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Comunicaciones e informaciones

Sumario

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[1] Texto pertinente a efectos del EEE

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

Comisión Europea

([1]) Texto pertinente a efectos del EEE

II

(Comunicaciones)

COMUNICACIONES PROCEDENTES DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

COMISIÓN EUROPEA

No oposición a una concentración notificada

(Asunto M.8039 — Freudenberg/Vibracoustic)

(Texto pertinente a efectos del EEE)

(2016/C 236/01)

El 22 de junio de 2016, la Comisión decidió no oponerse a la concentración notificada que se cita en el encabezamiento y declararla compatible con el mercado interior. Esta decisión se basa en el artículo 6, apartado 1, letra b), del Reglamento (CE) n.º 139/2004 del Consejo ([1]). El texto íntegro de la decisión solo está disponible en inglés y se hará público una vez que se elimine cualquier secreto comercial que pueda contener. Estará disponible:

— en la sección de concentraciones del sitio web de competencia de la Comisión (http://ec.europa.eu/competition/mergers/cases/). Este sitio web permite localizar las decisiones sobre concentraciones mediante criterios de búsqueda tales como el nombre de la empresa, el número de asunto, la fecha o el sector de actividad,

— en formato electrónico en el sitio web EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=es) con el número de documento 32016M8039. EUR-Lex da acceso al Derecho de la Unión en línea.

([1]) DO L 24 de 29.1.2004, p. 1.

No oposición a una concentración notificada

(Asunto M.8049 — TPG Capital/Partners Group/TH Real Estate Portfolio)

(Texto pertinente a efectos del EEE)

(2016/C 236/02)

El 23 de junio de 2016, la Comisión decidió no oponerse a la concentración notificada que se cita en el encabezamiento y declararla compatible con el mercado interior. Esta decisión se basa en el artículo 6, apartado 1, letra b), del Reglamento (CE) n.º 139/2004 del Consejo ([1]). El texto íntegro de la decisión solo está disponible en inglés y se hará público una vez que se elimine cualquier secreto comercial que pueda contener. Estará disponible:

— en la sección de concentraciones del sitio web de competencia de la Comisión (http://ec.europa.eu/competition/mergers/cases/). Este sitio web permite localizar las decisiones sobre concentraciones mediante criterios de búsqueda tales como el nombre de la empresa, el número de asunto, la fecha o el sector de actividad,

— en formato electrónico en el sitio web EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=es) con el número de documento 32016M8049. EUR-Lex da acceso al Derecho de la Unión en línea.

([1]) DO L 24 de 29.1.2004, p. 1.

No oposición a una concentración notificada

(Asunto M.8041 — M&G/Anchorage/PHS Group Investment)

(Texto pertinente a efectos del EEE)

(2016/C 236/03)

El 23 de junio de 2016, la Comisión decidió no oponerse a la concentración notificada que se cita en el encabezamiento y declararla compatible con el mercado interior. Esta decisión se basa en el artículo 6, apartado 1, letra b), del Reglamento (CE) n.º 139/2004 del Consejo ([1]). El texto íntegro de la decisión solo está disponible en inglés y se hará público una vez que se elimine cualquier secreto comercial que pueda contener. Estará disponible:

— en la sección de concentraciones del sitio web de competencia de la Comisión (http://ec.europa.eu/competition/mergers/cases/). Este sitio web permite localizar las decisiones sobre concentraciones mediante criterios de búsqueda tales como el nombre de la empresa, el número de asunto, la fecha o el sector de actividad,

— en formato electrónico en el sitio web EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=es) con el número de documento 32016M8041. EUR-Lex da acceso al Derecho de la Unión en línea.

([1]) DO L 24 de 29.1.2004, p. 1.

No oposición a una concentración notificada

(Asunto M.8054 — 3i Group/Deutsche Alternative Asset Management/TCR Capvest)

(Texto pertinente a efectos del EEE)

(2016/C 236/04)

El 24 de junio de 2016, la Comisión decidió no oponerse a la concentración notificada que se cita en el encabezamiento y declararla compatible con el mercado interior. Esta decisión se basa en el artículo 6, apartado 1, letra b), del Reglamento (CE) n.º 139/2004 del Consejo ([1]). El texto íntegro de la decisión solo está disponible en inglés y se hará público una vez que se elimine cualquier secreto comercial que pueda contener. Estará disponible:

— en la sección de concentraciones del sitio web de competencia de la Comisión (http://ec.europa.eu/competition/mergers/cases/). Este sitio web permite localizar las decisiones sobre concentraciones mediante criterios de búsqueda tales como el nombre de la empresa, el número de asunto, la fecha o el sector de actividad,

— en formato electrónico en el sitio web EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=es) con el número de documento 32016M8054. EUR-Lex da acceso al Derecho de la Unión en línea.

([1]) DO L 24 de 29.1.2004, p. 1.

IV

(Información)

INFORMACIÓN PROCEDENTE DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

COMISIÓN EUROPEA

Tipo de cambio del euro [1]

29 de junio de 2016

(2016/C 236/05)

1 euro =

	Moneda	Tipo de cambio		Moneda	Tipo de cambio
USD	dólar estadounidense	1,1090	CAD	dólar canadiense	1,4407
JPY	yen japonés	113,85	HKD	dólar de Hong Kong	8,6041
DKK	corona danesa	7,4376	NZD	dólar neozelandés	1,5565
GBP	libra esterlina	0,82550	SGD	dólar de Singapur	1,4951
SEK	corona sueca	9,4311	KRW	won de Corea del Sur	1 283,15
CHF	franco suizo	1,0854	ZAR	rand sudafricano	16,6016
ISK	corona islandesa		CNY	yuan renminbi	7,3680
NOK	corona noruega	9,3065	HRK	kuna croata	7,5273
BGN	leva búlgara	1,9558	IDR	rupia indonesia	14 577,25
CZK	corona checa	27,114	MYR	ringit malayo	4,4594
HUF	forinto húngaro	316,95	PHP	peso filipino	52,106
PLN	esloti polaco	4,4261	RUB	rublo ruso	71,0452
RON	leu rumano	4,5253	THB	bat tailandés	39,028
TRY	lira turca	3,2157	BRL	real brasileño	3,6216
AUD	dólar australiano	1,4911	MXN	peso mexicano	20,7331
			INR	rupia india	74,9693

[1] *Fuente*: tipo de cambio de referencia publicado por el Banco Central Europeo.

Nueva cara nacional de las monedas en euros destinadas a la circulación

(2016/C 236/06)

Cara nacional de la nueva moneda conmemorativa de 2 euros destinada a la circulación emitida por España

Las monedas en euros destinadas a la circulación tienen curso legal en toda la zona del euro. Con el fin de informar a las personas que manejan monedas en el ejercicio de su profesión y al público en general, la Comisión publica las características de todos los nuevos diseños de las monedas ([1]). De conformidad con las conclusiones del Consejo de 10 de febrero de 2009 ([2]), los Estados miembros de la zona del euro y los países que hayan celebrado un acuerdo monetario con la Unión Europea en el que se prevea la emisión de monedas de euros pueden emitir monedas conmemorativas de euros destinadas a la circulación en determinadas condiciones, en particular que solo se trate de monedas de 2 euros. Estas monedas tienen las mismas características técnicas que las demás monedas de 2 euros, pero presentan en la cara nacional un motivo conmemorativo de gran simbolismo en el ámbito nacional o europeo.

Estado emisor: España.

Tema de la conmemoración: Lugares culturales y naturales del patrimonio mundial de la Unesco – Iglesias del Reino de Asturias.

Descripción del motivo: En el motivo figura la iglesia de Santa María del Naranco en primer plano. En la parte superior del círculo interior y en sentido circular aparecen el nombre del país emisor «ESPAÑA» y debajo, a la derecha, el año de emisión «2017». En la parte izquierda del círculo interior figura la marca de ceca.

En la corona circular de la moneda figuran las doce estrellas de la bandera europea.

Volumen de emisión: Cuatro millones de monedas.

Fecha de emisión: 1 de febrero de 2017.

([1]) Las caras nacionales de todas las monedas en euros emitidas en 2002 figuran en el DO C 373 de 28.12.2001, p. 1.

([2]) Véanse las conclusiones del Consejo de Asuntos Económicos y Financieros de 10 de febrero de 2009 y la Recomendación de la Comisión, de 19 de diciembre de 2008, relativa a la fijación de directrices comunes respecto de las caras nacionales y la emisión de monedas en euros destinadas a la circulación (DO L 9 de 14.1.2009, p. 52).

TRIBUNAL DE CUENTAS

Informe Especial n.º 14/2016

«Iniciativas y ayuda financiera de la UE para la integración de los gitanos: pese a los avances significativos de la última década, aún son necesarios esfuerzos adicionales sobre el terreno»

(2016/C 236/07)

El Tribunal de Cuentas Europeo anuncia que acaba de publicar su Informe Especial n.º 14/2016, «Iniciativas y ayuda financiera de la UE para la integración de los gitanos: pese a los avances significativos de la última década, aún son necesarios esfuerzos adicionales sobre el terreno».

El informe puede consultarse o descargarse en el sitio web del Tribunal de Cuentas Europeo: http://eca.europa.eu o en EU-Bookshop: https://bookshop.europa.eu

INFORMACIÓN PROCEDENTE DE LOS ESTADOS MIEMBROS

Actualización de la lista de pasos fronterizos mencionados en el artículo 2, apartado 8, del Reglamento (UE) 2016/399 del Parlamento Europeo y del Consejo, por el que se establece un Código comunitario de normas para el cruce de personas por las fronteras (Código de fronteras Schengen) ([1])

(2016/C 236/08)

La publicación de la lista de pasos fronterizos mencionados en el artículo 2, apartado 8, del Reglamento (UE) 2016/399 del Parlamento Europeo y del Consejo, de 9 de marzo de 2016, por el que se establece un Código comunitario de normas para el cruce de personas por las fronteras (Código de fronteras Schengen), se basa en la información notificada por los Estados miembros a la Comisión de conformidad con el artículo 39 del Código de fronteras Schengen.

Además de publicarse en el Diario Oficial, una actualización mensual está disponible en el sitio de internet de la Dirección General de Asuntos de Interior.

FRANCIA

Modificación de la información publicada en DO C 229 de 14.7.2015

LISTA DE PASOS FRONTERIZOS

Fronteras aéreas

(1) Abbeville

(2) Agen-la Garenne

(3) Ajaccio-Campo dell'Oro

(4) Albert-Bray

(5) Amiens-Glisy

(6) Angers-Marcé

(7) Angoulême-Brie-Champniers

(8) Annecy-Methet

(9) Annemasse

(10) Auxerre-Branches

(11) Avignon-Caumont

(12) Bâle-Mulhouse

(13) Bastia-Poretta

(14) Beauvais-Tillé

(15) Bergerac-Roumanière

(16) Besançon-la Vèze

(17) Béziers-Vias

(18) Biarritz-Bayonne-Anglet

(19) Bordeaux-Mérignac

(20) Brest-Guipavas

(21) Brive-Souillac

(22) Caen-Carpiquet

(23) Calais-Dunkerque

(24) Calvi-Sainte-Catherine

([1]) Véase la lista de publicaciones anteriores al final de la presente actualización.

(25) Cannes-Mandelieu

(26) Carcassonne-Salvaza

(27) Châlons-Vatry

(28) Chambéry-Aix-les-Bains

(29) Châteauroux-Déols

(30) Cherbourg-Maupertus

(31) Clermont-Ferrand-Aulnat

(32) Colmar-Houssen

(33) Deauville-Saint-Gatien

(34) Dijon-Longvic

(35) Dinard-Pleurtuit

(36) Dôle-Tavaux

(37) Epinal-Mirecourt

(38) Figari-Sud Corse

(39) Grenoble-Saint-Geoirs

(40) Hyères-le Palivestre

(41) Issy-les-Moulineaux

(42) La Môle

(43) Lannion

(44) La Rochelle-Laleu

(45) Laval-Entrammes

(46) Le Castelet

(47) Le Havre-Octeville

(48) Le Mans-Arnage

(49) Le Touquet-Paris-Plage

(50) Lille-Lesquin

(51) Limoges-Bellegarde

(52) Lognes-Emerainville

(53) Lorient-Lann-Bihoué

(54) Lyon-Bron

(55) Lyon-Saint-Exupéry

(56) Marseille-Provence

(57) Metz-Nancy-Lorraine

(58) Monaco-Héliport

(59) Montbéliard-Courcelles

(60) Montpellier-Méditérranée

(61) Nantes-Atlantique

(62) Nevers-Fourchambault

(63) Nice-Côte d'Azur

(64) Nîmes-Garons

(65) Orléans-Bricy

(66) Orléans-Saint-Denis-de-l'Hôtel

(67) Paris-Charles de Gaulle

(68) Paris-le Bourget

(69) Paris-Orly

(70) Pau-Pyrénées

(71) Perpignan-Rivesaltes

(72) Poitiers-Biard

(73) Pontoise-Cormeilles-en-Vexin, con carácter temporal:

— Del miércoles 10 al domingo 14 de junio de 2015, de las 10.00 a las 15.30.

Esta apertura temporal estará en vigor durante el Salón Internacional de la Aeronáutica y del Espacio de Le Bourget, que exige el desvío hacia el Aeropuerto de Pontoise, a fines de descongestión, de los vuelos con origen/destino fuera del espacio de Schengen.

— Del lunes 15 al domingo 21 de junio de 2015, de las 06.00 a las 16.30.

Esta apertura temporal estará en vigor durante el período de establecimiento de una línea estacional fuera del espacio de Schengen (Quimper-Londres).

(74) Quimper-Cornouailles, con carácter temporal, del 19 de mayo al 4 de septiembre de 2016.

(75) Rennes Saint-Jacques

(76) Rodez-Marcillac

(77) Rouen-Vallée de Seine

(78) Saint-Brieuc-Armor

(79) Saint-Etienne-Bouthéon

(80) Saint-Nazaire-Montoir

(81) Strasbourg-Entzheim

(82) Tarbes-Ossun-Lourdes

(83) Toulouse-Blagnac

(84) Tours-Saint-Symphorien

(85) Troyes-Barberey

(86) Vichy-Charmeil

Fronteras marítimas

(1) Ajaccio

(2) Bastia

(3) Bayonne

(4) Bonifacio

(5) Bordeaux

(6) Boulogne

(7) Brest

(8) Caen-Ouistreham

(9) Calais

(10) Calvi

(11) Cannes-Vieux Port

(12) Carteret

(13) Cherbourg

(14) Dieppe

(15) Douvres

(16) Dunkerque

(17) Granville

(18) Honfleur

(19) La Rochelle-La Pallice

(20) Le Havre

(21) Les Sables-d'Olonne-Port

(22) L'Ile-Rousse

(23) Lorient

(24) Marseille

(25) Monaco-Port de la Condamine

(26) Nantes-Saint-Nazaire

(27) Nice

(28) Port-de-Bouc-Fos/Port-Saint-Louis

(29) Port-la-Nouvelle

(30) Porto-Vecchio

(31) Port-Vendres

(32) Roscoff

(33) Rouen

(34) Saint-Brieuc (maritime)

(35) Saint-Malo

(36) Sète

(37) Toulon

Fronteras terrestres

con el REINO UNIDO:

(túnel del Canal de la Mancha)

(1) Gare d'Ashford International

(2) Gare d'Avignon-Centre

(3) Cheriton/Coquelles

(4) Gare de Chessy-Marne-la-Vallée

(5) Gare de Fréthun

(6) Gare de Lille-Europe

(7) Gare de Paris-Nord

(8) Gare de St-Pancras International

(9) Gare d'Ebbsfleet International

(10) Gare TGV Haute-Picardie, el 1 de julio de 2016.

con ANDORRA

(1) Pas de la Case-Porta

Lista de publicaciones anteriores

DO C 316 de 28.12.2007, p. 1

DO C 134 de 31.5.2008, p. 16

DO C 177 de 12.7.2008, p. 9

DO C 200 de 6.8.2008, p. 10

DO C 331 de 31.12.2008, p. 13

DO C 3 de 8.1.2009, p. 10

DO C 37 de 14.2.2009, p. 10

DO C 64 de 19.3.2009, p. 20

DO C 99 de 30.4.2009, p. 7

DO C 229 de 23.9.2009, p. 28

DO C 263 de 5.11.2009, p. 22

DO C 298 de 8.12.2009, p. 17

DO C 74 de 24.3.2010, p. 13

DO C 326 de 3.12.2010, p. 17

DO C 355 de 29.12.2010, p. 34

DO C 22 de 22.1.2011, p. 22

DO C 37 de 5.2.2011, p. 12

DO C 149 de 20.5.2011, p. 8

DO C 190 de 30.6.2011, p. 17

DO C 203 de 9.7.2011, p. 14

DO C 210 de 16.7.2011, p. 30

DO C 271 de 14.9.2011, p. 18

DO C 356 de 6.12.2011, p. 12

DO C 111 de 18.4.2012, p. 3

DO C 183 de 23.6.2012, p. 7

DO C 313 de 17.10.2012, p. 11

DO C 394 de 20.12.2012, p. 22

DO C 51 de 22.2.2013, p. 9

DO C 167 de 13.6.2013, p. 9

DO C 242 de 23.8.2013, p. 2

DO C 275 de 24.9.2013, p. 7

DO C 314 de 29.10.2013, p. 5

DO C 324 de 9.11.2013, p. 6

DO C 57 de 28.2.2014, p. 4

DO C 167 de 4.6.2014, p. 9

DO C 244 de 26.7.2014, p. 22

DO C 332 de 24.9.2014, p. 12

DO C 420 de 22.11.2014, p. 9

DO C 72 de 28.2.2015, p. 17

DO C 126 de 18.4.2015, p. 10

DO C 229 de 14.7.2015, p. 5

DO C 341 de 16.10.2015, p. 19.

DO C 84 de 4.3.2016, p. 2.

Actualización de los modelos de tarjetas que expiden los Ministerios de Asuntos Exteriores de los Estados miembros a los miembros acreditados de las representaciones diplomáticas y oficinas consulares y a los miembros de sus familias, tal como se establece en el artículo 20, apartado 2, del Reglamento (UE) 2016/399 del Parlamento Europeo y del Consejo, por el que se establece un Código comunitario de normas para el cruce de personas por las fronteras (Código de fronteras Schengen) ([1])

(2016/C 236/09)

La publicación de los modelos de tarjetas que expiden los Ministerios de Asuntos Exteriores de los Estados miembros a los miembros acreditados de las representaciones diplomáticas y oficinas consulares y a los miembros de sus familias, tal como se establece en el artículo 20, apartado 2, del Reglamento (UE) 2016/399 del Parlamento Europeo y del Consejo, de 9 de marzo de 2016, por el que se establece un Código comunitario de normas para el cruce de personas por las fronteras (Código de fronteras Schengen), se basa en la información notificada por los Estados miembros a la Comisión de conformidad con el artículo 39 del Código de fronteras Schengen (codificación).

Además de publicarse en el Diario Oficial, una actualización mensual está disponible en el sitio web de la Dirección General de Asuntos de Interior.

SUIZA

Sustitución de la información publicada en el DO C 133 de 1.5.2014

PERMISOS ESPECIALES DE RESIDENCIA EXPEDIDOS POR EL MINISTERIO DE ASUNTOS EXTERIORES

Tarjetas de identificación (permisos de residencia) del Departamento Federal de Asuntos Exteriores (DFAE):

— Tarjeta de identificación «B» (con franja rosa): jefes de una misión diplomática, permanente o especial, altos cargos de las organizaciones internacionales y miembros de su familia con idéntico estatuto / Legitimationskarte „B“ (mit rosafarbigem Streifen): Missionschefs der diplomatischen, ständigen oder Spezialmissionen, leitende Beamte internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „B“ (a banda rosa): Chefs de mission diplomatique, permanente ou spéciale, membres de la haute direction des organisations internationales et membres de famille qui jouissent du même statut;

— Tarjeta de identificación «C» (con franja rosa): miembros del personal diplomático de las misiones diplomáticas, permanentes o especiales, altos funcionarios de las organizaciones internacionales y miembros de su familia con idéntico estatuto / Legitimationskarte „C“ (mit rosafarbigem Streifen): Mitglieder des diplomatischen Personals der diplomatischen, ständigen oder Spezialmissionen, Beamte internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „C“ (a banda rosa): membri del personale diplomatico di missioni diplomatiche permanenti o speciali, funzionari di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «D» (con franja azul): miembros del personal administrativo y técnico de las misiones dipomáticas, permanentes o especiales y miembros de su familia con idéntico estatuto / Legitimationskarte „D“ (mit blauem Streifen): Mitglieder des Verwaltungs- und technischen Personals der diplomatischen, ständigen oder Spezialmissionen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „D“ (a banda blu): membri del personale amministrativo e tecnico di missioni diplomatiche permanenti o speciali e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «D» (con franja marrón): funcionarios de la categoría profesional de las organizaciones internacionales y miembros de su familia con idéntico estatuto / Legitimationskarte „D“ (mit braunem Streifen): Beamte der Kategorie Berufspersonal internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „D“ (a banda marrone): funzionari appartenenti alla categoria del personale di carriera di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

([1]) Véase la lista de publicaciones anteriores al final de la presente actualización.

— Tarjeta de identificación «E» (con franja morada): miembros del personal de servicio de las misiones diplomáticas, permanentes y especiales, funcionarios de los servicios generales de las organizaciones internacionales y miembros de su familia con idéntico estatuto / Legitimationskarte „E“ (mit violettem Streifen): Mitglieder des Dienstpersonals der diplomatischen, ständigen oder Spezialmissionen, Beamte der allgemeinen Dienste internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „E“ (a banda viola): membri del personale di servizio di missioni diplomatiche permanenti e speciali, funzionari dei servizi generali di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «F» (con franja amarilla): empleados de hogar de los miembros de las misiones diplomáticas, permanentes o especiales, y de los puestos consulares de carrera y empleados de hogar de los funcionarios de las organizaciones internacionales / Legitimationskarte „F“ (mit gelbem Streifen): private Hausangestellte der Mitglieder der diplomatischen, ständigen oder Spezialmissionen und der von Berufs-Konsularbeamten geleiteten konsularischen Vertretungen sowie private Hausangestellte der Beamten internationaler Organisationen / Carta di legittimazione „F“ (a banda gialla): personale domestico privato di membri di missioni diplomatiche permanenti o speciali e di rappresentanze consolari dirette da funzionari consolari di carriera nonché personale domestico privato di funzionari di organizzazioni internazionali;

— Tarjeta de identificación «G» (con franja turquesa): funcionarios de las organizaciones internacionales (contratos de trabajo «de corta duración») y miembros de su familia con idéntico estatuto / Legitimationskarte „G“ (mit türkisem Streifen): Beamte internationaler Organisationen mit Arbeitsvertrag von begrenzter Dauer und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „G“ (a banda turchese): funzionari di organizzazioni internazionali con contratto di lavoro a durata determinata e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «H» (con franja blanca): colaboradores no funcionarios de las misiones diplomáticas, permanentes o especiales, de los consulados y de las organizaciones internacionales, así como personas sin privilegios ni inmunidades autorizadas a acompañar a los miembros de las misiones diplomáticas, permanentes o especiales, de los consulados y de las organizaciones internacionales. / Legitimationskarte “H” (mit weissem Streifen): Mitarbeiter ohne Beamtenstatus der diplomatischen, ständigen oder Spezialmissionen, der konsularischen Vertretungen und der internationalen Organisationen, sowie Personen ohne Privilegien und Immunitäten, die ermächtigt sind, Mitglieder der diplomatischen, ständigen oder Spezialmissionen, der konsularischen Vertretungen und der internationalen Organisationen zu begleiten. / Carta di legittimazione „H“ (a banda bianca): collaboratori senza statuto di funzionari di missioni diplomatiche permanenti o speciali, di consolati e di organizzazioni internazionali così come persone senza privilegi e immunità autorizzate a accompagnare membri di missioni diplomatiche permanenti o speciali, di consolati e di organizzazioni internazionali;

— Tarjeta de identificación «I» (con franja oliva): miembros del personal no suizo del Comité Internacional de la Cruz Roja y miembros de su familia con idéntico estatuto / Legitimationskarte „I“ (mit olivem Streifen): Personal nicht schweizerischer Staatsangehörigkeit des Internationalen Komitees vom Roten Kreuz und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „I“ (a banda oliva): membri del personale non svizzero del Comitato internazionale della Croce Rossa e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «K» (con franja roja): jefes de los puestos consulares de carrera, funcionarios consulares de carrera y miembros de su familia con idéntico estatuto / Legitimationskarte „K“ (mit rosafarbigem Streifen): Berufs-Postenchefs und Berufs-Konsularbeamte der konsularischen Vertretungen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda rosa): capiposto consolari di carriera e funzionari consolari di carriera di rappresentanze consolari e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «K» (con franja azul): empleados consulares de carrera y miembros de su familia con idéntico estatuto / Legitimationskarte „K“ (mit blauem Streifen): Berufs-Konsularangestellte und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda blu): impiegati consolari di carriera e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «K» (con franja morada): miembros del personal de servicio de las representaciones consulares de carrera y miembros de su familia con idéntico estatuto / Legitimationskarte „K“ (mit violettem Streifen): Mitglieder des dienstlichen Hauspersonals von berufs-konsularischen Vertretungen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda viola): membri del personale di servizio di rappresentanze consolari di carriera e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «K» (con franja blanca): jefes de puestos consulares honorarios / Legitimationskarte „K“ (mit weissem Streifen): Honorar-Postenchefs von konsularischen Vertretungen / Carta di legittimazione „K“ (a banda bianca): capiposto onorari di rappresentanze consolari;

— Tarjeta de identificación «L» (con franja de color arena): miembros del personal no suizo de la Federación Internacional de Sociedades de la Cruz Roja y de la Media Luna Roja y miembros de su familia con idéntico estatuto / Legitimationskarte „L“ (mit sandfarbigem Streifen): Personal nicht schweizerischer Staatsangehörigkeit der Internationalen Gemeinschaft der Roten Kreuz- und Roten Halbmond-Gesellschaften und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „L“ (a banda color sabbia): membri del personale non svizzero della Federazione internazionale delle Società della Croce Rossa e della Mezzaluna Rossa e familiari che beneficiano dello stesso statuto;

— Tarjeta de identificación «P» (con franja azul): personal científico no suizo del CERN y miembros de su familia con idéntico estatuto / Legitimationskarte « P » (mit blauem Streifen) : wissenschaftliches Personal des CERN nicht schweizerischer Staatsangehörigkeit und Familienmitglieder, die den gleichen Status besitzen / Carta di Legittimazione « P » (à banda blu) : personale scientifico non svizzero del CERN e familiari che beneficiano dello stesso statuto.

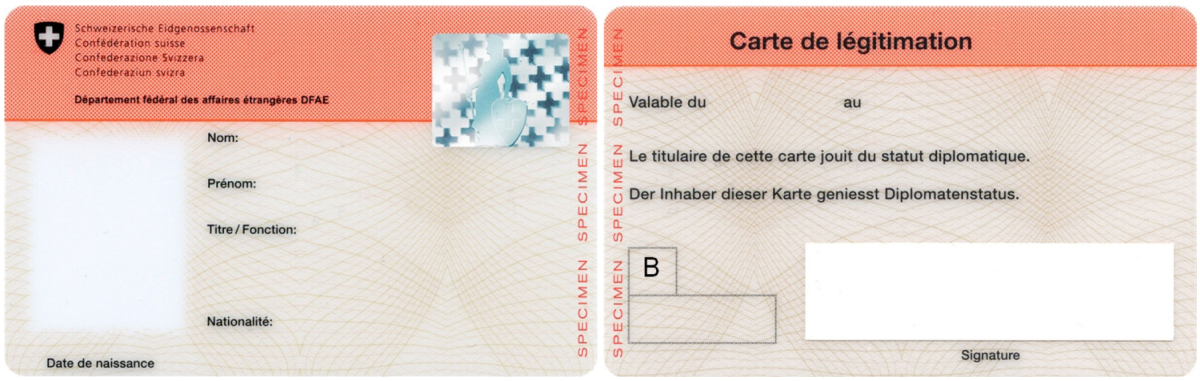
— Tarjeta de legitimación «R» (con franja gris): miembros del personal no suizo de las organizaciones internacionales cuasi gubernamentales o de otros organismos internacionales y miembros de su familia que gozan del mismo estatuto / Legitimationskarte « R » (mit grauem Streifen) : Personal nicht schweizerischer Staatsangehörigkeit von quasizwischenstaatlichen Organisation oder anderen internationalen Organen und Familienmitglieder, die den gleichen Status besitzen / Carta di Legittimazione « R » (a banda grigia) : membri del personale non svizzero di organizzazioni internazionali quasi intergovernative o di altri organismi internazionali e familiari che beneficiano dello stesso statuto.

— Tarjeta de identificación «S» (con franja verde): miembros del personal de nacionalidad suiza de las misiones diplomáticas, permanentes y especiales, funcionarios de nacionalidad suiza de las organizaciones internacionales / Legitimationskarte „S“ (mit grünem Streifen): Mitglieder des Personals schweizerischer Staatsangehörigkeit der diplomatischen, ständigen und der Spezialmissionen, Beamte schweizerischer Staatsangehörigkeit internationaler Organisationen / Carta di legittimazione „S“ (a banda verde): membri del personale di nazionalità svizzera di missioni diplomatiche permanenti e speciali, funzionari di nazionalità svizzera di organizzazioni internazionali;

Tarjeta de identificación del DFAE de tipo «B»

— Embajadas y misiones permanentes: jefe de misión

— Organizaciones internacionales: alto cargo

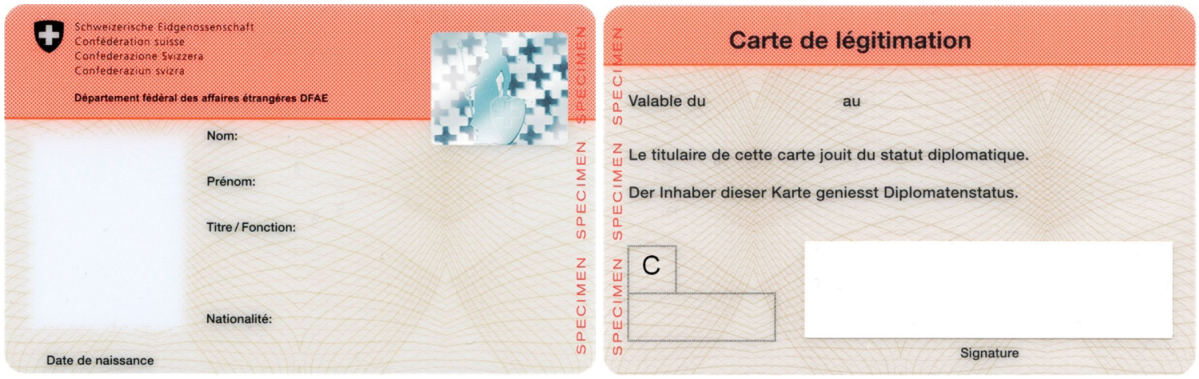


El titular de esta tarjeta goza de **estatuto diplomático**

Tarjeta de identificación del DFAE de tipo «C»

— Embajadas y misiones permanentes: miembro del personal diplomático

— Organizaciones internacionales: alto funcionario



El titular de esta tarjeta goza de **estatuto diplomático**

Tarjeta de identificación del DFAE de tipo «D»

— Embajadas y misiones permanentes: miembro del personal administrativo y técnico (AT)

El titular de esta tarjeta goza de **estatuto diplomático con excepción de la inmunidad de jurisdicción civil y administrativa que solo se concede en el ejercicio de sus funciones**

— Organizaciones internacionales: funcionario de la categoría profesional

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

Tarjeta de identificación del DFAE de tipo «E»

— Embajadas y misiones permanentes: miembro del personal de servicio y miembro del personal contratado *in situ*

— Organizaciones internacionales: funcionario de los servicios generales

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

Tarjeta de identificación del DFAE de tipo «F»

— Embajadas, misiones permanentes y organizaciones internacionales: empleado de hogar de un miembro del personal

El titular de esta tarjeta **no goza de inmunidad de jurisdicción**

Tarjeta de identificación del DFAE de tipo «G»

— Organizaciones internacionales: funcionario temporal (funcionario con contratos «de corta duración») y miembro del personal en comisión de servicios

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

Tarjeta de identificación del DFAE de tipo «H»

— Embajadas, consulados, misiones permanentes y organizaciones internacionales: persona sin privilegios ni inmunidades

El titular de esta tarjeta **no goza de inmunidad de jurisdicción ni tiene acceso al mercado de trabajo suizo**

Tarjeta de identificación del DFAE de tipo «I»

— Comité Internacional de la Cruz Roja (CICR) : colaborador del CICR

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones; no tiene privilegios aduaneros**

Tarjeta de identificación del DFAE de tipo «K»

— Consulados — tarjeta K roja: jefe de puesto de carrera y funcionario consular de carrera

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

— Consulados — tarjeta K azul: empleado consular de carrera

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

— Consulados — tarjeta K morada: miembro del personal de servicio y miembro del personal contratado *in situ*

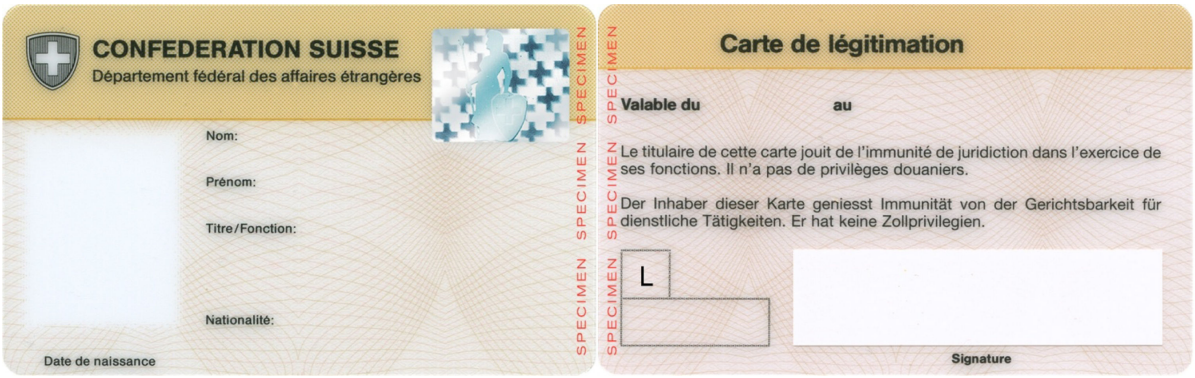
El titular de esta tarjeta **no goza de inmunidad de jurisdicción**

— Consulados — tarjeta K blanca: jefe de puesto honorario

El titular de esta tarjeta goza de **inmunidad de jurisdicción exclusivamente para las funciones consulares**

Tarjeta de identificación del DFAE de tipo «L»

— Federación Internacional de Sociedades de la Cruz Roja y de la Media Luna Roja (FISCR): colaborador de la FISCR



El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones; no tiene privilegios aduaneros**

Tarjeta de identificación del DFAE de tipo «P»

— Organización europea para la investigación nuclear (CERN): miembro del personal científico del CERN

El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

Tarjeta de identificación del DFAE de tipo «R»

— Miembros del personal no suizo de las organizaciones internacionales cuasi gubernamentales o de otros organismos internacionales y miembros de su familia que gozan del mismo estatuto.

El titular de esta tarjeta **no goza de inmunidad de jurisdicción**.

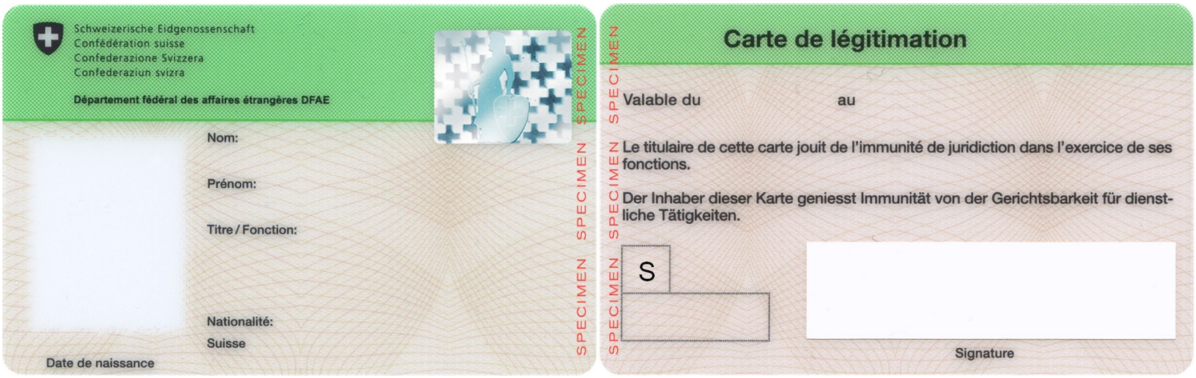
Tarjeta de identificación del DFAE de tipo «S»

Un miembro del personal de nacionalidad suiza, independientemente de la función que ocupe en la representación extranjera o en la organización internacional, tiene, en principio, una tarjeta de identificación de tipo «S». Los miembros suizos del personal contratados *in situ* por las embajadas y los consulados no tienen ninguna tarjeta. Los funcionarios temporales suizos (funcionarios con contratos de corta duración) de las organizaciones internacionales no tienen tarjeta.

— Embajadas y consulados: miembro del personal de carrera de nacionalidad suiza

— Misiones permanentes: miembro del personal de nacionalidad suiza

— Organizaciones internacionales: funcionario/colaborador de nacionalidad suiza



El titular de esta tarjeta goza de **inmunidad de jurisdicción en el ejercicio de sus funciones**

Lista de publicaciones anteriores

DO C 247 de 13.10.2006, p. 85

DO C 153 de 6.7.2007, p. 15

DO C 64 de 19.3.2009, p. 18

DO C 239 de 6.10.2009, p. 7

DO C 214 de 20.7.2012, p. 4

DO C 238 de 8.8.2012, p. 5

DO C 255 de 24.8.2012, p. 2

DO C 242 de 23.8.2013, p. 13

DO C 304 de 10.11.2010, p. 6

DO C 273 de 16.09.2011, p. 11

DO C 357 de 7.12.2011, p. 3

DO C 88 de 24.3.2012, p. 12

DO C 120 de 25.4.2012, p. 4

DO C 182 de 22.6.2012, p. 10

DO C 38 de 8.2.2014, p. 16

DO C 133 de 1.5.2014, p. 2

DO C 360 de 11.10.2014, p. 5

DO C 397 de 12.11.2014, p. 6

DO C 77 de 27.2.2016, p. 5

DO C 174 de 14.5.2016, p.12.

INFORMACIÓN RELATIVA AL ESPACIO ECONÓMICO EUROPEO

ÓRGANO DE VIGILANCIA DE LA AELC

Invitación a presentar observaciones, en aplicación del artículo 1, apartado 2, de la parte I del Protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en el ámbito de las ayudas estatales

(2016/C 236/10)

Por medio de la Decisión n.º 489/15/COL, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, el Órgano de Vigilancia de la AELC notificó a las autoridades noruegas su decisión de incoar un procedimiento con arreglo al artículo 1, apartado 2, de la parte I del Protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en relación con la medida antes mencionada.

Las partes interesadas podrán presentar sus observaciones sobre la medida en cuestión en el plazo de un mes a partir de la fecha de publicación a:

Órgano de Vigilancia de la AELC
Registro
Rue Belliard 35/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Dichas observaciones serán comunicadas a las autoridades noruegas. La identidad de las partes interesadas que presenten comentarios podrá tratarse de modo confidencial, previa solicitud por escrito en la que se aduzcan las razones para ello.

RESUMEN

Procedimiento

Las autoridades noruegas notificaron el régimen de cotizaciones de seguridad social diferenciadas por regiones para 2014-2020, de conformidad con lo dispuesto en el artículo 1, apartado 3, de la parte I del Protocolo 3, mediante una carta de 13 de marzo de 2014 ([1]). Con arreglo a dicha notificación y a la información presentada con posterioridad ([2]), el Órgano aprobó el régimen de ayudas notificado mediante su Decisión n.º 225/14/COL, de 18 de junio de 2014.

Mediante su sentencia de 23 de septiembre de 2015 en el asunto E-23/14, Kimek Offshore AS/Órgano de Vigilancia ([3]), el Tribunal de la AELC anuló parcialmente la Decisión del Órgano.

Mediante carta de 15 de octubre de 2015 ([4]), el Órgano solicitó información a las autoridades noruegas. Mediante carta de 6 de noviembre de 2015 ([5]), las autoridades noruegas respondieron a dicha solicitud de información.

Descripción de la medida

El objetivo del régimen general de cotizaciones a la seguridad social diferenciadas consiste en reducir o evitar la despoblación en las regiones menos pobladas de Noruega estimulando el empleo. El régimen de ayudas de funcionamiento compensa los costes del empleo al reducir los tipos de las cotizaciones de seguridad social en determinadas zonas geográficas. Como norma general, las intensidades de la ayuda varían en función de la zona geográfica en la que esté registrada la unidad de negocio. Con arreglo a la legislación noruega, las empresas han de registrar subunidades para cada una de las actividades empresariales realizadas por separado ([6]). Si una empresa lleva a cabo diferentes tipos de actividades empresariales, deberá registrar otras tantas subunidades por separado. Además, deben registrarse unidades separadas si las actividades se realizan en distintos emplazamientos geográficos.

([1]) Documentos n.os 702438-702440, 702442 y 702443.
([2]) Véase el apartado 2 de la Decisión n.º 225/14/COL, disponible en línea en: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf
([3]) Pendiente de publicación.
([4]) Documento n.º 776348.
([5]) Documentos n.os 779603 y 779604.
([6]) Ley sobre el registro de coordinación de las personas jurídicas (LOV-1994-06-03-15).

Como excepción respecto de la norma principal sobre la inscripción en el registro, el sistema también se aplica a las empresas registradas fuera de la zona elegible cuando contratan a trabajadores en dicha zona y cuando sus empleados participan en actividades móviles dentro de esta (que, a los efectos de la presente Decisión, se denominan «servicios ambulantes»). Esta es la norma de exención objeto de examen en la decisión en cuestión. La base jurídica nacional de este tipo de régimen es el artículo 23-2 de la Ley Nacional de la Seguridad Social ([1]). La base jurídica nacional de la exención la constituye el artículo 1(4) de la Decisión del Parlamento Noruego n.º 1482, de 5 de diciembre de 2013, sobre la determinación de los tipos impositivos, etcétera, en virtud de la Ley Nacional de la Seguridad Social.

La exención solamente se aplica cuando el trabajador pasa la mitad de sus días de trabajo o más en la zona elegible. Además, el tipo reducido solo se aplica a la parte del trabajo que se lleva a cabo allí.

Evaluación de la medida

El Órgano debe apreciar si la norma de exención es compatible con el funcionamiento del Acuerdo EEE con arreglo a su artículo 61, apartado 3, letra c), en consonancia con las directrices del Órgano de Vigilancia sobre las ayudas estatales de finalidad regional para el período 2014-2020 (en lo sucesivo, «DAR») ([2]).

La ayuda regional puede ser eficaz a la hora de promover el desarrollo económico de las zonas desfavorecidas, a condición de que se conceda para atraer inversiones adicionales o actividad económica en dichas zonas ([3]). Las ayudas regionales de funcionamiento solo pueden entrar dentro de lo previsto en el artículo 61, apartado 3, letra c), del EEE si se conceden para luchar contra los obstáculos específicos o permanentes a que tienen que hacer frente las empresas en las zonas desfavorecidas ([4]).

No cabe duda de que el ámbito geográfico de aplicación del régimen como tal se limita a las regiones desfavorecidas. El ámbito de la presente Decisión se circunscribe a la norma de exención. La cuestión consiste en determinar si dicha norma, que implica que las empresas registradas fuera de las regiones desfavorecidas contempladas por el régimen pueden beneficiarse de ayudas en virtud de dicho régimen, en la medida en que desarrollan actividades económicas en esas regiones desfavorecidas, es compatible con las normas sobre ayudas estatales. En otras palabras, ¿sirve la norma de exención para luchar contra obstáculos específicos o permanentes que afectan a las empresas en las regiones desfavorecidas?

Son las autoridades noruegas las que han de demostrar el riesgo de despoblación en caso de que no existiera la norma de exención ([5]). Las autoridades noruegas han subrayado las ventajas de la norma de exención para las empresas locales, ya que estas pueden tener acceso a una mano de obra especializada a un coste más bajo, algo que de otro modo no sería posible. Por otra parte, la norma de exención favorece una mayor competencia entre los servicios ambulantes en las zonas elegibles, lo que a su vez es beneficioso para las empresas locales (distintas de las que prestan los servicios ambulantes), ya que la reducción de los costes de los servicios ambulantes hace más atractivo y rentable que las empresas se establezcan en la zona elegible. La utilización de ayudas en virtud del régimen es una herramienta indirecta, en el sentido de que se utiliza para reducir el coste del empleo de los trabajadores como medida para reducir o evitar la despoblación. La idea es que el mercado de trabajo es el factor que tiene una influencia más importante en el lugar de residencia de las personas.

Las autoridades noruegas alegaron además que las empresas registradas fuera de la zona elegible a veces van a contratar trabajadores en las zonas elegibles. Por consiguiente, las empresas ofrecerán puestos de trabajo que, aunque sean de carácter más temporal, contribuirán al aumento de la renta salarial en las regiones elegibles, algo que también estimula la actividad económica. Las autoridades noruegas sostienen, además, que los empleados que permanecen temporalmente en la zona elegible adquieren bienes y servicios locales y, de esta manera, contribuyen a la economía local. Esto se aplica, en particular, a los trabajadores que se desplazan al lugar en cuestión especialmente para estancias de corto y medio plazo, ya que pueden alojarse en hoteles, comer en restaurantes, etc. Las autoridades noruegas han calculado el importe de la ayuda resultante de la norma de exención en un 2 % del total de ayudas para 2015, aunque subrayan que es una estimación incierta. Un 2 % equivale, aproximadamente, a 19 millones EUR ([6]). El Órgano invita a las autoridades noruegas a aportar información más precisa acerca del efecto financiero de la norma.

Aparte de estas observaciones de carácter general, las autoridades noruegas no han demostrado el riesgo de despoblación de la zona en caso de que no existiera la norma de exención. El Órgano considera que para que una medida cumpla los requisitos de las DAR debe tener efectos que rebasen el aumento marginal de las posibilidades de empleo temporal y del gasto en la zona elegible. A tenor de todo ello, el Órgano invita a las autoridades noruegas a facilitar más información al objeto de demostrar el riesgo de despoblación en caso de no existir la norma de exención.

([1]) LOV-1997-02-28-19.
([2]) DO L 166 de 5.6.2014, p. 44, y suplemento EEE n.º 33 de 5.6.2014, p. 1.
([3]) Apartado 6 de las DAR.
([4]) Apartado 16 de las DAR.
([5]) Apartado 43 de las DAR.
([6]) Basándose en el presupuesto notificado para 2013; véase el apartado 49 de la Decisión del Órgano de Vigilancia n.º 225/14/COL.

En lo que se refiere a los efectos de la norma de exención sobre la competencia y el comercio, las autoridades noruegas sostienen que aquella crea unas condiciones de igualdad para todas las empresas activas en las zonas menos favorecidas, ya que se aplica indistintamente a cualquier empresa con sede en el EEE. A consecuencia de ello, se evita un perjuicio excesivo sobre la competencia. El Órgano considera que este es un rasgo positivo, a la luz de los apartados 3 y 53 de las DAR. No obstante, las empresas registradas en la zona elegible pueden, en general, enfrentarse a más dificultades permanentes que las empresas que solo envían a sus empleados a trabajar en la zona de forma no permanente. Las autoridades noruegas sostienen que las empresas registradas fuera de la zona elegible pueden sufrir una desventaja competitiva frente a las empresas locales, debido a gastos de transporte y alojamiento del personal, entre otras cosas. Las autoridades noruegas no han presentado ningún dato o argumento adicional en apoyo de esta hipótesis. El Órgano pide a las autoridades noruegas que aclaren por qué la norma de exención no tiene un perjuicio excesivo sobre la competencia y que presenten más información para respaldar este extremo.

Las autoridades noruegas han insistido en que es evidente que la regla de exención tiene un efecto incentivador. El efecto incentivador de una ayuda no puede suponerse sin más. Aunque no es necesario presentar pruebas individuales de que la ayuda en el marco de un régimen ofrece a cada beneficiario un incentivo para llevar a cabo una actividad que de otra forma no se hubiera efectuado, el efecto incentivador debe basarse, al menos, en una sólida teoría económica. No basta con referirse simplemente a una supuesta obviedad. Si bien es cierto que la norma de exención para empresas registradas fuera de las zonas elegibles reduce los costes laborales de los servicios ambulantes en las zonas elegibles, las autoridades noruegas no han presentado pruebas o argumentos en el sentido de que es probable que, en caso de no existir la ayuda, el nivel de actividad económica en la zona se reduciría significativamente debido a los problemas que la ayuda pretende resolver ([1]).

Las autoridades noruegas han explicado que las empresas que realizan servicios ambulantes pueden registrar en cierta medida subunidades en la zona elegible. Además, están obligadas a hacerlo cuando al menos un trabajador lleva a cabo su trabajo para la unidad matriz en una zona separada, y la empresa puede ser visitada allí.

Las autoridades noruegas sostienen que, en caso de no existir la norma de exención para los servicios ambulantes en la zona elegible, se produciría una diferencia de trato injustificada dependiendo del hecho de si el servicio que proporciona la empresa había establecido una subunidad en la zona elegible.

En primer lugar, el Órgano no ve con claridad lo que implica el requisito de que «al menos un empleado trabaja para la unidad matriz en una zona separada, y la empresa puede ser visitada». Por lo tanto, el Órgano invita a las autoridades noruegas a aclarar este extremo.

En segundo lugar, el principio de igualdad de trato constituye un principio general del Derecho del EEE. No obstante, ello no puede servir de base por sí solo para justificar la norma de exención, toda vez que esta debe ser compatible con el funcionamiento del Acuerdo EEE.

En conclusión, la ausencia de la información pertinente, según lo descrito anteriormente, lleva al Órgano a albergar dudas sobre la compatibilidad de la norma de exención con el funcionamiento del Acuerdo EEE.

EFTA SURVEILLANCE AUTHORITY DECISION

No 489/15/COL

of 9 December 2015

opening a formal investigation into the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020

(Norway)

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61,

Protocol 26 to the EEA Agreement,

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

Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(2) of Part I and Articles 4(4) and 6(1) of Part II,

([1]) Apartado 71 de las DAR.

Whereas:

I. FACTS

1. Procedure

(1) The Norwegian authorities notified the regionally differentiated social security contributions scheme 2014-2020 pursuant to Article 1(3) of Part I of Protocol 3 by letter of 13 March 2014 [1]. On the basis of that notification and information submitted thereafter [2], the Authority approved the notified aid scheme by its Decision No 225/14/COL of 18 June 2014.

(2) By its judgment of 23 September 2015 in case E-23/14 *Kimek Offshore AS* v *ESA* [3] the EFTA Court annulled, in part, the Authority's decision.

(3) By letter dated 15 October 2015 [4], the Authority requested information from the Norwegian authorities. By letter dated 6 November 2015 [5], the Norwegian authorities replied to the information request.

2. The scheme as such is not the subject of the formal investigation

(4) By its judgment the EFTA Court partly annulled the Authority's decision approving the aid scheme. The aid scheme as such is not subject to the renewed scrutiny carried out by the Authority in the present formal investigation. The subject of this formal investigation is merely the part of the scheme (an exemption rule for ambulant services) for which the Authority's approval was annulled.

3. The scheme

3.1 *Objective*

(5) The objective of the general scheme on differentiated social security contributions as such is to reduce or prevent depopulation in the least inhabited regions in Norway, by stimulating employment. The operating aid scheme offsets employment costs by reducing the social security contribution rates in certain geographical areas. As a main rule, the aid intensitites vary according to the geographical area in which the business unit is registered. The rules on registration are explained in greater detail below.

3.2 *National legal basis*

(6) The national legal basis for the scheme as such is Section 23-2 of the National Insurance Act [6]. This provision sets out the employer's general obligation to pay social security contributions calculated on the basis of gross salary paid to the employee. According to paragraph 12 of that section, the Norwegian Parliament may adopt regionally differentiated rates, as well as specific provisions for undertakings within certain sectors. Thus, it is the National Insurance Act, in conjunction with the annual decisions of the Norwegian Parliament, that forms the national legal basis for the scheme.

(7) For further detail on the aid scheme as such, reference is made to the Authority's Decision No 225/14/COL.

3.3 *Rules on registration*

(8) As a main rule, aid eligibility depends on whether a business is registered in the eligible area. As noted above, the main rule of the scheme is that aid intensities vary according to the geographical area in which the business is registered.

(9) Norwegian law requires undertakings to register sub-units for each separate business activity performed [7]. If an undertaking performs different kinds of business activities, separate sub-units must be registered. Moreover, separate units must be registered if the activities are performed in different geographical locations.

(10) According to the Norwegian authorities, the 'separate business activitiy' criterion is met when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there. Each sub-unit forms its own basis for the calculation of the differentiated social security contribution, depending on their registered location. Thus, an undertaking registered outside the area eligible for aid under the scheme will be eligible for aid if, and in so far as, its economic activities are performed within a sub-unit located within the eligible area.

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[1] Documents No 702438-702440, 702442 and 702443.
[2] See paragraph 2 of Decision No 225/14/COL, available online: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf
[3] Not yet reported.
[4] Document No 776348.
[5] Documents No 779603 and 779604.
[6] LOV-1997-02-28-19.
[7] The Act on the Coordinating Register for Legal Entities (LOV-1994-06-03-15).

3.4 *Ambulant services – the measure under scrutiny*

(11) By way of exemption from the main rule on registration, the scheme also applies to undertakings registered outside the eligible area where they hire out workers to the eligible area and where their employees are engaged in mobile activities within the eligible area (for the purposes of this decision, this is referred to as 'ambulant services'). This is the exemption rule under scrutiny in the decision at hand. The national legal basis for that exemption is provided for by section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 on determination of the tax rates etc. under the National Insurance Act for 2014.

(12) The exemption applies only when the employee spends half or more of his working days in the eligible area. Further, the reduced rate is only applicable for the part of the work carried out there. As a principal rule, the tax registration period is one calendar month.

(13) This entails that if an employee of an Oslo-registered entity (Oslo is in Zone 1, an ineligible zone, where the rate therefore is the standard 14,1 %) completes 60 % of his work one calendar month in Vardø (which is in Zone 5 where the applicable rate is 0 %) and the rest in Oslo, the undertaking will be eligible for the zero-rate on the salary to be paid for the work carried out in Vardø, but not for the work carried out in Oslo.

4. **The judgment of the EFTA Court**

(14) The EFTA Court annuled the Authority's decision in so far as it closed the preliminary investigation as regards the aid measure in section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 on determination of the tax rates etc. under the National Insurance Act for 2014. Section 1(4) is drafted in such a way as to conflate, together with the exemption rule (which is the subject of the present decision), an anti-circumvention measure designed to prevent undertakings from claiming aid under the scheme by virtue of simply registering their business within an area with a lower rate of social security contributions, even if they then proceed to conduct ambulatory activities or hire out their employees to work in an area with a higher rate. The anti-circumvention measure is not subject to the present procedure ([1]).

5. **Comments by the Norwegian authorities**

(15) The Norwegian authorities argue that the exemption rule for ambulant services is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) and that it is in line with the Authority's Guidelines on Regional State Aid for 2014-2020 (the RAG) ([2]).

(16) The Norwegian authorities have explained that the exemption rule accounts for about two percent of the total aid granted under the scheme for 2015. They stress that this calculation is based on uncertain estimates.

(17) The Norwegian authorities have explained that in Norway, access to employment is the most influential factor when it comes to peoples' choice of residence. The social security contribution is as a main rule calculated on the basis of the rate applicable in the zone in which the employer is considered to carry out business activity. This rule is based on the premise that only undertakings performing economic activity in the eligible area should receive aid, and only to the extent that they are performing business activities in that area. This is a fundamental premise for the aid scheme.

(18) Where a company is registered, is not, and should not be, decisive. There are many sectors that frequently provide ambulant services. As an example, it would be too burdensome to require all construction firms to register their activities locally wherever they were to carry out work in order to be eligible for reduced social security rates. Neither Article 61(3)(c) nor the RAG or the GBER ([3]) contain requirements on where regional aid beneficiaries need to be registered. A formalistic approach where the registered location of the beneficiary is decisive in all cases has no basis in Article 61(3)(c). To the contrary, it would be difficult to reconcile with the RAG which focusses on whether the aid promotes economic activity in disadvantaged areas and not whether beneficiaries are registered within the area covered by the scheme. The underlying realities, i.e. whether the undertaking carries out economic activity within the eligible area, should be decisive. Furthermore, undertakings performing ambulant services can to some extent register sub-units in the eligible area. In the absence of the exemption rule for ambulant serices in the eligible area, there would be an unjustified difference in treatment depending on whether the service providing undertaking had established a sub-unit in the eligible area.

([1]) See Order of the EFTA Court of 23.11.2015 in Case E-23/14 INT *Kimek Offshore AS* v *ESA* (not yet reported).
([2]) OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p. 1.
([3]) The General Block Exemption Regulation (GBER). Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), incorporated into the EEA Agreement by EEA Joint Committee Decision No 152/2014 (OJ L 342, 27.11.2014, p. 63 and EEA Supplement No 71, 27.11.2014, p. 61) at point 1j of Annex XV to the EEA Agreement.

(19) The Norwegian authorities contend that the exemption rule contributes to an objective of common interest in a number of ways. They firstly note that undertakings in the eligible area can access, at a lower cost, specialised labour that would otherwise not be available. Secondly, the rule leads to increased competition between ambulant services in eligible areas. This is beneficial for local undertakings, other than those providing ambulant services, as lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. Thirdly, employees with a temporal stay in the eligible area will buy local goods and services and thereby contribute to the local economy. This applies in particular to employees commuting to the location especially in the short or medium term as they are likely to stay in hotels, eat in restaurants etc. Fourthly, undertakings located in central areas may also hire personnel residing in the area where the ambulant services are performed. Even if the jobs are temporary in nature, they will contribute to increased wage income in the eligible regions, which also stimulates economic activity. Finally, undertakings registered outside the eligible zone may have a competitive disadvantage compared to local firms due to *i.a.* costs of transporting and lodging of personnel.

(20) In the view of the Norwegian authorities, it is evident that the exemption rule has an incentive effect as it reduces labour costs for ambulant services.

(21) Finally, the Norwegian authorities stress that the exemption rule creates a level playing field for all undertakings active in the disadvantages areas. The rule applies equally to any EEA-based undertaking. This ensures that undue adverse effects on competition are avoided.

II. **ASSESSMENT**

1. **The presence of state aid**

(22) 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.*'

(23) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: (i) there must be an intervention by the state or through state resources, (ii) that intervention must confer a selective economic advantage on the recipients, (iii) it must be liable to affect trade between EEA States and (iv) it must distort or threathen to distort competition.

(24) In Decision No 225/14/COL, the Authority concluded that the scheme on differentiated social security contributions 2014-2020 constitutes an aid scheme. The Authority refers to its reasoning in paragraphs 68-74 of that decision. The exemption rule for ambulant services is part of the provisions providing for that aid scheme. It increases the scope of the scheme in the sense that it widens the circle of potential beneficiaries to undertakings that are not registered in the eligible areas. As with the other aid granted under the scheme, extending the scheme to the undertakings registered outside of the eligible areas results in state resources conferring selective advantages on undertakings. These advantages are liable to affect trade and distort competition.

2. **Procedural requirements**

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

(26) The Norwegian authorities implemented the exemption rule after the Authority approved it by Decision No 225/14/COL. With the annulment of the Authority's approval of the rule by the EFTA Court, the aid has become unlawful.

3. **Compatibility of the aid**

(27) The Authority must assess whether the exemption rule is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in line with the RAG.

(28) The exemption rule for ambulant services entitles undertakings that are not registered in the eligible area to benefit from reduced social security charges when and to the extent that they carry out economic activities in the registered area. Neither Article 61(3)(c) EEA nor the RAG (nor the regional aid rules in the GBER) formally require that regional aid beneficiaries are registered in the assisted areas.

(29) Regional aid can be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas [1]. Regional operating aid can only fall under Article 61(3)(c) EEA if it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions [2].

[1] Para. 6 of the RAG.
[2] Para. 16 of the RAG.

(30) There is no question that the geographical scope of the scheme as such is restricted to disadvantaged regions. The scope of this decision is limited to the exemption rule. The question is whether that rule, which entails that undertakings registered outside the disadvantaged regions covered by the scheme can benefit from aid under the scheme to the extent that they carry out economic activities in the disadvantaged regions is compatible with the state aid rules. In other words, does the exemption rule tackle specific or permanenet handicaps faced by undertakings in the disadvantaged regions?

(31) It is for the Norwegian authorities to demonstrate the risk of depopulation in the absence of the exemption rule ([1]). The Norwegian authorities have underlined the benefits of the exemption rule for local undertakings. They can access, at a lower cost, specialised labour that would otherwise not be available. Moreover, the exemption rule leads to increased competition between ambulant services in the eligible areas, which again is beneficial for local undertakings (other than those providing ambulant services) since lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. The use of aid under the scheme is an indirect tool in the sense that it is used to reduce the cost of employing workers as a measure to reduce or prevent depopulation. The idea is that the labour market is the most important factor influencing where people live.

(32) The Norwegian authorities have further argued that the firms registered outside the eligible area occasionally will hire workers in the eligible areas. Thereby the firms will provide jobs that, although of a more temporary nature, will nevertheless contribute to increased wage income in the eligible regions. This also stimulates economic activity. The Norwegian authorities furthermore argue that employees who temporarily stay in the eligible area will buy local goods and services and thereby contribute to the local economy. This applies in particular to employees commuting to the location especially on short or medium term as they are likely to stay in hotels, eat in restaurants, etc. The Norwegian authorities have estimated the amount of aid resulting from the exemption rule to be two percent of the total aid for 2015 which they stress is an uncertain estimate. Two percent amounts to approximately EUR 19 million ([2]). The Authority invites the Norwegian authorities to provide more precise information about the financial effect of the rule.

(33) Apart from the above remarks of a general nature, the Norwegian authorities have not demonstrated the risk of depopulation of the relevant area in the absence of the exemtion rule. It is the view of the Authority that a measure, in order to meet the requirements of the RAG, must have effects exceeding a marginal increase of temporary employment possibilities and spending in the eligible area. On this basis, the Authority invites the Norwegian authorities to provide more information to demonstrate the risk of depopulation in the absence of the exemption rule.

(34) In terms of effect on competition and trade of the exemption rule, the Norwegian authorities argue that the exemption rule creates a level playing field for all undertakings active in the disadvantaged areas as it applies equally to any EEA-based undertaking. The consequence is that it ensures that undue adverse effects on competition are avoided. It is the view of the Authority that this is a positive feature in light of paras. 3 and 53 of the RAG. However, the undertakings registered within the eligible area may, in general, face more permanent difficulties than the undertakings that merely send their employees to work in the area on a non-permanent basis. The Norwegian authorities argue that undertakings registered outside the eligible zone may have a competitive disadvantage compared to local firms due to *i.a.* costs of transporting and lodging of personnel. The Norwegian authotities have not presented any data or further reasoning to back up this assumption. The Authority invites the Norwegian authorities to further clarify why it is that the exemption rule does not have undue adverse effects on competition and to submit further information to back this up.

(35) The Norwegian authorities have stressed that it is evident that the exemption rule has an incentive effect. Incentive effect of an aid cannot merely be assumed. While it is not necessary to provide individual evidence that aid under a scheme provides each beneficiary with an incentive, on an individual basis, to carry out an activity it would not otherwise have carried out, the incentive effect must, at the least, be based on sound economic theory. It is not sufficient merely to refer to an alleged obviousness. While it is true that the exemption rule for companies registered outside the eligible areas reduces labour costs for ambulant services in the eligible areas, the Norwegian authorities have not provided evidence or arguments to the effect that it is likely that, in the absence of aid, the level of economic activity in the area would be significantly reduced due to the problems that the aid is intended to address ([3]).

(36) The Norwegian authorities have explained that undertakings performing ambulant services to some extent can register sub-units in the eligible area. Moreover, they are required to do so when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there.

(37) The Norwegian authorities argue that in the absence of the exemption rule for ambulant services in the eligible area, there would be an unjustified difference in treatment depending on whether the service providing undertaking had established a sub-unit in the eligible area.

([1]) Para. 43 of the RAG.
([2]) Based on the notified 2013 budget, see para. 49 of the Authority's Decision No 225/14/COL.
([3]) Para. 71 of the RAG.

(38) Firstly, it is not clear to the Authority what the requirement that 'at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there' entails. The Authority therefore invites the Norwegian authorities to clarify this.

(39) Secondly, the the principle of equal treatment is a general principle of EEA law. However, this cannot in and of itself serve as a basis to justify the exemption rule. The exemption rule must itself be compatible with the functioning of the EEA Agreement.

(40) In conclusion, the absence of the relevant information, as described above, leads the Authority to have doubts about the compatibility of the exemption rule with the functioning of the EEA Agreement.

4. **Conclusion**

(41) As set out above, the Authority has doubts as to whether the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020 is compatible with the functioning of the EEA Agreement.

(42) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measure is compatible with the functioning of the EEA Agreement.

(43) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by 10 January 2016 their comments and to provide all documents, information and data needed for the assessment of the compatibility of the measure in light of the state aid rules.

(44) The Authority reminds the Norwegian authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless this recovery would be contrary to a general principle of EEA law, such as the protection of legitimate expectations.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020.

Article 2

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure by 10 January 2016.

Article 3

The Norwegian authorities are requested to provide by 10 January 2016, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 9 December 2015

For the EFTA Surveillance Authority

Sven Erik SVEDMAN
President

Helga JÓNSDÓTTIR
College Member

Invitación a presentar observaciones en aplicación del artículo 1, apartado 2, de la Parte I del Protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia sobre ayudas estatales en relación con la posible ayuda a Hurtigruten ASA en el marco del acuerdo costero 2012-2019 para Hurtigruten Maritime Services

(2016/C 236/11)

Mediante la Decisión n.º 490/15/COL, de 9 de diciembre de 2015, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, el Órgano de Vigilancia de la AELC incoó el procedimiento establecido en el artículo 1, apartado 2, de la Parte I del Protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia. El Gobierno noruego fue informado mediante una copia de la Decisión.

Mediante el presente anuncio, el Órgano de Vigilancia de la AELC invita a los Estados de la AELC, a los Estados miembros de la UE y a las terceras partes interesadas a que presenten sus observaciones sobre dicha medida en el plazo de un mes, a partir de la fecha de publicación de la presente comunicación, enviándolas a:

Órgano de Vigilancia de la AELC
Registro
Rue Belliard 35/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Dichas observaciones serán comunicadas a las autoridades noruegas. Podrá preservarse la identidad de las partes interesadas que presentan observaciones previa solicitud por escrito aduciendo las razones para ello.

RESUMEN

Antecedentes

La empresa Hurtigruten ASA (Hurtigruten) opera servicios de transporte marítimo que consisten en el transporte combinado de personas y mercancías en la línea costera de Noruega, entre Bergen y Kirkenes.

Tras un procedimiento de licitación, el 13 de abril de 2011 se firmó un acuerdo con Hurtigruten («el acuerdo») para la contratación de servicios para la ruta costera Bergen-Kirkenes entre el 1 de enero de 2012 y el 31 de diciembre de 2019. En virtud del acuerdo, Hurtigruten realiza a lo largo de todo el año servicios diarios con escala en 32 puertos intermedios entre Bergen y Kirkenes. Para los trayectos Kirkenes-Tromsø y Tromsø-Kirkenes también se ofrece transporte de mercancías. Los servicios se prestan de acuerdo con determinadas capacidades y requisitos aplicables a los buques, tal como estipula el contrato. Los buques destinados a las rutas costeras deben tener, como mínimo, una capacidad de 320 pasajeros, con 120 plazas en camarotes, y una capacidad de carga de 150 europalés en bodega de carga de altura normal. Deben asimismo cumplir los requisitos legales y técnicos indicados en la sección 4.4 del pliego de condiciones.

Por los servicios establecidos en el acuerdo y por sus ocho años de vigencia, las autoridades noruegas pagan una compensación total de 5 120 millones NOK.

Evaluación de la compensación concedida desde la perspectiva de las ayudas estatales

El único criterio de la noción de ayuda estatal que está en cuestión es si el contrato confirió una ventaja económica selectiva indebida a Hurtigruten.

Ventaja económica selectiva a Hurtigruten

El Órgano evaluó los cuatro requisitos de la sentencia *Altmark* [1] y constató que por ahora no parece haberse cumplido ninguno de ellos, lo cual confiere a Hurtigruten una ventaja selectiva en el sentido del artículo 61, apartado 1, del Acuerdo EEE.

En cuanto al primer requisito (definición clara de obligaciones de servicio público), el Órgano duda de si Noruega puede caracterizar la exigencia de capacidad de reserva de la sección 4-2 del acuerdo como servicio de interés económico

[1] Sentencia del asunto C-280/00, *Altmark Trans GmbH y Regierungspräsidium Magdeburg* contra *Nahverkehrsgesellschaft Altmark GmbH* (EU:C:2003:415, apartados 87 a 93).

general (SIEG) y pide a las autoridades noruegas que presenten una justificación objetiva en relación con la necesidad de obligación de servicio público (OSP), teniendo en cuenta las fluctuaciones estacionales del transporte comercial de pasajeros.

En el segundo requisito (los parámetros para el cálculo de la compensación deben establecerse previamente de forma objetiva y transparente), el Órgano duda sobre si el requisito de capacidad de reserva está vinculado al número real de pasajeros en régimen de OSP. No ha habido, por ejemplo, una metodología objetiva y transparente para calcular de antemano el coste por pasajero/kilómetro. Hurtigruten ha establecido un presupuesto aparte con todos los costes e ingresos de las rutas OSP, pero esta contabilidad separada no persigue establecer previamente los parámetros de la compensación directamente vinculados a las pérdidas y los costes efectivos (capacidad y coste por pasajero) contraídos por Hurtigruten.

Por lo que respecta al tercer requisito, el Órgano duda de que las autoridades noruegas hayan garantizado que la compensación no supere el nivel necesario para cubrir total o parcialmente los gastos ocasionados por la ejecución de la OSP, teniendo en cuenta los ingresos correspondientes y un beneficio razonable por la ejecución de esta obligación.

El Órgano no puede actualmente excluir que se haya compensado en exceso a Hurtigruten por la prestación del servicio público. Para llegar a esta conclusión preliminar, el Órgano consideró lo siguiente:

i) Hurtigruten no reserva capacidad para pasajeros de servicio público, sino que vende dicha capacidad a pasajeros de crucero, mientras mantiene al mismo nivel la compensación por servicio público,

ii) la compensación por la prestación del servicio público ha aumentado sustancialmente en comparación con el anterior período contractual,

iii) Hurtigruten sigue recibiendo una compensación por servicios no prestados, y

iv) Hurtigruten sigue intentando conseguir precios más bajos para las tasas portuarias, mientras mantiene al mismo nivel la compensación por servicio público;

Por último, por lo que respecta al cuarto requisito (un procedimiento de contratación pública o un análisis comparativo de los costes con un operador eficiente), el Órgano observa que a la licitación se presentó una sola oferta, la de Hurtigruten, y duda de que tal procedimiento pueda considerarse suficiente para garantizar «el menor coste para la colectividad». En efecto, Hurtigruten tenía una ventaja competitiva importante que reforzó su posición en el procedimiento de licitación, pues ya disponía de buques adaptados a los requisitos del pliego de condiciones.

Además, según el pliego de condiciones, la asignación de la ejecución de la OSP se publicó con tres alternativas, lo que da a entender la existencia de más información o criterios de ponderación entre dichas alternativas. Dado que esta información no se incluyó en la documentación de la licitación, el Órgano duda de que el diseño de la misma ofreciese incentivos a potenciales licitadores, aparte de Hurtigruten, que hubieran estado dispuestos a presentar ofertas de conformidad con los requisitos de las tres diferentes alternativas y para otra alternativa que la realmente escogida.

Las autoridades noruegas no han presentado información alguna sobre el análisis comparativo de costes con un operador eficiente.

Evaluación de la compatibilidad

La compatibilidad de la compensación por servicio público para el transporte marítimo se determina sobre la base del artículo 59, apartado 2, del Acuerdo EEE, leído en relación con el Marco para ayudas estatales en forma de compensación por servicio público del Órgano («el Marco») ([2]).

([2]) Disponible en http://www.eftasurv.int/media/state-aid-guidelines/Part-VI---Framework-for-state-aid-in-the-form-of-public-service-compensation.pdf

Los principios expuestos en el marco solo se aplican a las compensaciones por servicio público en la medida en que constituyan ayuda estatal que no esté cubierta por la Decisión 2012/21/UE de la Comisión ([3]), relativa a la aplicación de las disposiciones del artículo 106, apartado 2, del Tratado de Funcionamiento de la Unión Europea a las ayudas estatales en forma de compensación por servicio público concedidas a algunas empresas encargadas de la gestión de servicios de interés económico general.

El Órgano no ha recibido información alguna de las autoridades noruegas sobre las consideraciones de compatibilidad y tiene dudas sobre si el acuerdo con Hurtigruten es compatible con el funcionamiento del Acuerdo EEE.

Conclusión

A la vista de las anteriores consideraciones, el Órgano de Vigilancia ha decidido incoar el procedimiento de investigación formal, de acuerdo con lo establecido en el artículo 1, apartado 2, de la Parte I del Protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia. Se invita a las partes interesadas a que presenten sus observaciones en el plazo de un mes a partir de la publicación del presente anuncio en el *Diario Oficial de la Unión Europea*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 490/15/COL

of 9 December 2015

opening the formal investigation procedure on the Coastal Agreement for Hurtigruten Maritime Services 2012-2019

(Norway)

[NON-CONFIDENTIAL VERSION]

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 59(2) and 61,

Protocol 26 to the EEA Agreement,

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

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

Whereas:

I. **FACTS**

1. **Procedure**

(1) On 28 April 2014 the Authority received by e-mail a complaint about alleged incompatible aid to Hurtigruten ASA ('Hurtigruten') under the Coastal Agreement for the Bergen – Kirkenes route ('Hurtigruten Agreement' or 'HA') for the period 1 January 2012 to 31 December 2019.

(2) A second complaint referring to the same Coastal Agreement was received on 9 July 2014. The two complaints are independent, but there are certain overlapping issues. Given that both complaints refer to the same HA, the present decision will treat them jointly and refer to them as 'the complaints' (reference will also be made to 'the complainants') throughout the text.

(3) By letter dated 13 June 2014 (supplemented by a subsequent letter of 10 July 2014), the Authority requested information from the Norwegian authorities. By letter dated 22 September 2014, the Norwegian authorities replied to the information request. An additional request for information was sent to the Norwegian authorities on 21 November 2014, to which the Norwegian authorities replied by letter dated 16 January 2015.

([3]) DO L 7 de 11.1.2012, p. 3, incorporada en el punto 1h del anexo XV del Acuerdo EEE.

2. **Background – the Hurtigruten Agreement**

(4) Hurtigruten operates transport services consisting of the combined transport of persons and goods along the Norwegian coast from Bergen to Kirkenes, as illustrated in the diagram below:

Diagram 1 – The Bergen – Kirkenes coastal route

(5) The operation of the service for parts of the period 1 January 2005 to 31 December 2012 was the subject of the Authority's Decision No 205/11/COL. ([4]) In that Decision the Authority concluded that the measures involved entailed state aid that was incompatible with the functioning of the EEA Agreement in so far as they constituted a form of overcompensation for a public service obligation, and ordered the recovery of the aid.

(6) The operation of the service for the period 1 January 2012 to 31 December 2019 was the subject of a tender procedure initiated on 30 June 2010, when the tender specifications were published on Doffin (online database for public procurement). ([5])

(7) Following this tender procedure, and on the basis of a bid submitted on 8 November 2010, a contract for the procurement of services for the Bergen – Kirkenes coastal route for the period 1 January 2012 to 31 December 2019 was signed with Hurtigruten on 13 April 2011. Under this contract, Hurtigruten shall perform daily sailings throughout the year with calls at 32 intermediate defined ports between Bergen and Kirkenes. For the Tromsø – Kirkenes and Kirkenes – Tromsø routes, freight transport shall also be provided. The services shall be operated in line with certain capacity and vessel requirements, as stipulated in the contract. Vessels used on the coastal route shall as a minimum have a passenger capacity for 320 passengers, berth capacity in cabins for 120 passengers and freight capacity for 150 euro pallets in a cargo hold with a normal load height. They shall also meet legal and technical requirements as indicated in section 4.4 of the tender specifications.

(8) The maritime services for the Bergen – Kirkenes route are based on maximum fares as regards port-to-port passengers (i.e. public service passengers), which must be approved by the Norwegian authorities. According to the HA, '"[p]ort-to-port passengers" are passengers who purchase tickets for travelling on a chosen route in accordance with the normal tariff, with any supplement for cabins and/or meals at their option. Prices for supplementary services must correspond to published prices for the selected standard of cabin and meal. The overall price must in such cases equal the sum of the ticket price and individual prices of the selected supplementary services.' An approved fare is taken to mean the normal fares tariff that applied on this route on 1 October 2004, adjusted in line with the Consumer Price Index. Any subsequent changes to the normal tariff must be approved by the Norwegian authorities.

([4]) OJ L 175, 5.7.2012, p. 19 and EEA Supplement No 37, 5.7.2012, p. 1. See also Joined Cases E-10/11 and E-11/11 *Hurtigruten* [2012] EFTA Ct. Rep. 758, upholding the Authority's Decision.

([5]) See www.doffin.no.

(9) For other passengers, Hurtigruten is free to set its prices. According to the HA, '"[o]ther passenger" are those who are not "port-to-port passengers". In other words, they are passengers who purchase travel products for specific routes, defined by the supplier, and which include at least one overnight cabin stay and at least one meal on board, where the supplier has published a combined price for the items included and which cannot be broken down into the individual published prices for the same items, including that the passengers will not be entitled to defined discounts on the travel component of the product. Other passengers also include those purchasing a travel product, defined by the supplier, with at least the above-mentioned supplementary services at a combined price, specified per day, but where the passengers themselves select the route where these conditions apply.' The same applies to cabin and meal prices, as well as to freight transport.

(10) For the services covered by the HA, the Norwegian authorities pay a total compensation of NOK 5120 million for the eight years' duration of the agreement, expressed in 2011 prices, in accordance with Statistics Norway's cost index for domestic sea transport. ([6]) The compensation allocation for each individual year is as follows:

Table 1 – Annual Compensation under the HA

2012	NOK 700 million
2013	NOK 683 million
2014	NOK 666 million
2015	NOK 649 million
2016	NOK 631 million
2017	NOK 614 million
2018	NOK 597 million
2019	NOK 580 million

(11) According to the HA, Hurtigruten is obliged to keep separate accounts for the activities on the Bergen – Kirkenes route and other activities and routes outside the scope of the HA. ([7]) In addition, Hurtigruten is obliged to keep separate accounts for the public service obligation routes ('PSO routes') of the Bergen – Kirkenes main coastal route and the commercial part of the same route.

3. **The complaints** ([8])

(12) Both complainants have requested confidential treatment.

(13) The complainants' argument that Hurtigruten receives state aid in the form of overcompensation, violating thus Articles 61 and 59 of the EEA Agreement, is centred around the following allegations:

1. The compensation for providing the PSO routes has increased substantially as compared to the previous contract period.

2. Hurtigruten continues to receive compensation for services that are not rendered:

   a. Hurtigruten has cancelled all sailings to and from the port of Mehamn from 6 January 2014 onwards without any objective justification or professional verification, after having itself partially demolished the terminal quay in April 2012, which Hurtigruten was actually using to dock for over 20 months. At the same time, the corresponding compensation granted by the Norwegian authorities has not been reduced, enabling Hurtigruten to receive monthly cost savings amounting to NOK 314 500. As a result, both the second and third Altmark conditions would not be fulfilled. The second condition is not fulfilled because the Norwegian authorities have not established a framework or policy for objectively and professionally evaluating loss of service after technical or operational claims by the company, and have not engaged any agency to verify the contested claims. The third condition would not be fulfilled, according to the complainants, because Hurtigruten is paid full compensation for PSO routes where it enjoys a substantial cost reduction as a result of the interruption of the services.

   b. Numerous complaints from several ports and regional authorities regarding frequent and arbitrary Hurtigruten cancellations have been dismissed by the Norwegian authorities and have not resulted in any reduction of the compensation. According to the complainants, certain ports are especially plagued by cancellations due to low passenger numbers and low profitability, especially during the winter season.

([6]) If Statistics Norway's cost index is unavailable, Statistics Norway's Consumer Price Index would be used.

([7]) As mentioned in the Authority's Decision No 205/11/COL *'[i]n addition to the service covered by the Hurtigruten Agreement, Hurtigruten is a commercial operator and offers round trips, excursions, and catering on the route Bergen – Kirkenes. Moreover, in connection with this route, Hurtigruten also provides transport services in the Geiranger fjord, outside the scope of the Hurtigruten Agreement. Furthermore, Hurtigruten operates a number of different cruises in different European states, Russia, Antarctica, Spitsbergen and Greenland'*, section 1.2.

([8]) Doc Nos 748323 and 715314.

The complainants particularly question the *force majeure* definition of section 8 of the HA referring to 'extreme weather conditions' without the use of objective criteria. ([9]) They also refer to such conditions as not constituting *force majeure* in line with section 8 of the HA, which particularly states that '[o]bstacles that the contracting party should have considered upon entering into the agreement, or could reasonably be expected to avoid or circumvent, shall not be considered to constitute *force majeure*'. At the same time, the complainants question Hurtigruten's discretion to abuse the absolute sovereignty of the master of the ship, when justifying cancellations that are not due to scheduled maintenance or technical reasons pursuant to section 4-1(3) of the HA.

In conclusion, the complainants submit that the cancellations that do not result in any reduction of the compensation have an adverse effect on the performance of the PSO routes and do not fulfil the second and third *Altmark* conditions.

3. Hurtigruten has shown reluctance to pay port fees, rent and service charges. It stopped paying from January 2014 until May 2014. Furthermore, it attempts to secure special price agreements and seeks repayments of such costs from all relevant ports going back to 2011, while maintaining the public service compensation at the same level.

4. Hurtigruten does not reserve capacity for public service passengers, but rather sells the berth capacity to cruise passengers. Hence, Hurtigruten is paid twice for the same capacity, which provides it with an advantage of NOK 50 to 100 million per year.

4. **Comments by the Norwegian authorities** ([10])

(14) On the allegation that the compensation for the PSO routes under the HA is much higher than under the former agreement of 2005-2012, the Norwegian authorities submit that this reflects the actual costs of running the service with the conditions set in the tender specifications. In this regard, it is also submitted that Hurtigruten suffered considerable losses in the period 2005-2010 while running its PSO routes.

(15) Nevertheless, as there was only one bid after the call for tenders, the Norwegian authorities made use of their right to initiate subsequent negotiations, resulting in the reduction of the compensation by NOK [400 - 1200] million in relation to the initial offer, i.e. from NOK [6320 – 5520] million to NOK 5120 million.

(16) Concerning the allegations regarding Hurtigruten cancellations not resulting in any reduction of the compensation, the Norwegian authorities submit that the HA indeed foresees, in section 3, cancellations within the agreed quotas for technical reasons or cultural events, or due to extraordinary weather conditions in line with the *force majeure* clause of section 8, which do not lead to reductions in the compensation nor to liquidated damages. ([11]) It is submitted that the benefit gained by Hurtigruten in 2012 and 2013 by not having the compensation reduced in case of extreme weather conditions is significantly lower than a proportional part of the reduction in compensation of NOK [400 – 1200] million so far (i.e. the benefit was NOK [14 – 19] million in 2012 and around NOK [16 – 22] million in 2013).

(17) As regards in particular the cancellations due to extreme weather conditions, the Norwegian authorities note that the guiding principle is the safety of the passengers, the crew and the ship, irrespective of whether such conditions are expected. Moreover, also in accordance with section 135 of the Norwegian Maritime Act of 24 June 1994 no. 39, the master of the vessel has the sole responsibility and absolute sovereignty when deciding to avoid servicing ports of call due to extreme weather conditions.

(18) Nevertheless, the HA also provides in section 9.2 that cancellations for other reasons, including cancelled calls at ports, will result in reduced compensation and possible liquidated damages (or claim for compensation in cases of negligence or intent) ([12]).

(19) In any case, according to the Norwegian authorities, the cancellations do not represent savings for the company as such cancellations involve several additional costs in changing the passengers' bookings, and finding alternative transportation of passengers and cargo.

([9]) The complainants point to the fact that in the call for tender for the 2005-2012 contract period *force majeure* as a result of extreme weather conditions was defined as wind speeds over 25 m/s (full storm). However, in the current HA, 'extreme weather conditions' are defined as 'conditions where ocean and/or wind conditions are such that the ship's captain judges it to be unsafe to continue the sailing and/or arrive at a specific port'. This, according to the complainants, has resulted in the majority of the cancellations during the period 2012-2013 in select ports to have occurred at wind conditions below 15 m/s.

([10]) Doc Nos 723002 and 742652.

([11]) The Norwegian authorities submit that according to Hurtigruten's reports, ships were out of production for 171 operating days in 2012 and 186.7 operating days in 2013 due to maintenance and unforeseen operational disturbances, for 5 operating days in 2012 and 12.8 operating days in 2013 due to the ships being used for cultural or similar activities, and finally for 87 operating days in 2012 and 99.8 operating days in 2013 due to extraordinary weather conditions.

([12]) On 12 December 2014, Hurtigruten paid back to the Norwegian authorities the amount of NOK [24 – 32] million due to cancellations in 2012 and 2013.

(20) In reference to the cancellation of services to the port of Mehamn, the Norwegian authorities consider that the decision to leave out the port of Mehamn as from January 2014 and until the port was repaired, was a result of a risk assessment made by Hurtigruten, taking into account the challenging port and weather conditions in line with the *force majeure* provision of section 8 of the HA. The passengers were informed in advance and a land-based transport of cargo was also established between Mehamn and Kjøllefjord. The question of reduction of compensation must be assessed in line with the *force majeure* provision of section 8 of the HA, pursuant to the accounting and other reporting requirements of section 4-4 of the HA. The repairs of the port of Mehamn were completed on 9 September 2014, and Hurtigruten has resumed its sailing.

(21) As far as the allegations regarding the port fees, rent and service charges are concerned, the Norwegian authorities state that their level is based on the new Norwegian Ports Act (NPA) in force as from 1 January 2012 for most ports, replacing the previous NPA of 1984 ([13]). As from that date onwards, the ports can sell services at fair and non-discriminatory prices on a normal contractual basis.

(22) The Norwegian authorities acknowledge that Hurtigruten has indeed approached some of the ports arguing that it is overcharged. This is because, as explained, some ports have conceived the new NPA as giving them the legal basis to increase radically their prices.

(23) It is further stressed that the HA is a net contract, which means that Hurtigruten has the risk for costs and revenues during the period of the agreement and is therefore free to influence its costs, including the port fees, in such a way as to operate the service in the most cost efficient manner. The price adjustment clause of section 5-2 of the HA covers only the compensation under the HA. Any amendments of the port fees and charges to Hurtigruten do not thus lead to compensation reduction.

(24) In this context, the Norwegian authorities point to the mechanism provided in section 7 of the HA for avoiding overcompensation under particular circumstances. This mechanism ensures that each of the parties may demand renegotiations concerning extraordinary adjustment of the compensation, a change in production or other measures, in the event of amendments to acts, regulations or statutory orders, which the parties could not have reasonably foreseen when signing the contract and which entail material extra costs or savings for the contract procuring the service.

(25) The Norwegian authorities submit that the requirement of section 4-2, paragraph 1 of the HA for a minimum capacity is understood to mean that Hurtigruten is obliged to have sufficient capacity available for the public service passengers up to the set capacity requirements. On the other hand, Hurtigruten is allowed to sell tickets to other passengers e.g. cruise passengers, in order to avoid sailing with empty berths and to the extent that this does not prejudge the rights of the public service passengers. In any case, as submitted, it has seldom occurred that there is not enough capacity for the public service passengers as the vessels' capacity for other passengers is higher than the actual demand.

(26) For the contingency, when access is denied to public service passengers, Hurtigruten has introduced a travel guarantee to ensure that these passengers may require either a free travel without berth on the planned journey or a travel with berth on the next scheduled ship, or alternative transport free of charge.

4.1 ***The BDO report*** ([14])

(27) The Norwegian authorities commissioned a report from the consultancy BDO, which looked at Hurtigruten's budgeted and actual financial performance in 2012 and 2013, for, separately: a) the services purchased by the government on the Bergen-Kirkenes route and, b) the totality of services provided by Hurtigruten on the same route (i.e. including both commercial and government-procured services).

(28) In this exercise, BDO distinguished between capacity costs, passenger costs, and costs relating to marketing and sales activities. Capacity costs were then allocated to the government-procured services on the basis of the share of capacity reserved by the government compared to the total capacity of the fleet, whereas passenger costs were allocated on the basis of actual passenger kilometres sailed by distance travellers over the total number of passenger kilometres for all travellers on the fleet. The marketing and sales costs were allocated to the government-procured services on the basis of the share of actual net passenger revenue relating to the PSO passengers compared to the total number of travellers.

(29) […]

([13]) The previous NPA of 1984 distinguished between port fees and service charges. There were several different port fees, e.g. quay fees covering quay costs, approach fees covering costs of keeping the fairway and port approach open and safe, passenger fees covering costs of special passenger facilities etc. Ports could additionally levy service charges for services they sold, which were not covered by the port fees.

([14]) BDO Memo, '*An assessment of Hurtigruten's reported income statements*', Oslo 14 January 2015, p. 7.

II. **ASSESSMENT**

1. **The presence of state aid**

1.1 ***The concept of state aid***

(30) 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.*'

(31) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled. The measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to have an impact on trade between Contracting Parties and to distort competition.

1.2 ***State resources***

(32) The Norwegian authorities, following a tender procedure, concluded a contract with Hurtigruten for the performance of maritime services over the period 2012-2019 against remuneration, as stipulated in detail in the HA. It is thus not disputed that the aid measure has been granted by the State or through state resources.

1.3 ***Impact on trade and distortion of competition***

(33) The measure in question must be liable to have an impact on trade between the Contracting Parties and to distort competition.

(34) According to established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade, then there is at least a potential effect on trade between Contracting Parties and on competition ([15]). In this regard, the Authority is of the view that any potential economic advantage granted to Hurtigruten through state resources would fulfil this condition. As the Authority stated in its Decision No 205/11/COL the market for domestic maritime services (maritime cabotage) ([16]), within which Hurtigruten operates, was opened to EEA-wide competition in 1998 ([17]). Moreover, Hurtigruten is also engaged in the tourism sector, in particular through the offer of cruises/round trips along the Norwegian coast. Other operators offer cruises along the same parts of the Norwegian coast ([18]). Moreover, Hurtigruten also operates a number of cruises in various European States.

(35) The only criterion of the notion of state aid that is thus in question is whether the HA has conferred a selective undue economic advantage on Hurtigruten.

1.4 ***Selective economic advantage on Hurtigruten***

(36) The aid measure must confer on Hurtigruten an advantage that relieves it of charges that are normally borne from its budget.

(37) 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:

i. *'First, the recipient undertaking must actually have public service obligations to discharge and such obligations must be clearly defined;*

ii. *Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner […];*

([15]) Judgment in *Philip Morris Holland BV* v *Commission*, 730/79, EU:C:1980:209, paragraph 11; judgment in *Regione Friuli Venezia Giulia* v *Commission*, T-288/97, EU:T:2001:115, paragraph 41; and judgment in *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH (Altmark)*, C-280/00, EU:C:2003:415, paragraph 75.

([16]) Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

([17]) The maritime cabotage regulation was incorporated at point 53a in Annex XIII to the EEA Agreement (OJ L 30, 5.2.1998, p. 42).

([18]) Norwegian Cruise Line, MSC Cruises, Royal Caribbean, Holland America Line, etc.

iii. *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 for discharging those obligations;*

iv. *Fourth, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.'* ([19])

1.4.1 *The first Altmark condition*

(38) The fulfilment of the first *Altmark* condition must be assessed with regard to Article 4, paragraph 2 of the Maritime Cabotage Regulation, which sets out the specifications that should be part of the definition of a public service obligation, namely: ports to be served, regularity, continuity, frequency, capacity to provide the service, rates to be charged and manning of the vessel.

(39) Further, in accordance with section 9 of the Authority's Maritime Guidelines, '[p]ublic service obligations may be imposed or public service contracts may be concluded for the services indicated in Article 4 of Regulation (EEC) No 3577/92' ([20]).

(40) In the absence of specific EEA rules defining the scope of the existence of a service of general economic interest (SGEI), the Norwegian authorities have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider. The Authority's competence in this respect is limited to checking whether Norway has made a manifest error when defining the service as an SGEI ([21]).

(41) However, according to the case law, PSOs may only be imposed if justified by the need to ensure adequate regular maritime transport services, which cannot be ensured by market forces alone. It is important for the national authorities therefore to demonstrate that there is a real public service need ([22]). The Communication on the interpretation of the Maritime Cabotage Regulation confirms that '[i]t is for the Member States […] to determine which routes require public service obligations. In particular, public service obligations may be envisaged for regular (scheduled) island cabotage services in the event of market failure to provide adequate services' ([23]).

(42) The Norwegian authorities submit that the public service pursuant to the HA relates to the capacity reserve requirement as defined in section 4-2, and that the public service should not be assessed at the level of the actual use of the service.

(43) Based on the information provided to the Authority ([24]), it appears however that in both 2012 and 2013, less than [10 – 30] per cent of the passenger capacity reserved for public service passengers was utilised. This would indicate that the compensation received by Hurtigruten for reserving capacity for PSO passengers in those two years vastly exceeded actual demand for PSO passenger services. Moreover, the BDO report shows that the capacity utilisation for commercial passengers amounted to [35 – 65] per cent and [35 – 65] per cent in 2012 and 2013 respectively. Given this level of spare capacity for commercial passengers (and the low level of capacity utilisation for PSO passengers), the Authority cannot exclude that a capacity reservation provision for PSO passengers may be unnecessary, especially during the winter season, where the utilisation by commercial passengers would naturally be much lower.

(44) For these reasons, the Authority doubts whether the reserve capacity requirement of section 4-2 of the HA can be classified by Norway as an SGEI and invites the Norwegian authorities to provide objective justification regarding the need for such a PSO, taking into account the seasonal fluctuations of commercial passengers transportation.

(45) The Authority has not received any information on berth utilisation. As regards the cargo transportation for the Tromsø – Kirkenes – Tromsø route, this is not price regulated and according to section 4-3 of the HA, Hurtigruten has full freedom to set the fares. It is doubtful therefore whether the cargo transportation is in compliance with Article 4(2) of the Maritime Cabotage Regulation, which explicitly mentions the elements needed for an adequate definition of a PSO, i.e. among others the rates to be charged.

([19]) Paragraphs 87-93.
([20]) Available at http://www.eftasurv.int/?1=1&showLinkID=15132&1=1.
([21]) Available at http://www.eftasurv.int/media/state-aid-guidelines/Part-VI---Compensation-granted-for-the-provision-of-services-of-general-economic-interest.pdf.
([22]) Judgment in *Alanir and others*, C-205/1999, EU:C:2001:107, paragraph 34.
([23]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions updating and rectifying the Communication on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), COM(2003) 595 final, 22.12.2003, section 5.2.
([24]) BDO Memo, page 7.

(46) In light of the above, the Authority doubts whether the PSO for cargo transportation has been clearly defined under the HA.

(47) The Authority however, does not doubt that other obligations are clearly defined in section 4-1 of the HA, as regards the supplier obligations in terms of route production requirements, in section 4-2 of the HA, as regards the vessel requirements and in section 4-3 of the HA, as regards fare and discount requirements, with the exception of cargo transportation.

(48) In view of the above, the Authority doubts that the first *Altmark* condition is met.

1.4.2 *The second Altmark condition*

(49) The Norwegian authorities must define *ex ante* the methodology to calculate the compensation for discharging the PSO obligations.

(50) Pursuant to section 4-2 of the HA '[v]essels used on the coastal route shall as a minimum have a passenger capacity for 320 passengers, berth capacity in cabins for 120 passengers and freight capacity for 150 euro pallets (in cargo hold with a normal load height)'.

(51) It is the view of the Norwegian authorities that this condition has been satisfied given that the compensation is calculated on the basis of the elements specified in Annex D to the tender specification, which provides the following:

Table 2 – The elements in the budget scheme for the public service

A:	Total revenues distance passengers
B:	Passengers cost distance passengers
C:	**Net passenger revenues (A+B)**
D:	Revenues from on board sales
E:	Net revenues from goods and cars
F:	Other revenues
G:	**Total own revenues (C+D+E+F)**
H:	Government procurement of service
I:	**Total revenue (G+H)**
J:	Safety crew
K:	Oil and fuel
L:	Repairs and maintenance
M:	Port costs
N:	Insurance costs
O:	Depreciation own vessels/bareboat
P:	Net financial costs
Q:	**Total capacity costs (J+K+L+M+N+P)**
R:	Cost of goods sold
S:	Crew not included in the safety crew
T:	Marketing costs and sales provision
U:	Administration costs
V:	Other costs
W:	**Total passenger costs (R+S+T+U+V)**
X:	**Total costs public service (Q+W)**
Y:	**Net result before taxes (I-X)**

(52) In concluding that the parameters were established in advance in an objective and transparent manner, the Norwegian authorities asked the independent consultant BDO to study Hurtigruten's financial accounts for 2012-2013 and compare the accounts for the public service and the total accounts.

(53) According to the Norwegian authorities, it is thus ensured that the PSO passengers do indeed receive their transport within the capacities set by the HA and that that capacity should be available to the extent that there is actual demand from PSO passengers.

(54) At this stage, it is not clear to the Authority whether the capacity reserve requirement is linked to actual PSO passenger numbers. For example, there seems to be no objective and transparent methodology to calculate in advance the cost per passenger/kilometre.

(55) Hurtigruten, in compliance with the tender specifications, has established a separate budget incorporating all costs and revenues attributed to the PSO routes. According to section 4.9.2 of the tender specifications, this separate accounting aims at ensuring predictability of which cost additions/savings/extra revenues/shortfalls form the basis of any renegotiation, as provided for in sections 6 and 7 of the HA. A further aim is to document that the public procurement process does not entail any unlawful cross-subsidisation. The separate accounting however does not aim at establishing in advance the parameters of the compensation, which shall be directly linked to the actual losses and costs (capacity and passenger costs) incurred by Hurtigruten. ([25]) Instead, the HA has only fixed the annual compensation to be paid for the maritime services for each individual year from 2012 to 2019 based on a minimum commitment for passengers/kilometres per year, without this having any link to the fixed costs (i.e. the capacity costs).

(56) In addition, although the compensation is based on the elements stipulated in table 2, as mentioned above, the Authority has not received any information as to how these costs have been calculated. For instance, sections 6 and 7 of the HA contain certain provisions on the adjustment of compensation in case of changes in production or in case of unforeseen events. Even though certain indications are provided, i.e. a calculation based on the costs and revenues ensuing from the changes in production or an aggregated calculation in the case of unforeseen events, the exact parameters of these adjustments are not known in advance and there are no limitations on how much extra compensation can be granted ([26]).

(57) In this context, as the EFTA Court pointed out in the *Hurtigruten* case, the principle of transparency could have been observed: '*[…] Norway could, if necessary, have made provision, in the notice of invitation to tender, for the possibility of amending the conditions for payment of the successful tenderers in certain circumstances by laying down in particular the precise arrangements for any supplementary compensation intended to cover unforeseen losses and costs*' ([27]).

(58) In addition, section 4-1, item 3 of the HA, provides that '[o]mission of up to 10 days of operation in agreed production per ship per annum due to planned maintenance and unforeseen operational disruption linked to agreed production (off-hire) is considered to be proper fulfilment and shall not entail a deduction in the agreed remuneration in accordance with section 9-2'. The Authority fails to see how this loss in production is calculated and certified in advance in a transparent and objective manner. The 10 days ceiling appears arbitrary and as such does not appear to qualify as an objective estimate of provable loss (e.g. cancellations of service to the port of Mehamn).

(59) The Authority notes that neither HA nor the tender specifications specify whether the compensation awarded includes any profit margin for Hurtigruten, and if so, what the methodology used to calculate this profit margin is, taking into account the risks incurred by the operator in the provision of the service.

(60) Lastly, concerning Hurtigruten's attempts to negotiate lower port fees whilst the Norwegian authorities maintain the compensation at the same level, the Authority underlines that the amount of compensation awarded should be fully reflected in the parameters established in advance including a reasonable profit. As mentioned above, the Authority is of the preliminary view that no parameters have been established to calculate a reasonable profit margin. Therefore, any attempts by Hurtigruten to get lower prices on the port fees while maintaining the compensation at the same level would seem not to satisfy the second *Altmark* condition.

(61) As a result, in view of the above, it is the Authority's preliminary opinion that the second Altmark condition is not fulfilled.

1.4.3 *The third Altmark condition*

(62) When granting compensation, the Norwegian authorities should ensure that it does not exceed what is necessary to cover all or part of the costs incurred in discharging the PSO, taking into account relevant receipts and a reasonable profit.

(63) In this regard, the EFTA Court already held in the *Hurtigruten* case:

'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 services obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations' ([28]).

([25]) Joined Cases E-10/11 and E-11/11 *Hurtigruten* [2012] EFTA Ct. Rep. 758, paragraph 117.
([26]) Ibid, paragraphs 128-129.
([27]) Ibid, paragraph 127.
([28]) Paragraph 170. See for comparison, judgment in *Enirisorse*, C-34/01 to C-38/01, EU:C:2003:640, paragraphs 37-40.

(64) Briefly, according to the complainants' arguments, presented in further detail in paragraph (13) above:

i) Hurtigruten does not reserve capacity for public service passengers, but rather sells the capacity to cruise passengers, while maintaining the public service compensation at the same level;

ii) The compensation for providing the public service has increased substantially as compared to the previous contract period;

iii) Hurtigruten continues to receive compensation for services that are not rendered; and, lastly

iv) Hurtigruten further attempts to get lower prices for the harbour fees, while maintaining the public service compensation at the same level;

(65) As regards the first point, the Authority reminds the Norwegian authorities that under the third *Altmark* condition, only the costs incurred in discharging the PSO shall be covered. Any compensation granted to cover costs outside the public service remit cannot be held to constitute compensation for PSO. Therefore, when the capacity (passengers and berth) for PSO passengers is sold to commercial cruise passengers, and given that the BDO report does not provide any information on the capacity utilisation to justify the opposite, it appears that Hurtigruten is paid twice for the same service, which would in principle constitute a form of overcompensation.

(66) The Authority is conscious that the figures presented in the BDO report are annual figures and therefore correspond to average capacity utilisation throughout the year. Accordingly, there may be periods of the year where capacity utilisation for public service passengers is higher, and where it is indeed also necessary to have in place a capacity reservation mechanism. The Authority, however, cannot rule out that the mechanism used in the HA overcompensates Hurtigruten in that it does not take into account different (e.g. seasonal) levels of capacity utilisation during the year.

(67) The Authority takes note of the travel guarantee subsequently introduced, as mentioned above in paragraph (26), to 'compensate' the public service passengers for their lost travel and correct any alleged overcompensation. However, until the introduction of that travel guarantee, public service passengers appear at times to have been unable to benefit from the public service, although the costs were evidently covered by the compensation already granted to Hurtigruten. Also, at this stage it is not clear to the Authority whether the cost of providing a free travel without berth on the planned journey or a travel with berth on the next scheduled ship or alternative transport free of charge equals the compensation that Hurtigruten has received to cover the cost of public service berth capacity, which is sold to commercial cruise passengers. It appears therefore that such a mechanism, due to the limited (on average) capacity utilisation in both the PSO and cruise segment, is an ineffective and relatively costless service for Hurtigruten that does not offset the advantage gained through the excess capacity reservation, which is freely sold to cruise passengers.

(68) Concerning the second point, as noted above in paragraph (13), and as evident from the Authority's Decision No 205/11/COL, the Norwegian authorities paid Hurtigruten a total compensation of NOK 1 899.7 million to carry out the same PSO routes during the period 2005-2012. More specifically, the annual compensation for the year 2011 amounted to NOK 236.8 million ([29]). Taking into account that the compensation for 2012 under the current HA amounted to NOK 700 million, the Authority expresses its doubts as to whether the increase in compensation is justified under the HA. The Norwegian authorities claim that there have been considerable losses for Hurtigruten in the period 2005-2012 to justify the increase of the compensation. However, the Authority is of the preliminary view that due to the fact that the previous HA had not envisaged separation of accounts, it is not possible to determine whether these losses were caused by commercial or PSO activities. In any case, it is questionable how such a higher compensation can be justified, when the scope of the PSO remains the same as in the previous contract period (in terms of sailing frequency and number of ports served) and the capacity reservation has decreased from 400 passengers to 320 and from 150 berths to 120.

(69) In relation to the third point, the Authority notes that when Hurtigruten keeps on its books compensation that has been granted to cover the costs of transporting PSO passengers, without however rendering the service to them (or when the service is not required), overcompensation cannot be excluded.

(70) Particularly, section 8 of the HA provides for the operator to keep the compensation granted in case of interruptions of sailings due to events that constitute *force majeure*. It is generally accepted that the decision to avoid servicing ports of call due to extreme weather conditions lies with the master of the vessel. However, the Authority questions at this stage the fact that, as provided for in section 8 of the HA, '[…] any cancelled production ensuing from force majeure shall not be considered as a non-conformity in the production under section 4-1, item 3' and thus not lead to any reduction in the compensation.

(71) On the basis of the information provided ([30]), it appears to the Authority that the phenomenon of extreme weather condition constitutes a normality in the maritime business along the Norwegian coast. It might thus be considered as a foreseen event. However, it is not reflected as such in the compensation calculations. The compensation has been calculated as a lump sum *ex ante* for the whole contract period, without taking into account an objective estimate of a provable loss due to foreseen extreme weather conditions.

([29]) Section 2.
([30]) See footnote 11.

(72) In reference to the cancellation of services to the port of Mehamn, which, according to the complainant, resulted in Hurtigruten receiving monthly cost savings at the amount of NOK 314 500 over a period of around 8 months, the Authority is not at this stage convinced by the Norwegian authorities' suggestion that this situation should be assessed in the context of the *force majeure* provision of the HA. According to the information provided by the complainants, the port was damaged in 2012 by Hurtigruten itself, which nevertheless continued serving the port until January 2014. Therefore, the Authority cannot see at this stage how this cancellation could be held to have taken place due to unforeseen events, which would entitle the operator to keep the compensation granted.

(73) Finally, concerning the last point and Hurtigruten's attempts to negotiate lower port fees whilst the Norwegian authorities maintain the compensation at the same level, it should be noted that there should not be any overcompensation above the level of a reasonable profit. Therefore, a reduction in port fees should result in lower compensation, whereas higher port fees would respectively mean a higher compensation. In light of this, at this stage the Authority is of the opinion that any attempts by Hurtigruten to get better prices of the port fees while maintaining the compensation at the same level, would not ensure that overcompensation is excluded.

(74) The Norwegian authorities point to section 7 of the HA as establishing a mechanism to avoid overcompensation. Section 7, however, refers to unforeseen costs resulting from events that are independent of Hurtigruten's management decisions, such as amendments to acts, regulations or statutory orders. To claim compensation for such costs, it must be proved by the operator that those costs are genuinely incurred in the discharge of the PSO, and the costs must be well documented, so as to ensure that the ultimate compensation received by Hurtigruten does not exceed its actual costs. The Authority at this stage cannot see how section 7 of the HA can ensure that overcompensation is avoided.

(75) Lastly, the contract does not contain any claw back clause such that if any agreed profit margin is exceeded, the surplus must be returned to the State or deducted from the compensation paid in the next year or perhaps over the contract period.

(76) In view of the above, the Authority cannot exclude that Hurtigruten has been overcompensated for the provision of the public service. As a result, the Authority doubts whether the third *Altmark* condition has been fulfilled.

1.4.4 *The fourth Altmark condition*

(77) Referring to the tender procedure carried out which resulted in only one bid, Hurtigruten's, the Norwegian authorities argue that the tender was designed in such a way as to attract more bidders. In this respect, it is argued that the tender was widened to include maritime services that would not run on a daily basis throughout the year and that the required minimum capacity was reduced from 400 to 320 passengers and from 150 to 120 berth bunks. Additionally, the deadline for submitting the bids was extended from 30 September until 8 November 2010 on request from an interested operator, whereas overall there was sufficient time allowed from the deadline for submitting bids (8 November 2010) until the date of commencement of the services (1 January 2013).

(78) Despite the above arguments as well as the fact that subsequent negotiations took place between the Norwegian authorities and Hurtigruten, which resulted in a reduction of the compensation for the whole contract period in relation to the initial offer, see paragraph (15), the Authority at this stage doubts whether a tender procedure such as the one at issue, where only one bid is submitted, can be deemed sufficient to ensure 'the least cost to the community' ([31]), for the reasons listed below.

(79) Hurtigruten had already run this particular maritime service consisting of the combined transport of persons and goods along the Norwegian coast from Bergen to Kirkenes for years ([32]). As the incumbent operator, Hurtigruten thus had a significant competitive advantage that reinforced its position in the tender procedure, given that it had already in its possession vessels adapted to the requirements of the tender specifications.

(80) Furthermore, according to the tender specifications, the assignment for carrying out the PSO was advertised as three alternatives:

i. Alternative 1: Daily sailing throughout the year to 34 ports;

ii. Alternative 2: Sailings 7 days a week in summer (8 months), 5 days a week in winter (4 months), to 34 ports; and

iii. Alternative 3: Sailings 5 days a week throughout the year to 34 ports.

([31]) Paragraph 68, http://www.eftasurv.int/media/state-aid-guidelines/Part-VI---Compensation-granted-for-the-provision-of-services-of-general-economic-interest.pdf.

([32]) For background information on the Hurtigruten Agreement, see Decision No 205/11/COL on the Supplementary Agreement on the Hurtigruten service, section 2, OJ L 175, 5.7.2012, p. 19 and EEA Supplement No 37, 5.7.2012, p. 1.

(81) However, the tender specifications do not provide any clarifications as to the criteria used to award the service. The Procurement Notice refers to the lowest price as the sole award criterion used for the service in question. Although, in itself the 'lowest price' criterion could satisfy the fourth *Altmark* condition, nevertheless in the case at hand, this reference is very abstract and cannot be assessed in isolation. The fact that there were three alternatives would indicate the existence of further information and/or weighting criteria among those alternatives. In view of the fact that such information was not included in the tender documents, the Authority doubts whether the tender as designed has provided incentives to potential bidders, apart from Hurtigruten, that would have been willing to bid in accordance with the requirements of the three different alternatives and for a different alternative than the one actually chosen (i.e. alternative 1).

(82) The Norwegian authorities have not submitted any information on the second leg of the fourth *Altmark* condition, concerning whether the level of compensation needed is determined on the basis of an analysis of the costs of a typical undertaking, well run and adequately equipped.

(83) In view of the above, the Authority doubts that the fourth *Altmark* condition is met.

1.4.5 *Conclusion on the Altmark conditions*

(84) Based on the information submitted, the Authority cannot, at this stage, conclude that the compensation awarded under the Coastal Agreement for Hurtigruten Maritime Services for the period 2012-2019 complies with all the four conditions in the *Altmark* judgement. The Authority thus cannot exclude the presence of an advantage within the meaning of Article 61(1) EEA, granted to an undertaking for performing public service obligations.

2. **Conclusion on the presence of aid**

(85) The Authority takes the preliminary view that the compensation awarded under the Coastal Agreement for Hurtigruten Maritime Services for the period 2012-2019 may entail state aid within the meaning of Article 61(1) of the EEA Agreement.

3. **Procedural requirements**

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

(87) The Norwegian authorities did not notify the HA to the Authority. Should the Authority therefore conclude that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3, there would be a breach of the standstill obligation, without prejudice to the application of the SGEI Decision as below mentioned.

4. **Compatibility of the aid**

4.1 ***The legal framework***

(88) The compatibility of public service compensation for maritime transport is assessed on the basis of Article 59(2) of the EEA Agreement in conjunction with the Authority's Framework for state aid in the form of public service compensation ('the Framework') ([33]).

(89) The principles set out in the Framework apply to public service compensation only in so far as it constitutes state aid not covered by Commission Decision 2012/21/EU on the application of Article 106(2) of the Treaty of the Functioning of the European Union to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ('SGEI Decision') ([34]).

(90) According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds for compatibility and to demonstrate that the conditions of compatibility are met ([35]). The Norwegian authorities consider that the measure at hand does not constitute state aid pursuant to the *Altmark* jurisprudence, and therefore has not provided any grounds for compatibility.

4.2 ***Applicability of Decision 2012/21/EU***

(91) The SGEI Decision lays down the conditions under which certain types of public service compensation are to be regarded as compatible with the functioning of the EEA Agreement pursuant to its Article 59(2) and exempt from the requirement of prior notification under Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

([33]) Available at http://www.eftasurv.int/media/state-aid-guidelines/Part-VI---Framework-for-state-aid-in-the-form-of-public-service-compensation.pdf.
([34]) OJ L 7, 11.1.2012, p. 3, incorporated at point 1h of Annex XV of the EEA Agreement.
([35]) Judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.

(92) There is one exception from the notification requirement of Article 2 of the SGEI Decision, which might be relevant in the present case:

> *'(d) compensation for the provision of services of general economic interest as regards air or maritime links to islands on which the average annual traffic during the 2 financial years preceding that in which the service of general economic interest was assigned does not exceed 300 000 passengers';*

(93) The Authority has not received any information from the Norwegian authorities as regards the applicability of the said exception. The Authority therefore doubts whether the Bergen – Kirkenes public service route concern an annual traffic not exceeding the threshold of 300 000 passengers.

(94) In light of the doubts expressed above under paragraphs (49) to (85) on alleged overcompensation, the Authority further doubts whether the Norwegian authorities have ensured, pursuant to Article 5 of the SGEI decision, that Hurtigruten does not receive compensation in excess of the amount needed to cover the net cost incurred in discharging the public service obligations, including a reasonable profit.

(95) The Authority additionally invites the Norwegian authorities, in the event of the measure falling under the above exception, to justify whether the provisions of Article 4 (entrustment), Article 6 (control of overcompensation) and Article 7 (transparency) of the SGEI Decision are complied with.

4.3 ***Applicability of the Framework***

(96) On the basis of the provisions of the Framework, one of the compatibility conditions that must be fulfilled is that the entrustment act which specifies the public service obligation, in this case the HA, shall include *'[a] description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation'*.

(97) Further, according to the Framework, *'[t]he amount of compensation must* not *exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit'*. The Framework also clarifies that *'[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology […]'*. ([36])

(98) On the basis of the considerations in paragraphs (49) to (85), at this stage the Authority considers that Hurtigruten may have been overcompensated for the provision of the public service.

(99) The compatibility of the HA shall also be assessed against the following conditions as provided for by the Framework:

a. Paragraph 14: proper consideration to the public service needs;

b. Paragraph 19: compliance with EEA public procurement rules;

c. Paragraph 20: absence of discrimination;

d. Paragraph 24 to 38: calculation of the net cost necessary to discharge the PSO;

e. Paragraphs 39 to 50: efficiency incentives;

f. Paragraphs 51 to 59: no affectation of trade development to an extent contrary to the interests of the EEA;

g. Paragraph 60: transparency.

(100) The Norwegian authorities have not put forward any compatibility considerations. Therefore at this stage, the Authority raises doubts as to whether the compensation awarded under the Coastal Agreement for Hurtigruten Maritime Services for the period 2012-2019 is compatible with the functioning of the EEA Agreement.

5. **Conclusion**

(101) As set out above, the Authority has doubts as to whether the HA entails state aid within the meaning of Article 61(1) of the EEA Agreement.

(102) The Authority also has doubts as to whether the HA is compatible with the functioning of the EEA Agreement.

([36]) See also paragraphs 27 and 28 of the Framework for alternative calculation methods.

(103) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the HA does not constitute aid or that it is aid compatible with the functioning of the EEA Agreement.

(104) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, within one month of the date of receipt of this Decision, their comments and to provide all documents, information and data needed for the assessment of the HA in light of the state aid rules.

(105) The Authority requests the Norwegian authorities to forward a copy of this decision to Hurtigruten.

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

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the Coastal Agreement for Hurtigruten Maritime Services 2012-2019.

Article 2

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month of the date of receipt of this Decision. They are further requested to provide, also within one month of the date of receipt of this Decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, on 9 December 2015.

For the EFTA Surveillance Authority

Sven Svedman
President

Helga Jónsdóttir
College Member

Anuncio de Noruega relativo a la Directiva 94/22/CE del Parlamento Europeo y del Consejo sobre las condiciones para la concesión y el ejercicio de las autorizaciones de prospección, exploración y producción de hidrocarburos

Anuncio de convocatoria para solicitar licencias de producción de petróleo en la Plataforma Continental de Noruega — Concesiones en las zonas predefinidas para 2016

(2016/C 236/12)

El Ministerio de Petróleo y Energía de Noruega anuncia una convocatoria de solicitudes de licencias de producción de petróleo de conformidad con el artículo 3, apartado 2, letra a), de la Directiva 94/22/CE del Parlamento Europeo y del Consejo, de 30 de mayo de 1994, sobre las condiciones para la concesión y el ejercicio de las autorizaciones de prospección ([1]), exploración y producción de hidrocarburos.

Las licencias de producción solo se concederán a sociedades anónimas con domicilio social en Noruega o en otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo (Acuerdo EEE), o a personas físicas domiciliadas en un Estado parte en el Acuerdo EEE.

Podrán concederse licencias de producción a empresas que actualmente no sean titulares de una licencia en la Plataforma Continental de Noruega, siempre que hayan sido precalificadas para la obtención de una licencia en dicha Plataforma.

El Ministerio tratará en pie de igualdad a las empresas que presenten una solicitud individual y a las empresas que presenten una solicitud como parte de un grupo. Tanto los solicitantes que presenten una solicitud individual como los que formen parte de un grupo y presenten una solicitud conjunta serán considerados solicitantes de una licencia de producción. Sobre la base de las solicitudes presentadas por solicitantes individuales o por grupos, el Ministerio podrá determinar la composición de los grupos de titulares de licencias a los que se conceda una licencia de producción, así como suprimir solicitantes de una solicitud conjunta y añadir solicitantes individuales, y nombrar al operador de dichos grupos.

La concesión de una participación en una licencia de producción estará subordinada a que los titulares de las licencias suscriban un acuerdo sobre el ejercicio de actividades petroleras, que incluya un acuerdo de explotación conjunta y un acuerdo contable. Si la licencia de producción está dividida estratigráficamente, los titulares de las dos licencias divididas estratigráficamente deberán suscribir también un acuerdo específico de explotación conjunta que regule la relación entre ambos a este respecto.

Una vez firmados dichos acuerdos, los titulares de las licencias constituirán una empresa conjunta en la que su participación será siempre idéntica a su participación en la licencia de producción.

Los documentos relativos a la licencia se basarán principalmente en los documentos pertinentes de las Concesiones en las zonas predefinidas para 2015. El objetivo es que la industria pueda conocer los elementos fundamentales de las posibles modificaciones del marco antes de la presentación de solicitudes.

Criterios para la concesión de una licencia de producción

En aras de una buena gestión de los recursos y de una exploración y producción de petróleo rápidas y eficientes en la Plataforma Continental de Noruega, así como a efectos de la composición de los grupos titulares de licencias a este fin, se aplicarán los siguientes criterios para la concesión de participaciones en las licencias de producción y la designación de operadores:

a) El conocimiento geológico, por parte de los solicitantes, de la zona geográfica de que se trate, así como la forma en que los titulares de licencias se propongan llevar a cabo una exploración petrolífera eficiente.

b) La experiencia técnica pertinente de los solicitantes y la forma en que dicha experiencia puede contribuir a una exploración rentable y, en su caso, a la producción de petróleo en la zona geográfica de que se trate.

c) La experiencia previa de los solicitantes en la Plataforma Continental de Noruega, o una experiencia equivalente en otras zonas.

d) Si los solicitantes cuentan con una capacidad económica adecuada para llevar a cabo la exploración y, en su caso, la producción de petróleo en la zona geográfica de que se trate.

e) Si los solicitantes son o han sido titulares de una licencia de producción, el Ministerio podría tener en cuenta cualquier forma de ineficacia o de falta de responsabilidad demostrada por los solicitantes en su calidad de licenciatarios.

f) Las licencias de producción se concederán principalmente a empresas conjuntas en las que como mínimo uno de los participantes haya perforado al menos un pozo en la Plataforma Continental de Noruega como operador, o cuente con experiencia operativa equivalente fuera de la Plataforma Continental de Noruega.

([1]) DO L 164 de 30.6.1994, p. 3.

g) Las licencias de producción se concederán principalmente a dos o más titulares, de los que al menos uno cuente con la experiencia contemplada en la letra f).

h) El operador designado para una licencia de producción en el Mar de Barents deberá haber perforado al menos un pozo en la Plataforma Continental de Noruega como operador, o contar con experiencia operativa equivalente fuera de la Plataforma Continental de Noruega.

i) En lo que respecta a las licencias de producción en aguas profundas, tanto el operador designado como al menos otro titular de licencia deberán haber perforado al menos un pozo en la Plataforma Continental de Noruega como operador, o contar con experiencia operativa equivalente fuera de la Plataforma Continental de Noruega. En la licencia de producción, al menos uno de los titulares deberá haber perforado en aguas profundas como operador.

j) Por lo que respecta a las licencias de producción en las que se prevea la perforación de pozos de exploración a presión elevada o altas temperaturas (HTHP), tanto el operador designado como al menos un titular de licencia deberán haber perforado al menos un pozo en la Plataforma Continental de Noruega como operador, o contar con experiencia operativa equivalente fuera de la Plataforma Continental de Noruega. En la licencia de producción, un titular deberá haber perforado un pozo HTHP como operador.

Bloques que pueden solicitarse

Pueden presentarse solicitudes de participación en licencias de producción para aquellos bloques del área predefinida para los que no se haya concedido una licencia, tal como se indica en los mapas publicados por la Dirección de Petróleo de Noruega (NPD). También es posible presentar solicitudes para superficies del área predefinida para las que se haya renunciado a una licencia después del anuncio, de conformidad con los mapas actualizados interactivos Factmaps de la NPD que se encuentran en la página web de la NPD.

Cada licencia de producción puede incluir uno o varios bloques o parte de un bloque o bloques. Los solicitantes deberán limitar la solicitud a las zonas para las que hayan realizado un mapa de potencial.

El texto completo del anuncio, con mapas detallados de las zonas disponibles, puede consultarse en la página web de la Dirección de Petróleo de Noruega: www.npd.no/apa2016

Las solicitudes de licencias de producción de petróleo se presentarán a:

Ministerio de Petróleo y Energía
P.O. Box 8148 Dep.
N-0033 OSLO
NORUEGA

Se remitirán dos ejemplares a:

Dirección del Petróleo de Noruega
P.O. Box 600
N-4003 STAVANGER
NORUEGA

Fecha límite: 6 de septiembre de 2016 a las 12.00 horas.

La concesión de licencias de producción de petróleo en el marco de las adjudicaciones correspondientes a las zonas predefinidas para 2016 en la Plataforma Continental de Noruega está prevista para el primer trimestre de 2017.

V

(Anuncios)

PROCEDIMIENTOS ADMINISTRATIVOS

COMISIÓN EUROPEA

Convocatoria de propuestas en el marco del programa plurianual de trabajo para la concesión de subvenciones en el ámbito de las infraestructuras energéticas transeuropeas del Mecanismo «Conectar Europa» en el período 2014-2020

[Decisión C(2016) 1587 de la Comisión]

(2016/C 236/13)

La Dirección General de Energía de la Comisión Europea lanza una convocatoria de propuestas con vistas a la concesión de subvenciones a proyectos que respondan a las prioridades y objetivos fijados en el programa plurianual de trabajo, en el ámbito de las infraestructuras energéticas transeuropeas del Mecanismo «Conectar Europa» para el período 2014-2020.

Se invita a presentar propuestas para la convocatoria indicada a continuación:

CEF-Energy-2016-2

El importe indicativo disponible para las propuestas seleccionadas asciende a 600 millones EUR.

El plazo para la presentación de propuestas finaliza el **8 de noviembre de 2016**.

El texto completo de la convocatoria de propuestas puede consultarse en:

https://ec.europa.eu/inea/en/https%3A//ec.europa.eu/inea/en/connecting-europe-facility/cef-energy/calls/second-2016-cef-energy-call-proposals-2016-2

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

COMISIÓN EUROPEA

Notificación previa de una operación de concentración

(Asunto M.8094 — BNP Paribas Fortis Private Equity Belgium/Sofindev IV/DHAM/Novy International)

Asunto que podría ser tramitado conforme al procedimiento simplificado

(Texto pertinente a efectos del EEE)

(2016/C 236/14)

1. El 21 de junio de 2016, la Comisión recibió la notificación, de conformidad con lo dispuesto en el artículo 4 del Reglamento (CE) n.º 139/2004 del Consejo ([1]), de un proyecto de concentración por el cual BNP Paribas Fortis Private Equity Belgium NV («BNPPF PE», Bélgica), Sofindev IV NV («Sofindev», Bélgica) y DHAM NV («Korys/Colruyt Group», Bélgica) adquieren el control conjunto, a tenor de lo dispuesto en el artículo 3, apartado 1, letra b), del Reglamento de concentraciones, de la empresa Novy International NV («Novy», Bélgica) mediante adquisición de acciones.

2. Las actividades comerciales de las empresas en cuestión son las siguientes:

— BNPPF PE: capital inversión y financiación de entresuelo. Sus empresas de cartera desarrollan su actividad en sectores como la fabricación y el suministro de metal y plástico, fondos de capital semilla universitarios, productos de panadería, proveedor de servicios industriales y bienes inmobiliarios;

— Sofindev: inversiones de capital inversión en pequeñas y medianas empresas belgas. Sus empresas de cartera se dedican a la distribución de materiales para tejados y fachadas y el desarrollo de soluciones de *software* basadas en la localización;

— Korys/Colruyt Group: mercados minorista, mayorista y de servicios alimentarios. También desarrolla actividades en soluciones de *software,* proyectos de energía sostenible/renovable y en el mercado de ciencias médicas/de la vida;

— Novy: diseño, fabricación y comercialización de aparatos de cocina de alta calidad, principalmente campanas extractoras de cocina.

3. Tras un examen preliminar, la Comisión considera que la operación notificada podría entrar en el ámbito de aplicación del Reglamento de concentraciones. No obstante, se reserva su decisión definitiva al respecto. En virtud de la Comunicación de la Comisión sobre el procedimiento simplificado para tramitar determinadas concentraciones en virtud del Reglamento (CE) n.º 139/2004 del Consejo ([2]), este asunto podría ser tramitado conforme al procedimiento simplificado establecido en dicha Comunicación.

4. La Comisión invita a los interesados a que le presenten sus posibles observaciones sobre el proyecto de concentración.

Las observaciones deberán obrar en poder de la Comisión en un plazo máximo de diez días a partir de la fecha de la presente publicación. Podrán enviarse por fax (+32 22964301), por correo electrónico a COMP-MERGER-REGISTRY@ec.europa.eu o por correo, con indicación del n.º de referencia M.8094 — BNP Paribas Fortis Private Equity Belgium/Sofindev IV/DHAM/Novy International, a la siguiente dirección:

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

([1]) DO L 24 de 29.1.2004, p. 1 («el Reglamento de concentraciones»).
([2]) DO C 366 de 14.12.2013, p. 5.

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