08	Forhåndsmelding om en foretakssammenslutning (Sak COMP/M.6978 – Banco Popular SA/Group Crédit Mutuel/ATM Business) – Sak som kan bli behandlet etter forenklet framgangsmåte	33
2013/EØS/44/09	Forhåndsmelding om en foretakssammenslutning (Sak COMP/M.7002 – M&G/Alliance Medical) – Sak som kan bli behandlet etter forenklet framgangsmåte	34
2013/EØS/44/10	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6697 – O.W.Bunker/Bergen Bunkers)	35
2013/EØS/44/11	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6813 – McCain Foods Group/Lutosa Business)	35
2013/EØS/44/12	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6891 – AGROFERT/Lieken)	36
2013/EØS/44/13	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6912 – Michael S. Dell/Dell)	36
2013/EØS/44/14	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6934 – Norges Bank/Generali/Group of Buildings in Paris)	37
2013/EØS/44/15	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6961 – Goldman Sachs/Gávea Investimontos/JV)	37
2013/EØS/44/16	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6972 – BC Partners/Springer Science + Business Media)	38
2013/EØS/44/17	Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning (Sak COMP/M.6986 – Bain Capital/Maisons du Monde)	38
2013/EØS/44/18	Statsstøtte – Belgia – Statsstøtte SA.34791 (2013/C) (tidl. 2012/NN) – Belgia – Krisestøtte til Val Saint-Lambert og Statsstøtte SA.35528 (2013/C) (tidl. 2012/N) – Belgia – Omstruktureringsstøtte til Val Saint-Lambert – Innbydelse til å sende inn merknader i henhold til artikkel 108 nr. 2 TEUV	39
2013/EØS/44/19	Vedtak om å avslutte formell gransking etter tilbaketrekking fra medlemsstatens side Statsstøtte – Spania (Artikkel 107–109 i traktat om Den europeiske unions virkemåte) – Kommisjonsmelding i henhold til artikkel 108 nr. 2 TEUV – Tilbakekalling av forhåndsmelding – Statsstøtte SA.31273 (12/C) (tidl. N 313/10) – Ultracongelados Antártida SA	39

EFTA-ORGANER

EFTAS OVERVÅKNINGSORGAN

Informasjon meddelt av EFTA-statene om statsstøtte gitt i henhold til rettsakten omhandlet i EØS-avtalens vedlegg XV nr. 1j (kommisjonsforordning (EF) nr. 800/2008 om visse støttekategoriers forenlighet med det felles marked i henhold til traktatens artikkel 87 og 88) (forordning om alminnelige gruppeunntak) **2013/EØS/44/01**

DEL I

Støttereferanse	GBER 8/2013/REG	
EFTA-stat	Norge	
Region	Alle regioner i Romania	Regionalstøttestatus
Tildelende myndighet	Navn	Innovasjon Norge
	Adresse Nettside	Postboks 448 Sentrum NO-0104 Oslo Norge www.innovationnorway.no
Støttetiltakets tittel	Den norske finansieringsordningen 2009–2014: Program for nyskapende miljøvennlig industri, Romania	
Nasjonalt rettsgrunnlag (henvisning til relevant nasjonal offisiell publikasjon)	Prop. 1 S (2012–2013) Utenriksdepartementet, side 85–95 http://www.regjeringen.no/nb/dep/ud/dok/regpubl/prop/2012-2013/prop-1-s-20122013.html?id=703276	
Lenke til den fullstendige teksten til støttetiltaket på Internett	www.norwaygrants-greeninnovation.no	
Type tiltak	Støtteordning	Ja
	Ekstraordinær støtte	Ikke aktuelt
Varighet	Støtteordning	12.3.2013–30.4.2016
Berørte økonomiske sektorer	Alle støtteberettigede økonomiske sektorer	Alle økonomiske sektorer
Type støttemottaker	SMB	Ja
	Store foretak	Ja
	Svært små foretak	Ja
	Frivillige organisasjoner	Ja
Budsjett	Samlet årlig planlagt budsjett for støtteordningen	Samlet beløp (2013–2016) EUR 21 768 200
Støtteinstrument (art. 5)	Tilskudd	Ja

DEL II

Generelle mål (liste)	Mål (liste)	Maksimal støtteintensitet i % eller maksimalt støttebeløp i NOK	SMB – bonuser i %
Regional investerings- og sysselsettingsstøtte (art. 13)	Støtteordning	Støtteintensiteten i denne brutto tilskudds-ekvivalenten skal ikke overstige grensen for regionalstøtte som gjelder på det tidspunktet støtten gis den aktuelle støttede regionen i Romania.	20 % for små bedrifter 10 % for mellomstore bedrifter
Investerings- og sysselsettingsstøtte til SMB (art. 15)		20 % for små bedrifter 10 % for mellomstore bedrifter	
Støtte til miljøvern (art. 17–25)	Investeringsstøtte som gjør det mulig for foretak å gå utover fellesskapsstandardene for miljøvern eller heve miljøvernnivået i fravær av fellesskapsstandarder (art. 18) Angi henvisning til spesifikk standard	35 %	20 % for små bedrifter 10 % for mellomstore bedrifter
	Støtte til anskaffelse av nye transportmidler som går utover fellesskapsstandardene eller som hever miljøvernnivået i fravær av fellesskapsstandarder (art. 19)	35 %	20 % for små bedrifter 10 % for mellomstore bedrifter
	Støtte til tidlig tilpasning til framtidige fellesskapsstandarder for SMB (art. 20)	15 % for små bedrifter og 10 % for mellomstore bedrifter dersom gjennomføringen og ferdigstillelsen finner sted tidligere enn tre år før standarden trer i kraft (10 % for små bedrifter ved tidligere enn tre år)	
	Støtte til miljøinvestering i energisparetiltak (art. 21)	60 %	20 % for små bedrifter 10 % for mellomstore bedrifter
	Støtte til miljøinvestering i høyeffektiv kraftvarme (art. 22)	45 %	20 % for små bedrifter 10 % for mellomstore bedrifter
	Støtte til miljøinvestering for fremme av energi fra fornybare energikilder (art. 23)	45 %	20 % for små bedrifter 10 % for mellomstore bedrifter
	Støtte til miljøvernundersøkelser (art. 24)	50 %	20 % for små bedrifter 10 % for mellomstore bedrifter
Støtte til rådgivning til SMB og SMB-deltaking på messer (art. 26–27)	Støtte til rådgivning til SMB (art. 26)	50 %	

	Støtte til SMB-deltaking på messer (art. 27)		50 %	
Støtte til forskning, utvikling og nyskaping (art. 30–37)	Støtte til prosjekter innen forskning, utvikling og nyskaping (art. 31)	Grunnforskning (art. 31 nr. 2 bokstav a))	100 %	
		Industriell forskning (art. 31 nr. 2 bokstav b))	50 %	10 % for mellomstore bedrifter 20 % for små bedrifter En bonus på 15 % kan tilføyes dersom vilkårene i art. 31 nr. 4 bokstav b) er oppfylt
		Eksperimentell utvikling (artikkel 31 nr. 2 bokstav c))	25 %	10 % for mellomstore bedrifter 20 % for små bedrifter En bonus på 15 % kan tilføyes dersom vilkårene i art. 31 nr. 4 bokstav b) er oppfylt
	Støtte til gjennomførbarhetsstudier (art. 32)		75 % (industriell forskning) og 50 % (eksperimentell forskning) for SMB 65 % (industriell forskning) og 40 % (eksperimentell forskning) for store foretak	
	Støtte til kostnader ved immaterielle rettigheter for SMB (art. 33)		Støtteintensiteten skal ikke overstige intensiteten for prosjektstøtte til forskning og utvikling (art. 31 nr. 3–4)	
	Støtte til unge, nyskapende foretak (art. 35)		EUR 1 million	
	Støtte til rådgivningstjenester ved nyskaping og til tjenester som støtter nyskaping (art. 36)		NOK 200 000 millioner per mottaker i enhver treårsperiode	
	Støtte til lån av høyt kvalifisert personale (art. 37)			
Opplæringsstøtte (art. 38–39)	Spesifikk opplæring (art. 38 nr. 1)		25 %	10 % for mellomstore bedrifter 20 % for små bedrifter
	Generell opplæring (art. 38 nr. 2)		60 %	10 % for mellomstore bedrifter 20 % for små bedrifter

Ikke statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 **2013/EØS/44/02**

EFTAs overvåkningsorgan anser at følgende tiltak ikke utgjør statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1:

Vedtaksdato: 10. april 2013

Saksnummer: 69933

Vedtak nr.: 144/13/COL

EFTA-stat: Norge

Tittel (og/eller navnet på mottakeren): Bergen Kirkelige Fellesråd

Type tiltak: Ikke støtte

Navn og adresse til myndigheten som gir støtten: Bergen Kirkelige Fellesråd, Bjørns gate 1, NO-5008 Bergen, Norge

Teksten til vedtaket, der alle fortrolige opplysninger er fjernet, foreligger på EFTAs overvåkningsorgans nettsider:

http://www.eftasurv.int/state-aid/state-aid-register/

Ikke statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 **2013/EØS/44/03**

EFTAs overvåkningsorgan anser at følgende tiltak ikke utgjør statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1:

Vedtaksdato: 10. april 2013

Saksnummer: 70521

Vedtak nr.: 145/13/COL

EFTA-stat: Island

Tittel (og/eller navnet på mottakeren): Påstått statsstøtte til Landsbankinn gjennom avkall på forventet utbytte av offentlige midler

Rettslig grunnlag: EØS-avtalens artikkel 61 nr. 1

Type tiltak: Ikke støtte

Økonomiske sektorer: Finansielle tjenester

Teksten til vedtaket, der alle fortrolige opplysninger er fjernet, foreligger på EFTAs overvåkningsorgans nettsider:

http://www.eftasurv.int/state-aid/state-aid-register/

Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til statsstøttetiltak i forbindelse med finansieringen av Harpa konserthus og konferansesenter. **2013/EØS/44/04**

EFTAs overvåkningsorgan har ved vedtak 128/13/COL av 20. mars 2013, gjengitt på det opprinnelige språket etter dette sammendraget, innledet undersøkelse i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Islandske myndigheter er underrettet ved en kopi av vedtaket.

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

EFTA Surveillance Authority
Registry
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Merknadene vil bli oversendt islandske myndigheter. En berørt part som ønsker å få sin identitet holdt fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

Sammendrag

Framgangsmåte

I september 2011 mottok EFTAs overvåkningsorgan (Overvåkningsorganet) en klage om påstått subsidiering fra den islandske stat og Reykjavik kommune av konferansetjenestene og restaurant-/cateringtjenestene i Harpa konserthus og konferansesenter (Harpa). Overvåkningsorganet sendte to anmodninger om nærmere opplysninger, som islandske myndigheter har besvart.

Beskrivelse av tiltaket

I 2004 tok den islandske stat og Reykjavik kommune initiativet til et offentlig-privat samarbeidsanbud om oppføring, utforming og drift av et 28 000 kvadratmeter stort konserthus og konferansesenter. Oppføringen av Harpa konserthus og konferansesenter startet 12. januar 2007 etter at det gunstigste tilbudet var fastsatt. Som følge av det økonomiske sammenbruddet på Island ble oppføringen av Harpa lagt på is i 2008. Kort tid etter ble Reykjaviks ordfører og utdanningsministeren enige om at staten og kommunen skulle fortsette oppføringen av prosjektet uten den private partneren. Bygningen ble formelt åpnet 20. august 2011.

Harpa skal huse ulike tjenester og virksomheter. Både det islandske symfoniorkester og den islandske opera har inngått langsiktige avtaler om bruk av visse fasiliteter i Harpa. Harpa har dessuten plass til konferanser, og det er fire konferansesaler av ulike størrelser. I tillegg har Harpa plass til ulike andre kunstarrangementer, som pop- og rockekonserter med både islandske og utenlandske artister. Annen virksomhet i Harpa, for eksempel catering, restauranter, en musikkforretning og en møbelbutikk, drives av private selskaper som leier lokaler i Harpa. Disse fasilitetene leies ut til de private aktørene på markedsvilkår og var omfattet av offentlige anbudskonkurranser der de gunstigste tilbudene ble akseptert.

Harpa er heleid av den islandske stat (54 %) og Reykjavik kommune (46 %) som gir betydelige årlige bidrag i samsvar med deltakelsen i prosjektet. Etter åpningen har Harpa vært drevet med et betydelig årlig underskudd, som er dekket over den islandske stats og Reykjavik kommunes budsjetter.

Kommentarer fra islandske myndigheter

Ifølge islandske myndigheter innebærer finansieringen av Harpa ikke statsstøtte, ettersom de på behørig vis har sikret at det føres atskilte regnskaper for de ulike aktivitetene i konserthuset og konferansesenteret. Som underlag for denne påstanden framla islandske myndigheter rapporter fra to regnskapsforetak om de atskilte regnskapene til selskapene som er involvert i driften av Harpa. Islandske myndigheter framla dessuten en prisfastsettelsesanalyse der de sammenlignet prisene til sammenlignbare konferanseanlegg i Reykjavik på grunnlag av størrelse og kapasitet. Videre fastholdt islandske myndigheter at konferansevirksomheten bidrar positivt til andre aktiviteter i Harpa, og at kostnadene andre aktiviteter ville måtte bære uten konferansevirksomheten, ville vært betydelig høyere.

Om det foreligger statsstøtte

Fordeler som innebærer statsmidler gitt til et foretak

Ettersom den islandske stat og Reykjavik kommune sammen dekker det årlige underskuddet fra driften av Harpa gjennom årlige bidrag på et visst beløp over deres budsjetter, utgjør dette statlige midler etter EØS-avtalens artikkel 61.

Overvåkningsorganet mener at både oppføringen og driften av en infrastruktur utgjør en økonomisk virksomhet i seg selv dersom infrastrukturen brukes til eller vil bli brukt til å tilby varer eller tjenester på markedet([1]). Noen av aktivitetene som arrangeres i Harpa, særlig konferanser, teaterforestillinger, popkonserter osv, kan trekke et betydelig antall kunder, samtidig som de konkurrerer med private konferansesentre, teatre og konsertsteder. Overvåkningsorganets foreløpige oppfatning er derfor at selskaper som er involvert i driften av Harpa, i den grad de utøver næringsvirksomhet, utgjør foretak.

Dessuten anser Overvåkningsorganet at den offentlige finansieringen av oppføringen av Harpa, vil utgjøre en økonomisk fordel og dermed støtte, siden prosjektet etter all sannsynlighet ikke ville blitt gjennomført uten denne finansieringen. I tillegg får selskapene som er involvert i driften av Harpa en fordel i form av sikret fortjeneste når staten og kommunen ikke krever avkastning på sin investering i konserthuset og konferansesentret, i den utstrekning disse selskapene utøver næringsvirksomhet, som å arrangere konferanser eller andre kulturelle begivenheter. Overvåkningsorganets foreløpige vurdering viser dermed at en selektiv økonomisk fordel ikke kan utelukkes på noe nivå (oppføring, drift og bruk).

Vridning av konkurransen og påvirkning av samhandelen mellom avtalepartene

Ettersom markedet for tilrettelegging av internasjonale arrangementer som konferanser og andre begivenheter er åpent for konkurranse mellom utleiere og arrangører, som generelt utøver virksomhet underlagt handel mellom EØS-stater, kan påvirkning av samhandelen formodes. I dette tilfellet, på grunn av konferansenæringens natur, er det enda større sannsynlighet for at handelen mellom visse nabostater i EØS påvirkes([2]). Overvåkningsorganets foreløpige holdning er derfor at tiltaket truer med å vri konkurransen og påvirke samhandelen i EØS.

Støttens forenlighet

Ifølge EØS-avtalens artikkel 61 nr. 3 bokstav c), slik Overvåkningsorganet tolker den og utarbeidet av Europakommisjonen i henhold til tidligere artikkel 87 nr. 3 bokstav d) TEF, nå artikkel 107 nr. 3 bokstav d) TEUV, kan støtte for å fremme bevaring av kulturarven anses som forenlig med EØS-avtalens virkemåte, når slik støtte ikke påvirker vilkårene for samhandel og konkurransen i EØS i et omfang som strider mot felles interesser. Islandske myndigheter har uttrykt at det berørte tiltakets hovedmål var å fremme kultur gjennom oppføringen av et konserthus som kunne huse både det islandske symfoniorkester og den islandske opera. Overvåkningsorganet har godtatt, med tanke på det kulturelle formålet, at oppføringen og driften av et anlegg for et symfoniorkester og en opera kan kunne kvalifisere som kulturfremmende støtte.

Overvåkningsorganet godtar at en infrastruktur som Harpa også kan brukes til å huse ulike typer næringsvirksomhet som restauranter, kaffebarer, forretninger, konferanser og popkonserter. Beskyttelsestiltak må imidlertid iverksettes for at konkurransen ikke vris og for å sikre at det ikke forekommer kryssubsidiering mellom næringsvirksomhet og de subsidierte kulturaktivitetene. Overvåkningsorganet kan ikke se at islandske myndigheter har iverksatt de nødvendige beskyttelsestiltak for å sikre at slik kryssfinansiering ikke forekommer. Overvåkningsorganet er etter sin foreløpige vurdering derfor i tvil om oppføringen og driften av Harpa kan anses som forenlig etter EØS-avtalens artikkel 61 nr. 3 bokstav c).

Konklusjon

I lys av de ovenstående betraktninger har Overvåkningsorganet besluttet å innlede formell undersøkelse i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol med henblikk på finansieringen av Harpa konserthus og

([1]) Se Kommisjonens beslutning i sak SA. 33618 (Sverige) *Finansiering av Uppsala arena* (EUT C 152 av 30.5.2012, s. 18) nr. 19.

([2]) Se sak T-90/09 *Mojo Concerts BV og Amsterdam Music Dome Exploitatie BV mot Europakommisjonen*, Underrettens kjennelse av 26.1.2012, nr. 45, offentliggjort i EUT C 89 av 24.3.2012, s. 22.

konferansesenter. Berørte parter innbys til å sende inn sine merknader innen en måned etter at denne kunngjøringen ble offentliggjort i *Den europeiske unions tidende*.

All ulovlig tildelt støtte kan i samsvar med artikkel 14 i protokoll 3 kunne kreves tilbakebetalt fra mottakerne.

EFTA SURVEILLANCE AUTHORITY DECISION

No. 128/13/COL

of 20 March 2013

to initiate the formal investigation procedure into potential state aid involved in the financing of the Harpa Concert Hall and Conference Centre

(Iceland)

The EFTA Surveillance Authority ("the Authority")

HAVING REGARD to:

The Agreement on the European Economic Area ("the EEA Agreement"), in particular to Article 61 and Protocol 26,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1 of Part I and Articles 4 (4), 6 and 13 of Part II,

WHEREAS:

I. FACTS

1. Procedure

(1) On 19 September 2011, the Authority received a complaint, dated 13 September 2011 (Event No. 608967), concerning the alleged subsidising by the Icelandic State and the City of Reykjavík ("the City") of conference services and restaurant/catering services in the Harpa Concert Hall and Conference Centre ("Harpa").([1])

(2) By letter dated 14 October 2011, the Authority requested additional information from the Icelandic authorities (Event No 609736). By a letter dated 30 November 2011 (Event No 617042), the Icelandic authorities replied to the request and provided the Authority with the relevant information.

(3) The case was the subject of discussions between the Authority and the Icelandic authorities as well as the lawyer representing the holding company responsible for Harpa's operations, at the package meeting in Reykjavík on 5 June 2012. Shortly after the meeting the Authority sent a follow up letter, dated 9 July 2012 (Event No 637627), to the Icelandic authorities inviting them to provide information on certain outstanding issues.

(4) By letter dated 21 August 2012 (Event No 644771), the Icelandic authorities submitted additional information. By letter dated 27 September 2012 (Event No 648320), the Icelandic authorities submitted a memorandum concerning the separation of accounts as well as a statement from the accounting firm PWC.

(5) Finally, the Icelandic authorities submitted information by email dated 11 February 2013 (Event No 662444) and by letter dated 7 March 2013 (Event No 665434).

2. The complaint

(6) The complainant has alleged that unlawful state aid is being provided by the Icelandic State and the City to the companies involved in the operation of Harpa. The complainant referred to the State budget for the year 2011 where the Ministry of Finance allocated ISK 419.400.000 to the operation of Harpa and additional ISK 44.200.000 for building costs and maintenance. The Municipality's budget foresaw a substantial allocation of funds to the Harpa project for the year

([1]) For the purposes of this decision 'Harpa' will refer to the building itself and its facilities.

2011 amounting to a total of ISK 391.526.000. Furthermore, the Municipality contributed a substantial amount to the project in the years 2009-2010.

(7) The complainant claims that the contribution from both the Icelandic government and the City is partly being used to subsidize the conference service and the restaurant/catering services in the music hall and conference centre. The contributions in question are fairly high and according to the complainant there is no transparency in how they are being used. The complainant maintains that this state aid affects the market for the conference business in the European Economic Area ("EEA") as a whole and is not limited to competitors on the Icelandic market. It therefore constitutes an infringement of Article 61 of the EEA Agreement.

(8) The complainant provided the Authority with extracts from the Icelandic State budget for the year 2011 as well as an extract from the City's budget for the same year. Furthermore the complainant provided a purchase agreement for Harpa and general information on the conference market in Iceland. However the complainant noted that due to the lack of transparency it was difficult to gather detailed information on the obligations of the Icelandic State and the City to contribute funds to the companies involved in the operation of Harpa as well as information on Harpa's business model and on the separation of accounts.

3. Harpa concert hall and conference centre

3.1 Background

(9) In 1999 the Mayor of Reykjavík along with representatives of the Icelandic government announced that a concert and conference centre would be constructed in the centre of Reykjavík. In late 2002 the Icelandic State and the City signed an agreement regarding the project and the following year the company Austurhöfn-TR ehf. was founded with the purpose of overseeing the project.

(10) In 2004 the Icelandic State and the City initiated a Public Private Partnership ("PPP") bid concerning the construction, design and operation of the concert hall and conference centre. There were four companies that bid for the contract. In 2005 the evaluation committee of Austurhöfn-TR ehf. concluded that the offer from Portus ehf. was the most favourable one and subsequently the Icelandic State and the City entered into a contract with Portus ehf. for the construction and operation of a concert and conference centre.([2]) The construction of Harpa began on 12 January 2007.

(11) Due to the financial collapse in Iceland in October 2008, the construction of Harpa was put on hold. However, shortly after the collapse, the Mayor of Reykjavík and the Minister of Education reached an agreement which entailed that the State and the City would continue with the construction of Harpa without the private partner. After an amended and restated project agreement was concluded the construction project continued (hereinafter referred to as "the Project agreement").([3]) On 20 August 2011 Harpa was formally opened. The building is 28.000 square meters and is located at Austurbakki 2, 101 Reykjavík.

(12) Harpa is meant to accommodate various services and operations. Both the Icelandic Symphony Orchestra and the Icelandic Opera have entered into long term contracts for the use of certain facilities within Harpa. Moreover, Harpa accommodates conferences and there are four conference halls of different sizes. Harpa also houses various other events such as pop and rock concerts with both Icelandic and foreign artists.

(13) Other activities in Harpa such as catering, restaurants, a music shop and a furniture shop are operated by private companies who rent the facilities. According to the Icelandic authorities these facilities are leased on market terms and were subject to public tenders, where the most favourable offers were accepted.

([2]) Project agreement between Austurhöfn-TR ehf. and Eignarhaldsfélagið Portus ehf, signed on 9 March 2006.
([3]) Amended and restated project agreement between Austurhöfn-TR ehf. and Eignarhaldsfélagið Portus ehf, signed on 19.1.2010.

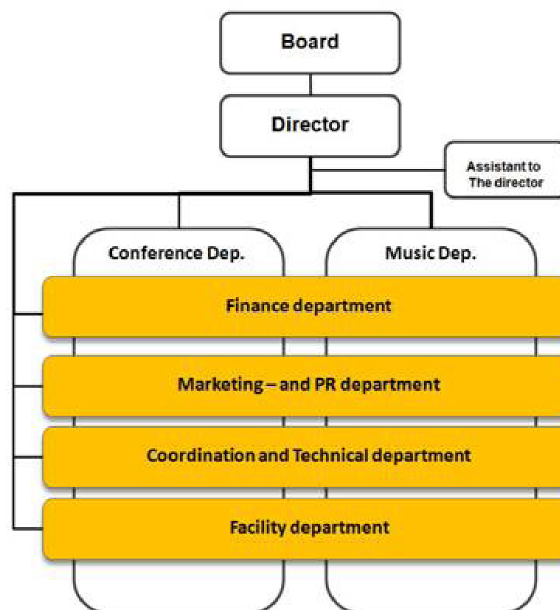
3.2 *The ownership and corporate structure of Harpa*

(14) Harpa Concert Hall and Conference Centre is owned by the Icelandic State (54%) and Reykjavík City (46%) and therefore constitutes a public undertaking. The entire Harpa project has been overseen by Austurhöfn-TR ehf. which is a limited liability company, established by the Ministry of Finance on behalf of the Icelandic State and the City in order to take over the construction and running of the Harpa project.([4])

(15) Until recently there were several limited liability companies involved in Harpa´s operations, namely: Portus ehf., which was responsible for Harpa real estate and operations, and Situs ehf., which was responsible for other buildings planned in the same area. Portus had two subsidiaries: Totus ehf., which owned the real estate itself, and Ago ehf., which was responsible for all operations in Harpa and leased the property from Totus. Situs also had two subsidies: Hospes ehf., which would have owned and operated a hotel which is to be constructed in the area, and Custos ehf., which was to own and operate any other buildings in the area.

(16) However, in order to minimize operational costs and increase efficiency, the board of Austurhöfn-TR ehf. decided in December 2012 to simplify the operational structure of Harpa by merging most of the limited liability companies involved in its operations into one company. The State and the City therefore founded the company Harpa tónlistar- og ráðstefnuhús ehf. which is to oversee all of Harpa´s operations. Simplifying the infrastructure of Harpa is a part of a long term plan to make Harpa's operations sustainable.

(17) The following chart explains in broad terms the organizational structure of Harpa after the changes to its corporate structure entered into effect:([5])



3.3 *The financing of Harpa's operations*

(18) As previously noted, Harpa is fully owned by the Icelandic State and the City through Austurhöfn-TR ehf. The obligation of the State and the City are regulated by Article 13 of the Project agreement from 2006.([6]) The annual payments of the State and the City are covered by their respective budgets. According to the State budget for 2011 the annual state contribution was expected to amount to ISK 424.4 million. For the year 2012 the expected amount to be contributed by the State was ISK 553.6 million. In the year 2013 there is expected to be an

([4]) Further information on Austurhöfn-TR ehf. can be found on their website: http://www.austurhofn.is/.
([5]) Information available online at: http://en.harpa.is/media/english/skipur-1.jpg.
([6]) As amended and restated in 2010.

increase in the public funding of Harpa as the City and the State have approved an additional ISK 160 million contribution. All public contributions to Harpa are borne in accordance with the participation in the project, i.e. the State pays 54% and the City 46%. The contributions are also indexed with the consumer price index.

(19) In addition to the contribution provided for in the State and the City's budgets the government and the City have undertaken an obligation to grant a short term loan for the operation of Harpa until long term financing necessary to fully cover the cost of the project is completed,. As from 2013 the total amount of the loan was ISK 794 million with an interest rate of 5% and a 200 bp premium. The Icelandic authorities have however announced their intention to convert the loan into share capital in the companies operating Harpa.([7])

(20) The State and the City allocate funds on a monthly basis in order pay off loan obligations in connection with Harpa. Since the project is meant to be self sustainable the profits must cover all operational costs. The funds from the owners are therefore, according to the Icelandic authorities, only meant to cover outstanding loans.([8])

(21) According to the Project agreement, there is to be a financial separation between the different companies involved in the operation of Harpa and between the different operations and activities:

(22) ***13.11.1*** *The Private Partner will at all times ensure that there is financial separation between the Real Estate Company, the Operation Company, Hringur and the Private Partner. Each entity shall be managed and operated separately with regards to finances.*

(23) ***13.11.2*** *The Private Partner will at all times ensure that there is sufficient financial separation, i.e. separation in book-keeping, between the Paid for Work and other operations and activities within the CC. The Private Partner shall at all times during the Term be able to demonstrate, upon request from the Client, that such financial separation exists.*

(24) The operations of Harpa are divided into several categories: 1) The Icelandic Symphony Orchestra, 2) The Icelandic Opera, 3) Other art events, 4) Conference department, 5) Operations, 6) Ticket sales, 7) Operating of facilities, 8) Management cost. All these cost categories now fall under Harpa tónlistar- og ráðstefnuhús ehf. and the revenue and costs attributed to each of these categories are included in the budget under the relevant category. Common operational costs such as salary, housing (heating and electricity) and administrative costs are divided among the categories according to a cost allocation model.([9])

(25) According to the projected annual account of Austurhöfn-TR ehf. for the year 2012, the company was expected to sustain a significant operating loss corresponding to a total negative EBITDA of ISK 406.5 million. The conference part of Harpa´s operation was run at a negative EBITDA of ISK 120 million in 2012 and the same goes for "other art events" (negative EBITDA of ISK 131 million). The projected annual accounts and earning analysis for the year 2013 also foresee a considerable operating loss, a total negative EBITDA of around ISK 348 million, with both the conference activities and "other art events" operating at a loss.([10])

(26) As previously noted, the operation in Harpa is now overseen by a single company, Harpa - tónlistar- og ráðstefnuhús ehf., which is devoted to making the Harpa project as profitable as possible. According to the Icelandic authorities the overall aim is to make the operations gradually sustainable. Nevertheless, Harpa has since its opening been operated with an annual deficit that has been covered over the budgets of the Icelandic State and Reykjavík City.([11]) According to projections submitted by the Icelandic authorities the conference activities in Harpa are expected to become gradually sustainable and by the year 2016 the authorities project that Harpa's conference operations will run at a positive EBITDA of ISK 3.5 million.([12]) However, by the year 2016 the "other art events" are still expected to run at a negative EBITDA of around ISK 93 million.

([7]) The Icelandic authorities have not yet outlined the particulars of this arrangement.
([8]) See memorandum issued by the Director of Harpa, dated 24 September 2012 (Event No 648320).
([9]) See report by KPMG, dated 7.2.2013 (Event No 662444).
([10]) Ibid.
([11]) According to the Icelandic authorities Harpa's losses mostly stem from high real estate taxes.
([12]) The key factor in this revenue growth is the expected increase in the conference business.

4. Comments by the Icelandic authorities

(27) The Icelandic authorities argue that the financing of the companies involved in the operation of Harpa does not involve state aid since they have properly ensured that the companies keep separate accounts for the different activities within the concert hall and the conference centre.

(28) The Icelandic authorities have claimed that revenues from conference and concert activities have been accounted for separately from other activities, while costs had not been accounted for separately up until now. The Icelandic authorities have acknowledged the need for accounting for conference activities separately from concert activities, as well as costs associated with these activities, and they aimed at having such a separation functional in January 2012.

(29) Furthermore, the Icelandic authorities claim that there is now a sufficient separation of accounts. In order to validate this claim they have put forward statements from two accounting firms, PWC and KPMG. According to PWC the separation of accounts for the companies involved in the operation of Harpa is sufficient. The profits are attributed to the relevant operational category and the common operational costs are divided between all operational categories. According to the report from KPMG, the property management team of Harpa have divided the building's square meters based on function and usage and the related costs are allocated accordingly.

(30) With regard to the conference operations, according to the Icelandic authorities, Harpa tónlistar- og ráðstefnuhús ehf. is not itself active on the conference market. The company however leases conference rooms either to one-off conference organizers or to specialized conference businesses. Furthermore, the Icelandic authorities have noted that that there are no competing conference centres in Iceland capable of hosting large scale conferences like Harpa. According to the Icelandic authorities the conference business positively contributes to other activities in Harpa. If Harpa tónlistar- og ráðstefnuhús ehf. would not operate the conference business, the costs other activities would have to carry would be considerably higher. In order to show that the conference aspect of Harpa is not being subsidized the Icelandic authorities submitted a pricing analysis from KPMG where they compared the prices of comparable conference facilities, based on size and capacity. According to KPMG's analysis the price for a full day, the price per guest and the price per square meter is on average much higher for the facilities in Harpa than for comparable facilities offered in competing conference facilities.

(31) Lastly, the Icelandic authorities maintain that the financial contributions from the State and the City are fully allocated for payment of outstanding loans and are not used in order to subsidize the conference hosting aspect.

II. ASSESSMENT

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

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

(33) *"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."*

(34) In the following chapters the financing of the companies involved in the operation of Harpa Concert Hall and Conference Centre will be assessed with respect to these criteria.

4.1 State resources

(35) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through state resources in order to constitute state aid.

(36) At the outset, the Authority notes that both local and regional authorities are considered to be equivalent to the State.([13]) Consequently, the state for the purpose of Article 61(1) covers all bodies of the state administration, from the central government to the City level or the lowest administrative level as well as public undertakings and bodies. Furthermore, municipal resources are considered to be state resources within the meaning of Article 61 of the EEA Agreement.([14])

(37) Since the Icelandic State and the City of Reykjavík cover jointly the annual deficit of the companies involved in the operation of Harpa by annually contributing a certain amount from their budgets, state resources are involved. Furthermore, the converting of loans into share capital also entails a transfer of state resources since the State and the City would forgo their entitlement to receive a full repayment of the outstanding loans. Therefore, the first criterion of Article 61(1) of the EEA Agreement is fulfilled.

4.2 Undertaking

(38) In order to constitute state aid within the meaning of Article 61 of the EEA Agreement the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.([15]) Economic activities are activities consisting of offering goods or services on a market.([16]) Conversely, entities that are not commercially active in the sense that they are not offering goods and services on a given market do not constitute undertakings.

(39) The Authority is of the opinion that both the construction and operation of an infrastructure constitute an economic activity in itself (and are thus subject to state aid rules) if that infrastructure is, or will be used, to provide goods or services on the market.([17]) In this case, the conference hall and concert centre is intended for e.g. hosting conferences as well as music, culture and "other art events" on a commercial basis, i.e. for the provision of services on the market. This view has been confirmed by the Court of Justice of the European Union in the *Leipzig/Halle* case.([18]) Consequently, in infrastructure cases, aid may be granted at several levels: construction, operation and use of the facilities.([19])

(40) As previously noted, Harpa Concert Hall and Conference Centre hosts concerts by the Icelandic Symphony Orchestra, the Icelandic Opera, various other art events as well as conferences. In the view of the Icelandic authorities only the conference aspect of Harpa's operation constitutes an economic activity. All other activities should therefore be classified as non-economic. However, the Authority has certain doubts in this regard.

(41) Some of the activities taking place in Harpa, notably conferences, theatre performances, popular music concerts etc., can attract significant numbers of customers while they are in competition with private conference centres, theatres or other music venues. Therefore, the Authority takes the view that the Harpa Concert Hall and Conference Centre and the companies involved in its operation, in so far as they engage in commercial activities, qualify as an undertaking.([20]) The companies involved in the operation of Harpa must be regarded as vehicles for pursuing the common interest of its owners, that is to support cultural activities in Iceland.

([13]) See Article 2 of Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings (OJ L 318 17.11.2006 p. 17), incorporated at point 1a of Annex XV to the EEA Agreement.

([14]) 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.

([15]) Case C-41/90 *Höfner and Elser* v. *Macroton* [1991] ECR I-1979 paragraphs 21-23 and Case E-5/07 *Private Barnehagers Landsforbund* v. *EFTA Surveillance Authority* [2008] Ct. Rep. 61 paragraph 78.

([16]) Case C-222/04 *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA* [2006] ECR I-289, paragraph 108.

([17]) See the Commission Decision in Case SA. 33618 (Sweden) *Financing of the Uppsala arena* (OJ C 152 of 30.5.2012, p. 18) paragraph 19.

([18]) Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v. The European Commission*, 19/12/2012, paragraphs 40–43, not yet published.

([19]) See the Commission Decision in Case SA. 33728 (Denmark) *Financing of a new multiarena in Copenhagen* (OJ C 152 of 30.5.2012, p. 6) paragraph 24.

([20]) See the Commission Decision in Case N 293/2008 (Hungary) *Cultural aid for multifunctional community cultural centres, museums, public libraries* (OJ C 66 of 20.3.2009, p. 22) paragraph 19.

4.3 Advantage

(42) In order to constitute state aid within the meaning of Article 6l of the EEA Agreement the measure must confer an economic advantage on the recipient.

(43) Regarding the financing of the construction of Harpa, state aid can only be excluded if it is in conformity with the market economy investor principle ("MEIP").([21]) According to the Icelandic authorities, the State and the City had initially hoped that a private investor would finance the realization of the project. However, due to the financial crisis, it became impossible to carry out the project without public funding. The direct grant by the State and the City is thus claimed to be necessary, as without it there were not enough funds to finance the project. The Authority therefore considers, at this stage, that the public financing of the construction of Harpa would constitute an economic advantage and thus aid, since the project would admittedly not have been realised in the absence of public funding and the participation by the State and the City was essential to the Harpa project as a whole.

(44) It follows from the Authority's decisional practice that when an entity carries out both commercial and non-commercial activities, a cost-accounting system that ensures that the commercial activities are not financed through State resources allocated to the non-profit making activities must be in place.([22]) This principle is also laid down in the Transparency Directive.([23]) The Directive does not apply directly to the case at hand. However, the Authority is of the opinion that the principles of operating economic activities on commercial terms with separate accounts, and a clear establishment of the cost accounting principles according to which separate accounts are maintained, still apply.

(45) As described in Section I.3 above, the operations of Harpa are divided into several categories, e.g. hosting the Icelandic Symphony Orchestra and the Icelandic Opera as well as other art events and conferences, which can be divided into economic and non-economic activities (i.e. cultural activities). The Icelandic authorities have however not properly ensured, through either amending the organizational structure of Harpa or by other administrative action, that there is a clear and consistent separation of the accounts for the different activities of the concert hall and conference centre. Simply dividing the losses associated with the operation of the building and common administrative costs between the different activities of Harpa, both the economic and non-economic, based on estimated usage and other criteria cannot be seen as a clear separation of accounts under EEA law. This situation therefore may lead to cross-subsidisation between non-economic and economic activities.

(46) Additionally, an advantage is conferred on the companies involved in the operation of Harpa in the form of foregone profits when the State and the City do not require a return on their investment in the concert hall and conference centre, in so far as those companies engage in commercial activities, such as the hosting of conferences or "other art events". Any business owner or investor will normally require a return on its investment in a commercial undertaking. Such a requirement effectively represents an expense for the undertaking. If a state and municipally owned undertaking is not required to generate a normal rate of return for its owner this effectively means that the undertaking benefits from an advantage whenever the owner foregoes that profit.([24])

(47) The Authority considers that the announced conversion of loans, in the amount of ISK 904 million could also constitute an advantage, should the conversion not be concluded on market terms. However, since the Authority has not received a detailed description of the loan conversion agreement it is not in the position to assess whether an advantage is present or not.

([21]) See the Commission Decision in Case SA. 33728 (Denmark) Financing of a new multiarena in Copenhagen (OJ C 152 of 30.5.2012, p. 6) paragraph 25.

([22]) ESA Decision No. 142/03/COL Regarding Reorganisation and Transfer of Public Funds to the Work Research Institute (OJ C 248, 16.10.2003, p. 6, EEA Supplement No. 52, 16.10.2003, p. 3), ESA Decision No. 343/09/COL on the property transactions engaged in by the Municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32 (OJ L 123, 12.5.2011, p. 72, EEA Supplement No. 27, 12.5.2011, p. 1).

([23]) Commission Directive 2006/111/EC of 16.11.2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318 17.11.2006 p. 17), incorporated at point 1a of Annex XV to the EEA Agreement.

([24]) Case C-234/84 *Belgium v Commission* [1986] ECR I-2263, paragraph 14.

(48) The preliminary assessment of the Authority thus shows that an economic advantage cannot be excluded at any level (construction, operation and use).

4.4 Selectivity

(49) In order to constitute state aid within the meaning of Article 6l of the EEA Agreement the measure must be selective.

(50) The Icelandic authorities provide funding to the companies involved in the operation of Harpa. The funding is used to cover the losses stemming from the different activities within Harpa, including economic activities such as the hosting of conferences. This system of compensation, under which cross-subsidisation may occur, is not available to other companies that are active on the conference market in Iceland or elsewhere.

(51) In light of the above, it is the Authority's preliminary view that the companies involved in the operation of Harpa receive a selective economic advantage compared to their competitors on the market.

4.5 Distortion of competition and effect on trade between Contracting Parties

(52) The measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement to be considered state aid within the meaning of Article 61(1) of the EEA Agreement.

(53) According to 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 considered to be sufficient in order to conclude that the measure is likely to affect trade between Contracting Parties and distort competition between undertakings established in other EEA States.([25]) The state resources allocated to the companies involved in the operation of Harpa, in order to cover their losses, constitute an advantage that strengthens Harpa's position compared to that of other undertakings competing in the same market.

(54) As the market for organising international events is open to competition between venue providers and event organisers, which generally engage in activities which are subject to trade between EEA States, the effect on trade can be assumed. In this case, the effect on trade between certain neighbouring EEA States is even more likely due to the nature of the conference industry. Moreover, the General Court has recently, in its Order concerning the Ahoy complex in the Netherlands, held that there was no reason to limit the market to the territory of that Member State.([26])

(55) Therefore, in the preliminary view of the Authority, the measure threatens to distort competition and affect trade within the EEA.

4.6 Conclusion with regard to the presence of state aid

(56) With reference to the above considerations the Authority cannot, at this stage and based on its preliminary assessment, exclude that the measure under assessment includes elements of state aid within the meaning of Article 61(1) of the EEA Agreement. Under the conditions referred to above, it is thus necessary to consider whether the measure can be found to be compatible with the internal market.

5. Compatibility assessment

(57) The Icelandic authorities have not put forward any arguments demonstrating that the state aid involved in the financing of the companies involved in the operation of Harpa could be considered as compatible state aid.

([25]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] Report of the EFTA Court page 76, paragraph 59; Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11.

([26]) Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v. The European Commission*, Order of the General Court of 26/01/2012, paragraph 45, published in OJ C 89, 24.3.2012, p. 36.

(58) 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 under Article 61(2) or (3) or Article 59(2) of the EEA Agreement and are necessary, proportional and do not cause undue distortion of competition.

(59) The derogation in 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. Further, the aid under assessment in this case cannot be considered to qualify as public service compensation within the meaning of Article 59(2) of the EEA Agreement.

(60) The EEA Agreement does not include a provision corresponding to Article 107(3)(d) of the Treaty on the Functioning of the European Union. 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.([27])

(61) On the basis of Article 61(3)(c) of the EEA Agreement, aid to promote culture and heritage conservation may be considered compatible with the functioning of the EEA Agreement, where such aid does not affect trading conditions and competition in the EEA to the extent that is considered to be contrary to the common interest. The Authority must therefore assess whether granting aid to the various activities in Harpa can be justified as aid to promote culture on the grounds of Article 61(3)(c) of the EEA Agreement.

(62) It should be noted that the principles laid down in Article 61(3)(c) of the EEA Agreement have been applied to cases somewhat similar to the case at stake.([28]) The Icelandic authorities have stated that the primary objective of the measure in question was to promote culture through the construction of a concert hall that could house both the Icelandic Symphony Orchestra and the Icelandic Opera. Similar multipurpose cultural centres already exist in most other European cities. Harpa is to be Iceland's national concert hall, providing a necessary cultural infrastructure that was missing in Iceland and it will act as the focal point for the development and advancement of those performance arts in Iceland. The concert centre will therefore contribute to the development of cultural knowledge and bring access to cultural educational and recreational values to the public.([29])

(63) In view of the above, the Authority considers that, given its cultural purpose, the construction and operation of a Symphony and Opera facility, would qualify as aid to promote culture within the meaning of Article 61(3)(c) of the EEA Agreement. However, the Authority has doubts as to whether aid granted to subsidize conference and other art events, on a commercial basis, can be justified under Article 61(3)(c) and this aid must therefore be assessed separately.

(64) Concerning necessity, proportionality and whether the measure is likely to distort competition, the Authority has the following observations. As previously noted the main reason for constructing Harpa was the apparent need for a suitable concert hall to accommodate both the Icelandic Symphony Orchestra and the Icelandic Opera. Given the scale of the project it is understandable that an infrastructure such as Harpa would also be used to house various commercial activities such as restaurants, coffee shops, stores, conferences and popular concerts. However, in order not to distort competition, safeguards must be put in place to ensure that there is no cross subsidisation between the commercial activities and the heavily subsidised cultural activities. This can be achieved by either tendering out facilities for the commercial activities, thereby ensuring that the economic operator pays market price for the facilities and does not benefit from cross subsidisation, or by sufficiently separating the economic activities from the non-commercial activities by establishing a separate legal entity or a sufficient system of cost allocation and separate accounts that ensures a reasonable return on investment. The Icelandic authorities have already taken the former approach with regard to the restaurants, catering services and shops within Harpa. The same approach has however not been taken with regard to the hosting of

([27]) See for example paragraph 7 (with further references) of the Authority's Guidelines on state aid to cinematographic and other audiovisual work, available at the Authority's webpage at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/.

([28]) See Commission Decision in Case N 122/2010 (Hungary) *State aid to Danube Cultural Palace* (OJ C 147, 18.5.2011, p. 3) and Commission Decision in Case N 293/2008 (Hungary) *Cultural aid for multifunctional community cultural centres, museums, public libraries* (OJ C 66, 20.3.2009, p. 22).

([29]) See Commission Decision in Case SA 33241 (Cyprus) *State support to the Cyprus Cultural Centre* (OJ C 377, 23.12.2011, p. 11), paragraphs 36–39.

conference and "other art events" which are currently overseen by a company owned by the State and the City, Harpa tónlistar- og ráðstefnuhús ehf., and run at a considerable negative EBITDA. The Authority therefore cannot see that the Icelandic authorities have put the necessary safeguards in place to ensure that cross subsidisation does not occur between the cultural and the purely commercial activities within Harpa.

(65) Consequently, following its preliminary assessment, the Authority has doubts whether the proposed project could be deemed compatible under Article 61(3)(c) of the EEA Agreement, at this stage at all three levels of possible aid (construction, operation and use) in accordance with the above.

(66) At this stage, the Authority has not carried out an assessment with respect to other possible derogations, under which the measure could be found compatible with the functioning of the EEA Agreement. In this respect, the Icelandic authorities have not brought forward any further specific arguments.

6. Procedural requirements

(67) Pursuant to Article 1(3) of Part I of Protocol 3, "[t]he 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 th[e] procedure has resulted in a final decision".

(68) The Icelandic authorities did not notify the aid measures to the Authority. Moreover, the Icelandic authorities have, by constructing and operating Harpa, put those measures into effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid involved is therefore unlawful.

7. Opening of the formal investigation procedure

(69) Based on the information submitted by the complainant and the Icelandic authorities, the Authority, after carrying out the preliminarily assessment, is of the opinion that the financing of the companies involved in the operation of the Harpa Concert Hall and Conference Centre – within the context of the project as outlined above – might constitute state aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, as outlined above, the Authority has doubts as regards the compatibility of the potential state aid with the functioning of the EEA Agreement.

(70) Given these doubts and the impact of potential state aid on the investments of private operators it appears necessary that the Authority opens the formal investigation procedure.

(71) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure 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 or that they do not constitute aid.

(72) The opening of the procedure will also enable interested third parties to comment on the questions raised and on the impact of the Harpa project on relevant markets.

(73) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, hereby invites the Icelandic authorities to submit their comments and to provide *all documents, information and data* needed for the assessment of the compatibility of the measures within one month from the date of receipt of this Decision.

(74) The Authority must remind the Icelandic authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted already to the beneficiaries will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principle of EEA law.

(75) Attention is drawn to the fact that the Authority will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union*. All interested parties will be invited to submit their comments within one month of the date of such publication.

HAS ADOPTED THIS DECISION:

Article 1

The financing and operation of the Harpa Concert Hall and Conference Centre constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts as regards the compatibility of the state aid with the functioning of the EEA Agreement.

Article 2

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is initiated regarding the aid referred to in Article 1.

Article 3

The Icelandic 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 4

The Icelandic authorities are requested to provide, within one month from notification of this Decision, all documents, information and data needed for assessment of the measures under the state aid rules of the EEA Agreement.

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Decision made in Brussels, on 20 March 2013.

For the EFTA Surveillance Authority

Oda Helen Sletnes	Sabine Monauni-Tömördy
President	College Member

2013/EØS/44/05

Innbydelse til å sende inn merknader i henhold til overvåknings- og domstolsavtalens protokoll 3 del I artikkel 1 nr. 2 med hensyn til statsstøtte i forbindelse med mulig støtte til Nasjonal digital læringsarena

EFTAs overvåkningsorgan har ved vedtak 136/13/COL av 27. mars 2013, gjengitt på det opprinnelige språket etter dette sammendraget, innledet behandling i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol Norske myndigheter er underrettet ved en kopi av vedtaket.

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

EFTA Surveillance Authority
Registry
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Merknadene vil bli oversendt norske myndigheter. En berørt part som ønsker å få sin identitet holdt fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

Sammendrag

Bakgrunn

I Norge er utdanning obligatorisk for alle barn fra 6 til 16 år og tilbys gjennom gratis offentlige skoler. I 2006 besluttet norske myndigheter gjennom Kunnskapsløftet at alle norske skoler skulle legge vekt på muligheten til å lære et bestemt fag ved bruk av informasjons- og kommunikasjonsteknologi. På bakgrunn av dette endret norske myndigheter utdanningsloven og påla fylkeskommunene å skaffe elevene det nødvendige trykte og digitale læringsmaterialet gratis.

I mai 2006 stilte norske myndigheter 50 millioner kroner til rådighet til utvikling og bruk av slike digitale læringsmidler. I juni 2006 oppfordret Udanningsdepartementet fylkeskommunene til å sende inn en felles søknad om de tilgjengelige midlene. I august 2006 besluttet utdanningslederne i 18 av de 19 fylkeskommunene å inngå et tverrkommunalt samarbeid og opprette NDLA som et tverrfylkeskommunalt samarbeidsorgan med hjemmel i §27 i kommuneloven.

De deltakende fylkeskommunene søkte så om midler fra Utdanningsdepartementet, som bevilget 30,5 millioner kroner til prosjektet på det vilkåret at det ansvarlige rettssubjektet skal ta ansvaret for fylkekommunens forpliktelser i henhold til initiativet, at rettsubjektet ikke utøver næringsvirksomhet og at det digitale læringsmaterialet og utviklingstjenestene kjøpes i samsvar med bestemmelsene om offentlig innkjøp.

Deretter bevilget fylkeskommunene 21,1 millioner kroner (2008), 34,7 millioner kroner (2009), 58,8 millioner kroner (2010) og 57,7 millioner kroner (2011) til prosjektet. Disse midlene ble delvis finansiert fra regulær kommunal finansiering av utdanningsvirksomhet og delvis gjennom ovennevnte tilleggsmidler, som utdanningsdepartementet hadde stilt til rådighet for fylkeskommunen øremerket for dette prosjektet.

Vedtak og dom

Den 12. oktober 2011 gjorde overvåkningsorganet vedtak nr. 311/11/COL om at tiltaket ikke utgjorde statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 (heretter kalt vedtaket). Den 9. januar 2012 anla saksøkeren et søksmål om oppheving av vedtaket, og EFTA-domstolen opphevet vedtaket ved dom av 11. desember 2012[1].

[1] Sak E-1/12 *Den norske Forleggerforening* (ennå ikke kunngjort).

Vurdering av ordningen

Om det foreligger statsstøtte

Etter dommen er Overvåkningsorganet i tvil om NDLA utøver økonomisk virksomhet. Overvåkningsorganet krever særlig nærmere opplysninger om initiativets overgang fra prosjektfase til den formelle opprettelsen av NDLA som et tverrfylkeskommunalt organ med hjemmel i §27 i kommuneloven.

I tillegg krever Overvåkningsorganet opplysninger om i hvilken grad forandringen av rettslig status berørte beslutningstakingsprosessen. Overvåkningsorganet trenger særlig å bringe på det rene i hvilken grad NDLA kan utvide omfanget av sin virksomhet uten de deltakende kommunenes samtykke, eller også mot deres vilje, og om den aktuelle situasjonen avviker fra situasjonen før den formelle opprettelsen.

Overvåkningsorganet vil dessuten foreta en nærmere undersøkelse av finansieringen av NDLA, både i prosjektfasen og etter den formelle ikrafttredelsen.

Videre trenger Overvåkningsorganet å fastslå nærmere hvordan parametrene fastsettes for de framgangsmåtene for offentlig innkjøp som NDLA følger ved kjøp av varer og ved ansettelse av personale.

Endelig trenger Overvåkningsorganet flere opplysninger om tiltaket påvirker konkurranse og samhandel.

Støttens forenlighet

På grunnlag av de opplysninger Overvåkningsorganet har for hånden, er det ikke mulig å fastslå tiltakets forenlighet. Overvåkningsorganet trenger derfor tilleggsopplysninger i så henseende.

Konklusjon

I lys av ovennevnte betraktninger har Overvåkningsorganet besluttet å innlede formell undersøkelse i samsvar med del 1 artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Berørte parter innbys til å sende inn sine merknader innen en måned etter at denne kunngjøringen ble offentliggjort i *Den europeiske unions tidende*.

EFTA SURVEILLANCE AUTHORITY DECISION

No. 136/13/COL

27 March 2013

opening the formal investigation procedure into potential aid to the

Nasjonal digital læringsarena (NDLA)

(Norway)

The EFTA Surveillance Authority ("the Authority")

HAVING REGARD to:

The Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 61 to 63 and Protocol 26,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), in particular to Article 24,

Protocol 3 to the SCA ("Protocol 3"), in particular to Article 1 of Part I and Articles 4(4) and 6 of Part II,

Whereas:

I. FACTS

1. Procedure

(1) By letter dated 15 April 2010 Den Norske Forleggerforening, the Norwegian Publishers Association ("NPA"), sent a complaint alleging that illegal State aid has been granted to the Nasjonal digital læringsarena ("NDLA"). The letter was received and registered by the Authority on 16 April 2010 (Event No. 553723). Following a telephone conference on 15 July 2011 the complainant provided additional information by email on the same day (Event No. 608593).

(2) By letter dated 2 July 2010 (Event No. 558201), the Authority requested additional information from the Norwegian authorities. By letter dated 9 August 2010 (Event No. 566179), the Norwegian authorities requested an extension of the time limit for sending a response. The request for an extension was granted by the Authority by letter dated 12 August 2010 (Event No. 566397). By letter dated 9 September 2010 (Event No. 568942), the Norwegian authorities replied to the information request. In addition, discussions between the Authority and the Norwegian authorities regarding the case took place at a meeting in Norway on 13–14 October 2010. Additional information from the Norwegian authorities was sent to the Authority by letter dated 1 December 2010 (Event No. 579405).

(3) The Authority considered that further information was necessary and sent another request for information by letter dated 4 February 2011 (Event No. 574762). The Norwegian authorities replied to the information request by letter dated 7 March 2011 (Event No. 589528). Upon request the Norwegian authorities provided further clarifications by emails 2 May 2011 (Event No. 596402) and 12 August 2011 (Event No. 608596).

(4) On 12 October 2011 the Authority adopted Decision No. 311/11/COL deciding that the measure did not constitute State aid within the meaning of Article 61(1) EEA (hereafter: the Decision). On 9 January 2012 the applicant brought an action against the decision and by its judgment dated 11 December 2012 the EFTA Court annulled the decision (hereafter: the Judgment).([1])

([1]) Case E-1/12 *Den norske Forleggerforening* (not yet published).

2. The Complaint

(5) The complainant is the Norwegian Publishers Association, which represents i.a. companies which are or could be active in the development and distribution of digital learning material. The complaint concerns the Norwegian government's and the county municipalities granting of funds as well as the transfer of a content management system to the NDLA. The NDLA is an entity which has been founded as an inter-county cooperation body by 18 Norwegian municipalities(2) in order to develop or purchase digital learning material with a view to publishing the material on the internet free of charge.

(6) The complainant submits that the NDLA has four main areas of activity: firstly, the NDLA develops and supplies learning resources for the upper secondary school; secondly, the NDLA procures learning resources from third party suppliers; thirdly, the NDLA ensures the quality of learning resources; and fourthly, the NDLA develops and manages the content management system which operates the website through which the digital learning material is published (these activities are hereafter also referred to as 'purchase, development and supply of digital learning materials').

(7) The complainant submits that the granting of funds to the NDLA for the purchase, development and supply of digital learning material constitutes illegal State aid to the NDLA. In that regard the complainant emphasises that – in his view – the NDLA is not an integrated part of the public administration but rather an undertaking within the meaning of State aid rules. The complainant recalls that according to established case law an undertaking is an entity which is engaged in economic activities. The complainant suggests that according to the ECJ case law an economic activity is an activity, which could, at least in principle, be carried out by a private undertaking in order to make profits. Then, the complainant argues that any entity, which carries out an activity which could be carried out to make profits, is engaged in an economic activity. The complainant further submits that there was a market for digital learning material prior to the activities of the NDLA and that the NDLA competes at present with private undertakings offering digital learning resources. The complainant claims that on this basis the development and supply of digital learning resources constitutes an economic activity. The complainant further suggests that the other activities of the NDLA are closely linked to the development and supply of digital learning resources and are therefore also to be considered as economic in nature.

(8) Furthermore, the complainant argues that the funds offered by the Ministry of Education and from the county municipalities to the NDLA for the purchase of digital learning material from third party suppliers also constitute State aid. Finally, the complainant submits that the fact that the State also made its content management system available to the NDLA free of charge – according to the complainant – also amounts to State aid.

(9) The complainant notes that the measure has not been notified. He continues to argue that Article 59(2) EEA is not applicable and concludes that – in the absence of a notification – the Norwegian State has granted State aid contrary to State aid rules.

3. Background

3.1. The Educational System in Norway

(10) Education in Norway is mandatory for all children aged from 6 to 16 and is provided through a system of free public schools. This system is divided into a compulsory elementary school (age 6 to 13), a compulsory lower secondary school (age 13 to 16), and the upper secondary school (age 16 to 19).

(11) In 2006 the Norwegian authorities decided in the course of the 'Knowledge Promotion Initiative' (Kunnskapsløftet) that all Norwegian schools were to emphasise certain basic skills in all subjects. One of these skills is the ability to learn a given subject by using information and communication technology. This requirement was introduced in the national curricula for pupils in the 10-year compulsory school (i.e. school for grades 1 to 9) and for pupils in the first year of upper secondary education (i.e. school for grades 10 to 12) and apprenticeships. Under the Norwegian Education

(2) Norway is divided into 19 municipalities, all of which participate in the NDLA project with the exception of the county municipality of Oslo. Participants are therefore the municipalities of Akershus, Aust-Agder, Buskerud, Finnmark, Hedmark, Hordaland, Nordland, Nord-Trøndelag, Møre og Romsdal, Oppland, Rogaland, Sogn og Fjordane, Sør-Trøndelag, Telemark, Troms, Vest-Agder, Vestfold and Østfold.

Act([3]) the county municipalities are responsible for meeting these requirements. Furthermore, in 2007 the Norwegian authorities amended the Education Act and obliged the county municipalities to provide the pupils with the necessary printed and digital learning materials free of charge.

(12) It should be noted that until that time, pupils in Norwegian upper secondary school (grades 10 to 12) had to purchase their learning material themselves based on the choice of learning material designated by the schools in compliance with the national curricula.([4]) Under the new Education Act, county municipalities are obliged to provide all learning material, i.e. digital learning material as well as physical learning material such as books, to pupils free of charge.([5])

Provisions in the Revised State Budget

(13) The obligation of providing digital and physical learning material for free constitutes a considerable financial burden for the Norwegian county municipalities. In view of these additional costs, the Norwegian government decided already in 2006 to provide additional funds. The provision of these funds is laid down in a revised State budget which was adopted in May 2006:

"The Government aims to introduce free teaching material for secondary education. At the same time, it is desirable to encourage the use of digital learning materials in secondary education. As part of the efforts to bring down the cost for each student through increased access to and use of digital teaching aids, the Government proposes to allocate 50 million NOK as a commitment to the development and use of digital learning resources.

Counties are invited to apply for funding for the development and use of digital learning resources. Applications from counties may include one, several, or all secondary schools in the county, and may include one or more subjects. The objective of the grant is to encourage the development and use of digital learning resources, and to help reduce students' expenses for teaching aids.

The funds can be used for the provision or for local development of digital learning resources. The funds shall not be used for the preparation of digital infrastructure for learning. The intention is to give priority to applications that involve inter-county cooperation."([6])

Invitation to Submit an Application

(14) In June 2006 the Ministry of Education submitted an invitation to the county municipalities to jointly apply for the available funds of 50 million NOK. The letter describes the objectives and the concept of the initiative as follows:

"The Ministry of Education has the following objectives for the initiative:
- *To increase access to and use of digital learning materials in secondary education.*
- *To develop secondary schools and school owners' competence as developers and/or purchasers of digital learning materials.*
- *To increase the volume and diversity of digital teaching materials aimed at secondary schools.*
- *Over time to reduce students' expenses for teaching aids*

[...]
The funds can be used to purchase digital learning resources and to locally develop digital learning resources." ([7])

Creation of the NDLA

(15) In August 2006 the heads of education of the 19 Norwegian county municipalities met to discuss the possibility of a joint application for the funds in question based on the requested inter-county cooperation. While the municipality of Oslo decided not to participate in a cooperative project, the other 18 municipalities decided to enter into the inter-county cooperation and to set up the NDLA to manage the process. Each of these municipalities subsequently adopted the following resolution:

([3]) Act of 17 July 1998 no. 61 relating to Primary and Secondary Education and Training (The Education Act).
([4]) As the national curricula set out the objectives for the learning outcome of all classes, the content of the learning material must respect the objectives of the national curricula.
([5]) Section 3-1and 4A-3 of the Education Act states that the county municipality is responsible for providing pupils with the necessary printed and digital teaching material as well as digital equipment free of charge.
([6]) Translation made by the Authority.
([7]) Translation made by the Authority.

"The County Council passes a resolution for the following counties, Akershus, Aust-Agder, Buskerud, Finnmark, Hedmark, Hordaland, Nordland, Nord-Trondelag, More og Romsdal, Oppland, Rogaland, Sogn og Fjordane, Sor-Trondelag, Telemark, Troms, Vest-College, Vesold and Østfold, to establish an inter-county cooperation body, the NDLA, with its own Board in accordance with §27 of the Local Government Act. The purpose of this collaboration is to facilitate the purchase, development, deployment and organisation of digital learning resources for all subjects in upper secondary education. The result shall be free digital learning material that facilitates active learning and sharing…" ([8])

Funds for the County Municipalities

(16) Subsequently, an application for the State funds was submitted to the Ministry of Education, which in April 2007 granted the funds under a number of conditions:

"The Ministry requests further that the counties jointly identify a responsible legal entity that will take care of the counties' responsibility for digital learning resources under this initiative. Such an entity can be e.g. a corporation, an inter (county) municipal corporation or a host (county) municipality but it cannot itself engage in economic activity.

[...]

The Ministry expects that the purchase of digital learning materials and development services are performed in accordance with the regulations for public procurement. The development of digital learning resources by county employees is to be regarded as an activity for its own account, provided that the counties do not gain any profits from this activity. The development by people who are not county employees must be regarded as the purchase of services and should be evaluated based on the rules and regulations for public procurement in the usual way." ([9])

(17) Following the approval of the funds the Ministry of Education transferred over a period of three years 30.5 million NOK (17 million NOK in 2007, 9 million NOK in 2008 and 4.5 million NOK in 2009) to the participating municipalities for the NDLA project.

(18) Besides, following the amendment of the Education Act in 2007, the county municipalities were compensated for the obligations to provide (physical and digital) learning material through an increase in the county municipal grant scheme. This compensation was based on the estimated costs of providing learning materials in all subjects. The compensation amounted to 287 million NOK in 2007, 211 million NOK in 2008, 347 million NOK in 2009 and 308 million NOK in 2010.

Funding of NDLA by the Municipalities

(19) The participating municipalities decided to use part of these funds for the NDLA project. The county municipalities allocated 21.1 million NOK (2008), 34.7 million NOK (2009), 58.8 million NOK (2010) and 57.7 million NOK (2011) to the project.

Legal Status

(20) The EFTA Court emphasised that it is apparent from the case file that the NDLA was active as an ad hoc cooperation before it was formally established as an inter-county cooperation body pursuant Article 27 of the Norwegian Local Government Act.([10])

Related Projects

(21) There are currently two other projects concerning digital learning in Norway. Firstly, the municipality of Oslo has applied for a similar grant for its own project (Real Digital). Secondly, the Ministry of Education itself is working on a similar project (Utdanning).

(22) The municipality of Oslo does not participate in the NDLA project and has submitted an application for funding for its own project called Real Digital. The Norwegian government accepted the application from Oslo and granted 13.5 million NOK to the municipality of Oslo over a period of two years (8 million NOK in 2007 and 5.5 million NOK in 2008). It should be noted that the funds provided to the municipality of Oslo are not subject to the complaint at hand.

([8]) Translation made by the Authority.
([9]) Translation made by the Authority.
([10]) Case E-1/12 *Den norske Forleggerforening*, para. 117 (not yet published).

(23) The Ministry of Education has decided to provide its own system for access to digital learning material. In that regard the Ministry can both develop digital learning material and/or acquire such learning material from third party suppliers. The Ministry acknowledges that there might be areas where the activities of the Ministry of Education might overlap with the activities of the NDLA. In its letter stating the conditions of the grant the Ministry of Education reserved itself the right to reallocate funds originally earmarked for the NDLA to the Ministry's own project. The relevant funds provided to the Ministry of Education are not subject to the complaint at hand.

3.2. National legal basis for the measure

(24) The legal basis for the funds paid by the Ministry of Education to the NDLA is the State budget resolution of the Stortinget in combination with the delegation of competence to the Ministry of Education to approve applications for grants. The legal basis for the grants from the county municipalities to the NDLA is budget resolution of the participating county municipalities.

3.3. Recipient

(25) The NDLA is organised as an inter-county cooperation body under Article 27 of the Local Government Act. This provision stipulates that municipalities or county municipalities may join forces to solve mutual tasks. The cooperation should take place through a board appointed by the relevant municipal or county municipal boards. The board may be empowered to adopt decisions concerning the operation and organisation of the inter municipal cooperation. Moreover, the provision stipulates that the articles of association of such cooperation shall determine the appointment and representation in the board, the area of activities, whether the participating municipalities shall make financial contributions, whether the board may enter into loan agreements or in other ways make the participating municipalities liable for financial obligations and, finally, how such cooperation shall be abolished.

(26) Participation in such cooperation is only open for municipalities and county municipalities. Neither the state nor other state entities or private parties can participate. The cooperation must be sincere in the sense that the law prohibits that the competence to govern the cooperation is delegated to one municipality. This is so since municipal tasks and obligations shall remain the responsibility of each municipality.([11])

3.4. Amount

(27) As indicated above, so far the county municipalities have transferred 21.1 million NOK in 2008, 34.7 million NOK in 2009 and 61.6 million NOK in 2010 to the NDLA project. In 2010 the county municipalities allocated 58.8 million NOK to the project and in 2011 this amount was 56.9 million NOK.

3.5. Duration

(28) The NDLA project is not subject to a limited duration.

4. The Decision

(29) On 12 October 2011 the Authority adopted Decision No. 311/11/COL holding that the measure did not constitute State aid within the meaning of Article 61(1) EEA. The Authority found that the NDLA was not to be considered as an undertaking because it did not carry out an economic activity.

(30) In that regard the Authority, firstly, noted that, according to established case law and decision practice, in setting up and maintaining the national education system the State fulfils its duties towards its own population in the social, cultural and educational fields.([12]) The Authority observed that the purchase, development and supply of learning material is inextricably linked to the provision of teaching content and is thus an inherent part of the actual teaching itself. In that regard it noted that the learning material forms both the basis and the framework for teaching and that the development of learning material is closely linked to the curriculum which is also established by the public authorities.

(31) Secondly, the Authority pointed out that, for a service to be considered as non-economic, it must be provided based on the principle of national solidarity, which means that the activity must be

([11]) NOU 1996:5 pkt. 8.1.2

([12]) Case 263/86 *Humbel* [1988] ECR 5383, para. 18; Case E-05/7 *Private Barnehagers Landsforbund* [2008] EFTA Ct. Rep. 64, para. 82; Commission decision N 118/2000 *France – Aide aux clubs sportifs professionels*, OJ C 333, 28.11.2001, p. 6.

funded by the public purse and not through remuneration. In other words, there should be no connection between the actual costs of the service provided and the fee paid by those benefiting from the activity.([13]) In that regard the Authority concluded that this requirement was fulfilled because the NDLA is entirely funded by the State and distributes the developed or purchased learning material free of any charge.

(32) Thirdly, the Authority noted that in cases in which the activity in question is carried out by entities other than the State itself, the recipient of the funds (public or private) must be subject to the control of the State to the extent that the recipient merely applies the law and cannot influence the statutory conditions of the service (i.e. the amount of the contributions, the use of assets and the fixing of the level of benefits).([14]) In that regard the Authority noted that the participating municipalities have established the NDLA as an inter-county cooperation body in accordance with Article 27 of the local government act, referred to above. In view of the above, the Authority concluded in its Decision that the NDLA did not carry out an economic activity. Consequently, the NDLA did not act as an undertaking and the funds which the county municipalities transferred to it did not constitute State aid.

5. Judgment in case E-1/12

(33) On 11 December 2012 the EFTA Court annulled Decision No. 311/11/COL. The EFTA Court concluded that the Authority did not carry out a sufficient examination into several issues and should have opened the formal investigation procedure.

(34) Firstly, the EFTA Court noted that the NDLA was active as an ad hoc cooperation before it was formally established as an inter-county cooperation body pursuant to Article 27 of the Norwegian Local Government Act. According to the EFTA Court it remains unclear how this change in the legal and organisational status may have changed the decision-making process and the source of funding.([15])

(35) Secondly, the EFTA Court stated that it remains unclear whether the legislation imposes the obligation to provide the services free of charge on the counties or on the NDLA.([16]) According to the EFTA Court this circumstance raises serious difficulties with regard to the application of the principle of solidarity.

(36) Thirdly, the EFTA Court stated that there are aspects related to the autonomy of the NDLA which remain unclear. First, the EFTA Court noted that it is unclear, how the decisions to expand the NDLA's activities were taken and by whom.([17]) Furthermore, the EFTA Court pointed out that Article 8 of the Articles of Association of the NDLA states that "*the board [of the NDLA] has the competence to impose financial obligations on the participants*."([18]) Moreover, it follows from the judgment that the annulled decision lacked information as regards the autonomy of the the NDLA to set the parameters for the public procurement procedure through which it purchases goods on the market and hires staff.([19])

II. ASSESSMENT

1. The Presence of State Aid

(37) According to Article 61(1) EEA *"[s]ave 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."*

([13]) Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, para. 47; Case C-160/91 Poucet [1993] ECR I-637, para. 11 and 12.

([14]) Case C-160/91 *Poucet* [1993] ECR I-637, para. 15 and 18; Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, para. 46 - 57; Case C-218/00 *Cisal die Battistello Venanzi* [2002] ECR I-691, para. 31–46. These cases concern health and social insurances. However, the fact that the Commission explicitly refers to these cases in the context of professional services indicates that the assessment can be generally applied (see Commission Communication "Report on Competition in Professional Services" of 9.2.2004 (COM(2004) 83 final, Fn. 22)

([15]) Case E-1/12 *Den norske Forleggerforening*, para. 117 (not yet published).

([16]) Case E-1/12 *Den norske Forleggerforening*, para. 123 (not yet published).

([17]) Case E-1/12 *Den norske Forleggerforening*, para. 127 (not yet published).

([18]) Case E-1/12 *Den norske Forleggerforening*, para. 128–130 (not yet published).

([19]) Case E-1/12 *Den norske Forleggerforening*, para. 131 (not yet published).

1.1. State Resources

(38) A measure is financed *by the State or through State resources*, if it results in a burden on the budget of a public authority or on a public or private undertaking provided that the measure is imputable to the State.([20]) In the case at hand the financing of the project results in a burden on the budget of the counties and of the Ministry of Education and Research. Consequently, the measure is financed by the State within the meaning of Article 61(1) of the EEA.

1.2. Advantage to an undertaking

(39) As mentioned above, the Authority concluded in its previous decision that the county municipalities' provision of free, and in this case digital learning material for pupils in the national elementary and secondary school system to be a part of the state's fulfilment of its duty in the educational field and hence a non-economic activity provided under the principle of solidarity as such material is fully funded by the state.

(40) However, in its judgment the EFTA Court addressed several aspects relating not to the nature of the activity as such but rather to organisational aspects of the NDLA, its financing and autonomy, which should have led the Authority to open a formal investigation procedure.

The legal status of the NDLA

(41) The EFTA Court noted that the Articles of Association of the NDLA foresaw that the formalised cooperation would enter into force on 1 July 2009.([21]) At the same time, the EFTA Court noted that the county municipalities resolutions of August 2006 foresaw that the inter-county cooperation would enter into force on 1 January 2010.([22]) In view of the above and taking into account that the NDLA was already active as an ad hoc cooperation before it was formally established, the EFTA Court found that the Authority should have investigated the effects of the organisational changes and legal status of the NDLA may have affected its decision making process and the sources of its funding and how it may have changed over time.([23])

(42) The Authority's Decision described the project phase of the NDLA; the Authority thus acknowledges that the information in the case file does indeed suggest that the NDLA entered into force on 1 July 2009 and thus 6 months earlier than originally foreseen in the resolutions which the county-municipalities had adopted several years earlier.

(43) The complainant has not alleged that the NDLA in its project phase, i.e. before its entry into force as a inter municipal cooperation under Article 27 of the local government act, did engage in any other activities than what it has done after its formal establishment Nevertheless, the EFTA Court points out that the lack of information about how the county municipalities organised their cooperation to comply with their obligations to provide learning material in the NDLA project phase may have an impact on the classification of the activities as non-economic. For that reason the Court emphasised that the Authority should have carried out an investigation on the effects of the change in legal status on the decision making process in the NDLA.([24])

(44) In that regard it is the Authority's understanding that prior to the formal establishment the project was managed by the "forum for the county municipalities Heads of Education" (hereafter: FFU) ([25]), which appointed board members to carry out delegated tasks in the project phase.

(45) After the NDLA had been formally established and according to §7(2) of the Articles of Association the forum of the counties' Heads of Education became the Supervisory Board which remains responsible for the overall management. The forum of the counties' Heads of Education appoints the Management Board management board. According to §7(1) of the Articles of Association the Management Board is composed of 5 members with one member of the FFU and at least one representative of the training regions (i.e. Northern Region, South Western Region and Eastern Region. According to §8 of the Articles of Association, the task of the Management Board is to ensure that the NDLA is able to perform its duties under §2 of the Articles of Association, namely to ensure that (1) that digital educational materials are available to users free of charge, (2) that secondary school is characterised by collaboration and sharing (3) that students and teacher actively participate in teaching and learning, (4) that academic institutions and networks

([20]) Case C-482/99 *France v Commission (Stardust)* [2002] ECR I-4397, para. 52.
([21]) Case E-1/12 *Den norske Forleggerforening*, para. 115 (not yet published).
([22]) The EFTA Court refers to the submission from Norway dated 9 September 2010, p. 3.
([23]) Case E-1/12 *Den norske Forleggerforening*, para. 117 (not yet published).
([24]) Case E-1/12 *Den norske Forleggerforening*, para. 117 (not yet published).
([25]) The Norwegian wording is: "*Forum for fylkesutdanningssjefer*"

across the country are a driving force in the development of excellent digital learning material and (5) that the market provides content and services for students and teachers needs. Furthermore, the Management Board has the authority to incur financial obligations on the participants in that regard. However, §7(2) of the Articles of Association explicitly states that the Management Board only exercises its authority on the basis of delegation decisions of the Supervisory Board and that the Supervisory Board may instruct the Management Board and overrule its decisions.

(46) The Authority requests the Norwegian government and any interested third parties to explain whether they consider the NDLA to be an undertaking within the meaning of Article 61(1) EEA. In particular they are asked to explain in more detail how the counties cooperated in the NDLA project phase and, in particular, to clarify at what time the NDLA entered into force and whether this entry into force of the municipal cooperation affected the decision making process and the sources of the NDLA's funding. Moreover, the Norwegian authorities are invited to elaborate on the nature, practice and use of inter municipal cooperation under Article 27 of the local government act, including whether such cooperation is considered separate legal entities or not under Norwegian law.

(47) The Authority moreover requests the Norwegian authorities to explain to what extent the change in legal status effected the decision making process, in particular, to what extent the NDLA can expand the scope of its activities without the consent of the participating municipalities or even against their will, and if the present situation differs from the situation prior to the formal establishment of the NDLA on 1 July 2009.([26]) The Authority also invites the Norwegian authorities to explain in more detail the funding of the NDLA, both in its project phase and after the formal entry into force up to and including 2012.([27])

The principle of solidarity and the autonomy of the NDLA

(48) The EFTA Court also found that it was unclear from the Decision whether the obligation to provide digital learning material free of charge falls upon the county municipalities or upon the NDLA.([28]) The EFTA Court noted that in the annulled Decision, the Authority "*refers to the Norwegian legislation and states that it obliged the <u>counties</u> to provide the pupils with the necessary printed and digital learning materials free of charge*"(emphasis added).([29]) The EFTA Court further noted that in the assessment on the autonomy of the NDLA, the annulled decision states that the NDLA cannot decide on charging fees to the end consumer ... *since the legal framework obliges <u>the NDLA</u> to provide its services free of charge*" (emphasis added).([30]) The judgment also refers to that the Authority at the oral hearing explained that it is the counties which bear the statutory obligation to offer this service free of charge and that they had decided to offer this service jointly through the NDLA.([31])

(49) In the view of that the EFTA Court considered the above mentioned statements in the decision to represent an implicit contradiction (as it was not clear who was the client of the NDLA), the Authority notes that the notion of "legal framework" is wider than that of "legislation". The reference to the legal framework encompasses not only the statutory obligation in national law (such as the Education Act), but also resolutions (such as the resolutions passed by the county municipalities in August 2006), as well as administrative acts (such as the April 2007 award of funding by the Ministry of Education) and the Articles of Association of the NDLA. The Authority does therefore not consider the above mentioned statements to contain any implicit contradiction.

(50) However, based on the EFTA Court's judgment the Authority invites the Norwegian authorities to explain in more details how the obligation to provide free learning material has been imposed on the county municipalities in the Public Education Act, and how the county municipalities involved in the NDLA have fulfilled this obligation through the NDLA cooperation as set out in the Articles of Association.

(51) Finally, the Court found that the decision did not contain sufficient information on the possibility of the NDLA to set the parameters for the public procurement procedures through which it purchases goods and hires staff.([32])

([26]) Case E-1/12 *Den norske Forleggerforening*, paras. 117 (not yet published).
([27]) Case E-1/12 *Den norske Forleggerforening*, paras. 117 (not yet published).
([28]) Case E-1/12 *Den norske Forleggerforening*, paras. 121–123 (not yet published).
(29) The EFTA Court seems to refer to para. 12 and footnote 4 of the annulled decision according to which "*Section 3-1and 4A-3 of the Education Act states that the county municipality is responsible for providing pupils with the necessary printed and digital teaching material as well as digital equipment free of charge*."
([30]) The EFTA Court refers to para. 45 of the annulled decision in para. 121 of the Judgment.
([31]) Case E-1/12 *Den norske Forleggerforening*, para. 123 (not yet published).
([32]) Case E-1/12 *Den norske Forleggerforening*, para. 131 (not yet published).

(52) The Authority therefore invites the Norwegian authorities to provide more detail on how the parameters for the public procurement procedures through which the NDLA purchases goods and hires staff are set.

(53) Consequently the Authority expresses doubts as to whether the NDLA, wholly or partly, before or after its formal entry into force, may be considered as an undertaking under the EEA State aid rules.

1.3. Selectivity

(54) It is established case law that a measure is selective if it derogates from the common regime inasmuch as it differentiates between economic operators who are otherwise in the same legal and factual situation.([33]) In that regard the Authority notes that if the NDLA were to be considered as an undertaking, the funding of it would be selective since other operators would not benefit from a similar funding.

1.4. Effect on Competition and Trade

(55) It is established case law that a measure distorts or threatens to distort competition in a way that affects trade between Contracting Parties if it strengthens the position of the recipient compared with other companies([34]) and if the recipient is active in a sector, in which trade between Contracting Parties takes place.([35]) In that regard the Norwegian authorities noted that the relevant geographic market for provision of learning materials made to fit the national Norwegian curricula should to a great extent be limited to Norway, so that the effects on cross-border trade are not significant. The Authority cannot at this stage and based on the information at hand conclude on the effects of the measure on competition and trade. The Authority therefore invites Norway to provide further information in that regard.

2. Compatibility

(56) The Norwegian authorities submitted that if one were to view the funding of the NDLA as State aid, then it would qualify as a compensation for a service of general economic interest under Article 59(2) EEA. However, based on the information at hand the Authority cannot at this stage conclude on the compatibility of the measure. The Authority therefore invites Norway to provide further information in that regard.

3. Conclusion

(57) Based on the information submitted by the complainant and by the Norwegian authorities, and taking into account the judgment of the EFTA Court, the Authority has doubts as to whether the grants to the NDLA constitute State aid within the meaning of Article 61(1) EEA. Furthermore, the Authority has doubts regarding the compatibility of the measure with the functioning of the EEA Agreement.

(58) Given these doubts and the impact of potential state aid on the investments of private operators it appears necessary that the Authority opens the formal investigation procedure. Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3.

(59) The decision to open a formal investigation procedure 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 or that they do not constitute State aid.

(60) The opening of the procedure will also enable interested third parties to comment on the questions raised and on the impact of the measure on the relevant markets.

(61) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, hereby invites the Norwegian authorities to submit their comments and to provide *all documents, information and data* needed for the assessment of the compatibility of the measures within one month from the date of receipt of this Decision.

([33]) Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, para. 41; Cases C-106/09 P and C-107/09 P *Commission and Spain v Gibraltar and UK (Gibraltar corporate tax)* [2011] not yet published, para. 36.

([34]) Case 730/79 Philip Morris *Holland* BV v Commission, [2005] ECR, 2671, para. 11.

([35]) Case 102/87, France v *Commission* (SEB), [1988], 4067, Case C-310/99, Italian Republic v Commission, [2002] EC R I-289, para. 85, Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark),* [2003] ECR, I-7747, para. 77; Case T-55/99, *Confederación Espanola de Tranporte de Mercancias (CETM) v Commission*, [2000] ECR II-3207, para. 86.

(62) Further, the Authority invites the Norwegian authorities to forward a copy of this Decision to the potential recipients of the aid immediately.

(63) The Authority would like to remind the Norwegian authorities that, according to Article 14 of Part II 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 a general principle of EEA law. Moreover, according to Article 15 Part II of Protocol 3, the powers of the Authority to order the recovery of aid are subject to a limitation period of 10 years. This period begins on the day on which the unlawful aid is awarded. Any action taken by the Authority with regard to this unlawful aid shall interrupt the limitation period.

(64) Attention is drawn to the fact that the Authority will inform interested parties by publishing this letter and a meaningful summary of it in the EEA Supplement of the Official Journal of the European Union. It will also inform interested parties, by publication of a notice in the EEA Supplement to the Official Journal of the European. All interested parties will be invited to submit their comments within one month of the date of such publication.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure, provided for in Article 1(2) of part I of Protocol 3 is initiated regarding the potential State aid to the NDLA.

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 of 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 nature and compatibility of the aid measure.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English version of this Decision is authentic.

Done at Brussels, 27 March 2013

For the EFTA Surveillance Authority

Oda Helen Sletnes	Sabine Monauni-Tömördy
President	*College Member*

EU-ORGANER

KOMMISJONEN

Forhåndsmelding om en foretakssammenslutning **2013/EØS/44/06**

(Sak COMP/M.6863 – Avnet EMG/MSC Investoren)

1. Kommisjonen mottok 1. august 2013 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der Avnet EMG GmbH ("Avnet", Tyskland), et heleid datterselskap av Avnet Inc. ("Avnet Inc.", USA), ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over MSC Investoren GmbH ("MSC", Tyskland).

2. De berørte foretakene har virksomhet på følgende områder:

   – Avnet: distribusjon av elektroniske komponenter, dataprodukter og teknologitjenester

   – MSC: distribusjon av elektroniske komponenter

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 berørte tredjemenn 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 231 av 9.8.2013. Merknadene sendes til Kommisjonen, med referanse COMP/M.6863 – Avnet EMG/MSC Investoren, per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Brussels

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

Forhåndsmelding om en foretakssammenslutning **2013/EØS/44/07**

(Sak COMP/M.6966 – 3i Group/Barclays Infrastructure Funds Management)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 31. juli 2013 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der 3i Group plc (”3i Group”, Storbritannia) ved kjøp av aksjer alene overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over Barclays Infrastructure Funds Management Limited (”BIFM”, Storbritannia).

2. De berørte foretakene har virksomhet på følgende områder:

   – 3iGroup: internasjonal investeringsvirksomhet og investeringsforvaltning, med fokus på direkte investeringer i mellomstore bedrifter, infrastruktur og forvaltning av gjeld

   – BIFM: forvaltning av infrastrukturfond, med fond som fokuserer på investeringer i Storbritannia, Frankrike, Irland og Italia

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 berørte tredjemenn 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 227 av 6.8.2013. Merknadene sendes til Kommisjonen, med referanse COMP/M.6966 – 3i Group/Barclays Infrastructure Funds Management, per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Brussels

([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 **2013/EØS/44/08**

(Sak COMP/M.6978 – Banco Popular SA/Group Crédit Mutuel/ATM Business)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 2. august 2013 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der Banco Popular Español S.A. ("Banco Popular", Spania) og Group Crédit Mutuel ("Group Crédit", Frankrike) i fellesskap overtar kontroll over et nystiftet foretak ("ATM Business", Spania) som utgjør et fellesforetak med alle funksjoner i henhold til fusjonsforordningens artikkel 3 nr. 4.

2. De berørte foretakene har virksomhet på følgende områder:

   – Banco Popular SA: handels-, detalj-, investerings- og engrosbanktjenester samt forsikringstjenester

   – Group Crédit Mutuel: detaljbanktjenester og forsikring

   – ATM Business: leverer tjenester som er nødvendige for autorisasjon, dataformidling, behandling, oppgjør og avstemming av minibanktransaksjoner utført av kortholdere i Spania

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 berørte tredjemenn 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 231 av 9.8.2013. Merknadene sendes til Kommisjonen, med referanse COMP/M.6978 – Banco Popular SA/Group Crédit Mutuel/ATM Business, per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Brussels

([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 **2013/EØS/44/09**

(Sak COMP/M.7002 – M&G/Alliance Medical)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 2. august 2013 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der M&G Investment Management Limited ("M&G", Storbritannia), som kontrolleres av Prudential plc (Storbritannia), gjennom en utveksling av gjeld og aksjekapital overtar kontroll alene i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over Alliance Medical-konsernet av selskaper ("Alliance Medical", Storbritannia).

2. De berørte foretakene har virksomhet på følgende områder:

   – M&G: heleid datterselskap av Prudential plc, et internasjonalt forsikringskonsern, utgjør den europeiske investeringsforvaltningsdelen av Prudential plc

   – Alliance Medical: hovedsakelig levering av avbildingstjenester for diagnose til sykehus og legekontorer, samt produksjon og distribusjon av radioaktive legemidler og sporstoffer som brukes i diagnostisk avbilding

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 berørte tredjemenn 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 231 av 9.8.2013. Merknadene sendes til Kommisjonen, med referanse COMP/M.7002 – M&G/Alliance Medical, per faks (faksnr. +32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   J-70
   B-1049 Brussels

([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")

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/10**

(Sak COMP/M.6697 – O.W.Bunker/Bergen Bunkers)

Kommisjonen vedtok 11. desember 2012 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32012M6697. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/11**

(Sak COMP/M.6813 – McCain Foods Group/Lutosa Business)

Kommisjonen vedtok 28. mai 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6813. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/12**

(Sak COMP/M.6891 – AGROFERT/Lieken)

Kommisjonen vedtok 15. mai 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6891. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/13**

(Sak COMP/M.6912 – Michael S. Dell/Dell)

Kommisjonen vedtok 20. juni 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6912. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/14**

(Sak COMP/M.6934 – Norges Bank/Generali/Group of Buildings in Paris)

Kommisjonen vedtok 29. juli 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6934. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/15**

(Sak COMP/M.6961 – Goldman Sachs/Gávea Investimontos/JV)

Kommisjonen vedtok 25. juli 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6961. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/16**

(Sak COMP/M.6972 – BC Partners/Springer Science + Business Media)

Kommisjonen vedtok 31. juli 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6972. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Vedtak om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2013/EØS/44/17**

(Sak COMP/M.6986 – Bain Capital/Maisons du Monde)

Kommisjonen vedtok 31. juli 2013 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning, og å erklære den forenlig med det felles marked. Vedtaket er gjort på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004. Det foreligger i uavkortet tekst bare på engelsk, og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Vedtaket kan fås:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne et bestemt vedtak, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32013M6986. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/).

Statsstøtte – Belgia **2013/EØS/44/18**

Statsstøtte SA.34791 (2013/C) (tidl. 2012/NN) – Belgia – Krisestøtte til Val Saint-Lambert

og

Statsstøtte SA.35528 (2013/C) (tidl. 2012/N) – Belgia – Omstruktureringsstøtte til Val Saint-Lambert

Innbydelse til å sende inn merknader i henhold til artikkel 108 nr. 2 TEUV

Kommisjonen har ved brev av 6. februar 2013 underrettet Belgia om at den har besluttet å innlede gransking i henhold til artikkel 108 nr. 2 i traktat om Den europeiske unions virkemåte (TEUV) med hensyn til ovennevnte støtte.

Berørte parter kan sende sine merknader innen en måned etter at denne oppsummeringen og følgebrevet ble offentliggjort (EUT C 213 av 26.7.2013, s. 38), til:

European Commission
Directorate-General for Competition
State aid Registry
Rue de la Loi/Wetstraat, 200
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Faks: +32 2 296 12 42
E-post: stateaidgreffe@ec.europa.eu

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

Vedtak om å avslutte formell gransking etter tilbaketrekking fra medlemsstatens side **2013/EØS/44/19**

Statsstøtte – Spania

(Artikkel 107–109 i traktat om Den europeiske unions virkemåte)

Kommisjonsmelding i henhold til artikkel 108 nr. 2 TEUV – Tilbakekalling av forhåndsmelding

Statsstøtte SA.31273 (12/C) (tidl. N 313/10) – Ultracongelados Antártida SA

Kommisjonen har vedtatt å avslutte saksbehandlingen fastsatt i artikkel 108 nr. 2 TEUV som ble innledet 21. november 2012 ([1]), med hensyn til ovennevnte tiltak, ettersom Spania 13. desember 2012 trakk tilbake meldingen.

([1]) EUT C 359 av 21.11.2012, s. 11.