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Mitteilungen und Bekanntmachungen

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[1] Text von Bedeutung für den EWR

(Fortsetzung umseitig)

DE

(Fortsetzung dritte Umschlagseite)

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(Sache COMP/M.6879 — Mitsui Group/Gestamp Automoción/Target Companies)

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(2013/C 118/01)

Am 17. April 2013 hat die Kommission nach Artikel 6 Absatz 1 Buchstabe b der Verordnung (EG) Nr. 139/2004 des Rates entschieden, keine Einwände gegen den obengenannten angemeldeten Zusammenschluss zu erheben und ihn für mit dem Gemeinsamen Markt vereinbar zu erklären. Der vollständige Wortlaut der Entscheidung ist nur auf Englisch verfügbar und wird in einer um etwaige Geschäftsgeheimnisse bereinigten Fassung auf den folgenden beiden EU-Websites veröffentlicht:

— der Website der GD Wettbewerb zur Fusionskontrolle (http://ec.europa.eu/competition/mergers/cases/). Auf dieser Website können Fusionsentscheidungen anhand verschiedener Angaben wie Unternehmensname, Nummer der Sache, Datum der Entscheidung oder Wirtschaftszweig abgerufen werden,

— der Website EUR-Lex (http://eur-lex.europa.eu/en/index.htm). Hier kann diese Entscheidung anhand der Celex-Nummer 32013M6879 abgerufen werden. EUR-Lex ist das Internetportal zum Gemeinschaftsrecht.

Keine Einwände gegen einen angemeldeten Zusammenschluss

(Sache COMP/M.6782 — HIG Capital/Petrochem Carless Holdings)

(Text von Bedeutung für den EWR)

(2013/C 118/02)

Am 26. März 2013 hat die Kommission nach Artikel 6 Absatz 1 Buchstabe b der Verordnung (EG) Nr. 139/2004 des Rates entschieden, keine Einwände gegen den obengenannten angemeldeten Zusammenschluss zu erheben und ihn für mit dem Gemeinsamen Markt vereinbar zu erklären. Der vollständige Wortlaut der Entscheidung ist nur auf Englisch verfügbar und wird in einer um etwaige Geschäftsgeheimnisse bereinigten Fassung auf den folgenden beiden EU-Websites veröffentlicht:

— der Website der GD Wettbewerb zur Fusionskontrolle (http://ec.europa.eu/competition/mergers/cases/). Auf dieser Website können Fusionsentscheidungen anhand verschiedener Angaben wie Unternehmensname, Nummer der Sache, Datum der Entscheidung oder Wirtschaftszweig abgerufen werden,

— der Website EUR-Lex (http://eur-lex.europa.eu/en/index.htm). Hier kann diese Entscheidung anhand der Celex-Nummer 32013M6782 abgerufen werden. EUR-Lex ist das Internetportal zum Gemeinschaftsrecht.

Keine Einwände gegen einen angemeldeten Zusammenschluss

(Sache COMP/M.6753 — Orkla/Rieber & Son)

(Text von Bedeutung für den EWR)

(2013/C 118/03)

Am 4. März 2013 hat die Kommission nach Artikel 6 Absatz 1 Buchstabe b der Verordnung (EG) Nr. 139/2004 des Rates entschieden, keine Einwände gegen den obengenannten angemeldeten Zusammenschluss zu erheben und ihn für mit dem Gemeinsamen Markt vereinbar zu erklären. Der vollständige Wortlaut der Entscheidung ist nur auf Englisch verfügbar und wird in einer um etwaige Geschäftsgeheimnisse bereinigten Fassung auf den folgenden beiden EU-Websites veröffentlicht:

— der Website der GD Wettbewerb zur Fusionskontrolle (http://ec.europa.eu/competition/mergers/cases/). Auf dieser Website können Fusionsentscheidungen anhand verschiedener Angaben wie Unternehmensname, Nummer der Sache, Datum der Entscheidung oder Wirtschaftszweig abgerufen werden,

— der Website EUR-Lex (http://eur-lex.europa.eu/en/index.htm). Hier kann diese Entscheidung anhand der Celex-Nummer 32013M6753 abgerufen werden. EUR-Lex ist das Internetportal zum Gemeinschaftsrecht.

IV

(Informationen)

INFORMATIONEN DER ORGANE, EINRICHTUNGEN UND SONSTIGEN STELLEN DER EUROPÄISCHEN UNION

EUROPÄISCHE KOMMISSION

Euro-Wechselkurs [1]

24. April 2013

(2013/C 118/04)

1 Euro =

	Währung	Kurs		Währung	Kurs
USD	US-Dollar	1,3006	AUD	Australischer Dollar	1,2659
JPY	Japanischer Yen	129,46	CAD	Kanadischer Dollar	1,3345
DKK	Dänische Krone	7,4553	HKD	Hongkong-Dollar	10,0980
GBP	Pfund Sterling	0,85250	NZD	Neuseeländischer Dollar	1,5366
SEK	Schwedische Krone	8,5885	SGD	Singapur-Dollar	1,6147
CHF	Schweizer Franken	1,2302	KRW	Südkoreanischer Won	1 453,80
ISK	Isländische Krone		ZAR	Südafrikanischer Rand	11,9395
NOK	Norwegische Krone	7,6780	CNY	Chinesischer Renminbi Yuan	8,0352
BGN	Bulgarischer Lew	1,9558	HRK	Kroatische Kuna	7,6065
CZK	Tschechische Krone	25,909	IDR	Indonesische Rupiah	12 637,76
HUF	Ungarischer Forint	299,55	MYR	Malaysischer Ringgit	3,9644
LTL	Litauischer Litas	3,4528	PHP	Philippinischer Peso	53,657
LVL	Lettischer Lat	0,7001	RUB	Russischer Rubel	40,9583
PLN	Polnischer Zloty	4,1367	THB	Thailändischer Baht	37,626
RON	Rumänischer Leu	4,3495	BRL	Brasilianischer Real	2,6318
TRY	Türkische Lira	2,3476	MXN	Mexikanischer Peso	15,9395
			INR	Indische Rupie	70,5190

[1] *Quelle*: Von der Europäischen Zentralbank veröffentlichter Referenz-Wechselkurs.

DEN EUROPÄISCHEN WIRTSCHAFTSRAUM BETREFFENDE INFORMATIONEN

EFTA-ÜBERWACHUNGSBEHÖRDE

Aufforderung zur Abgabe von Stellungnahmen nach Teil I Artikel 1 Absatz 2 des Protokolls 3 zum Abkommen zwischen den EFTA-Staaten über die Errichtung einer Überwachungsbehörde und eines Gerichtshofs in Bezug auf etwaige staatliche Beihilfen für fünf Erbringer öffentlicher Busverkehrsdienstleistungen in der norwegischen Provinz Aust-Agder

(2013/C 118/05)

Mit Beschluss Nr. 60/13/KOL vom 6. Februar 2013, der nachstehend in der verbindlichen Sprachfassung wiedergegeben wird, hat die EFTA-Überwachungsbehörde ein Verfahren nach Teil I Artikel 1 Absatz 2 des Protokolls 3 zum Abkommen zwischen den EFTA-Staaten zur Errichtung einer Überwachungsbehörde und eines Gerichtshofs eingeleitet. Norwegen wurde durch Übermittlung einer Kopie des Beschlusses davon in Kenntnis gesetzt.

Die EFTA-Überwachungsbehörde fordert hiermit die EFTA-Staaten, die EU-Mitgliedstaaten und alle Beteiligten auf, ihre Stellungnahmen zu der betreffenden Maßnahme innerhalb eines Monats nach Veröffentlichung dieser Bekanntmachung an folgende Anschrift zu richten:

EFTA-Überwachungsbehörde
Registratur
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Die Stellungnahmen werden Norwegen übermittelt. Beteiligte, die eine Stellungnahme abgeben, können unter Angabe von Gründen schriftlich beantragen, dass ihre Identität nicht bekanntgegeben wird.

ZUSAMMENFASSUNG

Hintergrund

In Norwegen unterliegt der örtliche Busverkehr dem Gesetz über die gewerbliche Beförderung (*Lov om yrkestransport med motorvogn og fartøy* — Commercial Transport Act) von 2002 (im Folgenden „CTA“) und der Verordnung über die gewerbliche Beförderung (*Yrkestransportforskriften* — Commercial Transport Regulation) von 2003 (im Folgenden „CTR“). Sowohl das CTA als auch die CTR ersetzten bestehende Rechtsvorschriften mit ähnlichem Inhalt. Dieser Rechtsrahmen sieht unter anderem die Vergabe von Konzessionen vor, die Unternehmen benötigen, damit sie mit der Durchführung öffentlicher Busverkehrsdienstleistungen beauftragt werden können. Ferner legt er fest, dass Provinzen wie Aust-Agder Unternehmen, die auf nicht rentablen Strecken Beförderungsdienstleistungen erbringen, einen Ausgleich gewähren können. Ein solcher Ausgleich dient der Deckung der Differenz zwischen den Einnahmen aus dem Fahrkartenverkauf und den anfallenden Kosten für die Erbringung der Beförderungsdienstleistung.

Bereits vor dem Inkrafttreten des EWR-Abkommens wurden in der Provinz Aust-Agder mit fünf Anbietern (vor 2009 waren es sieben Anbieter) Verträge über die Erbringung örtlicher Linienbusverkehrsdienste und die Schulbusbeförderung geschlossen. Auf der Grundlage dieser Verträge wurde den Konzessionären auf nicht rentablen Strecken nach dem einschlägigen Haushaltsverfahren ein jährlicher Ausgleich gewährt. Der Ausgleich wurde in Form eines jährlichen Pauschalbetrags gezahlt, der anhand der Kosten der Vorjahre und unter Berücksichtigung mehrerer Korrekturfaktoren berechnet wurde. Seit 2004 wird dieser Ausgleich für die Erbringung öffentlicher Dienstleistungen nach einer neuen Methode kalkuliert.

Mit den folgenden Verkehrsunternehmen hat die Provinz Aust-Agder Verträge über die Erbringung öffentlicher örtlicher Linienbusverkehrsdienste und die Schulbusbeförderung abgeschlossen: Birkeland Busser AS,

Frolandsruta Frode Oland, Høyvågruta AS (bis zu dessen Zusammenschluss mit Nettbuss Sør AS im Jahr 2009), Nettbuss Sør AS, Risør und Tvedestrand Bilruter AS („RTB") (bis zu deren Zusammenschluss mit Nettbuss Sør AS im Jahr 2009), Setesdal Bilruter L/L und Telemark Bilruter.

Diese Busunternehmen sind nicht nur im öffentlichen Auftrag, sondern auch gewerblich tätig. Zu ihren gewerblichen Tätigkeiten gehören Speditionsdienste, Reisebusverkehrsdienste, Taxidienste und Expressbusdienste. Allerdings haben die Busunternehmen während des gesamten Untersuchungszeitraums nicht durchgehend getrennte Bücher über ihre gewerblichen Tätigkeiten und ihre Dienstleistungen im Rahmen des öffentlichen Auftrags geführt.

Ferner haben nach Angaben Norwegens mehrere Kommunen und die Provinzen Vest-Agder und Aust-Agder ein Kooperationsvorhaben (das sogenannte „ATP-Projekt") ins Leben gerufen, mit dem bessere Busverkehrsdienste gewährleistet werden sollen. Seit 2004 hat nur Nettbuss Sør AS auf der Grundlage dieses Projekts direkte staatliche Zuwendungen von rund 1 Mio. NOK (seit 2010 insgesamt 2 Mio. NOK) erhalten.

Würdigung der jährlichen Ausgleichszahlungen

Vorliegen einer staatlichen Beihilfe

Nach Auffassung der Überwachungsbehörde könnten die jährlichen Ausgleichszahlungen an die Konzessionäre möglicherweise eine staatliche Beihilfe enthalten. Die Höhe der jährlichen Ausgleichszahlungen wurde nicht im Rahmen einer öffentlichen Ausschreibung festgelegt. Es ist zu prüfen, ob die Ausgleichszahlungen den Kosten eines gut geführten und angemessen ausgestatteten Unternehmens entsprechen. Da die im Altmark-Urteil genannten Kriterien nicht erfüllt zu sein scheinen, ist es wahrscheinlich, dass es sich bei den Ausgleichszahlungen um staatliche Beihilfen im Sinne des Artikels 61 Absatz 1 des EWR-Abkommens handelt.

Art der Beihilfe

Die Überwachungsbehörde ist zu dem Schluss gelangt, dass die Beihilfen im Wesentlichen im Rahmen einer bestehenden Beihilferegelung gewährt werden. Rechtsgrundlage dieser Beihilferegelung sind das CTA, die CTR und das Bildungsgesetz (*Lov om grunnskolen og den videregående opplæring*), die von Aust-Agder schon vor Inkrafttreten des EWR-Abkommens angewandt wurden. Die Überwachungsbehörde ist derzeit nicht in der Lage festzustellen, ob alle Beihilfen auf der Grundlage dieser Regelung gewährt wurden. Ferner ist die Überwachungsbehörde nicht in der Lage festzustellen, ob die bestehende Beihilferegelung durch Einführung der ALFA-Methode im Jahr 2004 möglicherweise in ihrer Art geändert wurde, so dass es sich von da an um eine neue Beihilferegelung handeln würde.

Vereinbarkeit der Beihilfe mit dem Binnenmarkt

Beim derzeitigen Stand geht die Überwachungsbehörde davon aus, dass die Zahlungen im Rahmen der direkt erteilten Konzessionen nach Artikel 49 des EWR-Abkommens als Ausgleich für die Erbringung öffentlicher Dienstleistungen mit dem Binnenmarkt vereinbar sind. Bei der Vereinbarkeitsprüfung im abschließenden Beschluss würde deshalb insbesondere untersucht werden, ob möglicherweise eine Überkompensation vorliegt.

Würdigung der jährlichen Zuwendungen für Nettbuss Sør AS

Vorliegen einer staatlichen Beihilfe

Seit 2004 hat Nettbuss Sør AS auf der Grundlage des ATP-Projekts direkte staatliche Zuwendungen von rund 1 Mio. NOK (seit 2010 insgesamt 2 Mio. NOK) erhalten. Nach Auffassung der Überwachungsbehörde wurde Nettbuss Sør AS durch diese „selektive" Maßnahme ein wirtschaftlicher Vorteil verschafft, den das Verkehrsunternehmen unter normalen Marktbedingungen wahrscheinlich nicht erhalten hätte. Der Überwachungsbehörde liegen allerdings keine Informationen vor, anhand deren sie sachgemäß prüfen könnte, ob es sich bei diesen jährlichen Zahlungen um staatliche Beihilfen handelt.

Vereinbarkeit der Beihilfe mit dem Binnenmarkt

In Ermangelung ausreichender Informationen kann die Überwachungsbehörde zum gegenwärtigen Zeitpunkt nicht nach Artikel 49 oder anderen relevanten Bestimmungen des EWR-Abkommens prüfen, ob das ATP-Projekt mit dem EWR-Abkommen vereinbar ist.

Schlussfolgerung

Aufgrund der vorstehenden Erwägungen hat die Überwachungsbehörde beschlossen, das förmliche Prüfverfahren nach Teil I Artikel 1 Absatz 2 des Protokolls 3 zum Abkommen zwischen den EFTA-Staaten über die Errichtung einer Überwachungsbehörde und eines Gerichtshofs einzuleiten. Beteiligte werden aufgefordert, ihre Stellungnahmen zu den Maßnahmen binnen eines Monats nach Veröffentlichung dieser Bekanntmachung im *Amtsblatt der Europäischen Union* zu übermitteln.

EFTA SURVEILLANCE AUTHORITY DECISION

No 60/13/COL

of 6 February 2013

opening the formal investigation procedure concerning potential aid to public bus transport providers in Aust-Agder County

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING REGARD to:

The Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 49, 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 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) By letter dated 23 March 2011 (Event No 591767) the Authority received a complaint ('the complaint') from the Norwegian bus company *Konkurrenten.no* ('the complainant') alleging that unlawful State aid is involved in the contracts awarded by Aust-Agder County, Norway ('Aust-Agder') to several bus operators for the supply of local bus transport services in Aust-Agder.

(2) Furthermore, the complaint alleges breaches of the EEA procurement rules. That aspect of the complaint is dealt with by the Authority's Internal Market Affairs Directorate as Cases No 69656 and 69548. On 12 October 2011, the Authority issued a letter of formal notice to Norway for failure to comply with the principles of non-discrimination and transparency laid down in Articles 4 and 48 of the EEA Agreement by allowing Aust-Agder to award, and prolong bus transport concessions without any form of publication (Event No 607316). On the same grounds, on 22 June 2012, the Authority delivered a reasoned opinion to Norway (Event No 620449).

(3) The present decision only covers the State aid part of the complaint which has been investigated by the Authority's Competition and State aid Directorate.

(4) By letter dated 10 November 2011 (Events Nos 612071 and 614791), the Authority informed the Norwegian authorities that the complainant also alleges that unlawful State aid is involved in the award of the contracts for local bus transport services, and sent a request for information. By letter dated 9 December 2011 (Event No 618202), the Norwegian authorities replied to the Authority's request. Additional requests for information were sent to the Norwegian authorities on 13 March 2012 (Event No 624061) and on 17 October 2012 (Event No 648686), to which the Norwegian authorities replied by letters dated 10, 11 May 2012 (Events Nos 634034 and 634269) and 15 November 2012 (Event No 653639), respectively. By email dated 15 January 2013 (Event No 659645), the Authority asked for additional information, to which it received replies by emails dated 17, 22, 23, 24 January and 30 January 2013 (Events Nos 660036, 660348, 660467, 660486, 660960, 661258 and 661576).

(5) On 19 December 2012 the Authority adopted its Decision closing the formal investigation into potential aid to AS Oslo Sporveier and AS Sporveisbussene. This case concerned an existing aid scheme in local public transport that was governed by the same legislative framework as the present case. In the view of the Authority, it was necessary to conclude on that case before adopting an opening decision for the contracts awarded by Aust-Agder.

2. The complaint

(6) The complainant 'Konkurrenten.no' is a privately owned Norwegian bus transport operator. It claims that the award of contracts by Aust-Agder without any form of competition has favoured Nettbus

Sør AS and several other the complainant's competitors during the period 2004-2016, as well as before that period. The complainant takes the view that the compensation paid according to these contracts involves unlawful State aid. It refers in particular to the Authority's Decision No 254/10/COL of 21 June 2010 (*AS Oslo Sporveier and AS Sporveisbussene*) submitting that the contracts in this present case also constitute unlawful State aid.

(7) The complainant furthermore submits that Aust-Agder has for many years granted substantial State aid under the contracts. In particular, Nettbuss Sør AS is claimed to have received significant advantages. The complainant argues that in 2009, Aust-Agder increased the compensation to Nettbuss Sør AS by as much as 37 % without any corresponding increase in the production level. According to the complainant, this shows that the compensation that Aust-Agder has been paying out is above the market price.

(8) The complainant alleges that in 2010 Nettbuss Sør AS received more than 70 % of the annual compensation that Aust-Agder paid to the bus transport operators and that this has led to a serious distortion in the local bus transport market, as well as in the express bus market.

(9) The complainant argues that the compensation paid by Aust-Agder represents as much as 68,5 % to 88,4 % of the expected costs of the bus operators for performing local transport services.

(10) Furthermore, the complainant refers to the compensation mechanisms in the contracts between Aust-Agder and the bus operators. These mechanisms set out: (1) that the parties can adjust productions and compensation annually and that the bus operators have a right to propose 'production changes'; (2) that the compensation automatically increases in response to higher labour costs, higher fuel costs and any increase in the general consumer price index; (3) that the bus operator can also renegotiate the compensation in response to 'changes in public levies or laws and regulations'. Such negotiations can lead to 'extraordinary adjustments of the compensation, changes in production or other measures'; and finally, (4) that Aust-Agder must allocate NOK 1 million per year for 'research and environmental measures' to the bus operators.

(11) The complainant alleges that the compensation has been increased due to these mechanisms and that Aust-Agder has displayed a lack of interest in holding the operators to the terms of the contracts.

3. **Background — the legislation on local scheduled and school bus transport**

3.1. ***Local scheduled bus transport*** [1]

3.1.1. *Centralised State responsibility*

(12) At the time of the entry into force of the Transport Act of 1976 [2], the Norwegian State (the Ministry of Transport) was responsible for local scheduled transport services. State transport agencies managed the local scheduled transport in each county.

3.1.2. *De-centralisation process*

3.1.2.1. Introduction

(13) Shortly after the entry into force of the Transport Act of 1976, a de-centralisation process was initiated. From 1 January 1979, the powers of the Ministry of Transport could be delegated to county level. At the same time, the State transport agencies were turned into county administrative bodies.

(14) In 1981, with the introduction of Article 24a to the Transport Act of 1976, by providing funding to the counties, the State could confer the responsibility for financing local scheduled transport to the counties [3].

3.1.2.2. The 1980 Regulation

(15) Another important element of the de-centralisation process was the Regulation of 19 December 1980 on compensation for providing local scheduled transport ('the 1980 Regulation'). Its Article 1 stated that the county has the responsibility to finance local scheduled transport. Pursuant to Article 3, the amount of the compensation should be decided on an annual basis, based on the difference between estimated income according to the decided tariffs and discounts, and reasonable costs.

[1] This section is an extract from the recent decision of the Authority 519/12/COL of 19.12.2012 (not yet published), closing the formal investigation into potential aid to AS Oslo Sporveier and AS Sporveisbussene.
[2] Act of 4.6.1976 No 63 (e.i.f. 1.7.1977). Repealed and replaced by the CTA on 1.1.2003.
[3] See the preparatory works to the amendment of the Transport Act of 1976 — Ot.prp. nr. 16 (1980-81) at page 2.

(16) The 1980 Regulation also contained rules on control and access to information and clarified the roles of, on the one hand, the Ministry of Transport and, on the other, the counties. Its Article 7 provided the legal basis for the Ministry to issue further rules and guidelines for the compensation of local scheduled transport.

3.1.2.3. The 1982 Regulation and the KS and NABC Standard Main Agreement

(17) On 1 January 1983, the 1980 Regulation was replaced by the Regulation of 2 December 1982 on compensation for providing local scheduled transport ('the 1982 Regulation'). Its Article 4 of the 1982 Regulation imposed an obligation on the counties to enter into agreements with the concessionaires on the compensation for the provision of the scheduled public transport. On this basis, the Norwegian Association of Local and Regional Authorities ('KS') and the Norwegian Association of Bus Companies ('NABC') ([4]), concluded a standard main agreement ('the KS and NABC Standard Main Agreement') and a standard yearly compensation agreement to be used by each county when concluding agreements for the provision of local scheduled bus transport. As regards the calculation of the compensation, the standard agreement was based on the same principles as Article 3 of the 1980 Regulation. The standard main agreement also provided for a separation of costs between the local bus transport services and other commercial services.

3.1.2.4. The 1985 Regulation

(18) With the adoption of a new income system for the counties, a new Regulation on Compensation for Local Transport was adopted in 1985 ('the 1985 Regulation'). The new income system for the counties (and municipalities) entailed that the central contribution for local transport was given as a lump sum. The main focus of the 1985 Regulation was the relationship between the Ministry of Transport and the counties. The 1985 Regulation was repealed on 1 January 1987 by a new regulation ([5]) which remained in force until 30 April 2003 when it, in turn, was replaced by the Commercial Transport Regulation (see below).

3.1.3. *Commercial Transport Act 2002 and Commercial Transport Regulation 2003*

(19) At present, the local scheduled bus transport sector is regulated by the Commercial Transport Act of 2002 ('CTA') ([6]) and the Commercial Transport Regulation of 2003 ('CTR') ([7]). The CTA repealed and replaced the Transport Act of 1976 ([8]). The CTR repealed and replaced two regulations ([9]).

(20) Further, the Norwegian authorities submit that the relevant provisions have not been significantly altered since the entry into force of the EEA Agreement in 1994.

3.1.4. *Administrative responsibility of the counties*

(21) In Norway, the responsibility for providing local public transport services is conferred on the counties. However, the counties are not under any obligation to offer such services.

(22) The counties can either administer local bus transport services through their own organisation or through an administrative company ([10]) set up by the county. The CTA provides that when the county sets up an administrative company, the funds intended for the financing of the local bus transport services will be allocated to that company ([11]). The administrative companies can either obtain the bus transport services from a third party, or provide the services themselves.

3.1.5. *Co-financing of local transport services by the State and counties*

(23) The counties partly finance the local transport services with tax revenue. In addition, under the CTA the counties receive State funding by way of annual block grants ([12]). The amount of the grants is determined on the basis of the extent to which the counties need contributions from the State. Therefore, the counties have to provide the Ministry of Transport with budgets, accounts and other relevant information necessary to assess the need for contributions ([13]). The Norwegian authorities have stated that if a county reduces the amount of the block grant used for the financing of local scheduled transport costs, this would have consequences for future grants.

([4]) In Norwegian: Norsk Rutebileierforbund.
([5]) Regulation of 12.8.1986 No 2170 (e.i.f. 1.1.1987).
([6]) Act of 21.6.2002 No 45 (e.i.f. 1.1.2003).
([7]) Regulation of 26.3.2003 No 401 (e.i.f. 1.4.2003).
([8]) See footnote 2.
([9]) Regulation of 12.8.1986 No 2170 (e.i.f. 1.1.1987) and Regulation of 4.12.1992 No 1013 (e.i.f. 1.1.1994). Both repealed and replaced by the CTR on 1.4.2003.
([10]) In Norwegian: *Administrasjonsselskap.*
([11]) Article 23 CTA.
([12]) Article 22(3) CTA.
([13]) Article 22(4) CTA.

3.1.6. *Concessions*

3.1.6.1. Introduction

(24) Under the CTA, concessions are required to carry out scheduled passenger transport services by bus for remuneration (i.e. for payment by the users (the passengers) of the transport services) ([14]).

(25) Both a general and a special concession are required for operators of scheduled passenger transport services by bus for remuneration.

3.1.6.2. General concession for passenger transport

(26) Undertakings providing passenger transport services for remuneration must have a general concession ([15]). In order to obtain a general concession, the applicant must (i) provide a certificate of good conduct, (ii) have satisfactory financial means and abilities, and (iii) have satisfactory professional qualifications ([16]). General concessions are not time limited ([17]).

3.1.6.3. Special concessions for scheduled passenger transport

(27) In addition to the general concession, any undertaking wishing to carry out scheduled passenger transport for remuneration must have a special concession ([18]). There are two types of special concessions: (i) area concessions, and (ii) route specific concessions. The area concession is of a residual nature, in that it permits its holder to operate scheduled bus transport services in the entire area covered, in so far as other route specific concessions have not been granted in the area. The holder of a route specific concession is the sole entity entitled to operate scheduled bus transport on that route.

(28) The special concession confers upon the concessionaire both a right and a duty to carry out the transport service as set out in the concession ([19]). When applying for a special concession, a proposal for a transportation schedule and tariffs must be submitted ([20]). Schedules and tariffs are subject to the control of the counties ([21]). The counties can order changes in the schedules and tariffs ([22]).

(29) Special concession can either be awarded for periods of up to 10 years (i) through tender procedures and granted for the period determined in the tender procedure ([23]), which in any event will not be for a longer period than 10 years ([24]), or (ii) directly, *i.e.* outside any tender procedure for a 10 year period ([25]).

3.1.6.4. Ticketing systems

(30) The concessionaires must deploy ticketing systems approved by the counties ([26]).

([14]) Articles 4 and 6 CTA.
([15]) Article 4(1) CTA.
([16]) Article 4(2) CTA and Chapter I of the CTR.
([17]) Article 27(1) CTA.
([18]) Article 6(1) CTA.
([19]) Article 25 CTR.
([20]) Articles 28 and 29 CTR. These are the requirements the Authority considers to be the most relevant for the purposes of describing the national scheme, however, a number of other detailed requirements for a special concession are set out in the CTR.
([21]) The Ministry of Transport has delegated its competence for setting the tariffs to the counties. However, some rebates are determined on the national level. In practice, the Ministry has instructed all the counties to ensure that local scheduled bus transport operators carrying out a public service offer a 50 % price reduction to children, senior and disabled citizens.
([22]) Articles 28 and 29(2) CTR. On the basis of Article 28(3) CTR, the Ministry of Transport has the competence to give guidelines on the content and publication of the transportation schedules. The Ministry of Transport's Circular Letter N-1/2006 contains supplementary guidelines on the publication of route schedules. Before 2006, Article 28 CTR regulated certain aspects of the publication of route schedules. These aspects were taken out in 2006. In practice, the Circular Letter N-1/2006 refers to the old provision (Article 28 CTR) as it was before the amendment, and states that the requirements of the old provision, until further notice, shall be considered as a guideline for the content of the route schedule.
([23]) Article 27(2) CTR.
([24]) As stated in the preparatory works, chapter 10.1 of Prop. 113 L (2009-2010).
([25]) Article 8 CTA. The possibility to tender the concessions was introduced by an amendment of the Transport Act of 1976 by Act of 11.6.1993 No 85 (e.i.f. 1.1.1994).
([26]) Article 30(1) CTR. The Ministry of Transport has powers to give general guidelines for the use of electronic ticketing systems (Article 30(2) CTR). The Ministry has given such guidelines in the form of its Circular Letter N-1/2006. In that Circular Letter the Ministry has decided that the following document should serve as a standard for electronic ticketing systems — Part 3 of Handbook 206 by the Norwegian Public Roads Administration (in Norwegian: *Statens Vegvesen*).

3.1.6.5. Contracts

(31) To complement the concessions, the counties may enter into contracts with the concessionaires about the provision of public services. The counties are free to determine the form of these contracts ([27]).

3.1.6.6. Compensation

(32) The counties are responsible for compensating the concessionaires ([28]). Compensation is only granted to undertakings that operate unprofitable routes (*i.e.* where the revenue generated from the sale of tickets does not cover the cost of operating the service).

(33) Under Article 22 CTA, counties have to compensate operators for the provision of the transport service on unprofitable routes that the counties seek to establish, or to maintain within their territories ([29]). The counties are free to determine the manner in which the concessionaires are to be compensated; the CTA and the CTR do not forsee any particular rules on how compensation is to be provided.

(34) The Authority understands that Article 22 CTA allows for compensation to cover the cost of the public service minus the ticket revenues but including a reasonable profit, and that any compensation beyond that could not be based on the CTA.

3.2. ***School Transport***

(35) Since before the entry into force of the EEA Agreement in Norway on 1 January 1994, the Norwegian counties have been responsible for providing primary and high school transportation of children residing in a certain distance from the school (normally four kilometres). At present, this responsibility is laid down in the Act on Education of 1998 ([30]). This Act was preceded by the Act on Primary Schools of 1969 ([31]) and the Act on Secondary Schools of 1974 ([32]). In the mid-1980s, on the basis of an act amending the Act on Primary Schools and the Act on Secondary Schools ([33]), the counties became responsible for providing school transportation. For the sake of clarity, in this Decision the term 'Education Act' will be used throughout the text to refer also to the relevant legal provisions in force in the period prior to 1999.

(36) According to the Education Act, for primary school transportation, the municipalities are obliged to pay a tariff to the county. The county, thereafter, pays the bus operator for providing the service. For high school transportation, the counties pay for monthly tickets for the students, pursuant to contracts concluded with the bus operators.

4. **The award of contracts and compensation in Aust-Agder**

(37) Point 1 of the contracts entered into between Aust-Agder and the bus operators provides that 'the contract commits the parties to ensure that the residents of Aust-Agder receive the best possible local scheduled and school transport services (…)'.

4.1. ***Potential aid recipients***

(38) Aust-Agder has concluded contracts for local scheduled and school bus transport services with the following companies:

— Birkeland Busser AS, owned by Setesdal Bilruter L/L.

— Frolandsruta Frode Oland, owned by Frode Stoltenberg Oland.

— Høyvågruta AS, until its merger with Nettbuss Sør AS in 2009.

([27]) Article 22(5) CTA.
([28]) Article 22(1) CTA.
([29]) The Norwegian authorities, in their comments to the opening decision in case 71524 concerning alleged aid to AS Oslo Sporveier and AS Sporveisbussene, have confirmed this and explained, with reference to legal literature (*Norsk Lovkommentar*), that the preceding provision — Article 24a of the Transport Act of 1976 — was interpreted in the same way. In that regard, *Norsk Lovkommentar* to the Transport Act of 1976 (available on http://www.rettsdata.no/ (access requires a paid subscription)) on the issue of compensation states the following in note 43 (in Norwegian): 'I rutetransporten vil det dog ofte være aktuelt å pålegge utøver en større rutetjeneste som sammenholdt med de takster som godkjennes, ikke gir et forsvarlig økonomisk grunnlag. I slike tilfeller kan plikten bare opprettholdes dersom det ytes tilskudd, jf. § 24 a'. Translation by the Authority: 'For scheduled transport it will, however, frequently be appropriate to require the transport operator to provide a more comprehensive service that, in light of the set maximum prices, would not be of sound financial interest. Under such circumstances, the public service obligation can only be maintained against compensation, cf. Article 24a.'
([30]) Act of 17.7.1998 No 61 (e.i.f. 1.8.1999).
([31]) Act of 13.7.1969 No 24.
([32]) Act of 21.6.1974 No 55.
([33]) Act of 31.5.1985 No 41.

— Nettbuss Sør AS, which is part of the Nettbuss-group and owned by the bus transport company Nettbuss AS, which is owned by Norges Statsbaner AS ([34]).

— Risør and Tvedestrand Bilruter AS ('RTB'), until its merger with Nettbuss Sør AS since 2009.

— Setesdal Bilruter L/L whose three main shareholders are Sigmund Aune, Brøvig Holding AS and Bykle Municipality. Additionally, several other municipalities within Aust-Agder and some in Vest-Agder are shareholders; and

— Telemark Bilruter whose main shareholders are Vinje Municipality, Seljord Municipality and Seljord Sparebank; in addition, several municipalities in the Telemark County own shares in the company.

(39) These companies have been operating scheduled and school bus transport in Aust-Agder since before the entry into force of the EEA Agreement in Norway on 1 January 1994. As from 2009, and following the merger of Nettbuss Sør AS with Høyvågruta AS and RTB, five operators have remained to carry out the transport services under the Aust-Agder contracts ([35]).

(40) The right and the obligation to provide local scheduled and school bus transport has been awarded through concessions, as well as, at a later stage, in combination with the award of separate contracts to the bus transport operators. The two most recent awards of concessions covered periods of 10 years (1993-2003 and 2003-2013). The awards of concessions and contracts have routinely been extended to the same bus transport operators during the two concession periods.

(41) All the operators carry out commercial activities outside the public service remit. These activities consist of freight transport, tour buses, taxi services and express bus routes.

(42) The Norwegian authorities have stated that Telemark Bilruter AS has kept separate accounts for the public service and the commercial activities since 2000. Since 1 January 2012, the Norwegian authorities have confirmed that Telemark Bilruter has kept separate accounts for the contracts between the County of Telemark on the one hand and the County of Aust-Agder on the other. Frolandsruta Frode Oland has not kept separate accounts. Nettbuss Sør AS, L/L Setesdal Bilruter and Birkeland Busser AS introduced account separation in 2009. As for Høyvågruta AS and RTB, the Norwegian authorities have not been able to provide information whether the companies have kept separate accounts. As from their merger with Nettbuss Sør AS in 2009, their accounts have been incorporated to those of Nettbuss Sør AS.

4.2. *The award of contracts have been linked to the award of concession*

(43) With the exception of Birkeland Busser AS, all bus companies referred to above have been operating scheduled and school bus transport in the area for decades. In fact, most of them were awarded concessions shortly after the concession system was introduced in 1947. Birkeland Busser AS was established in the late 1980s and has since been operating local bus routes.

4.3. *The award of contracts between 1988 and 2003*

(44) From 1988, Aust-Agder concluded agreements with each bus operator holding a concession. The duration of these agreements was for one year with the possibility of automatic renewal for a year at a time.

(45) These agreements did not provide a formula on how to calculate the public service compensation. The compensation was based on negotiations. However, the contracts provided an obligation upon each bus company holding a concession to prepare a production plan and a budget proposal indicating their expected income and costs. This proposal should, as far as possible, be based on the accounts, statistics and also on prognosis of predictable costs and income plus the traffic evolution. Further, the proposed production costs should correspond to the costs for a normal and well run operator. This constituted the basis for the negotiations.

4.4. *The award of contracts between 2004 and 2008*

(46) Following a decision by its County Council of December 2002, Aust-Agder concluded a new form of individual contracts.

([34]) Norges Statsbaner AS (NSB) is train operator for passengers in Norway. It is owned by the Ministry of Transport and Communications. In addition to provide transport services by train or by bus, the company is also engaged in cargo trains, foreign train transport and real estate activity.

([35]) The merger was notified to the Norwegian company registry on 10 and 11 June 2009 and the companies Høyvågruta AS and RTB were removed from the registry on 3 and 5 September 2009.

(47) According to the Norwegian authorities, the introduction of these contracts did not entail any fundamental change compared to the prior system. All contracts continued to be awarded directly to the existing operators. However, the negotiation-based compensation system was replaced by the so-called ALFA method. As of 2004, this ALFA method, which is explained in more detail below under 4.6 and 4.7, was used as a basis to calculate the compensation for the public service obligations.

(48) The new individual contracts were initially in force from 1 January 2004 until 31 December 2006 and were prolonged by two years until 31 December 2008.

4.5. ***The award of contracts since 2009***

(49) On 12 June 2007, the Aust-Agder County Council decided to award new contracts directly to the existing bus companies for the next period 2009 to 2012. Following negotiations with the bus transport companies, it approved the new contracts on 9 December 2008.

(50) The previous contracts remained largely unchanged. However, the ALFA method was supplemented by a new indexation system.

(51) The new contracts initially ran from 1 January 2009 until 31 December 2012 and were prolonged until the end of 2016, except for the contract with Nettbuss Sør AS which was extended by two years, until 31 December 2014.

4.6. ***The ALFA-method to calculate the compensation for local scheduled and school bus transport (2004-2008)***

(52) As from 2004, the level of compensation continued to be concluded on negotiations between the county and the bus companies, but the basis for the negotiations changed with the introduction of a new system on how to calculate the compensation, the so-called 'ALFA method' ([36]).

(53) According to the Norwegian authorities, the ALFA method was developed as an objective and transparent calculation model for costs connected to bus transport. A fundamental principle has been that the transport companies shall not have their remuneration calculated based on their own, actual costs, but according to representative assumptions for their type of enterprises. That said, the ALFA method provides for a basis for the assumption that costs shall correspond to a lower threshold. For example, normalised consumption of fuel for a certain number of operations shall correspond to a level which will mean that 33 % of measured values will lie below the norm and 67 % higher than the norm. This means that the system is not based on average cost, but on the cost of the 33 % best run companies.

(54) According to the Norwegian authorities, this method simulates the costs of a well-run bus company. The normalised cost calculation of bus operations under the ALFA model includes the following core elements:

(a) Calculation of production: number of kilometres per production period per vehicle; each scheduled route is registered by distance driven, time consumed, number of days per period and type of bus used. The calculation of the number of kilometres per vehicle and hours in traffic is included, as well as the average speed per period;

(b) Calculation of costs: unit costs x numbers of kilometres per vehicle; the ALFA-method takes into account costs such as fuel, tires, spare parts, service, maintenance, carwash, costs of vehicle, cost of personnel (drivers), budgets costs (traffic costs such as ferries, toll etc.), administration costs and other shared cost. The cost of each items is partially calculated on the basis of prices for input factors multiplied by their consumption per km, which give the normalised figure per km;

(c) Revenue from traffic operations in the production period; and

(d) Calculation of the need for subsidies. The calculation of subsidies is built on the normalised calculation plus budget costs minus traffic revenue.

(55) The calculation has been based on the production of transport services (i.e. the number of kilometres driven by vehicles carried out in the various vehicle groups and scheduled service groups) by each of the companies; then on the ALFA-method's average costs for the various cost items; and finally on some adjustments based on costs that are specific to the individual company due to: geographical and topographical consitions, traffic conditions and legislation, as well as tariff cited conditions.

([36]) There has been two parallel systems for calculation compensation for bus transport services in Norway, which share many of the same features. One system is called ALFA, as applied by Aust-Agder, while the alternative is called BUSSKOST. Both systems are based on the same core elements but the BUSSKOST is developed and exclusively managed (for a fee) by the consultancy company Asplan-VIAK.

4.7. ***The indexation of the ALFA-method (2009-2014/2016)***

(56) As from 2009, the ALFA method was complemented by a system of indexation linked to certain cost relevant input factors.

(57) From then on, the costs were indexed annually according to the following formula:

$$0{,}55 \times L + 0{,}30 \times K + 0{,}15 \times D$$

L = change in wage cost (Statistics Norway, statistics of wages within transport)

K = change in the Consumer price index (Statistics Norway)

D = change in fuel cost (Platts Oilgram index in NOR).

(58) The final amount of compensation continued, however to be set based on negotiations. These negotiations were concluded taking into account the calculations made the previous years by using the ALFA-method, increased costs of the bus operators and finally, the general increase of costs by the new system of indexation.

5. **Financing project for ATP Kristiansand area**

(59) The complainant alleges that Aust-Agder has allocated NOK 1 million annually for 'research and environmental measures' to the bus operators.

(60) According to the information provided by the Norwegian authorities, the municipalities of Kristiansand, Sognadalen, Søgne, Vennesla, Lillesand, Birkenes and Iveland and the counties of Vest-Agder and Aust-Agder have established a cooperation project referred to as the ATP project.

(61) On the basis of the ATP project, as from 2004, only Nettbuss Sør AS was granted directly by the project an annual amount of NOK 1 million. As from 2010, that amount was increased to NOK 2 million and was granted to Nettbuss Sør AS directly from Aust-Agder as part of their contract on local scheduled and school bus transport.

6. **Comments by the Norwegian authorities**

(62) The Norwegian authorities submit that the complaint, without further elaboration, mainly refers to an Authority Decision that concerned an entirely different case, *i.e.* bus transport in Oslo ([37]). The complainant, according to the Norwegian authorities, has not substantiated how Aust-Agder has violated the State aid rules, nor has it explained how the bus companies concerned have been overcompensated. Further, the Norwegian authorities reject as incorrect the complainant's allegation that Aust-Agder has displayed a lack of interest in holding the companies to the terms of the contracts.

(63) The Norwegian authorities further take the view that the present compensation scheme in Aust-Agder does not entail State aid within the meaning of Article 61(1) of the EEA Agreement because it fulfils the criteria laid down in the Altmark judgment ([38]).

(64) As regard the first Altmark criterion, the Norwegian authorities consider the public bus transport service obligations to be clearly defined as a service of general economic interest. In that context, the Norwegian authorities point to Article 1(1) of Regulation (EC) No 1370/2007 ([39]), arguing that the obligations at issue have been defined and entrusted by way of both law, concessions/licences and in the contracts concluded with the companies.

(65) According to the second *Altmark* condition, the parameters that serve as a basis for calculating compensation must be established in advance in an objective and transparent manner in order to ensure that they do not confer an economic advantage that could favour the recipient undertakings. The Norwegian authorities submit that the introduction of the ALFA-method as from 2004, complies with the second condition. The costs, revenues and the compensation from Aust-Agder are determined in advance in an objective and transparent manner indicating all the different elements of the formula that relevant for the calculation.

(66) With regard to the third *Altmark* condition, the Norwegian authorities argue that the calculation of the compensation according to the ALFA-method and its indexation does not exceed what is necessary to cover the costs of the discharge of the public service obligations, taking into account relevant income and a reasonable profit. They point out that the compensation in this case is

([37]) Decision No 254/10/COL dated 21.6.2010 (*AS Oslo Sporveier and AS Sporveisbussene*).

([38]) Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellshaft* (2003) ECR I-7747 ('the Altmark judgment').

([39]) Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23.10.2007 on the public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1), incorporated in the EEA Agreement by means of section 4(a) of Annex XIII to the EEA Agreement.

calculated to cover the difference between estimated income and estimated costs of the company, being applied in an objective and transparent manner. The operating profit is also relatively low and limited for most of the companies.

(67) Based on figures made available to the Authority, the Norwegian authorities further submit that the accounts of the companies operating the public service do not reveal any overcompensation.

(68) With regard to the fourth *Altmark* condition, the Norwegian authorities submit that the ALFA method and the later system of indexation (see above paragraphs 52-58) are both based on a benchmarking exercise as provided in the *Altmark* judgment. Thus, the compensation is calculated on the basis of the costs and incomes of a well run undertaking and not only the average in the sector concerned.

(69) The Norwegian authorities also submit that the scheme of compensation for public service bus transport would in any event comply with the requirements of Regulation (EC) No 1370/2007.

(70) In particular, the Norwegian authorities argue that two of the five contracts meet the requirements of Article 5(4) of Regulation (EC) No 1370/2007, which provides for thresholds below which public service contracts can be awarded directly ([40]). It is also submitted that due to the limited number of kilometres driven, the low contract value and the relatively short duration of the contracts, these have no direct or potential interest to an undertaking located in other EEA States than Norway.

(71) If the Authority were to conclude that State aid was present in this case, the Norwegian authorities argue that such aid would in any event have to be classified as existing aid. In their view, the financing has been carried out on the basis of a scheme that has existed before the entry into force of the EEA Agreement in Norway in 1994.

(72) It is further submitted that no significant changes have been made; neither to the basic features of the basis for the aid, nor to the source of financing, nor to the aims pursued by the aid. The aim of the scheme has always been to provide public passenger transport. Consequently, any aid granted in accordance with the present scheme must, the Norwegian authorities contend, be considered as existing aid.

(73) As regards the ATP project, the Norwegian authorities have stated that the amount paid annually to Nettbuss Sør AS aims at maintaining improved bus transport services.

II. **ASSESSMENT**

1. **The presence of State aid**

1.1. ***State aid within the meaning of Article 61(1) of the EEA Agreement***

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

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

1.2. ***The presence of State resources***

(75) The Authority notes that the compensation for both local scheduled and school bus transport is paid from the public budget of Aust-Agder. In the context of Article 61(1) of the EEA Agreement, both local and regional authorities are considered to be equivalent to the State ([41]). Hence, Aust-Agder is equivalent to the State for the purposes of the EEA State aid rules. On this basis, the Authority concludes that the compensation measure implies the use of State resources.

(76) Equally, the Authority notes that the ATP project is paid from the budget of municipalities and Aust-Agder. Therefore, the Authority finds that State resources are involved.

1.3. ***Undertaking***

(77) As provided by Article 61(1) of the EEA Agreement, it must also be established whether the public service compensation to the five operators (seven operators before 2009), as well as the financing from the ATP project, grant a selective economic advantage in favour of certain undertakings or the production of certain goods.

([40]) Frolandsruta Frode Oland provides a total annual amount of 120 000 kilometer with a value of service concession at NOK 2 779 000 in 2010. Also, Telemark Birluter AS provides an annual amount of 220 000 kilometer with a value of service concession at NOK 7 144 000 in 2010.

([41]) 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.

(78) The beneficiaries in the present case are bus operators that engage in economic activities, inter alia scheduled and school bus transport against remuneration (see para. (41) above). Thus, they all constitute undertakings within the meaning of Article 61(1) of the EEA Agreement.

1.4. ***Selectivity***

(79) In order to determine whether a measure is selective, the question is whether the undertaking(s) in question are in a legal and factual situation that is comparable to other undertakings in light of the objective of the measure ([42]).

(80) In the present case, the public service compensation has been limited to five (seven before 2009) companies. Other undertakings engaging in transport activities in Norway or elsewhere in the EEA, that have been in a similar legal and factual situation, have not received public service compensation. Therefore, the Authority concludes that the award of public service compensation is selective.

(81) Furthermore, the financing of NOK 1 million (NOK 2 million as from 2010) from the ATP project has only been granted to Nettbuss Sør AS. It is, thus, a selective measure.

1.5. ***Advantage — Compensation for a public service obligation for local scheduled and school bus transport***

1.5.1. *Altmark criteria*

(82) In order to constitute State aid, the measure must also confer an advantage that relieves an undertaking of charges that are normally borne from its budgets.

(83) As regard the grant of a selective economic advantage, it follows from the Altmark judgment that where a State measure must be regarded as compensation for services provided by the recipient undertakings in order to discharge public service obligations, such a measure is not caught by Article 61(1) of the EEA Agreement. In the Altmark judgment, the Court of Justice held that compensation for public service obligations does not constitute State aid when four cumulative criteria are met:

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

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

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

— Fourth, and finally, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tender capable of providing those services at the least cost, the level of compensation needed must be determined on the basis of analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred ([43]).

1.5.2. *1994-2003*

(84) According to the information provided by the Norwegian authorities, from 1994 to 2003, no objective and transparent parameters for the calculation of the compensation existed (2nd Altmark criterion). The compensation was in principle based on negotiations between the individual operators and Aust-Agder, which cannot exclude overcompensation, even though, according to the agreements, each operator should, prior to these negotiations, have presented a plan of the relevant route production and also provided a budget proposal of its costs and income (3rd Altmark criterion). In addition no method determining the level of compensation in relation to the costs of an efficient operator (4th Altmark criterion) was in place.

(85) As a result, the Authority concludes that before 2004, the Altmark criteria were not cumulatively met.

([42]) C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* ECR (2001) I-8365, paragraph 41.
([43]) The *Altmark* judgment, paragraphs 87-93.

1.5.3. *Since 2004*

1.5.3.1. The first Altmark condition

(86) The relevant bus operators have been under public service obligations to provide local scheduled and school bus transport services in Aust-Agder.

(87) The public service obligations have been based on (1) the CTA and the CTR, and on provisions in the Education Act, all stating that the grant of concession involves an obligation to carry out the transport services stipulated in the concession; (2) the concessions granted to the relevant operators, which cover the provision of local scheduled and school bus transport services in Aust-Agder; and (3) the individual contracts between Aust-Agder and the operators.

(88) Further, it is possible to identify in the relevant contracts the service providers, the duration of the service period, the nature of the public service obligations of operating collective transport services in the local network. Hence, the Authority takes the preliminary view that the first condition of the Altmark judgement has been fulfilled since 2004.

1.5.3.2. The second Altmark condition

(89) As regards the second condition, the Authority observes that the parameters for calculating the compensation changed with the introduction of the ALFA model as from 2004.

(90) As it is presented by the Norwegian authorities, the ALFA method appears to contain parameters on how to calculate the compensation that are established beforehand in an objective and transparent manner, e.g. calculation of production on the basis of the number of kilometres per production period per vehicle or calculation of costs on the basis of unit costs multiplied by the number of kilometres per vehicle. That being said, negotiations about the exact amount of the compensation to be granted take place after the ALFA method has been applied. This begs the question whether the systematic use of such negotiations, *ex post*, entails that the calculation of compensation in practice leaves room for discretionary adjustment ([44]). As a result, the Authority, based on the information before it, has doubts as to whether the second condition of Altmark has been met since 2004.

1.5.3.3. The third Altmark condition

(91) The third condition is that the compensation shall not exceed what is necessary to cover all — or part of — the costs incurred in discharging the public service obligations, taking into account relevant receipts and a reasonable profit for discharging those obligations.

(92) In that regard, the EFTA Court already held in Joined Cases E-10/11 and E-11/11:

'If it is shown that the compensation paid to the undertakings operating the public service does not reflect the costs actually incurred by that undertaking for the purposes of that service, such a system does not satisfy the requirement that compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations' ([45]).

(93) It is evident from the information submitted that all operators involved carry out activities outside the public remit. However, concerning Telemark Bilruter AS, the company has not kept separate accounts for the public service contracts in Aust-Agder and its public service contracts with the county of Telemark until the end of 2011, although it has kept separate accounts for the public service and the commercial activities since 2000; concerning Nettbuss Sør AS (including the two companies that were merged with Nettbuss Sør AS in 2009: RTB and Høvågruta AS) no complete figures showing the full accounts from 2004 onwards have been submitted and Nettbuss Sør AS has not kept separate accounts before 2009; as for RTB and Høvågruta AS there has been no information submitted for the period until they ceased to exist with the merger of 2009; L/L Setesdal Bilruter and Birkeland Busser AS have not kept separate accounts before 2009; finally, as to Frolandsruta, the Norwegian authorities have not been able to provide information whether the company has kept separate accounts.

(94) Consequently, at this stage, the Authority considers that there has been no complete, transparent and objective information available as to the costs and revenues of the public service operations as

([44]) Commission Decision of 23.2.2011 on State aid C 58/06 (ex NN 98/05) implemented by Germany for Bahnen der Stadt Monheim (BSM) and Rheinische Bahngesellschaft (RBG) in the Verkehrsverbund Rhein-Ruhr (OJ L 210, 17.8.2011, p. 1).

([45]) Paragraph 170. See for comparison, Joined Cases C-34/01 to C-38/01 *Enirisorse* (2003) ECR I-14243, paragraphs 37-40.

opposed to those of other commercial activities. Even though for some companies the accounts have been kept separate, it is not clear whether there are common costs between the public service provided in Aust-Agder and the activities outside the public service remit in Aust-Agder. Furthermore, it is not clear how these potential common costs have been allocated to avoid cross-subsidization.

(95) Further, the Authority recalls that the calculattion of the final compensation was not only based on the application of the ALFA method, but also on subsequent negotiations. In principle, the use of negotiations cannot guarantee that the amount of compensation finally granted does not exceed what is necessary for the discharge of public service obligations.

(96) In view of the above, the Authority cannot exclude that any of the companies have been over-compensated for the provision of the public services since 2004. Given that separate accounts have not been consistently kept by the companies since 2004, and that no proper allocation of common costs has been reported, it is not clear at this stage whether the final compensation agreed on the basis of negotiations covers solely the cost of the public service ([46]). As a result, the Authority doubts whether the third Altmark condition has been fulfilled since 2004.

1.5.3.4. The fourth Altmark condition

(97) In this case, the bus operators' compensation has not been determined on the basis of a public procurement procedure. Rather, the Norwegian authorities submit that the compensation scheme in Aust-Agder was based on a benchmarking exercise that ensures that the compensation granted covers but the cost of a well run operator (as compensation calculated under the ALFA model is based on the costs of the 33 % best run bus companies).

(98) The Authority acknowledges the measures taken by the Norwegian authorities to increase the efficiency of the operators concerned. However, at this stage, the Authority cannot conclude on the applicability of the fourth Altmark criterion, due to the fact that the ALFA method does not specify in detail the sample of undertakings that were taken into account for benchmarking purposes. In addition, no analytical ratios representative of productivity (such as turnover to capital employed, total cost to turnover, turnover per employee, value added per employee or staff costs to value added) or quality of supply have been submitted ([47]). The Authority also entertains doubts as to whether all relevant costs for the discharge of the public service correspond to the lower threshold as envisaged by the ALFA method, or only a sample (e.g. fuel consumption), and only for a certain number of operations.

(99) Therefore, it is not clear at this stage whether the ALFA method applies a cost analysis that corresponds to the totality of the costs of an efficient undertaking — and in such a case the fourth criterion would be met — or a cost analysis that provides incentives to companies to become more efficient than before on the basis of selective cost factors — and in such a case the fourth criterion could not be met. In addition, the fact that the final compensation is set on the basis of negotiations may be held to allow for discretionary cost adjustments that cannot reflect the costs of an efficient operator.

(100) As a result, the Authority doubts whether the fourth Altmark condition has been fulfilled since 2004.

1.5.3.5. Conclusion on the Altmark test

(101) Based on the information submitted, the Authority cannot, at this stage, conclude that the compensation awarded since 2004 for the local scheduled and school bus transport service obligations in Aust-Agder complies with all the four criteria in the *Altmark* judgement. The presence of an advantage granted to an undertaking for performing public service obligations in the meaning of Article 61(1) of the EEA agreement cannot thus be excluded.

1.6. ***Advantage — ATP Project***

(102) If a recipient undertaking receives an economic advantage from the State, which it would not have obtained under normal market condition, such an advantage would normally involve State aid.

(103) Since 2004, Nettbuss Sør AS has received NOK 1 million from the ATP project on an annual basis. In 2010 the amount was increased to NOK 2 million. This would appear to constitute an economic advantage that Nettbuss Sør AS is unlikely to have obtained under normal market conditions. However, the Authority has not received adequate information that would enable it to make a proper assessment of whether the annual payments constitute State aid.

([46]) See in this respect the Judgment of the EFTA Court of 8.10.2012 in Joined Cases E-10/11 and E-11/11, paragraph 175.

([47]) See the Authority's Guidelines on the application of the State aid rules to compensation granted for the provision of services of general economic interest (not yet published), paragraphs 72 and 73.

(104) Due to the absence of such information, the Authority cannot presently assess whether these amounts are connected to the award of compensation by Aust-Agder, or whether they constitute, or form part of, a separate scheme.

(105) Therefore, based on the information before it, the Authority cannot exclude that the ATP project provides an advantage to Nettbuss Sør AS that may entail State aid in the meaning of Article 61(1) of the EEA Agreement.

1.7. ***Distortion of competition and effect on trade between Contracting Parties***

(106) Next, the Authority must examine whether the measures are *liable* to affect trade and to distort competition ([48]).

(107) Since before the entry into force of the EEA Agreement in Norway, several undertakings have been providing scheduled bus services in Aust-Agder. The Authority thus concludes that the annual compensation has been liable to distort competition since then ([49]).

(108) With respect to the effect on trade and the fact that the present case concerns a local market for bus transport in Aust-Agder, the Authority recalls that in the *Altmark* judgment, which also concerned regional bus transport services, the Court of Justice held that:

'a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may none the less have an effect on trade between Member States … The second condition for the application of Article 92(1) of the Treaty, namely that the aid must be capable of affecting trade between Member States, does not therefore depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned' ([50]).

(109) This means that even if — as in the present case — only a local or regional bus transport market (Aust-Agder) may be concerned, public funding made available to one operator in that market is still liable to affect trade between Contracting Parties ([51]). Consequently, the Authority considers that the annual compensation is liable to affect trade between Contracting Parties.

(110) Moreover, the Authority takes the preliminary view that the same considerations apply, *mutatis mutandis*, both to the school transport activities ([52]) and to the ATP project.

1.8. ***Conclusion***

(111) The Authority considers that the compensation awarded by Aust-Agder to the seven bus operators for local scheduled and school bus transport prior to 2004 constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

(112) Furthermore, the Authority has doubts as to whether the compensation awarded by Aust-Agder to the seven bus operators for local scheduled and school bus transport from 2004 until today constitutes State aid within the meaning of Article 61(1) of the EEA agreement.

(113) Finally, the Authority takes the preliminary view that the financing of Nettbuss Sør AS on the basis of the ATP project may entail State aid in the meaning of Article 61(1) of the EEA agreement.

([48]) See Joined Cases E-5/04, E-6/04 and E-7/04, *Fesil and Finnfjord and Others* v *EFTA Surveillance Authority* (2005) EFTA Court Report 117 at paragraph 93.

([49]) Moreover, the Court of Justice observed in its *Altmark* judgment that since 1995, several EU Member States had voluntarily opened up certain urban, suburban or regional transport markets to competition from undertakings established in other EU Member States. The risk to inter-Member State trade was thus not hypothetical but real, as the market was open to competition (paragraphs 69 and 79).

([50]) Paragraphs 77 and 82 of the *Altmark* judgment.

([51]) See also Case 102/87 *France* v *Commission* (1988) ECR 4067, paragraph 19; Case C-305/89 *Italy* v *Commission* (1991) ECR I-1603, paragraph 26.

([52]) See Commission Decision to open the investigation in case C-54/07 (Germany) *State aid to Emsländische Eisenbahn GmbH* (OJ C 174, 9.7.2008, p. 13), paragraph 119.

2. **The classification of new and existing aid**

2.1. ***The legal provisions — the EFTA Court's Judgement in Case E-14/10***

(114) According to Article 1(c) of part II of Protocol 3 SCA; 'new aid' shall mean:

'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.'

(115) The relevant provisions, Article 1(b)(i) and (v) of Part II of Protocol 3 SCA provide that 'existing aid' shall mean:

'all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement; (…)'

and

'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State (…)'

(116) In its judgment in Case E-14/10, the EFTA Court held:

'Whether the aid granted (…) constitutes "existing aid" (…) depends upon the interpretation of the provisions of Protocol 3 SCA (…)'

'(…) to qualify as an "existing aid measure" under the EEA State aid rules, it must be part of an aid scheme that was put into effect before the entry into force of the EEA Agreement' ([53]).

2.2. ***Definition of an aid scheme***

(117) Article 1(d) of Part II of Protocol 3 provides that an 'aid scheme':

'shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;'

(118) Article 1(e) of Part II of Protocol 3 provides that 'individual aid':

'shall mean aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme;'

(119) This distinction is of particular importance in the context of existing aid, as Protocol 3 provides the Authority with the competence to keep under constant review existing systems of aid ([54]). Likewise, Section V of Part II of Protocol 3 applies only to existing aid schemes ([55]).

(120) The Authority notes that this definition entered the EEA Agreement in 2001 when the Procedural Regulation was incorporated as Part II of its Protocol 3 ([56]). Prior to 2001, there was no similarly precise EEA law definition of an aid scheme. Moreover, the rationale for the concept of existing aid must be borne in mind, *i.e.* to provide both beneficiaries of State aid and the EFTA States with legal certainty regarding arrangements that predate the entry into force of State aid control in their legal systems, whilst empowering the Authority to bring such systems in line with EEA law.

(121) Furthermore the Authority notes that the case-law of the European Courts does not provide for detailed guidance as regards the interpretation of this definition. While not bound by either, the Authority has found it useful to review its own case practice and that of the European Commission

([53]) Paragraphs 50 and 53.
([54]) Cf. Article 1.1 of Part I of Protocol 3.
([55]) The Authority considers that the terms 'aid schemes' and 'systems of aid' are synonyms
([56]) Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

and found that existing 'aid schemes' have been held to encompass non-statutory customary law ([57]) and administrative practice related to the application of statutory ([58]) and non-statutory law ([59]). In one case, the European Commission found that an aid scheme relating to *Anstaltslast* and *Gewährträgerhaftung* was based on the combination of an unwritten old legal principle combined with widespread practice across Germany ([60]).

(122) The Authority observes that the compensation for carrying out bus transport in Aust-Agder has from before the entry into force of the EEA Agreement in Norway on 1 January 1994, been provided on the basis of the CTA and the CTR (and the relevant legislation preceding them). Furthermore, since before the entry into force of the EEA Agreement, compensation for the provision of school transport services has been awarded on the basis of the Act on Education (and the relevant legislation preceding it).

(123) Further, in order to conclude on the existence of an aid scheme, it is necessary to examine whether the legal framework for the financing of scheduled and school bus transport in Aust-Agder meets the three criteria of Article 1(d) of Part II of Protocol 3: (i) an act on the basis of which aid can be awarded, (ii) an act that shall not require any further implementing measures, and (iii) an act that shall define the potential aid beneficiaries in a general and abstract manner.

(124) As for the first criterion, the Authority notes that the CTA, the CTR and the Education Act are acts on the basis of which Aust-Agder awarded the compensation.

(125) As for the second criterion, it is noted that the administration of any aid scheme requires a certain decision-making process that allows for individual awards of aid without the adoption of further implementing measures.

(126) In turn, a mere 'technical application', as indicated above, of the provisions providing for the scheme would thus not be an implementing measure ([61]). Moreover, the mere fact that a decision awarding aid under an aid scheme has implications for the budget of the authority administering that scheme, cannot, in the Authority's view, mean that such decisions are to be regarded as implementing measures ([62]).

(127) In a similar vein, considering acts of entrustment, such as the award of a concession, this, as any entrustment, specifies one particular undertaking, and cannot by definition thus relate to a group of undertakings 'defined in a general and abstract manner' (compare the third criterion).

([57]) See the Authority's Decision No 405/08/COL, HFF (OJ L 79, 25.3.2010, p. 40, EEA Supplement No 14, 25.3.2010, p. 20), Chapter II.2.3.1, p. 23: 'The State guarantee on all State institutions for all their obligations follows from general unwritten rules of Icelandic public law predating the entry into force of the EEA Agreement. The guarantee is applicable to all State institutions, regardless of when they are established, or of their activities, or changes in those activities. This possible aid measure must be regarded as a scheme falling within the definition in Article 1(d) in part II of Protocol 3 to the Surveillance and Court Agreement.'

([58]) See Commission Decision in Case E-45/00 (Netherlands) *Fiscal exemption in favour of Schiphol Group* (OJ C 37, 11.2.2004, p. 13).

([59]) From the Authority's Decision No 491/09/COL Norsk Film group (OJ C 174, 1.7.2010, p. 3, EEA Supplement No 34, 1.7.2010, p. 1), Chapter II.2 p. 8: 'the yearly payments made by the Norwegian State since the 1970s to Norsk FilmStudio AS/Filmparken AS for the production of feature films and to maintain an infrastructure necessary for the production of films were based on an existing system of aid. The Authority considers that in this case, where regular payments were consistently made over a very long period of time, the practice shows that state support was an essential element in the financing of the company. The Authority considers on that basis that the annual grants were made under an existing system of State aid within the meaning of Article 62 EEA.' In that case, the Authority opened the formal investigation into a payment of NOK 36 million that had been made in addition to the regular payments and an alleged preferential tax measure. With Decision No 204/11/COL (OJ L 287, 18.10.2012, p. 14, EEA Supplement No 58, 18.10.2012, p. 1.) the Authority closed the procedure on the basis that the NOK 36 million payment was made on the basis of the existing aid scheme and that the tax measure did not constitute State aid.

([60]) See Commission Decision in Case E-10/00 (Germany) *State guarantees for public banks in Germany* (OJ C 150, 22.6.2002, p. 6).

([61]) See Commission Decision in Case E-4/07 (France) *Charges aéroportuaires* (OJ C 83, 7.4.2009, p. 16), paragraph 56.

([62]) See to that effect, the judgment of the EFTA Court in Case E-14/10 *Konkurrenten*, at paragraphs 74-75, where the EFTA Court states as follows:
'In the case at hand, the City of Oslo was entitled, under the provisions of the 1976 Transport Act and the implementing regulations, to provide financial support in order to enable the operation of non-profitable scheduled bus services. The fact that the level of the compensation was "negotiated" does not, as such, entail that the payments did not cover actual losses incurred in the operation of those services and were per se not covered by the scheme. The Court considers that in so far as the compensation payments were indeed used to finance the operation of non-profitable scheduled bus services, the defendant may correctly have classified those payments as existing aid.
The argument that the aid must be considered as new aid because it was granted on an annual and discretionary basis under the city budget must (…) be rejected.'

(128) In contrast, the Authority is of the view that 'implementing measures' should be understood to entail a certain degree of discretion, that would influence to a significant degree the amount, characteristics or conditions under which the aid is granted. In particular, it would seem that every scheme determines the purpose which aid can be awarded for. Thus, where a public body, for example, is empowered to use different instruments to promote the local economy and grants several capital injections, this implies the use of considerable discretion as to the amount, characteristics or conditions and purpose for which the aid is granted, and is hence not to be regarded as an aid scheme ([63]).

(129) In the case at hand, Aust-Agder was responsible for the management and funding of the local scheduled and school bus transport within its territory ([64]). It is clear that no further legislative measures needed to be adopted for the compensation payments to the undertakings involved. The Authority, thus, is of the opinion that the CTA, the CTR and the Education Act limit the discretion of Aust-Agder, in the sense that the county is bound by that legal framework when taking decisions on the amount of compensation, the characteristics, conditions and purpose for which the aid is granted.

(130) The compensation can only be granted for the purpose of financing local scheduled and school bus transport in the areas concerned. Aust-Agder is not entitled to award aid for different purposes on the basis of the provisions described above.

(131) Also, the State is responsible for the coordination and development of public transport in Norway and exercises this prerogative in a way that restricts the counties' powers.

(132) As for the third criterion, the same compensation systems in Aust-Agder have applied and still apply to all concessionaires that are entrusted with the provision of bus services on unprofitable routes.

(133) Accordingly, the Authority considers that an aid scheme has been and still is in place in Aust-Agder. The provisions providing for that aid scheme are the CTA, the CTR, the Education Act and the relevant administrative practice in Aust-Agder.

2.3. ***Definition of existing aid***

(134) Article 1(b)(i) of Part II of Protocol 3 provides that existing aid encompasses all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after the entry into force of the EEA Agreement.

(135) Here, the provisions providing for the scheme have been in place since before the EEA Agreement entered into force in Norway on 1 January 1994. As the market for local bus transport was already exposed to some competition on that date, the Authority is of the view that the financing of local scheduled and school bus transport on the basis of the CTA, the CTR and the Education Act constitutes an existing aid scheme that existed before January 1994 and remained applicable thereafter.

(136) Further, Article 1(c) of Part II of Protocol 3 provides that 'new aid' is:

'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;'

(137) In its judgment *Namur*, the Court of Justice stated the following:

'(…) the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amounts in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered. Whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it' ([65]).

(138) Moreover, as Advocate-General Trabucchi pointed out in his Opinion in *Van der Hulst*, modifications are substantial if the main elements of the system have been changed, such as the nature of the advantage, the purpose pursued with the measure, the legal basis, the beneficiaries or the source of the financing ([66]).

([63]) Cf. Case SA.21654 (ex NN-69/07 and C-6/08) *Public Commercial Property Åland Industrihus* (OJ L 125, 12.5.2012, p. 33), paragraphs 107-109 in particular.
([64]) With the exception of primary school transportation, for which the municipalities are obliged to pay a tariff.
([65]) Case C-44/93 *Namur-Les Assurances du Crédit* (1994) ECR I-3829, paragraph 28.
([66]) Opinion of Advocate General Trabucchi in Case 51/74 *Van der Hulst* (1975) ECR 79.

(139) Purely formal or administrative changes to an aid scheme do not lead to the reclassification of existing aid as new ([67]).

(140) As shown above, the financing of bus transport services in Aust-Agder has been provided on the basis of an aid scheme consisting of the CTA, the CTR, the Education Act and the administrative practice in Aust-Agder. In 2004 the administrative practice was amended with the introduction of the ALFA method, on the basis of which new contracts were concluded for the period 2004-2008. This ALFA method was supplemented by the introduction of a new indexation system, on the basis of which new contracts with the same operators were signed to cover the period 2009-2012 with the possibility of prolongation for up to additional four years. The question is whether the introduction in 2004 of a new financing system though the ALFA method and its later indexation can be considered as features that change the existing aid scheme to new aid.

(141) The ALFA method, as explained above in Part I, Sections I, 4.6 and 4.7, is a system used to calculate the costs connected to bus transportation. Its later indexation introduced several cost relevant parameters, such as fuel costs or wage costs, on the basis of which the compensation is to be calculated. The introduction of this system does not appear to have changed the legal basis and the aim for awarding the compensation or the beneficiaries involved. Nevertheless, the Authority doubts whether the substance of the scheme remained unaffected. Before 2004, the compensation was determined on the basis of negotiations and the compensation so agreed might simply have covered the difference that could not be covered by revenues, including a reasonable profit. As a result, the Authority doubts whether the basic features on how to calculate the compensation have been significantly altered by the introduction of the ALFA method.

(142) The Authority recalls that if an alteration affects the substance of an existing aid scheme and it is not clearly severable from it, then the whole scheme is transformed into new aid ([68]).

(143) Therefore, the Authority doubts whether the change introduced with the ALFA method and its indexation has substantially altered the existing aid scheme. In case the Authority would come to the conclusion that this change is substantial, and not severable from it, the scheme, in its entirety, would have turned into new aid as of 1 January 2004.

2.4. ***Conclusion***

(144) The Authority concludes that there is an aid scheme in place in Aust-Agder based on the CTA, the CTR, the Act on Education and the administrative practice. The Authority is of the view that scheme was existing in nature at least until the end of 2003, but has doubts as to whether the scheme may have turned into new aid with the introduction of the ALFA method on 1 January 2004.

3. **Whether the aid was granted on the basis of an existing aid scheme**

(145) In its judgment in Case E-14/10, the EFTA Court stated the following on the question of the existing or new nature of the aid:

> '(…) in so far as the compensation payments were indeed used to finance the operation of non-profitable scheduled bus services, the (Authority) may correctly have classified those payments as existing aid.
>
> However, (…) any aid granted to Oslo Sporveier in excess of the losses actually incurred in connection with the services in question cannot be regarded to constitute, on the basis of that aid scheme, existing aid (…)' ([69])

(146) It follows from the judgment of the EFTA Court that only payments made on the basis of the existing aid scheme can be considered as existing aid disbursed under that scheme. Conversely, payments not made on the basis of the provisions providing for the scheme cannot be protected by the existing aid nature of that scheme ([70]).

(147) The Authority doubts at this stage whether the aid, in its entirety, has been granted on the basis of an existing aid scheme, which entitled concessionaires that provided public scheduled bus services in

([67]) See Article 4(1) of the consolidated version of the Authority's Decision No 195/04/COL of 14.7.2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 (available at: http://www.eftasurv.int/media/decisions/195-04-COL.pdf). See also the opinion of Advocate General Lenz in *Namur*.

([68]) Case T-195/01 *Gibraltar* v *Commission* ECR (2002) II-2309, paragraphs 109 ff.

([69]) See paragraphs 74 and 76.

([70]) The same logic applies for schemes that have been approved by the Authority or the European Commission. See for example Case C-47/91 *Italy* v *Commission* (1994) ECR-4635, paragraphs 25-26.

Aust-Agder to a compensation which would cover the difference between ticket revenue and cost for discharging the public service, including a reasonable profit. It is recalled that, the bus operators have not consistently kept separate accounts for public service activities and the activities outside the public service remit ([71]). Nor can the Authority determine whether common costs have been properly (or at all) allocated between these two kinds of activities.

(148) In line with the above cited judgment of the EFTA Court, the Authority is of the view that any aid not granted on the basis of the existing aid scheme would have to be qualified as new aid.

(149) In addition, the Authority at present has not received enough information that would enable it to consider whether the financing of Nettbuss Sør AS on the basis of the ATP project is part of the overall existing aid scheme at place in Aust-Agder. To the extent, thus, that the ATP project is not part of that existing aid scheme, it constitutes new aid.

4. **Notification of new aid**

(150) According to Article 1(3) of Part I of Protocol 3, new aid must be notified to the Authority, and cannot be put into effect before the Authority has taken a decision authorising it (the standstill obligation).

(151) Should the Authority conclude that new aid has been granted, there would be a breach of the standstill obligation, given that this aid has been put into effect, whilst not having been notified to, nor approved by, the Authority.

5. **Compatibility**

5.1. ***The legal framework***

(152) The compatibility of public service compensation for transport by road ([72]) is assessed on the basis of Article 49 of the EEA Agreement. This provision cannot be applied directly, but only by virtue of Council Regulations, i.e. Regulation (EEC) No 1191/69 ([73]) or Regulation (EC) No 1370/2007 ([74]). An essential element under both regulations is to verify that aid in the form of public service compensation only covers the cost of the public service (including a reasonable profit) and does not lead to overcompensation.

5.2. ***Potential aid granted outside an existing aid scheme***

(153) In case the compensation for local scheduled and school bus transport services was granted in excess of what was allowed for under the existing aid scheme (until 2004, or alternatively, until today, if the nature of the aid was not altered by the introduction of the ALFA method), this would constitute new aid. It is the Authority's preliminary view that such new aid, which in practice would represent a form of overcompensation, would likely to be incompatible with the EEA Agreement, in particular its Article 49 and Regulations (EEC) No 1191/69 or (EC) No 1370/2007, as overcompensation by definition exceeds what is necessary for the operation of the public service.

5.3. ***Potential new aid granted after 2004***

(154) In case the Authority should come to the conclusion that the introduction of the ALFA method entailed that the compensation disbursed from then on constituted new aid, the compatibility of that aid would have to be assessed.

(155) The Authority notes that the Norwegian authorities have submitted some arguments relating to the compatibility of the compensation granted by Aust-Agder, pursuant to Regulation (EC) No 1370/2007 and Article 49 of the EEA Agreement.

(156) The Authority concurs that the bus operators have been the subject of genuine and clearly defined public service obligations, pursuant to Article 4 of Regulation (EC) No 1370/2007. These obligations have been based on: (1) the CTA and the CTR, and the Education Act; (2) concessions granted to the relevant operators, which cover the provision of local scheduled and school bus transport services in Aust-Agder; and (3) individual contracts between Aust-Agder and the operators.

([71]) See paragraph (42) of this Decision.
([72]) Cf. Article 47 of the EEA Agreement.
([73]) Regulation (EEC) No 1191/69 on public service in transport by rail, road and inland waterway (OJ L 156, 8.6.1969, p. 8), incorporated into the EEA Agreement by means of Annex XIII to the EEA Agreement.
([74]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23.10.2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EC) No 1107/70 (OJ L 315, 3.12.2007, p. 1), incorporated in the EEA Agreement by means of Annex XIII to the EEA Agreement. Regulation (EC) No 1370/2007 entered into force in Norway on 1 January 2011, see Regulation of 17.12.2010 No 1673.

(157) Article 4 of Regulation (EC) No 1370/2007 requires furthermore that the public service concession establishes in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated in a way that prevents overcompensation. Moreover, the arrangements for allocating costs to the provision of the services should be clear so that only the costs associated with public service obligation is taken into consideration.

(158) With regard to this provision, the Authority has already expressed doubts as to whether the parameters to calculate the compensation have been established in advance; and whether there is overcompensation ([75]). Therefore, it cannot be established that the aid in the form of public service compensation only covers the cost of the public service (including a reasonable profit) and does not lead to overcompensation. Thus, as the Authority cannot take a final view on this matter. Therefore, the Authority cannot at this stage conclude that the compensation system at hand complies with the EEA Agreement on the basis of its Article 49 and Regulation (EC) No 1370/2007 (or Regulation (EEC) No 1191/69).

(159) Concerning the ATP project, in the absence of sufficient information, the Authority cannot presently appraise the compatibility of that measure with the EEA Agreement on the basis of its Article 49 and Regulation (EC) No 1370/2007 (or Regulation (EEC) No 1191/69) or any other provision of the EEA Agreement.

6. **Conclusion**

(160) Based on the information submitted by the complainant and by the Norwegian authorities, and having carried out a preliminary assessment, the Authority considers that the compensation to local scheduled and school bus transport operators in Aust-Agder prior to 2004 constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

(161) Moreover, it is the Authority's preliminary view that compensation to local scheduled and school bus transport operators in Aust-Agder since 2004 may entail State aid within the meaning of Article 61(1) of the EEA Agreement.

(162) The Authority is of the view that there is an existing aid scheme at place in Aust-Agder until the end of 2003 based on the CTA, the CTR, the Act on Education and the administrative practice. The Authority, however, has doubts as to whether that scheme has been materially altered as from 2004.

(163) In case new aid has been granted as from 2004, the Authority doubts, on the basis of the information provided, whether such aid would be compatible with Article 49 of the EEA Agreement and Regulations (EEC) No 1191/69 or (EC) No 1370/2007.

(164) The Authority has further doubts as to whether there is overcompensation that is not based on the existing aid scheme, and is thus considered as new aid, and whether such potential new aid is compatible with the functioning of the EEA Agreement.

(165) It is the Authority's preliminary view that the financing of Nettbuss Sør AS on the basis of the ATP project may entail State aid in the meaning of Article 61(1) of the EEA Agreement. To the extent that the ATP project is not part of the existing aid scheme in Aust-Agder, it constitutes new aid.

(166) However, the Authority does not presently have sufficient information that would enable it to consider whether the ATP project would be compatible with Article 49 of the EEA Agreement and Regulations (EEC) No 1191/69 or (EC) No 1370/2007, or any other provisions of the EEA Agreement.

(167) Therefore, and in accordance with Article 4(4) of Part II of Protocol 3 SCA, the Authority is obliged to open the procedure provided for in Article 1(2) of Part I of Protocol 3 SCA. This decision to open a formal procedure is without prejudice to the final assessment of the case by the Authority.

(168) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3 SCA, invites the Norwegian authorities, within one month of the date of receipt of this Decision, to submit their comments, as well as all documents, information and data needed to address the doubts of the Authority outlined above, as well as all relevant information that will enable the Authority in consolidating its preliminary views expressed in this decision.

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

([75]) See paragraphs 89-96 above.

(170) 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,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure, provided for in Article 1(2) of part I of Protocol 3 is opened regarding the potential aid to the five (seven before 2009) local scheduled and school bus operators in Aust-Agder, Norway, in the form of (i) potential new aid not granted on the basis of the scheme for local scheduled and school bus transport services since 1994 until today, and (ii) potential new aid granted on the basis of the scheme for local scheduled and school bus transport services since 2004.

Article 2

The formal investigation procedure, provided for in Article 1(2) of part I of Protocol 3 is opened regarding direct grants made available to Nettbuss Sør AS on the basis of the ATP project since 2004.

Article 3

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 4

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 5

This Decision is addressed to the Kingdom of Norway.

Article 6

Only the English version of this Decision is authentic.

Done at Brussels, 6 February 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

Angaben der EFTA-Staaten über staatliche Beihilfen, die gemäß dem in Anhang XV Ziffer 1 j EWR-Abkommen aufgeführten Rechtsakt (Verordnung (EG) Nr. 800/2008 der Kommission zur Erklärung der Vereinbarkeit bestimmter Gruppen von Beihilfen mit dem Gemeinsamen Markt in Anwendung der Artikel 87 und 88 EG-Vertrag (allgemeine Gruppenfreistellungsverordnung)) gewährt werden

(2013/C 118/06)

TEIL I

Beihilfe Nr.	AGVO 2/13/EMP	
EFTA-Staat	Norwegen	
Bewilligungsbehörde	Name	Arbeids- og velferdsetaten (Norwegische Arbeits- und Wohlfahrtsverwaltung)
	Anschrift	Postbox 8019 Dep 0030 Oslo NORWAY
	Website	http://www.nav.no
Bezeichnung der Beihilfemaßnahme	Forsøk med arbeidsavklaringspenger som lønnstilskudd (Pilotprojekt — Verwendung von Arbeitsübergangsgeld als Lohnzuschuss)	
Einzelstaatliche Rechtsgrundlage (Fundstelle der amtlichen Veröffentlichung im EFTA-Staat)	Forskrift av 21. desember 2012 nr. 1418 om forsøk med arbeidsavklaringspenger som lønnstilskudd — Lovdata Hl-2012-1184 Norwegische Verordnung Nr. 1418 vom 21. Dezember 2012 über die Verwendung von Arbeitsübergangsgeld als Lohnzuschuss	
Weblink zum vollständigen Wortlaut der Beihilfemaßnahme	http://lovdata.no/for/sf/ad/xd-20121221-1418.html	
Art der Maßnahme	Regelung	X
Laufzeit	Regelung	1.1.2013 bis 31.12.2017
Betroffene Wirtschaftszweige	Alle für Beihilfen in Frage kommenden Wirtschaftszweige	X
Art des Begünstigten	KMU	X
	Große Unternehmen	X
Mittelausstattung	Nach der Regelung vorgesehene jährliche Gesamtmittelausstattung	25,2 Mio. NOK
Beihilfeinstrument (Art. 5)	Finanzhilfe	X

TEIL II

Allgemeine Ziele (Liste)	Ziele (Liste)	Beihilfehöchstintensität in % oder Beihilfehöchstbetrag in NOK	KMU — Aufschläge in %
	Beihilfen in Form von Lohnkostenzuschüssen für die Beschäftigung behinderter Arbeitnehmer (Art. 41)	40 %	

V

(Bekanntmachungen)

VERWALTUNGSVERFAHREN

EUROPÄISCHE KOMMISSION

AUFFORDERUNG ZUR EINREICHUNG VON VORSCHLÄGEN — EACEA/04/13

Im Rahmen des Programms für Lebenslanges Lernen

Umsetzung der strategischen Ziele für die europäische Zusammenarbeit auf dem Gebiet der allgemeinen und beruflichen Bildung (ET 2020) (Zusammenarbeit der Akteure, Experimente und Innovation)

(2013/C 118/07)

Teil A — Unterstützung nationaler Umsetzungsmaßnahmen und Sensibilisierung für die Ziele der europäischen Zusammenarbeit auf dem Gebiet der allgemeinen und beruflichen Bildung (ET 2020 [1]).

Teil B — Beiträge zur Schaffung innovativer politischer Lösungen auf institutioneller Ebene zur Verringerung der Zahl der Schulabbrecher im Einklang mit den Prioritäten von Europa 2020 und ET 2020.

1. **Ziele und Beschreibung**

Das übergeordnete Ziel der vorliegenden Aufforderung zur Einreichung von Vorschlägen besteht darin,

die europäische politische Zusammenarbeit zu fördern, um — über ET 2020 — die Anstrengungen der Länder bei der Erreichung der Ziele von Europa 2020 zu unterstützen, die ihren Niederschlag im Jahreswachstumsbericht 2013 und in der Mitteilung „Neue Denkansätze für die Bildung“ finden, insbesondere die Entwicklung von Fertigkeiten und Fähigkeiten für Wachstum und Wettbewerbsfähigkeit, die Stärkung der Beschäftigungsfähigkeit junger Menschen und die Verringerung der Zahl der Schulabbrecher in einem Kontext, in dem effizienten Investitionen in die allgemeine und berufliche Bildung Priorität eingeräumt wird. Gefördert werden:

— die Sensibilisierung und das Engagement der betroffenen Einrichtungen sowie die Koordinierung und Partnerschaft mit allen Akteuren, um insbesondere Fertigkeiten und Fähigkeiten für Wachstum und Wettbewerbsfähigkeit und die Beschäftigungsfähigkeit junger Menschen zu fördern (Teil A);

— die Entwicklung, Erprobung und Bewertung innovativer politischer Lösungen zur Verringerung der Zahl der Schulabbrecher mithilfe von Feldversuchen (Teil B).

Die Aufforderung bietet darüber hinaus aber auch Ministerien und Akteuren die Möglichkeit, in realen Situationen die Umsetzung innovativer politischer Maßnahmen (experimentelle Maßnahmen) zu erproben, mit denen europäische Ziele erreicht werden sollen.

2. **Förderfähige Einrichtungen**

Anträge können von Einrichtungen (einschließlich aller Partnereinrichtungen) mit Sitz in Ländern, die am Programm für lebenslanges Lernen teilnehmen, gestellt werden. Diese Länder sind:

[1] http://ec.europa.eu/education/lifelong-learning-policy/policy-framework_en.htm

— die 27 Mitgliedstaaten der Europäischen Union,

— die EWR- und EFTA-Länder: Island, Liechtenstein, Norwegen,

— die Kandidatenländer: Kroatien, Türkei,

— die Schweiz,

— Serbien, die ehemalige jugoslawische Republik Mazedonien, Bosnien und Herzegowina, Albanien und Montenegro ([2]).

Organisationen aus Drittländern können nicht an dieser Maßnahme teilnehmen.

Unter den Ländern der Partnerschaft muss sich mindestens ein Mitgliedstaat der EU befinden (betrifft nur Teil B dieser Aufforderung).

Der Antrag muss von einer rechtsfähigen juristischen Person gestellt werden. Natürliche Personen können keinen Antrag auf Finanzhilfe stellen.

Als Empfänger kommen für die allgemeine und berufliche Bildung und für Maßnahmen für lebenslanges Lernen zuständige nationale oder regionale Ministerien sowie andere an der Ausarbeitung und Umsetzung von Maßnahmen für lebenslanges Lernen beteiligte Behörden/öffentliche Einrichtungen und Interessenvertretungen von Akteuren in Betracht. Zu den Interessenvertretungen zählen europäische, nationale und regionale Vereinigungen oder Organisationen, deren Haupttätigkeit oder zentrale Verantwortungsbereiche unmittelbar mit der allgemeinen und beruflichen Bildung zusammenhängen, insbesondere Organisationen der Sozialpartner und andere nationale oder regionale Vereinigungen, die die Interessen einer gesellschaftlichen Gruppe bei der Ausarbeitung und Umsetzung von Maßnahmen für lebenslanges Lernen vertreten.

Teil A — Unterstützung nationaler Umsetzungsmaßnahmen und Sensibilisierung für die Ziele der europäischen Zusammenarbeit auf dem Gebiet der allgemeinen und beruflichen Bildung (ET 2020 ([3]))

Finanzhilfeanträge können ausschließlich von nationalen Partnerschaften eingereicht werden, die aus mindestens drei Organisationen bestehen und an denen mindestens eine nationale oder regionale Behörde beteiligt ist, die für die allgemeine und berufliche Bildung und für Maßnahmen für lebenslanges Lernen (Vorschule, Schule, Berufsbildung, Hochschule und Erwachsenenbildung) zuständig ist, sowie andere direkt an der Ausarbeitung und Umsetzung solcher Maßnahmen beteiligte Einrichtungen und Interessenvertretungen von Akteuren.

Teil B — Beiträge zur Schaffung innovativer politischer Lösungen auf institutioneller Ebene zur Verringerung der Zahl der Schulabbrecher im Einklang mit den Prioritäten von Europa 2020 und ET 2020.

Finanzhilfeanträge können ausschließlich von länderübergreifenden Partnerschaften eingereicht werden, denen nationale oder regionale Ministerien angehören, die für die Ausarbeitung und Umsetzung der allgemeinen und beruflichen Bildung und von Maßnahmen für das lebenslange Lernen zuständig sind, oder von anderen Einrichtungen, die von den betreffenden Ministerien mit der Einreichung von Vorschlägen in Reaktion auf diese Aufforderung beauftragt worden sind.

Die Partnerschaften müssen aus mindestens fünf Organisationen aus drei oder mehr förderfähigen Ländern bestehen. Mindestens ein Partner aus jedem Land muss ein für die Ausarbeitung und Umsetzung der allgemeinen und beruflichen Bildung und von Maßnahmen für lebenslanges Lernen zuständiges nationales oder regionales Ministerium oder eine andere, vom betreffenden Ministerium mit der Einreichung von Vorschlägen in Reaktion auf diese Aufforderung beauftragte Organisation sein, und mindestens ein Partner muss eine Evaluierungsstelle sein. Partnerschaften sollten ggf. auch andere einschlägige Akteure angehören.

Mit der Papierfassung des Vorschlags sind ein oder mehrere unterzeichnete Beauftragungsschreiben der betreffenden Behörde einzureichen.

([2]) Die Teilnahme von Albanien, Bosnien und Herzegowina und Montenegro an dieser Aufforderung zur Einreichung von Vorschlägen erfordert die Unterzeichnung einer Absichtserklärung zwischen der Kommission und den zuständigen Behörden in jedem dieser Länder. Ist die Absichtserklärung spätestens am ersten des Monats des Finanzhilfebeschlusses nicht unterzeichnet, werden Teilnehmer aus diesem Land nicht gefördert und auch im Hinblick auf die Mindestgröße der Konsortien/Partnerschaften nicht berücksichtigt.

([3]) Vgl. Fußnote 1.

Für diese Aufforderung gelten alle von den Mitgliedstaaten (teilnehmenden Ländern) benannten Hochschulen und alle Einrichtungen und Organisationen mit Bildungsangeboten, die in den letzten zwei Jahren mehr als 50 % ihrer Jahreseinnahmen aus öffentlichen Mitteln (ohne Berücksichtigung anderer Finanzhilfen der Europäischen Union) bezogen haben oder von öffentlichen Einrichtungen oder deren Vertretern kontrolliert werden, als öffentliche Einrichtungen. Diese Organisationen müssen in den Antragsunterlagen eine ehrenwörtliche Erklärung darüber abgeben, dass sie der vorstehenden Definition einer öffentlichen Einrichtung entsprechen. Die Agentur behält sich das Recht vor, Nachweise für die Richtigkeit dieser Erklärung zu verlangen.

3. **Förderfähige Aktivitäten**

Teil A — Unterstützung nationaler Umsetzungsmaßnahmen und Sensibilisierung für die Ziele der europäischen Zusammenarbeit auf dem Gebiet der allgemeinen und beruflichen Bildung (ET 2020 ([4]))

Im Rahmen dieses Teils der Aufforderung sind folgende Aktivitäten förderfähig:

— Sensibilisierungsmaßnahmen, mit denen auf nationaler Ebene die Diskussion und der Dialog über die Umsetzung der vier strategischen Ziele von ET 2020 zur Förderung der Strategie Europa 2020 gefördert werden.

— Einrichtung von Diskussionsforen der Akteure zu nationalen Strategien des lebenslangen Lernens zur Bekämpfung der Jugendarbeitslosigkeit und zur Förderung des Wachstums.

— Verbreitungs- und Sensibilisierungsmaßnahmen im Rahmen von ET 2020 zur Verbesserung der Lernchancen über alternative Lernpfade.

— Folgemaßnahmen auf nationaler Ebene durch Verknüpfung der Ergebnisse der offenen Methode der Koordinierung mit bestehenden nationalen Programmen.

Teil B — Beiträge zur Schaffung innovativer politischer Lösungen auf institutioneller Ebene zur Verringerung der Zahl der Schulabbrecher im Einklang mit den Prioritäten von Europa 2020 und ET 2020.

Im Rahmen dieses Teils der Aufforderung sind folgende Aktivitäten förderfähig:

— Entwicklung, Erprobung und Bewertung innovativer politischer Lösungen zur Verringerung der Zahl der Schulabbrecher über Feldversuche, die im Rahmen von länderübergreifenden Partnerschaften durchgeführt werden.

— Gemeinsame Entwicklung und Erprobung innovativer politischer Maßnahmen, an denen eine ausreichend große Zahl von Bildungseinrichtungen beteiligt ist.

— Analyse der Effektivität, Effizienz und der Bedingungen für die Skalierbarkeit der Ergebnisse der experimentellen Maßnahmen aus politischer Sicht und für die länderübergreifende Verbreitung bewährter Verfahren.

— Systematische Verbreitung auf nationaler und europäischer Ebene; Förderung der Übertragbarkeit zwischen verschiedenen Systemen und politischen Strategien im Bereich der allgemeinen und beruflichen Bildung.

Teile A und B:

Die Maßnahmen müssen zwischen dem 1. März 2014 und dem 31. Mai 2014 beginnen.

Die vorgeschriebene Laufzeit der Projekte beträgt 12 Monate für Teil A und 36 Monate für Teil B. Projekte, deren Laufzeit nicht der in dieser Aufforderung angegebenen Laufzeit entspricht, werden abgelehnt.

4. **Vergabekriterien**

Die Förderfähigkeit der Anträge wird anhand folgender Kriterien beurteilt:

Teil A — Unterstützung nationaler Umsetzungsmaßnahmen und Sensibilisierung für die Ziele der europäischen Zusammenarbeit auf dem Gebiet der allgemeinen und beruflichen Bildung (ET 2020).

1. Relevanz (30 %);

2. Qualität des Aktionsplans (10 %);

3. Qualität der Methodik (10 %);

4. Qualität des Konsortiums (10 %);

([4]) Vgl. Fußnote 1.

5. Kosten-Nutzen-Verhältnis (10 %);

6. Wirkung (20 %);

7. Qualität des Valorisierungsplans (Verbreitung und Nutzung der Ergebnisse) (10 %).

Part B — Beiträge zur Schaffung innovativer politischer Lösungen auf institutioneller Ebene zur Verringerung der Zahl der Schulabbrecher im Einklang mit den Prioritäten von Europa 2020 und ET 2020.

1. Relevanz (30 %);

2. Qualität des Aktionsplans (10 %);

3. Qualität der Methodik (10 %);

4. Qualität des Konsortiums (10 %);

5. Kosten-Nutzen-Verhältnis (10 %);

6. Wirkung und europäischer Mehrwert (20 %);

7. Qualität des Valorisierungsplans (Verbreitung und Nutzung der Ergebnisse) (10 %).

5. **Mittelausstattung**

Für die Kofinanzierung von Projekten sind insgesamt 4 Mio. EUR vorgesehen.

Der finanzielle Beitrag der Europäischen Union ist auf höchstens 75 % der förderfähigen Gesamtkosten beschränkt.

Die Finanzhilfe für ein Projekt beläuft sich auf bis zu 120 000 EUR für Teil A sowie auf höchstens 800 000 EUR für Teil B.

Die Agentur beabsichtigt, die verfügbaren Mittel wie folgt aufzuteilen: 1 200 000 EUR für Teil A und 2 800 000 EUR für Teil B. Die endgültige Aufteilung hängt jedoch von der Zahl und der Qualität der für die Teile A und B eingegangenen Anträge ab.

Die Agentur behält sich das Recht vor, nicht alle verfügbaren Mittel zu vergeben.

6. **Stichtag für die Einreichung**

Berücksichtigt werden nur Anträge, für die das richtige Formular verwendet wurde. Die Anträge müssen richtig ausgefüllt und datiert sein, einen Finanzplan mit ausgeglichenen Einnahmen und Ausgaben beinhalten, online (Original) eingereicht werden und von der Person unterzeichnet sein, die bevollmächtigt ist, rechtlich bindende Verpflichtungen im Namen der antragstellenden Organisation einzugehen.

Stichtag: **Montag, 16. September 2013, 12.00 Uhr mittags** (mitteleuropäische Zeit).

Anträge, die nicht sämtliche erforderlichen Dokumente beinhalten oder nicht fristgerecht eingereicht werden, werden nicht berücksichtigt.

Ein vollständiger Antrag beinhaltet folgende Unterlagen:

— Eine Originalausfertigung der Antragsunterlagen (elektronisches Formular — „eForm“ — und die vier Anlagen). Diese Unterlagen sind gemäß den Hinweisen im „eForm — Leitfaden für Benutzer“ online einzureichen. Diese Fassung, einschließlich der dazugehörigen Anlagen, gilt als die maßgebliche Fassung.

— Eine Papierfassung, die unmittelbar nach der elektronischen Einreichung mit normaler Post oder per Einschreiben an die folgende Anschrift zu senden ist:

Exekutivagentur Bildung, Audiovisuelles und Kultur (EACEA)
Referat P9 — Lebenslanges Lernen: Eurydice und Unterstützung politischer Maßnahmen
Schwerpunktaktivität 1 — ECET (ET 2020)
Aufforderung zur Einreichung von Vorschlägen EACEA/04/13 — Teil A/Teil B *(bitte betreffenden Teil angeben)*
BOU2 01/055
Avenue du Bourget/Bourgetlaan 1
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

Nicht fristgerecht eingegangene Anträge werden nicht berücksichtigt.

Per Telefax oder ausschließlich per E-Mail eingereichte Anträge werden nicht berücksichtigt.

Weiterführende Angaben sind dem Allgemeinen Leitfaden zur Aufforderung zu entnehmen.

7. **Ergänzende Informationen**

Der ausführliche Allgemeine Leitfaden zur Aufforderung zur Einreichung von Vorschlägen und die vollständigen Antragsunterlagen stehen auf der folgenden Website zur Verfügung:

http://eacea.ec.europa.eu/llp/funding/2013/call_ecet_2013_en.php

Für die Anträge müssen die dafür vorgesehenen Formulare verwendet werden. Die Anträge müssen sämtliche im ausführlichen Leitfaden genannten Anlagen, Anhänge und Informationen enthalten.

EUROPÄISCHES AMT FÜR PERSONALAUSWAHL (EPSO)

BEKANNTMACHUNG ALLGEMEINER AUSWAHLVERFAHREN

(2013/C 118/08)

Das Europäische Amt für Personalauswahl (EPSO) führt folgende allgemeine Auswahlverfahren durch:

— EPSO/AD/252/13 (AD 9) und EPSO/AD/253/13 (AD 12) — Referatsleiter (m/w) kroatischer Staatsbürgerschaft (HR)

in folgenden Fachgebieten:

1. Recht

2. Wirtschaft

3. Europäische öffentliche Verwaltung

Die Bekanntmachung des Auswahlverfahrens wird in 23 Sprachen im Amtsblatt C 118 A vom 25. April 2013 veröffentlicht.

Weitere Informationen finden Sie auf der EPSO-Website: http://blogs.ec.europa.eu/eu-careers.info/

GERICHTSVERFAHREN

EFTA-GERICHTSHOF

URTEIL DES GERICHTSHOFS

vom 11. Dezember 2012

in der Rechtssache E-2/12

HOB-vín ehf. gegen die staatliche Alkohol- und Tabakgesellschaft Island (ÁTVR)

(Freier Warenverkehr — Richtlinie 2000/13/EG — Erfassungsbereich — Kennzeichnung von Lebensmitteln — irreführende Kennzeichnung — Unterlassung der Notifizierung einer nationalen Maßnahme an die EFTA-Überwachungsbehörde — Begründung — staatliche Haftung)

(2013/C 118/09)

In der Rechtssache E-2/12 HOB-vín ehf. gegen die staatliche Alkohol- und Tabakgesellschaft Island (ÁTVR) — ANTRAG des Héraðsdómur Reykjavíkur (Bezirksgerichts Reykjavik) an den EFTA-Gerichtshof gemäß Artikel 34 des Abkommens zwischen den EFTA-Staaten über die Errichtung einer Überwachungsbehörde und eines Gerichtshofes auf Prüfung der Vereinbarkeit nationaler Rechtsvorschriften, die festlegen, dass ein staatliches Handelsmonopol für alkoholische Getränke unter bestimmten Bedingungen den Verkauf alkoholischer Getränke, die in einem anderen EWR-Staat rechtmäßig hergestellt und in den Verkehr gebracht wurden, untersagen darf, mit dem EWR-Abkommen — gab der Gerichtshof, zusammengesetzt aus dem Präsidenten Carl Baudenbacher sowie den Richtern Per Christiansen (Berichterstatter) und Páll Hreinsson, am 11. Dezember 2012 ein Urteil mit folgendem Tenor ab:

1. Artikel 18 der Richtlinie 2000/13/EG des Europäischen Parlaments und des Rates vom 20. März 2000 zur Angleichung der Rechtsvorschriften der Mitgliedstaaten über die Etikettierung und Aufmachung von Lebensmitteln sowie die Werbung hierfür schließt eine Bestimmung wie Artikel 5.10 der Vorschriften über die Produktauswahl aus, aufgrund deren die ÁTVR den Verkauf in einem anderen EWR-Staat rechtmäßig hergestellter und in den Verkehr gebrachter alkoholischer Getränke mit der Begründung verweigert, dass die Kennzeichnung der Erzeugnisse suggestive oder irrelevante Angaben enthalten.

   Es ist dabei nicht von Belang, ob die Vorschriften für die Produktauswahl für inländische und ausländische Erzeugnisse gleichermaßen gelten.

2. Eine nationale Vorschrift wie Artikel 8 der isländischen Verordnung Nr. 828/2005 über die kommerzielle Produktion, die Einfuhr und den Vertrieb von alkoholischen Getränken, nach der auf der Verpackung von Getränken mit einem Alkoholgehalt von mehr als 1,2 Volumenprozent Alkohol neben der Angabe des tatsächlichen Alkoholgehalts pro Volumen angegeben sein muss, dass es sich um ein alkoholisches Getränk handelt, kann nicht als zweckdienlich erachtet werden und darf keine Erschwernisse für Einzelkunden und Wirtschaftsteilnehmer verursachen, wenn sie nicht nach dem Verfahren des Artikels 19 der Richtlinie 2000/13/EG erlassen wurde.

3. Einzelpersonen und Wirtschaftsteilnehmer, denen durch die nicht ordnungsgemäße Anwendung der Richtlinie 2000/13/EG Schaden entstanden ist, können unter Berufung auf den freien Warenverkehr den Staat für den Verstoß gegen das EWR-Recht haftbar machen.

   Für einen Schaden, der durch eine solche nationale Maßnahme, wie in der ersten Frage beschrieben, entstanden ist, haftet der Staat, wenn das nationale Gericht feststellt, dass die Anwendung der nationalen Rechtsvorschriften oder Verwaltungsvorschriften einen hinreichenden Verstoß gegen das EWR-Recht darstellt und ein unmittelbarer Kausalzusammenhang zwischen dem Verstoß gegen die dem Staat obliegende Verpflichtung und dem Schaden, den der Geschädigte erlitten hat, besteht.

Ein Verstoß gegen das EWR-Recht gilt als hinreichend, wenn durch eine solche nationale Maßnahme, wie in der zweiten Frage beschrieben, Schaden verursacht wurde und die nationale Rechts- oder Verwaltungsvorschrift nicht als wirksam angesehen werden kann, da sie nicht gemäß Artikel 19 der Richtlinie 2000/13/EG mitgeteilt wurde. Für einen solchen Verstoß haftet der Staat, wenn das nationale Gericht einen unmittelbaren Kausalzusammenhang zwischen dem Verstoß gegen die dem Staat obliegende Verpflichtung und dem Geschädigten entstandenen Schaden feststellt.

URTEIL DES GERICHTSHOFS

vom 21. Dezember 2012

in der Rechtssache E-14/11

Schenker North AB, Schenker Privpak AB und Schenker Privpak AS gegen EFTA-Überwachungsbehörde

(Klage auf Nichtigerklärung einer Entscheidung der EFTA-Überwachungsbehörde — Zugang zu Dokumenten — Zulässigkeit — Prozessleitende Maßnahmen — Wiedereröffnung des mündlichen Verfahrens)

(2013/C 118/10)

In der Rechtssache E-14/11 Schenker North AB, Schenker Privpak AB und Schenker Privpak AS gegen EFTA-Überwachungsbehörde — KLAGE auf Nichtigerklärung der Entscheidung der EFTA-Überwachungsbehörde vom 16. August 2011 in der Sache Nr. 68736 über die Verweigerung des Zugangs der Kläger zu bestimmten die Sache Nr. 34250 Posten Norge gegen Privpak betreffenden Dokumenten aufgrund der vom Kollegium der EFTA-Überwachungsbehörde am 27. Juni 2008 festgelegten Vorschriften für den Zugang zu Dokumenten — erließ der Gerichtshof, bestehend aus dem Präsidenten und Berichterstatter Carl Baudenbacher sowie den Richtern Per Christiansen und Páll Hreinsson, am 21. Dezember 2012 ein Urteil mit folgendem Tenor:

1. Die Entscheidung der EFTA-Überwachungsbehörde vom 16. August 2011 in der Sache Posten Norge gegen Privpak — Zugang zu Dokumenten — wird insoweit für nichtig erklärt, als die Einsichtnahme in Ermittlungsunterlagen in der Sache Nr. 34250 Posten Norge gegen Privpak ganz oder teilweise verweigert wurde.

2. Im Übrigen wird die Klage abgewiesen.

3. Die EFTA-Überwachungsbehörde trägt die eigenen Kosten und die Kosten des Klägers.

4. Posten Norge AS trägt die eigenen Kosten.

Antrag des Héraðsdómur Reykjavíkur vom 6. Dezember 2012 auf Abgabe eines Gutachtens des EFTA-Gerichtshofs in der Rechtssache *Jan Anfinn Wahl* gegen *Island*

(Rechtssache E-15/12)

(2013/C 118/11)

Mit Schreiben vom 6. Dezember 2012, das in der Gerichtskanzlei am 6. Dezember 2012 eingegangen ist, beantragte der Oberste Gerichtshof Islands (*Hæstiréttur Íslands*) beim EFTA-Gerichtshof ein Gutachten in der Rechtssache *Jan Anfinn Wahl* gegen *Island* zu folgenden Fragen:

1. Bleibt den Mitgliedstaaten, die Vertragsparteien des Abkommens über den Europäischen Wirtschaftsraum sind, im Hinblick auf Artikel 7 des Abkommens die Wahl der Form und der Mittel überlassen, wenn sie die Richtlinie 2004/38/EG des Europäischen Parlaments und des Rates über das Recht der Unionsbürger und ihrer Familienangehörigen, sich im Hoheitsgebiet der Mitgliedstaaten frei zu bewegen und aufzuhalten, in nationales Recht umsetzen?

2. Ist Artikel 27 Absatz 1 der Richtlinie 2004/38/EG dahingehend auszulegen, dass der bloße Umstand, dass die zuständigen Behörden eines EWR-Mitgliedstaats aufgrund einer Risikoabschätzung davon ausgehen, eine Vereinigung, der die fragliche Person angehört, stehe mit der organisierten Kriminalität in Verbindung, und sich diese Einschätzung darauf stützt, dass sich die organisierte Kriminalität überall dort ausbreitet, wo solche Vereinigungen Fuß gefasst haben, ausreicht, um festzustellen, dass ein Unionsbürger eine Gefahr für die öffentliche Ordnung und Sicherheit des betreffenden Staates darstellt?

3. Ist es von Bedeutung, ob der Mitgliedstaat die Vereinigung, der die fragliche Person angehört, verboten hat und die Mitgliedschaft in einer solchen Vereinigung in dem betreffenden Staat verboten ist?

4. Reicht es für die Feststellung einer Gefahr für die öffentliche Ordnung und Sicherheit im Sinne von Artikel 27 Absatz 1 der Richtlinie 2004/38/EG aus, wenn nach der Rechtsordnung eines EWR-Mitgliedstaats, der Vertragspartei des Abkommens über den Europäischen Wirtschaftsraum ist, ein Verhalten strafbar ist, das in der Duldung einer strafbaren Handlung besteht und diese Handlung Teil der Aktivitäten einer kriminellen Vereinigung darstellt? Sind solche Vorschriften als Generalprävention im Sinne von Artikel 27 Absatz 2 der Richtlinie zu betrachten? Diese Frage stützt sich darauf, dass sich der Begriff „organisierte Kriminalität" im innerstaatlichen Recht auf einen Zusammenschluss von mehr als drei Personen bezieht, dessen Hauptzweck darin besteht, aus (direktem oder indirektem) Gewinnstreben bewusst eine Straftat zu begehen oder die Begehung von Straftaten wesentlicher Teil der Aktivitäten darstellt.

5. Ist Artikel 27 Absatz 2 der Richtlinie 2004/38/EG so zu verstehen, dass die Maßnahmen nach Artikel 27 Absatz 1 der Richtlinie nur getroffen werden können, wenn der Mitgliedstaat eine Wahrscheinlichkeit nachweisen kann, dass die fragliche Person beabsichtigt, sich an Aktivitäten zu beteiligen, die bestimmte Handlungen umfassen bzw. von bestimmten Handlungen absehen, damit das persönliche Verhalten als eine tatsächliche, gegenwärtige und hinreichend schwere Gefährdung angesehen werden kann, die ein Grundinteresse der Gesellschaft berührt?

VERFAHREN BEZÜGLICH DER DURCHFÜHRUNG DER WETTBEWERBSPOLITIK

EUROPÄISCHE KOMMISSION

Vorherige Anmeldung eines Zusammenschlusses

(Sache COMP/M.6919 — KKR/Bregal Fund/Avenia/Cognita)

Für das vereinfachte Verfahren in Frage kommender Fall

(Text von Bedeutung für den EWR)

(2013/C 118/12)

1. Am 16. April 2013 ist die Anmeldung eines Zusammenschlusses nach Artikel 4 der Verordnung (EG) Nr. 139/2004 des Rates [1] bei der Kommission eingegangen. Danach ist Folgendes beabsichtigt: Das Unternehmen KKR & Co. LP („KKR", USA) und das Unternehmen Bregal Fund III LP („Bregal Fund III", Jersey), das letztlich von der Avenia AG (Schweiz) kontrolliert wird, erwerben im Sinne von Artikel 3 Absatz 1 Buchstabe b der Fusionskontrollverordnung durch Erwerb von Anteilen die gemeinsame Kontrolle über das Unternehmen Cognita Holdings Limited („Cognita", Vereinigtes Königreich).

2. Die beteiligten Unternehmen sind in folgenden Geschäftsbereichen tätig:

— KKR: Anbieter eines breiten Spektrums alternativer Vermögensverwaltungsdienstleistungen für öffentliche und private Investoren sowie Kapitalmarktlösungen für das Unternehmen, dessen Portfolio-Unternehmen und Kunden,

— Avenia: Holdinggesellschaft einer Gruppe von Unternehmen, die in unterschiedlichen Wirtschaftszweigen angesiedelt sind (Einzelhandel, Immobilien, Bildung, erneuerbare Energien und Versicherungen), sowie von Kapitalanlagefonds,

— Bregal Fund III: Kapitalbeteiligungsgesellschaft,

— Cognita: weltweit tätiger Träger von privaten K-12-Schulen.

3. Die Kommission hat nach vorläufiger Prüfung festgestellt, dass das angemeldete Rechtsgeschäft unter die EG-Fusionskontrollverordnung fallen könnte. Die endgültige Entscheidung zu diesem Punkt behält sie sich vor. Dieser Fall kommt für das vereinfachte Verfahren im Sinne der Bekanntmachung der Kommission über ein vereinfachtes Verfahren für bestimmte Zusammenschlüsse gemäß der EG-Fusionskontrollverordnung fallen könnte [2] in Frage.

4. Alle betroffenen Dritten können bei der Kommission zu diesem Vorhaben Stellung nehmen.

Die Stellungnahmen müssen bei der Kommission spätestens 10 Tage nach Veröffentlichung dieser Anmeldung eingehen. Sie können der Kommission unter Angabe des Aktenzeichens COMP/M.6919 — KKR/Bregal Fund/Avenia/Cognita per Fax (+32 22964301), per E-Mail (COMP-MERGER-REGISTRY@ec.europa.eu) oder per Post an folgende Anschrift übermittelt werden:

Europäische Kommission
Generaldirektion Wettbewerb
Registratur Fusionskontrolle
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

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[1] ABl. L 24 vom 29.1.2004, S. 1 (nachstehend „EG-Fusionskontrollverordnung" genannt).
[2] ABl. C 56 vom 5.3.2005, S. 32 („Bekanntmachung über ein vereinfachtes Verfahren").

DE

[1] Text von Bedeutung für den EWR

Abonnementpreise 2013 (ohne MwSt., einschl. Portokosten für Normalversand)

Amtsblatt der EU, Reihen L + C, nur Papierausgabe	22 EU-Amtssprachen	1 300 EUR pro Jahr
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Amtsblatt der EU, Reihe L, nur Papierausgabe	22 EU-Amtssprachen	910 EUR pro Jahr
Amtsblatt der EU, Reihen L + C, monatliche (kumulative) DVD	22 EU-Amtssprachen	100 EUR pro Jahr
Supplement zum Amtsblatt (Reihe S), öffentliche Aufträge und Ausschreibungen, DVD, eine Ausgabe pro Woche	mehrsprachig: 23 EU-Amtssprachen	200 EUR pro Jahr
Amtsblatt der EU, Reihe C — Auswahlverfahren	Sprache(n) gemäß Auswahlverfahren	50 EUR pro Jahr

Das *Amtsblatt der Europäischen Union* erscheint in allen EU-Amtssprachen und kann in 22 Sprachfassungen abonniert werden. Es umfasst die Reihen L (Rechtsakte) und C (Mitteilungen und Bekanntmachungen).

Ein Abonnement gilt jeweils für eine Sprachfassung.

In Übereinstimmung mit der Verordnung (EG) Nr. 920/2005 des Rates (veröffentlicht im Amtsblatt L 156 vom 18. Juni 2005), die besagt, dass die Organe der Europäischen Union ausnahmsweise und vorübergehend von der Verpflichtung entbunden sind, alle Rechtsakte in irischer Sprache abzufassen und zu veröffentlichen, werden die Amtsblätter in irischer Sprache getrennt verkauft.

Das Abonnement des Supplements zum Amtsblatt (Reihe S — Bekanntmachungen der Ausschreibungen öffentlicher Aufträge) umfasst alle Ausgaben in den 23 Amtssprachen auf einer einzigen mehrsprachigen DVD.

Das Abonnement des *Amtsblatts der Europäischen Union* berechtigt auf einfache Anfrage hin zum Bezug der verschiedenen Anhänge des Amtsblatts. Die Abonnenten werden durch einen im Amtsblatt veröffentlichten „Hinweis für den Leser“ über das Erscheinen der Anhänge informiert.

Verkauf und Abonnements

Abonnements von Periodika unterschiedlicher Preisgruppen, darunter auch Abonnements des *Amtsblatts der Europäischen Union*, können über die Vertriebsstellen abgeschlossen werden. Die Liste der Vertriebsstellen findet sich im Internet unter:

http://publications.europa.eu/others/agents/index_de.htm

EUR-Lex (http://eur-lex.europa.eu) bietet einen direkten und kostenlosen Zugang zum EU-Recht. Die Website ermöglicht die Abfrage des *Amtsblatts der Europäischen Union* und enthält darüber hinaus die Rubriken Verträge, Gesetzgebung, Rechtsprechung und Vorschläge für Rechtsakte.

Weitere Informationen über die Europäische Union finden Sie unter: http://europa.eu

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