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Euroopa Liidu Teataja

C 77

50. aastakäik

Eestikeelne väljaanne

Teave ja teatised

5. aprill 2007

Teatis nr | Sisukord | Lehekülg

ET

([1]) EMPs kohaldatav tekst

(Jätkub pöördel)

ET

[1] EMPs kohaldatav tekst

II

(Teatised)

EUROOPA LIIDU INSTITUTSIOONIDE JA ORGANITE TEATISED

KOMISJON

Euroopa Ühenduse asutamislepingu artiklite 87 ja 88 raames antava riigiabi lubamine

Juhud, mille suhtes komisjonil ei ole vastuväiteid

(EMPs kohaldatav tekst)

(2007/C 77/01)

Otsuse vastuvõtmise kuupäev	7.12.2005
Abi nr	N 395/05
Liikmesriik	Iirimaa
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Loan guarantees for social infrastructure schemes funded by the Housing Finance Agency (HFA)
Õiguslik alus	Section 17 of the Housing (Miscellanous Provisions) Act 2002 in conjunction with Section 56 of the Housing Act 1966)
Meetme liik	Abikava
Eesmärk	Sotsiaalmajutust toetava infrastruktuuri loomine
Abi vorm	Tagatis ja sooduslaen
Eelarve	Rahandusminister võib pakkuda tagatist Majutuse Rahastamise Agentuuri kuni 6 000 miljoni EUR ulatuses võetud laenudele
Abi ülemmäär	—
Kestus	Piiramatu
Majandussektorid	Abi ei hõlma konkreetseid sektoreid
Abi andva ametiasutuse nimi ja aadress	Department of Finance, Government Buildings Dublin 2 Ireland Department of the Environment, Heritage and Local Government, Custom House Dublin 1 Ireland

Muud andmed	Iirimaa kohustused: — raha, mille Majutuse Rahastamise Agentuur on kohalikele ametiasutustele andnud, kasutatakse ainult sotsiaalmajutuse valdkonna investeerimisprojektideks, mitte teenuste osutamiseks; — raha, mille Majutuse Rahastamise Agentuur on kohalikele ametiasutustele andnud, ei kasutata kaupluste, vabrikute või büroode asutamiseks või säilitamiseks; erandiks on kohalike ametiasutuste ametnike bürood; — kui ettevõtjale antakse mõne tegevusala praktiseerimiseks eriõigused kava kaudu rahastatava infrastruktuurielemendi haldamiseks või kasutamiseks, tagab Majutuse Rahastamise Agentuur, et kohalik ametiasutus määrab ettevõtja infrastruktuurielemendi haldajaks või kasutajaks turutingimustel.

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	21.2.2007
Abi nr	N 692/06
Liikmesriik	Ühendkuningriik
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Large Combustion Plants National Emission Reduction Plan
Õiguslik alus	2(2) of the European Communities Act 1972, England and Wales — Statutory Instrument 2000 No 1973; Northern Ireland — Statutory Rule 2003 No 46; Scotland — Scottish Statutory Instrument 2000 No 323
Meetme liik	Abiskeem
Eesmärk	Keskkonnakaitse
Abi vorm	Kaubeldavate saastekvootide tasuta eraldamine
Eelarve	—
Abi osatähtsus	—
Kestus	1.1.2008-31.12.2015
Majandusharud	Suured põletusseadmed
Abi andva asutuse nimi ja aadress	The Department of Environment, Food and Rural affairs, Ashdown House 123 Victoria Street London SW 1E 6DE United Kingdom
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	8.3.2007
Abi nr	N 760/06
Liikmesriik	Hispaania
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Régimen de financiación para la exportación de buques
Õiguslik alus	Real Decreto 442/1994, Art. 11-14
Meetme liik	Abiskeem
Eesmärk	Valdkondlik arendustegevus
Abi vorm	Sooduslaen
Eelarve	Kavandatud aastased kulutused: 38 mln EUR
Abi osatähtsus	—
Kestus	1.1.2007-31.12.2008
Majandusharud	Laevaehitus
Abi andva asutuse nimi ja aadress	Ministerio de Industria, Turismo y Comercio
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:
http://ec.europa.eu/community_law/state_aids/

Euroopa Ühenduse asutamislepingu artiklite 87 ja 88 raames antava riigiabi lubamine

Juhud, mille suhtes komisjonil ei ole vastuväiteid

(EMPs kohaldatav tekst)

(2007/C 77/02)

Otsuse vastuvõtmise kuupäev	7.2.2007
Abi nr	N 217/06
Liikmesriik	Prantsusmaa
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Soutien à la régénération d'huiles usagées noires
Õiguslik alus	Délibération du Conseil d'administration de l'Agence de l'Environnement et de la Maîtrise de l'Énergie (ADEME) nº 06-1-3 du 2 février 2006
Meetme liik	Abiskeem
Eesmärk	Keskkonnakaitse
Abi vorm	Otsene toetus
Eelarve	Kavandatud abi kogusumma: 1,25 miljonit EUR
Abi osatähtsus	—
Kestus	7.2.2007-7.2.2017
Majandusharud	Õlijäätmete regenereerimine
Abi andva asutuse nimi ja aadress	Agence de l'Environnement et de la Maîtrise de l'Énergie (ADEME)
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	20.12.2006
Abi nr	N 409/06
Liikmesriik	Saksamaa
Piirkond	Brandenburg
Nimetus (ja/või abisaaja nimi)	HighSi GmbH (MSF 2002)
Õiguslik alus	Verbesserung der regionalen Wirtschaftsstruktur (Staatliche Beihilfe N 642/2002), das „Investitionszulagengesetz 2005" (Staatliche Beihilfe N 142a/2004) und dessen Nachfolgeregelung „Investitionszulagengesetz 2007" (Staatliche Beihilfe N 357a/2006)
Meetme liik	Individuaalne abi
Eesmärk	Piirkondlik areng

Abi vorm	Otsene toetus, maksutoetus
Eelarve	Kavandatud abi kogusumma: 76,63 miljonit EUR
Abi osatähtsus	14,73 %
Kestus	1.1.2006-31.12.2008
Majandusharud	Energia
Abi andva asutuse nimi ja aadress	InvestitionsBank des Landes Brandenburg Steinstraße 104-106 D-14480 Postdam Betriebsstättenfinanzamt Frankfurt (Oder)
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	19.2.2007
Abi nr	N 460/06
Liikmesriik	Taani
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Privat deltagelse i strategisk forskning — grundforskning og anvendt forskning
Õiguslik alus	Lov om forskningsrådgivning m.v.
Meetme liik	Abiskeem
Eesmärk	Uurimis- ja arendustegevus
Abi vorm	Otsene toetus
Eelarve	Kavandatud aastased kulutused: 250 miljonit DKK; kavandatud abi kogusumma: 2 500 miljonit DKK
Abi osatähtsus	100 %
Kestus	1.1.2007-31.12.2012
Majandusharud	—
Abi andva asutuse nimi ja aadress	Ministeriet for Videnskab, Teknologi og Udvikling Bredgade 43 DK-1260 København K
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	21.2.2007
Abi nr	N 536/06
Liikmesriik	Küpros
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Ανάπτυξη της Κυπριάκης Χειροτεχνίας
Õiguslik alus	Αποφ. Υπουργικού Συμβουλίου, 7.5.2003
Meetme liik	Abiskeem
Eesmärk	Kultuuripärandi säilitamine
Abi vorm	Otsene toetus
Eelarve	Kavandatud abi kogusumma: 0,6 miljonit CYP
Abi osatähtsus	—
Kestus	1.1.2007-31.12.2012
Majandusharud	Meelelahutus, kultuur ja sport
Abi andva asutuse nimi ja aadress	Υπουργείο Εμπορίου, Βιομηχανίας και Τουρισμού
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	19.2.2007
Abi nr	N 699/06
Liikmesriik	Hispaania
Piirkond	Cataluña
Nimetus (ja/või abisaaja nimi)	Energías renovables en Cataluña
Õiguslik alus	Orden TRI/301/2006 (DOGC 4461, 23.6.2006)
Meetme liik	Abiskeem
Eesmärk	Keskkonnakaitse
Abi vorm	Otsene toetus
Eelarve	Kavandatud abi kogusumma: 30,6 miljonit EUR
Abi osatähtsus	—
Kestus	24.6.2006-31.12.2009
Majandusharud	—

Abi andva asutuse nimi ja aadress	Generalitat de Catalunya
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	19.2.2007
Abi nr	N 761/06
Liikmesriik	Rootsi
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Ändring av stödordningen för effektiv och miljöanpassad energiförsörjning
Õiguslik alus	Förordning (2003:564) om bidrag till åtgärder för effektiv och miljöanpassad energiförsörjning
Meetme liik	Abiskeem
Eesmärk	Keskkonnakaitse
Abi vorm	Otsene toetus
Eelarve	Kavandatud aastased kulutused: 70 miljonit SEK; kavandatud abi kogusumma: 350 miljonit SEK
Abi osatähtsus	40 %
Kestus	1.1.2007-31.12.2012
Majandusharud	Elektri-, gaasi- ja veevarustus
Abi andva asutuse nimi ja aadress	Statens energimyndighet Box 310 S-631 04 Eskilstuna
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Euroopa Ühenduse asutamislepingu artiklite 87 ja 88 raames antava riigiabi lubamine

Juhud, mille suhtes komisjonil ei ole vastuväiteid

(EMPs kohaldatav tekst)

(2007/C 77/03)

Otsuse vastuvõtmise kuupäev	18.12.2006
Abi nr	N 452/06
Liikmesriik	Holland
Piirkond	—
Nimetus (ja/või abisaaja nimi)	Warmtebedrijf NV
Õiguslik alus	Kaderwet EZ-subsidies, programma Bestaand Rotterdams Gebied
Meetme liik	Individuaalne abi
Eesmärk	Energia säästmine
Abi vorm	Otsene toetus
Eelarve	Kavandatud abi kogusumma: 27 mln EUR
Abi osatähtsus	33 %
Kestus	1.1.2007-31.12.2008
Majandusharud	Kõik sektorid
Abi andva asutuse nimi ja aadress	Ministerie van Economische Zaken en de stad Rotterdam
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://ec.europa.eu/community_law/state_aids/

Otsuse vastuvõtmise kuupäev	21.2.2007
Abi nr	N 593/06
Liikmesriik	Ühendkuningriik
Piirkond	Northern Ireland
Nimetus (ja/või abisaaja nimi)	Northern Ireland Screen Fund
Õiguslik alus	Education and Library Services Etc. Grants Regulation (Northern Ireland) 1994 and The Industrial Development (Northern Ireland) Order 1982
Meetme liik	Abiskeem

Eesmärk	Kultuuri edendamine
Abi vorm	Otsene toetus, sooduslaen
Eelarve	Kavandatud aastased kulutused: 7,75 mln GBP; kavandatud abi kogusumma: 38,75 mln GBP
Abi osatähtsus	75 %
Kestus	1.4.2007-31.3.2012
Majandusharud	Meelelahutus, kultuur ja sport
Abi andva asutuse nimi ja aadress	Northern Ireland Film & Television Commission 3rd floor Alfred House 21 Alfred Street Belfast BT2 8ED United Kingdom
Muu teave	—

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:
http://ec.europa.eu/community_law/state_aids/

IV

(Teave)

TEAVE EUROOPA LIIDU INSTITUTSIOONIDELT JA ORGANITELT

KOMISJON

Euro vahetuskurss ([1])

4. aprill 2007

(2007/C 77/04)

1 euro =

	Valuuta	Kurss		Valuuta	Kurss
USD	USA dollar	1,3352	RON	Rumeenia leu	3,3345
JPY	Jaapani jeen	158,70	SKK	Slovakkia kroon	33,474
DKK	Taani kroon	7,4540	TRY	Türgi liir	1,8312
GBP	Inglise nael	0,67665	AUD	Austraalia dollar	1,6413
SEK	Rootsi kroon	9,3355	CAD	Kanada dollar	1,5441
CHF	Šveitsi frank	1,6292	HKD	Hong Kongi dollar	10,4358
ISK	Islandi kroon	88,93	NZD	Uus-Meremaa dollar	1,8590
NOK	Norra kroon	8,1675	SGD	Singapuri dollar	2,0224
BGN	Bulgaaria lev	1,9558	KRW	Korea won	1 250,21
CYP	Küprose nael	0,5812	ZAR	Lõuna-Aafrika rand	9,5879
CZK	Tšehhi kroon	27,933	CNY	Hiina jüaan	10,3244
EEK	Eesti kroon	15,6466	HRK	Horvaatia kuna	7,4051
HUF	Ungari forint	246,12	IDR	Indoneesia ruupia	12 171,68
LTL	Leedu litt	3,4528	MYR	Malaisia ringit	4,6158
LVL	Läti latt	0,7083	PHP	Filipiini peeso	63,889
MTL	Malta liir	0,4293	RUB	Vene rubla	34,7050
PLN	Poola zlott	3,8510	THB	Tai baht	43,305

([1]) *Allikas:* EKP avaldatud viitekurss.

TEAVE LIIKMESRIIKIDELT

Rumeenia teatis Euroopa Komisjonile vastavalt Euroopa Parlamendi ja nõukogu määruse (EÜ) nr 562/2006 (millega kehtestatakse isikute üle piiri liikumist reguleerivad ühenduse eeskirjad) artikli 34 lõikele 1 (Schengeni piirieeskirjad)

(2007/C 77/05)

(a) **Elamislubade loetelu**

— *permis de şedere temporară* (tähtajaline elamisluba), mille haldus- ja siseministeerium on välja andnud vastavalt välismaalaste seadusele nr 194/2002;

— *permis de şedere permanentă* (pikaajaline elamisluba), mille haldus- ja siseministeerium on välja andnud vastavalt välismaalaste seadusele nr 194/2002.

(b) **Piiripunktide loetelu**

RUMEENIA-UNGARI

1. Rahvusvaheliseks liikluseks avatud piiripunktid:
   — Urziceni — Vallaj, maantee;
   — Valea lui Mihai — Nyrábrány, raudtee ja maantee;
   — Satu Mare — Csengersima, raudtee;
   — Episcopia Bihor — Biharkeresztes, raudtee;
   — Borş — Artánd, maantee;
   — Salonta — Méhkerék, maantee ja raudtee;
   — Săcuieni — Létavértes, maantee;
   — Vărşand — Gyula, maantee;
   — Curtici — Lokosháza, raudtee ja vabatsoon;
   — Turnu — Battonya, maantee;
   — Nădlac — Nagylac, maantee;
   — Cenad — Kiszombor, maantee;
   — Carei — Vallaj, raudtee;
   — Petea — Csengersima, maantee;
   — Tudor Vladimirescu RO — LA-Lokoshaza, maantee.

RUMEENIA-SERBIA

1. Rahvusvaheliseks liikluseks avatud piiripunktid:
   — Jimbolia — Sirpca Krnja, maantee ja raudtee;
   — Stamora Moravita — Vatin, maantee ja raudtee;
   — Naidaş — Kaludjerovo, maantee;
   — Moldova Veche — Veliko Gradište, sadam;
   — Porţile de Fier I — Djerdap I, maantee;

— Drobeta-Turnu Severin, maantee;

— Porțile de Fier II — Djerdap II, maantee;

— Orşova, sadam.

RUMEENIA–BULGAARIA

1. Rahvusvaheliseks liikluseks avatud piiripunktid:

— Calafat — Vidin, maantee (parvlaev) ja sadam;

— Bechet — Orjahovo, maantee (parvlaev) ja sadam;

— Corabia, sadam;

— Turnu Măgurele, sadam;

— Zimnicea, sadam;

— Giurgiu — Ruse, maantee ja raudtee;

— Oltenița, sadam;

— Ostrov — Silistra, maantee;

— Negru Vodă — Kardam, maantee ja raudtee;

— Vama Veche — Durankulak, maantee.

RUMEENIA–MOLDOVA

1. Rahvusvaheliseks liikluseks avatud piiripunktid:

— Galați — Giurgiuleşti, raudtee;

— Galați, sadam;

— Galați — Giurgiuleşti, maantee;

— Oancea — Cahul, maantee;

— Fălciu — Stoianovca, maantee;

— Albița — Leuseni, maantee;

— Iaşi — Ungheni, maantee;

— Sculeni — Sculeni, maantee;

— Stanca — Costeşti, maantee.

RUMEENIA–UKRAINA

1. Rahvusvaheliseks liikluseks avatud piiripunktid:

— Siret — Porubnoe, maantee;

— Vicşani — Vadul Siret, raudtee;

— Valea Vişeului, raudtee;

— Câmpulung la Tisa, raudtee;

— Halmeu, maantee ja raudtee (kaubaveo puhul);

— Sighetu Marmației — Solotvino, maantee.

LENNUJAAMAD

— Henry Coandă — Otopeni;

— Bucureşti — Băneasa;

— Satu Mare;

— Suceava;

— Iaşi;

— Timişoara;

— Arad;

— Oradea;

— Cluj-Napoca;

— Bacău;

— Târgu Mureş;

— Sibiu;

— Mihail Kogălniceanu — Constanța.

MERESADAMAD

— Constanța;

— Mangalia;

— Midia.

VABATSOON

— Galați;

— Constanța-Sud-Agigea;

— Basarabi;

— Sulina;

— Giurgiu;

— Curtici;

— Brăila.

c) **Siseriiklike asutuste poolt igal aastal kinnitatavad välispiiri ületamisel nõutavad summad**

Välismaalaste seaduse nr 194/2002 artikli 6 lõike 1 punkti c kohaselt on Rumeenia territooriumile lubatud siseneda välismaalastel, kes suudavad tõendada, et neil on vajalikud vahendid isiklike kulude katmiseks ja päritoluriiki naasmiseks või transiidiks läbi mõne teise riigi, kes kindlasti lubab neil riiki siseneda.

Välispiiri ületamisel tuleb Rumeeniasse sisenemiseks esitada viisa saamiseks tõend, et isiklike kulude katmiseks on kogu ajavahemikuks olemas vajalikud vahendid (100 EUR päevas või samaväärne summa konverteeritavas välisvääringus).

ELi ja EMP liikmesriikide kodanikel on lubatud Rumeenia territooriumile siseneda ilma eespool ettenähtud tingimuste täitmiseta.

d) **Piirikontrolli eest vastutavate siseriiklike teenistuste loetelu**

Poliția de Frontieră Română (Rumeenia piiripolitsei)

Autoritatea Națională a Vămilor (riiklik tolliamet)

e) **Välisministeeriumide poolt väljastatud kaartide näidised**

Näidised: CD-, TC- ja PS-tüüpi isikutunnistused, mille välisministeerium on välja andnud Rumeenia diplomaatilise korpuse liikmetele ning tehnilisele ja administratiivpersonalile.

Liikmesriikide edastatav teave riigiabi kohta, mida antakse kooskõlas komisjoni aasta määrusega (EÜ) nr 70/2001, mis käsitleb EÜ asutamislepingu artiklite 87 ja 88 kohaldamist väikestele ja keskmise suurusega ettevõtetele antava riigiabi suhtes

(EMPs kohaldatav tekst)

(2007/C 77/06)

Abi nr	XS 15/07
Liikmesriik	Holland
Piirkond	Alle regio's kunnen in aanmerking komen
Abikava nimetus või üksiktoetust saava äriühingu nimi	Advies Ketendigitalisering en winkelautomatisering
Õiguslik alus	Kaderwet EZ-subsidies
Meetme liik	Individuaalne abi
Eelarve	Kavandatud aastased kulutused: 1,45 mln EUR; kavandatud abi kogusumma: —
Abi suurim osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–6 ja artikliga 5
Rakendamise kuupäev	12.2006
Kestus	31.12.2006
Eesmärk	Väikesed ja keskmise suurusega ettevõtjad
Majandusharud	Muud teenused: Jaemüügi sektor
Abi andva asutuse nimi ja aadress	Ministerie van Economische Zaken Bezuidenhoutseweg 20 2500 EC Den Haag Nederland

Abi nr	XS 40/07
Liikmesriik	Austria
Piirkond	—
Abikava nimetus või üksiktoetust saava äriühingu nimi	ERP-Internationalisierungsprogramm
Õiguslik alus	Richtlinien für das ERP-Internationalisierungsprogramm (in der Fassung gültig ab 1.1.2007) Allgemeine Bestimmungen für ERP-Programme: Industrie und Gewerbe Verlängerung der angemeldeten Förderungsrichtlinie XS 2/02
Meetme liik	Abiskeem
Eelarve	Kavandatud aastased kulutused: 10 mln EUR (= ± 1,2 mln EUR brutotoetusekvivalent); kavandatud abi kogusumma: —
Abi suurim osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–6 ja artikliga 5
Rakendamise kuupäev	1.1.2002

Kestus	31.12.2008
Eesmärk	Väikesed ja keskmise suurusega ettevõtjad
Majandusharud	Kõik majandusharud
Abi andva asutuse nimi ja aadress	ERP-Fonds Ungargasse 37 A-1030 Wien Tel. (43-1) 501-75 (DW 466) E-mail: e.kober@awsg.at Internet: www.awsg.at/2007plus

Abi nr	XS 44/07
Liikmesriik	Austria
Piirkond	Gesamtes Hoheitsgebiet
Abikava nimetus või üksiktoetust saava äriühingu nimi	ERP-KMU-Programm
Õiguslik alus	Richtlinien für das ERP-KMU-Programm Allgemeine Bestimmungen für ERP-Programme: Industrie und Gewerbe Nachfolgeregelung des ERP-KMU-Technologieprogramms N 303/97
Meetme liik	Abiskeem
Eelarve	Kavandatud aastased kulutused: 300 mln EUR (= ± 40 mln EUR brutotoetus-ekvivalent); kavandatud abi kogusumma: —
Abi suurim osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–6 ja artikliga 5
Rakendamise kuupäev	1.1.2007
Kestus	31.12.2008
Eesmärk	Väikesed ja keskmise suurusega ettevõtjad
Majandusharud	Kogu töötlev tööstus, muud teenused
Abi andva asutuse nimi ja aadress	ERP — Fonds Ungargasse 37 A-1030 Wien Tel. (43-1) 501-75 466 E-mail: e.kober@awsg.at Internet: www.awsg.at/2007plus

Liikmesriikide edastatav teave riigiabi kohta, mida antakse kooskõlas komisjoni aasta määrusega (EÜ) nr 70/2001, mis käsitleb EÜ asutamislepingu artiklite 87 ja 88 kohaldamist väikestele ja keskmise suurusega ettevõtetele antava riigiabi suhtes

(2007/C 77/07)

Abi number: XA 7001/07

Liikmesriik: Belgia

Piirkond (märkige piirkonna nimi, kui abi annab keskvalitsusest madalam asutus): Flaami piirkond

Abikava nimetus või üksiktoetust saava ettevõtte nimi (märkige abikava nimetus või üksiktoetuse puhul abisaaja nimi): Abi mahetootmise kontrolliasutustele (tootmine)

Õiguslik alus (esitage täpne viide abikava või üksiktoetuse riiklikule õiguslikule alusele):

Titel: Koninklijk Besluit van 17 april 1992 inzake de biologische productiemethode en aanduidingen dienaangaande op landbouwproducten en levensmiddelen, artikel 8bis; gewijzigd bij het KB van 10 juli 1998 en 3 september 2000 (B.s. 20-05-2000).

Referentie: Belgisch staatsblad 20-05-2000, dossier nr. 1992-04-17/32.

Kavas ettenähtud aastased kulutused või ettevõttele antud üksiktoetuse üldsumma (summad esitatakse eurodes või vajaduse korral omavääringus: 60 000 EUR aastas (iga-aastaselt uuendatav)

Abi ülemmäär (märkige abi ülemmäär või suurim abisumma abi saamise tingimustele vastava kululiigi kohta):

Võttes arvesse, et Flaami piirkonnas on 233 mahetootjat:

1. Aastased kogukulud kuni 18 000 EUR aastas, et kompenseerida Flaami kontrolliasutustele Flaami pädevate asutuste poolt antud kohustuste täitmine (teave esitatud nõukogu määruses (EMÜ) nr 2092/91 osutatud aruande osana).

2. Aastased kogukulud kuni 42 000 EUR, mis kompenseeritakse Flaami ametiasutuste antud kohustuste täitmiseks (sealhulgas katsete ja pistelise kontrolli läbiviimiseks vastavalt määruse (EMÜ) nr 2092/91 III lisa punktis 5 sätestatule. Abi katab:

   — kuni 25 % (või 128 EUR tootja kohta) tootja kontrollimise kogukuludest;

   — halduskulud, mis tekkisid kontrolliasutusel abikava raames.

Rakendamise kuupäev (märkige kuupäev, millest alates võib kava alusel abi anda või millal antakse üksiktoetus):

Abi antakse 2007. aasta jooksul ning kõige varem 15 päeva pärast taotluse esitamist.

Abi antakse rakendusmääruse alusel. Kõnealused rakendusmäärused koostatakse igal aastal. Rakendusmääruse eelnõu alles koostatakse. Kõnealune rakendusmäärus sisaldab "kavatsetud meetmete rakendamiskeeldu".

Kava või üksiktoetuse kestus (märkige kuupäev (aasta ja kuu), milleni võib kava alusel abi anda, või üksiktoetuse puhul vajaduse korral viimase osamakse eeldatav kuupäev (aasta ja kuu)): Lõppkuupäev: 31.12.2007.

Abi eesmärk (väikeste ja keskmise suurusega ettevõtete abistamine). Märkige täiendavad (teisesed) eesmärgid. Märkige, millist artiklit [artiklid 4–17] kohaldatakse, ja esitage abikava või üksiktoetusega kaetavad abi saamise tingimustele vastavad kulud:

Väikeste ja keskmise suurusega ettevõtete toetamine ja sektori areng.

Täpsemalt "abi kvaliteetsete põllumajandustoodete tootmise toetuseks" vastavalt komisjoni 15. detsembri 2006. aasta määruse (EÜ) nr 1857/2006 (mis käsitleb asutamislepingu artiklite 87 ja 88 kohaldamist põllumajandustoodete tootmisega tegelevatele väikestele ja keskmise suurusega ettevõtetele antava riigiabi suhtes ning millega muudetakse määrust (EÜ) nr 70/2001) artiklile 14.

Asjaomane sektor (asjaomased sektorid) (Märkige allsektor, nimetades asjaomane loomakasvatuse liik (nt sead/linnud) või asjaomane taimekasvatuse liik (nt õunad/tomatid)): Mahepõllumajandus

Abi andva ametiasutuse nimi ja aadress:

Vlaamse overheid
Beleidsdomein Landbouw en Visserij
Departement Landbouw en Visserij
Afdeling Duurzame Landbouwontwikkeling
WTC III — 12de verd.
Simon Bolivarlaan 30
B-1000 Brussel

Muu teave:

Belgia ametliku väljaande veebileht:
http://www.ejustice.just.fgov.be/cgi/welcome.pl
http://www.ejustice.just.fgov.be/doc/rech_n.htm

Jules Van Liefferinge
peasekretär

Liikmesriikide esitatav teave antud riigiabi kohta, mida antakse kooskõlas komisjoni määrusega (EÜ) nr 2204/2002, milles käsitletakse EÜ asutamislepingu artiklite 87 ja 88 kohaldamist tööhõivealase riigiabi suhtes

(EMPs kohaldatav tekst)

(2007/C 77/08)

Abi nr	XE 31/06	
Liikmesriik	Ungari	
Piirkond	Kogu riik	
Abikava nimetus	Abi isikutele, kes soovivad sõlmida kaitstud töölepingu, ning rehabilitatsiooni- ja muude kulude katteks	
Õiguslik alus	177/2005. (IX. 2.) Korm. rendelet a megváltozott munkaképességű munkavállalók foglalkoztatásához nyújtható költségvetési támogatásról	
Kava kohaselt planeeritud aastakulutused	Aastane üldsumma	98 miljonit EUR (eelarve perioodile 1.1.2007 kuni 30.6.2007)
	Tagatud laenud	—
Abi maksimaalne osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–5 ning artiklitega 5 ja 6	Jah
Rakendamise kuupäev	1.1.2006	
Kava kestus	Algne ajapiir: 31.12.2006; uus ajapiir: 30.6.2007	
Abi eesmärk	Artikkel 4: Töökohtade loomine	
	Artikkel 5: Ebasoodsas olukorras ja puuetega töötajate värbamine	
	Artikkel 6: Puuetega töötajate värbamine	Jah
Asjaomased majandussektorid	— Kõik tööhõivealase abi kõlblikud ühenduse sektorid [1]	Jah
	— Kogu tootmine [1]	
	— Kõik teenused [1]	
	— Muu	
Abiandva asutuse nimetus ja aadress	Szociális és Munkaügyi Minisztérium	
	Alkotmány u. 3. H-1054 Budapest	
Muu teave	—	
Kohustus komisjoni abist eelnevalt teavitada	Kooskõlas määruse artikliga 9	Jah

[1] V.a laevaehituse sektor ja muud sektorid, mille kohta kehtivad erieeskirjad ja direktiivid, millega reguleeritakse kogu sektorile antavat riigiabi.

Abi nr	XE 32/06
Liikmesriik	Hispaania
Piirkond	Comunidad Autónoma de La Rioja
Abikava nimetus	Abi stabiilseks töötajate palkamiseks La Rioja autonoomse piirkonna tehnoloogiapõhistele äriühingutele
Õiguslik alus	Orden de 3 de noviembre de 2006 (BOR núm. 150, de 14 de noviembre), de la Consejería de Hacienda y Empleo por la que se establecen las Bases reguladoras de concesión de ayudas a la contratación estable en empresas de base tecnológica, en el ámbito de la Comunidad Autónoma de La Rioja (BOR nº 150, de 14.11.2006)

Kava kohaselt planeeritud aastakulutused	Aastane üldsumma	0,2 miljonit EUR
	Tagatud laenud	Ei
Abi maksimaalne osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–5 ning artiklitega 5 ja 6	Jah
Rakendamise kuupäev	15.11.2005	
Kava kestus	Kuni 30. juunini 2007	
Abi eesmärk	Artikkel 4: Töökohtade loomine	Jah
	Artikkel 5: Ebasoodsas olukorras ja puuetega töötajate värbamine	Jah
	Artikkel 6: Puuetega töötajate värbamine	Ei
Asjaomased majandussektorid	— Kõik tööhõivealase abi kõlblikud ühenduse sektorid (1)	Jah
	— Kogu tootmine (1)	Ei
	— Kõik teenused (1)	Ei
	— Muu	Ei
Abiandva asutuse nimetus ja aadress	Servicio Riojano de Empleo	
	C/Portales 46. 26071 Logroño Teléfono 941291100 E-La Rioja	
Muu teave	Abikava rahastatakse koos Euroopa Sotsiaalfondiga	
Kohustus komisjoni abist eelnevalt teavitada	Kooskõlas määruse artikliga 9	Jah

(1) V.a laevaehituse sektor ja muud sektorid, mille kohta kehtivad erieeskirjad ja direktiivid, millega reguleeritakse kogu sektorile antavat riigiabi.

Abi nr	XE 33/06	
Liikmesriik	Poola	
Piirkond	Północny 1.6	
Abikava nimetus	Vabastus kinnisvaramaksust Elblągi linnastegutsevatele ja uute investeeringute kaudu uusi töökohti loovatele äriühingutele.	
Õiguslik alus	— art. 18 ust. 2 pkt 8 w związku z art. 40 ust. 1 i art. 41 ust. 1 ustawy z dnia 8 marca 1990 r. o samorządzie gminnym (Dz.U. z 2001 r. nr 142, poz. 1591), — art. 7 ust. 3 ustawy z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych (Dz.U. z 2006 r. nr 121, poz. 844)	
Kava kohaselt planeeritud aastakulutused	Aastane üldsumma	0,2586 miljonit EUR
	Tagatud laenud	—
Abi maksimaalne osatähtsus	Kooskõlas määruse artikli 4 lõigetega 2–5 ning artiklitega 5 ja 6	Jah Artikli 4 lõiked 2–6
Rakendamise kuupäev	3.11.2006	
Kava kestus	Kuni 31. detsembrini 2006	
Abi eesmärk	Artikkel 4: Töökohtade loomine	Jah
	Artikkel 5: Ebasoodsas olukorras ja puuetega töötajate värbamine	
	Artikkel 6: Puuetega töötajate värbamine	

Asjaomased majandussektorid	— Kõik tööhõivealase abi kõlblikud ühenduse sektorid (1)	Jah
	— Kogu tootmine (1)	
	— Kõik teenused (1)	
	— Muu	
Abiandva asutuse nimetus ja aadress	Prezydent Miasta Elbląg	
	ul. Łączności 1 PL-82-300 Elbląg	
Muu teave	—	
Kohustus komisjoni abist eelnevalt teavitada	Kooskõlas määruse artikliga 9	Jah

(1) V.a laevaehituse sektor ja muud sektorid, mille kohta kehtivad erieeskirjad ja direktiivid, millega reguleeritakse sektorile antavat riigiabi.

EUROOPA MAJANDUSPIIRKONDA KÄSITLEV TEAVE

EFTA JÄRELEVALVEAMET

Kutse märkuste esitamiseks vastavalt järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikele 2 riigiabi andmise kohta seoses ettevõtja Sementsverksmiðjan hf penisonikohustuste ülevõtmisega Islandi riigi poolt

(2007/C 77/09)

29. novembri 2006. aasta otsusega nr 367/06/COL, mis on esitatud käesolevale kokkuvõttele järgnevatel lehekülgedel autentses keeles, algatas EFTA järelevalveamet menetluse kooskõlas EFTA riikide lepingu protokolli nr 3 I osa artikli 1 lõikega 2, mis käsitleb järelevalveameti ja kohtu asutamist (edaspidi "järelevalve- ja kohtuleping"). Islandi ametiasutustele on sellest teatamiseks saadetud otsuse koopia.

Käesolevaga palub EFTA järelevalveamet EFTA riikidel, ELi liikmesriikidel ja huvitatud isikutel saata märkused kõnealuse meetme kohta ühe kuu jooksul alates käesoleva teatise avaldamisest aadressil:

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

Märkused edastatakse Islandi ametiasutustele. Märkused esitanud huvitatud isiku andmete konfidentsiaalset käsitlemist võib nõuda kirjalikult, esitades nõude põhjendused.

KOKKUVÕTE

MENETLUS

Islandi esindus Euroopa Liidu juures edastas 19. augusti 2003. aasta kirjas rahandusministeeriumi 19. augusti 2003. aasta kirja (järelevalveamet sai mõlemad kirjad kätte ja registreeris samal kuupäeval numbriga 03-5685 A), millega Islandi ametiasutused teavitasid vastavalt järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikele 3 ettevõtja Sementsverksmiðjan hf riigile kuuluvate aktsiate müümisest.

17. detsembril 2003. aastal esitas äriühing Aalborg Portland Íslandi ehf järelevalveametile kaebuse Islandi riigile kuuluvate ettevõtja Sementsverksmiðjan hf aktsiate müügi tingimuste kohta.

Pärast kirjavahetust Islandi ametiasutustega [1] võttis järelevalveamet vastu otsuse nr 421/04/COL, et algatada Islandi riigile kuuluvate ettevõtja Sementsverksmiðjani hf aktsiate müügi kohta järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikes 2 sätestatud menetlus.

Islandi ametiasutused esitasid oma märkused nimetatud otsuse kohta 24. veebruari 2005. aasta kirjas. 20. juunil 2005. aastal sai järelevalveamet märkused ettevõtjalt Islenskt Sement ehf, kes ostis riigile kuulunud ettevõtja Sementsverksmiðjan hf aktsiad. 2. septembril 2005. aastal esitas ettevõtja Aalborg Portland Íslandi ehf täiendavaid märkusi ja juhtis tähelepanu sellele, et järelevalveamet ei ole tegelenud ettevõtjal Sementsverksmiðjan hf lasuvate pensionikohustuste ülevõtmisega riigi poolt.

[1] Järelevalveameti ja Islandi ametiasutuste kirjavahetuse kohta üksikasjalikuma teabe saamiseks vt järelevalveameti otsust ametliku uurimismenetluse alustamise kohta, otsus nr 421/04/COL (ELT C 117, 19.5.2005, lk 17).

Pärast täiendavat kirjavahetust Islandi ametiasutustega on järelevalveamet otsustanud laiendada ametlikku uurimismenetlust ettevõtja Sementsverksmiðjan hf pensioniga seonduvate kohustuste ülevõtmisele riigi poolt.

MEETME ANALÜÜS

23. oktoobril 2003. aastal rahandusministeeriumi ja riigikassa nimel riigiteenistujate pensionifondi poolt sõlmitud lepinguga, millega rahandusministeerium täitis tööstusministeeriumi ja ettevõtja Islenskt Sement ehf vahel sõlmitud aktsiate ostu lepingus sätestatud kohustuse, võttis rahandusministeerium üle ülejäänud võlakirjad, mis olid 1997. aasta lepingu kohaselt väljastatud ettevõtja Sementsverksmiðjan hf kogunenud võlgade katmiseks.

2003. aasta oktoobris allkirjastatud lepingus viidatakse samuti 30. märtsil 1999. aastal riigiteenistujate pensionifondi ja ettevõtja Sementsverksmiðjan hf vahel sõlmitud lepingule, milles on sätestatud, et ettevõtja Sementsverksmiðjan hf töötajatega seonduvad kohustused tasutakse ja nendega arveldatakse aasta lõikes. 2003. aasta oktoobri lepinguga võttis rahandusministeerium üle ka 1999. aasta märtsis sõlmitud lepingu kohased ettevõtjale Sementsverksmiðjan hf kuuluvad kohustused.

Selle teabe kohaselt, mida Islandi ametiasutused edastasid oma 12. novembri 2003. aasta kirjas, hinnati aastal 2003 juba pensionile läinud töötajate pensionikohustusi 412 miljonile Islandi kroonile. Ettevõtja Sementsverksmiðjan hf riigiteenistujate pensionifondi B osaga liitunud töötajatega seonduvad tulevased kohustused moodustavad hinnanguliselt 10–15 miljonit Islandi krooni, sõltuvalt sellest, kui kauaks töötaja äriühingusse jääb.

Järelevalveamet arvab esmasel vaatlusel, et see, kui Islandi riik võttis üle ettevõtja Sementsverksmiðjan hf. pensioniga seonduvad kohustused, maksmata nende eest turuhinda, andis äriühingule selektiivse eelise, mis hõlmab riigi vahendeid kasutades üle võetud kohustustega võrdset summat. Sellel eelisel on konkurentsi moonutav mõju ja mõju kaubandusele, kuna Euroopa Majanduspiirkonna tsemenditurul valitseb konkurents. Seepärast kujutab teatatud meede järelevalveameti esialgse arvamuse kohaselt endast riigiabi EMP lepingu artikli 61 lõike 1 tähenduses.

Järelevalveameti esialgne arvamus on, et on võimalik hinnata ainult seda, kas ettevõtja Sementsverksmiðjan hf pensioniga seonduvate kohustuste ülevõtmine riigi poolt sobib kokku EMP lepingu riigiabi eeskirjadega riigiabi suuniste päästmis- ja ümberkorraldamisabi käsitleva 16. peatüki sätete alusel. Järelevalveametil on siiski kahtlusi, kas Islandi ametiasutuste antud teave kehtiva ümberkorraldamiskava kohta vastab vajalikele nõuetele.

KOKKUVÕTE

Eelnevatele kaalutlustele toetudes on järelevalveamet vastavalt järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikele 2 otsustanud alustada ametlikku uurimismenetlust. Huvitatud isikuid kutsutakse üles esitama oma märkused ühe kuu jooksul käesoleva otsuse avaldamisest *Euroopa Liidu Teatajas*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 367/06/COL

of 29 November 2006

on the taking over by the Icelandic State of pension-related liabilities of Sementsverksmiðjan hf. (Iceland)

THE EFTA SURVEILLANCE AUTHORITY [1],

Having regard to the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [3], in particular to Article 24 thereof,

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

Having regard to the Authority's Guidelines [4] on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Authority's Decision No 421/04/COL on the sale of the Icelandic State's shares in Sementsverksmiðjan hf. and having called on interested parties to submit their comments pursuant to those provisions [5],

Whereas:

I. FACTS

1. Procedure

By letter of 19 August 2003 from the Icelandic Mission to the European Union forwarding a letter from the Ministry of Finance dated 19 August 2003, both received and registered by the Authority on the same date (Doc No 03-5685 A), the Icelandic authorities notified the sale of the State's shares in Sementsverksmiðjan hf., pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

On 17 December 2003, the company Aalborg Portland Íslandi ehf. lodged a complaint with the Authority against the terms and conditions of the sale by the Icelandic State of its shares in Sementsverksmiðjan hf. The Authority received and registered this letter on 23 December 2003 (Doc No 03-9059 A). The complainant requested this complaint to be processed simultaneously to the notification of the sale made by the Government.

After various exchanges of correspondence [6], by letter dated 21 December 2004 the Authority informed the Icelandic authorities that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement in respect of the sale by the Icelandic State of its shares in Sementsverksmiðjan hf. (Event No 296878). The Authority raised doubts regarding the market value of Sementsverksmiðjan hf. at the time the State's shares were sold, the market value of the assets repurchased by the State, the right of Sementsverksmiðjan hf. to use some of the assets located in Reykjavik sold to the National Treasury without any payment as well as its right to reacquire certain properties and ground rights in Reykjavik for an already predetermined price.

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[1] Hereinafter referred to as the Authority.
[2] Hereinafter referred to as the EEA Agreement.
[3] Hereinafter referred to as the Surveillance and Court Agreement.
[4] Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, EEA Supplements 3.9.94 No 32. The Guidelines were last amended on 25 October 2006. Hereinafter referred to as the State Aid Guidelines.
[5] Published in OJ C 117, 19.5.2005, p. 17 as well as in the EEA Supplement to the Official Journal of the EU No 24 of 19.5.2005.
[6] For more detailed information on the various correspondence between the Authority and the Icelandic authorities, reference is made to the Authority's Decision to open the formal investigation procedure, Decision No 421/04/COL (OJ C 117, 19.5.2005, p. 17).

The Authority's Decision No 421/04/COL to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ([7]). The Authority called on interested parties to submit their comments thereon. The Icelandic authorities submitted comments on this Decision by letter dated 24 February 2005 (Event No 311243). On 20 June 2005, the Authority received comments from Íslenskt sement ehf., the purchaser of Sementsverksmiðjan hf. (Event No 323552). On 2 September 2005, Aalborg Portland Íslandi ehf. submitted further comments (Event No 333018).

The Authority requested the assistance of an independent expert to find out whether the sale of the State's shares in Sementsverksmiðjan hf. was done in accordance with the market investor principle. Based on the independent expert's first assessment of the information on the sale available to the Authority, an information request was sent to the Icelandic authorities on 12 July 2005 (Event No 326295). The Icelandic authorities replied by letter from the Icelandic Mission to the EU forwarding a letter of the Ministry of Finance dated 30 and 31 August 2005 respectively. This letter was received and registered by the Authority on 1 September 2005 (Event No 332274).

A second information request was sent to the Icelandic authorities in the framework of the formal investigation procedure on 28 October 2005 (Event No 347691). This request was followed by a meeting in Brussels on 23 November 2005 between representatives of the Authority, the Icelandic authorities, the company and one of the investors participating in the consortium which acquired Sementsverksmiðjan hf. The independent expert engaged by the Authority attended this meeting as well.

By letter dated 6 December 2005, received and registered by the Authority on 7 December 2005 (Event No 353483), the Icelandic Mission to the EU forwarded a letter from the Ministry of Finance dated 2 December 2005, replying to the above-mentioned information request as well as to some pending issues raised during the meeting.

On 31 January 2006, the independent expert presented to the Authority his final report on whether the sale by the Icelandic State of its shares in Sementsverksmiðjan hf. had been accomplished on market terms (Event No 360438).

On 16 February, 9 March and 4 August 2006, the Authority sent letters to the Icelandic authorities requesting further information and clarifications on still unclear points (Event No 363213, 365145 and 383227). The Icelandic authorities replied with letters dated 20 February, 19 April and 26 September 2006 respectively (Event No 363608, 370425 and 390092).

On 12 October 2006 in the annual State Aid Package Meeting in Reykjavik, this case was discussed. As a follow-up to this discussion, the Icelandic authorities sent a letter to the Authority on 2 November 2006 (Event No 396476).

2. **Description of the measure under assessment**

With an agreement dated 23 October 2003 between the Ministry of Finance and the Pension Fund of State Employees, on behalf of the State Treasury, the Ministry of Finance took over the pension obligations of Sementsverksmiðjan hf. taken over by the company with a special agreement from 1997, and those regarding the annual compensation settlement for employees affiliated to the B-Section of the Pension Fund of State Employees.

a) *Introduction: the affiliation of employees of Sementsverksmiðjan hf. to the Pension Fund of State Employees*

In a letter dated 18 April 2006, the Icelandic authorities explained that white-collar employees of Sementsverksmiðjan hf. had access to the Pension Fund of State Employees. For their part, blue-collar employees were affiliated to the private pension fund system, i.e. the pension funds of their trade unions. According to the explanations of the Icelandic authorities, at the time of the incorporation of the company in 1993, 6 employees were affiliated to the Pension Fund of State Employees and 93 to private pension funds. Although after the incorporation of the company in 1993, new white-collar employees could still affiliate to the Pension Fund of State Employees, after the sale of the State's shares in Sementsverksmiðjan hf. carried out in 2003, all new employees have to affiliate to a private pension fund.

([7]) Published in OJ C 117, 19.5.2005, p. 17 as well as in the EEA Supplement to the Official Journal of the EA No 24 of 19.5.2005.

b) *General information on the functioning of the Pension Fund of State Employees*

The Pension Fund of State Employees was originally governed by the provisions of Act No 29/1963. In 1997, given that the premiums to the Pension Fund of State Employees seemed insufficient to cover its pension payments, the State decided to reform the system and adopted Act No 1/1997 "The Government Employees Pension Fund Act". The Pension Fund of State Employees was divided into two Sections: a new Section A was created and the existing pension fund changed into Section B. All new employees were to join Section A whereas existing employees could choose between membership in Section A or retaining their right to membership in Section B, closed henceforth to new members. According to the Icelandic authorities, with the splitting of the former Pension Fund of State Employees into Section A and B, the fund was made self-sustaining and would no longer cumulate a negative balance between premiums and commitments which would eventually have to be made up by the National Treasury.

The main differences between Section A and B of the Pension Fund of State Employees are:

— Premiums to Section A of the Pension Fund of State Employees are paid on the basis of the total income of the affiliated employees who earn retirement rights on the basis of total premiums paid. The pension rights are linked to the consumer price index. The rights of the affiliated employees to a pension are bound by law and employers must periodically adjust their premiums to ensure that the Fund's premium income matches its commitments.

— In contrast, premiums to Section B of the Pension Fund of State Employees are only paid on the basis of the basic salary of the affiliated employees, not on their total pay. The affiliated employees acquire pension rights in a way that at retirement they receive a certain percentage of the basic pay for the post from which they retired. Thereafter, the pension is linked to the average rise in the pay of government employees. As a result of the provisions for Section B, there is normally a deficit which has to be covered on a regular basis. By virtue of Article 32 of Act No 1/1997, the Treasury guarantees the payment of a pension according to the Act. Notwithstanding this guarantee of the State on the paying-out of pensions to affiliates to the Fund, it is the employer of the members of Section B of the Pension Fund of State Employees who must cover this difference on the basis of Article 33 Act No 1/1997.

c) *The establishment of a debt from Sementsverksmiðjan hf. towards the Pension Fund of State Employees*

Article 33 of Act No 1/1997 provides that *"in the case where a previously determined […] pension increases due to a general increase in the salary of public employees, the Treasury and other employers who insure their employees in the Fund* ***refund*** [8] *the increase which thus takes place in pension payments. […] The board of the Fund may […] accept a debenture in payment of accrued commitments. […] The commitment thus settled shall be based on an actuarial assessment as at the settlement date. An employer who has settled his/her commitment with the issue of a debenture in accordance with this paragraph shall have no further responsibility for the Fund's commitments […] in respect of the period and those employees to which the settlement applies"*.

On 8 October 1997, the Ministry of Finance signed an Agreement with the Civil Servants' Pension Fund on payment of National Treasury obligations pursuant to Article 33 of Act No 1/1997 on the Civil Servants' Pension Fund with respect to employees of the Iceland State Cement Works to year-end 1996. These obligations corresponded to the accrued unpaid pension obligation for Sementsverksmiðjan hf.'s employees minus the share of the company in the Fund's assets.

Article 3 of this Agreement reads as follows: *"Using an imputed interest rate of 3,5 %, the present value of the LSR([9])'s accrued obligations with respect to employees of the Iceland State Cement Works at year-end 1996 was assessed as ISK 494 816 380. LSR's assets for payment of obligations are considered to be 19 % of the Fund's accrued unsettled obligations. The State's obligations on behalf of Iceland Cement Ltd. is thus ISK 400 801 268"*.

According to Article 4 of the same agreement *"The National Treasury will make payment to LSR of its obligation pursuant to Article 2 by presenting it with Iceland Cement Ltd. bonds for a total amount of ISK 326 488 714 […]. This will take the form of five bonds, each in the amount of ISK 50 000 000, and one bond in the amount of ISK 76 488 714. the bonds are to be paid in 49 equal instalments of the principal and interest, with the first instalment due 1 March 1998 and the remainder at six-month intervals after that. The bonds are inflation-indexed to the Consumer Price Index (CPI) with the base index 178,6. Annual interest is 5,5 % (2,75 % for half-year) and shall be calculated as of 1 January 1997. Interest for the period 1 January 1997 to 30 August 1997 shall be paid separately on 1 November 1997. The present value of the bonds as of 1 September 1997, at 3,5 % imputed interest, is ISK 400 801 268. The National Treasury shall guarantee LSR of payment of instalments and interest of these bonds. With these bonds the National Treasury has fully settled its obligations towards LSR with respect to pension supplements pursuant to Article 33 of Act No 1/1997 on the Civil Servants' Pension Fund, arising from membership of employees of the Iceland State Cement Works to LSR until the end of 1996"*.

[8] Emphasis added by the Authority.
[9] Acronym in Icelandic for Pension Fund of State Employees.

Therefore, following the application of Article 33 last paragraph of Act No 1/1997, once Sementsverksmiðjan hf. settled its commitment with the issue of bonds for the amount determined in the Agreement of 8 October 1997, the company would have no further responsibility for the Fund's commitments regarding the period until end of 1996 for the employees to which the settlement applied. These bonds are thus simply a postponement of the payment of the debt.

On 30 March 1999, Sementsverksmiðjan hf. and the Pension Fund of State Employees signed a second agreement pursuant to Article 33 of Act No 1/1997. On the basis of this agreement, the Fund would assess yearly the accrued pension obligation arisen during the year with respect to the employees of the company affiliated to Section B of the Fund remaining at the time. According to this Agreement, the company would settle the accrued obligations arisen during the year with respect to the employees still affiliated to Section B at the end of each year, after deducting all contributions already paid by the employees and the company with respect to the rights earned during the year. According to the information provided by the Icelandic authorities, in 2003, five employees of Sementsverksmiðjan hf. were still affiliated to Section B of the Pension Fund of State Employees.

d) *The taking over by the State of Sementsverksmiðjan hf.'s pension liabilities*

With an agreement dated 23 October 2003 between the Ministry of Finance and the Pension Fund of State Employees, on behalf of the State Treasury, fulfilling the obligation laid down in Article 4 of the Share Purchase Agreement between the Ministry of Industry and Íslenskt sement ehf., the Ministry of Finance took over the remainder of the bonds issued to pay the accrued obligations of Sementsverksmiðjan hf. as settled in the agreement of 1997.

The agreement signed in October 2003 also refers to the agreement dated 30 March 1999 between the Pension Fund of State Employees and Sementsverksmiðjan hf. in which it was stated that obligations regarding employees of Sementsverksmiðjan hf. were to be paid and settled annually. With the agreement of October 2003, the Ministry of Finance also took over the obligations of Sementsverksmiðjan hf. according to the referred agreement of March 1999.

With this Agreement, the Ministry of Finance fulfilled the obligation entered into under Article 4 of the Share Purchase Agreement signed on 2 October 2003 with the investors group, Íslenskt sement ehf., according to which *"[t]he Seller shall take over the pension debts and obligations of the Company, which carry Government guarantee, and were taken over by the Company in 1997 with a special agreement. The Seller shall as well take over all existing and future obligations regarding the annual compensation settlement for the individuals who are now paying in the B-Section of the Pension Fund of State Employees as long as they are employees of the Company"*.

Even if the Ministry of Finance engaged itself into taking over these debts and obligations of Sementsverksmiðjan hf. in the Share Purchase Agreement with the investors group Íslenskt sement ehf., it is on the basis of a distinct legal act, namely the agreement between the Ministry of Finance and the Pension Fund of State Employees, that Sementsverksmiðjan hf. is relieved of these obligations.

According to the information provided by the Icelandic authorities in their letter dated 12 November 2003, the pension obligations for employees already retired were estimated at ISK 412 million in 2003. As far as the future obligations for the employees of Sementsverksmiðjan hf. still affiliated to Section B of the Pension Fund of State Employees are concerned, they were estimated to amount to ISK 10-15 million, depending on the time the employees will remain in the company.

3. **Comments to the Authority's Decision No 421/04/COL relevant to the present decision**

a) *The Icelandic authorities*

In their letter dated 18 April 2006, the Icelandic authorities explained that the Ministry of Finance and the Pension Fund of State Employees signed an agreement on 8 October 1997 on the basis of which the pension obligations of Sementsverksmiðjan hf. regarding all its employees were settled as they stood at the end of year 1996.

Article 4 of the Agreement states that the State shall be liable as guarantor of collection towards the Pension Fund of State Employees. A guarantee of collection implies that all legal remedies will have to be exhausted before the guarantee can be activated.

The Icelandic authorities clarified that *"[f]ollowing the Agreement, dated 8 October 1997, Sementsverksmiðjan hf. was liable for the pension fund obligations. On the basis of this Agreement the said liabilities were accounted for in the accounts of Sementsverksmiðjan hf. between 1997 and 2003. The legal liability of the State remained intact as a secondary liability to the Company's as per art. 32 of Act No 1/1997 that defines the constitutional legal liability of the State"*.

As far as the Agreement between the Pension Fund of State Employees and Sementsverksmiðjan hf. of 30 March 1999 is concerned, the Icelandic authorities have explained that obligations regarding employees of Sementsverksmiðjan hf. will be paid and settled annually by the company.

According to the explanations of the Icelandic authorities, *"[o]ther corporations under State ownership were treated similarly in 1997 and bonds issued for a calculated future pension obligation pertaining to former and current employees of said corporations. When these corporations have been privatized the bonds have in most cases been taken over by the State or settled prior to the sale. The Icelandic government found that to be correct since the legal responsibility for the payments is always the State. […] The obligation was in all cases to the greatest extent pertaining to rights earned by employees prior to the incorporation of the companies, granted them as State employees. It would be skewering the competitional standing of these companies by burdening them with a bond for part pension obligations in most part accrued prior to their incorporation and in most part resulting from the fact that the State did not at that time collect pension premiums into a fund in [the Pension Fund of State Employees] resulting in the fact that there were no investments made for the premiums and no interest accrued to meet the future pension obligations"*.

In a letter dated 25 September 2006, the Icelandic authorities first made reference to the Authority's Decision No 421/04/COL to open the formal investigation procedure which *"did not" set out any doubts as to its compatibility with the functioning of the EEA Agreement "concerning the pension obligations"*. Further, they argued that *"the Authority is not authorised by law to add new "doubts" which are not on the list of the doubts set out by the Authority in the decision to initiate the formal investigation procedure, after the decision has been published. This is clear from Article 6 of Part II to Protocol 3 to the Surveillance and Court Agreement"*.

In this letter, the Icelandic authorities explained in further detail the three pillar structure of the Icelandic pension system: pillar one corresponds to public pensions, pillar two to occupational pension funds and pillar three to voluntary private pension saving. The Pension Fund of State Employees is the biggest public sector pension fund in Iceland.

As far as the Agreement signed in 1997 regarding Sementsverksmiðjan hf.'s pension-related liabilities towards the Pension Fund of State Employees is concerned, the Icelandic authorities consider that the 1997 Agreement did not alter the obligation of the State. *"The legal liability of the State remained intact as a secondary liability. […] The obligations of the State with regard to pensions are towards the individuals and not the company. The obligations are due to the previous ownership and structure of the company and would not have occurred if the State would not have owned the company. The obligations can thus only be towards the State"*.

The Icelandic authorities finally pointed out that *"even if the conclusion would be that the pension obligations were the liability of the company, then this had to be taken into account in the experts assessment on the market value of the company. If the determined market value of the company shows that no State aid was involved then it would, in the opinion of the Icelandic authorities, be difficult to maintain the handling of the pension obligation contains State measures. The determination of the market value therefore has to be closely linked to the question of the pension liabilities"*.

b) *Aalborg Portland Íslandi ehf.*

In the complaint letter dated 17 December 2003, Aalborg Portland Íslandi ehf. referred to three points regarding the terms and conditions of the sale which had been disclosed to the public. One of these points was the take-over by the Icelandic State of Sementsverksmiðjan hf.'s pension obligations amounting to over ISK 400 million. The complainant considered that the terms of the sale of Sementsverksmiðjan hf. constituted a violation of the State aid rules of the EEA Agreement. In the opinion of Aalborg Portland Íslandi ehf. none of the compatibility grounds foreseen under Article 61(2) and (3) are applicable to the case at hand.

II. **APPRECIATION**

1. **The scope of the initial formal investigation and the need to extend it**

The Authority had not addressed the taking over by the State of Sementsverksmiðjan hf.'s pension-related liabilities in the decision to open the formal investigation procedure on the sale of the Icelandic State's shares in Sementsverksmiðjan hf. (Decision No 421/04/COL) adopted in December 2004. In light of the comments made by the complainant and in light of the further information and clarifications made by the Icelandic authorities during the formal investigation procedure, the Authority considers it necessary to extend the formal investigation procedure opened with Decision No 421/04/COL to cover the take-over by the Icelandic State of pension-related liabilities of Sementsverksmiðjan hf. In Decision No 421/04/COL, the Authority identified two possible aid beneficiaries, Íslenskt sement ehf. and Sementsverksmiðjan hf. The potential beneficiary of State aid in the case of the sale of the State's shares in Sementsverksmiðjan hf. would be Íslenskt sement ehf. In contrast, the potential beneficiary of any possible State aid granted in the context of the assets-liabilities restructuring of the company made by the State in connection to the sale of shares would be the cement producer itself, i.e. Sementsverksmiðjan hf. It is from the latter that the State purchased various assets and took over pension liabilities. The potential aid beneficiary with regard to the take-over by the Icelandic State of pension-related liabilities of Sementsverksmiðjan hf. would therefore be Sementsverksmiðjan hf.

2. **State aid assessment**

Article 61(1) of the EEA Agreement provides that:

> *"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".*

Thus, in order for a measure to be considered State aid, it must constitute an advantage in favour of certain undertakings, be granted through State resources, distort competition and affect trade between the Contracting Parties to the EEA Agreement.

In the following, the Authority will make a preliminary assessment of whether the taking over by the State of Sementsverksmiðjan hf.'s pension-related liabilities constitutes State aid.

a) *Market economy investor principle*

In accordance with established case law ([10]), the Authority will firstly assess whether, in similar circumstances, a private investor operating in normal conditions of a market economy would have entered into the transaction in question on the same terms the State had and, if not, on which terms he might have done so. If the behaviour of the State complies with the market economy investor principle there is no State aid within the meaning of Article 61(1) of the EEA Agreement. The comparison between the conduct of public and private investors must be made by reference to the attitude which a private investor would have had at the time of the transaction in question, having regard to the available information and foreseeable developments at that time ([11]). Had the State acted as a private market investor, no State aid would have been granted by the State with the taking over of pension-related liabilities.

The behaviour of the State as owner of a company, supposed to act in accordance with market principles, should be distinguished from the behaviour of the State as public authority, which takes into account other considerations such as regional development, unemployment, etc. which are not strictly linked to the maximisation of profits a market investor would theoretically pursue. In the case at hand, a distinction can be made between the role of the State as owner of Sementsverksmiðjan hf., the State as guarantor of the Pension Fund of State Employees and the State as authority.

In principle, a private market investor whose company faced a difficult financial and operational situation like the one Sementsverksmiðjan hf. had experienced, would try to turn it around, stop losses of the undertaking and make it function in a way to obtain revenue. If it were to be unsuccessful, some legislations would leave it no option but to file for bankruptcy. Otherwise, it would seem reasonable to try to sell the company with the aim of obtaining a price over its liquidation value.

Had the owner of Sementsverksmiðjan hf. let the company go bankrupt, the State as guarantor of the Pension Fund of State Employees would have had to cover the missing payments from the former company in order to guarantee the payment of monthly pensions to the former affiliates of the Fund.

In this case, the State decided to take over pension liabilities amounting to ISK 422-427 million (ISK 412 + 10~15 million) and sold the company, now released from these obligations, for ISK 68 million. An outlay of more than ISK 400 million for a receipt of less than ISK 70 million does not appear to be in accordance with the market criteria. Therefore, the Authority has the preliminary view that it cannot be considered that the State acted in accordance with the private market investor principle.

In the following, the Authority will assess whether the conditions laid down under Article **61(1) of the EEA Agreement for a measure to constitute State aid have been fulfilled.**

b) *Selective advantage*

The Authority preliminarily considers that the State granted a selective advantage to Sementsverksmiðjan hf. by taking over its pension-related liabilities with the Agreement signed in October 2003. Sementsverksmiðjan hf. obtained an advantage because the State relieved it from some of its debts corresponding to past pension-related liabilities. Moreover, by virtue of this agreement, Sementsverksmiðjan hf. has also been relieved of future, still undetermined, pension-related liabilities due in application of Article 33 of Act No 1/1997 with respect to its employees still affiliated to the Pension Fund of State Employees. The measure is selective because it is granted exclusively to Sementsverksmiðjan hf., due to the very specific circumstances of the company, by means of the Agreement signed in 2003 between the Ministry of Finance and the Pension Fund, a particular act from which no other undertaking could benefit.

([10]) Case T-16/96 *Cityflier Express* v *Commission* [1998] ECR II-757, paragraph 51 and Case T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale* a.o. v *Commission* [2003] ECR II-435, paragraph 245.

([11]) Case T-16/96 *Cityflier Express* v *Commission* [1998] ECR II-757, paragraph 76.

The Icelandic authorities have argued that by taking over Sementsverksmiðjan hf.'s pension liabilities the Treasury acted as the guarantor of the Pension Fund of State Employees on the basis of Article 32 of Act No 1/1997, according to which *"[t]he Treasury guarantees the payment of a pension according to this act and it shall be paid with 1/12 of the annual pension in advance each month"*.

The preliminary opinion of the Authority is that the guarantee of the State laid down in Article 32 of Act No 1/1997 is directed towards the employees of companies affiliated to the Pension Fund and has the object of guaranteeing that these employees obtain their pensions even in the situation where their former employer does not pay its due contributions in full. In the Authority's opinion, this guarantee does not constitute a secondary guarantee for the payment of Sementsverksmiðjan hf.'s pension obligations to the fund. Therefore, the Authority has difficulties in understanding that the State acted as guarantor when taking over Sementsverksmiðjan hf.'s pension liabilities towards the Pension Fund.

Article 33 of Act No 1/1997 determines the obligation of employers to refund the Pension Fund of State Employees in case the pension payments done in the past by the company and the employees themselves do not suffice to cover the full payment of pensions. As mentioned above, according to Article 33 of Act No 1/1997, *"[i]n the case where a previously determined old age, disability or spouse's pension increases due to a general increase in the salary of the public employees, the Treasury and other employers who insure their employees in the Fund refund the increase which thus takes place in pension payments.[…] An employer who has settled his/her commitment with the issue of a debenture […] should have no further responsibility for the Fund's commitments […]"*.

In the view of the Authority, this places an obligation on employers, in the case at hand, on Sementsverksmiðjan hf. Thus, by taking over these various liabilities on the basis of the Agreement signed in October 2003, the Ministry of Finance, on behalf of the Treasury, did not act as the guarantor of the individual pension payment to pensioners affiliated to the Pension Fund of State Employees. The Ministry of Finance relieved the undertaking of debts and obligations it had towards the Fund and accordingly granted it a selective advantage.

The Icelandic authorities have claimed in their letter dated 18 April 2006 that other corporations under State ownership were treated similarly in 1997 and that the Pension Fund for State Employees accepted a debenture in the payment by means of a bond. According to the Icelandic authorities, when these corporations were privatised, in most cases, the State took over similar bonds. Even if this is the case, it does not modify the selective nature of the measure at hand. In this case, the Authority is not addressing the lawfulness of issuing in 1997 a bond as a debenture for the payment of due contributions to the Pension Fund of State Employees but the taking over by the State in 2003 of the remainder of the bonds issued to cover the debt assessed in 1997 (as well as other past and future pension-related liabilities).

Some case law from the European Courts as well as from the practice of the European Commission has concluded that, under certain conditions, a financial contribution from the State to cover its obligations towards civil servants does not constitute State aid in as far as these obligations do not constitute a "normal" burden of a company ([12]). At this stage of the procedure, the Authority doubts that this approach can be applicable to the case at hand.

c) *State resources*

Secondly, in order to constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the advantage must be granted by the State or through State resources.

On the basis of the Agreement between the Ministry of Finance and the Pension Fund of State Employees signed in October 2003, the Treasury will pay, on behalf of Sementsverksmiðjan hf., to the Pension Fund, the amounts due by the company. Thus, by so doing, resources from the State budget will be expended. At this point, the Authority would like to ask the Icelandic authorities for a clarification on the figures of ISK 412 million and ISK 10-15 million. It is not clear from the information provided, what kind of pension obligations are covered under each of these estimates, i.e. what are the obligations already estimated and what corresponds to future obligations.

Alternatively, if Sementsverksmiðjan hf. had paid a market price to the State for the take-over of these debts, it could be considered that no State resources would have been involved ([13]). No such market price was paid.

Therefore, the Authority takes the preliminary view that there were State resources involved in the taking over of pension-related liabilities of Sementsverksmiðjan hf. by the State.

([12]) Case T-175/01 *Danske Busvognmaend* v *Commission* ECR [2004] II-917, Commission's decision of 12 October 2006 on the reform of the mode of financing of civil servants' pensions attached to La Poste.

([13]) Commission Decision of 21 January 2004 on the transfer to the Belgian State of pension obligations of Belgacom pertaining to the "first pillar" (Case N 567/2003).

d) *Distortion of competition*

Thirdly, in order for Article 61(1) of the EEA Agreement to be applicable, the measure must distort competition. Undertakings benefiting from an economic advantage granted by the State which reduces their normal burden of costs, are placed in a better competitive position than those who cannot enjoy this advantage.

There is competition in the market for cement within the EEA. Currently there are two companies active in the Icelandic market of cement: Sementsverksmiðjan hf. and Aalborg Portland Íslandi ehf. Any advantage granted to Sementsverksmiðjan hf. which reduces the costs it should normally incur, places this undertaking in a better competitive position *vis à vis* the other market player in the Icelandic cement market which does not receive this advantage. Thus, the support granted by the State to Sementsverksmiðjan hf. has the effect of distorting competition since the other competitor neither had access to nor obtain such support from the State.

e) *Effect on trade*

Fourthly, for Article 61(1) of the EEA Agreement to be applicable, the notified measure must have an effect on trade between the Contracting Parties to the EEA Agreement.

The direct competitor of Sementsverksmiðjan hf. in the Icelandic market is a subsidiary of an undertaking located in another State party to the EEA Agreement which does not produce cement in Iceland, but imports it from other EEA countries into Iceland.

Accordingly, the measure affects trade between the Contracting Parties to the EEA Agreement within the meaning of Article 61(1) of the EEA Agreement.

f) *Conclusion*

For the above mentioned reasons, the Authority preliminarily considers that the take-over by the State of pension-related liabilities of Sementsverksmiðjan hf. constitutes State aid within the meaning of Article 61 (1) of the EEA Agreement.

3. **Procedural requirements**

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

The Icelandic authorities notified to the Authority the sale of the Icelandic State's shares in Sementsverksmiðjan hf. with a letter dated August 2003. The take-over by the State of Sementsverksmiðjan hf.'s pension-related liabilities was agreed in Article 4 of the Share Purchase Agreement between the Ministry of Finance and the investors group Íslenskt sement ehf. for the sale of the State's shares.

This notwithstanding, the Icelandic authorities put the measure into effect in October 2003 before the State aid procedure had resulted in a final decision. The Icelandic authorities did not respect the standstill obligation further laid down under Article 3 of Part II of Protocol 3 to the Surveillance and Court Agreement according to which *"[a]id notifiable […] shall not be put into effect before the […] Authority has taken, or is deemed to have taken, a decision authorising such aid"*. Hence, the Authority takes the preliminary view that the State's take-over of Sementsverksmiðjan hf.'s pension-related liabilities would constitute unlawful aid within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement and, thus, possible subject to recovery. According to Article 13 in Part II of Protocol 3 to the Surveillance and Court Agreement, in cases of possible unlawful aid the Authority shall not be bound by the time-limits set out in Articles 4(5), 7(6) and (7).

4. **Compatibility of the aid**

In the Authority's preliminary view, a distinction has to be made between the take-over by the State of the old pension-related liabilities of Sementsverksmiðjan hf. which constitutes a so-called one-off measure, and the take-over of future pension-related liabilities in application of Article 33 of Act No 1/1997 regarding the affiliated to the Pension Fund of State Employees still employed at Sementsverksmiðjan hf. The Authority further considers, that the take-over (yearly or periodically) of future pension-related liabilities of Sementsverksmiðjan hf. will entail a reduction in the running costs of an undertaking. This constitutes operating aid, which is in principle prohibited. The assessment of the compatibility of these measures with the rules of the EEA Agreement may therefore differ.

The Authority is of the opinion that none of the derogations mentioned in Article 61(2) of the EEA Agreement can be applied to the case at hand.

These measures cannot be considered within the framework of Article 61(3)(a) of the EEA Agreement since none of the Icelandic regions qualify for this provision which requires an abnormally low standard of living or serious underemployment.

The take-over by the State of pension liabilities of a given undertaking does not seem to promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a State, as it is requested for compatibility on the basis of Article 61(3)(b) of the EEA Agreement.

According to Article 61(3)(c) of the EEA Agreement, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible. Regional aid or rescue and restructuring aid can be considered compatible on the basis of this provision.

Concerning Article 61(3)(c) of the EEA Agreement, the site of Sementsverksmiðjan hf. is located in Akranes, an area covered by the regional aid map of Iceland. However, this financial support does not seem to be linked to any investment and, in particular as far as the refund for future pension obligations is concerned, it seems to cover a running cost. The Regional Aid Guidelines applicable at the time of the sale did not foresee the possibility to grant operating aid. For this reason, the Authority has doubts that the measures can be considered compatible on the basis of the Regional Aid Guidelines.

The Authority preliminarily considers that it can only be assessed whether the take-over by the State of pension-related liabilities of Sementsverksmiðjan hf. can be considered compatible with the State aid rules of the EEA Agreement on the basis of the provisions of Chapter 16 of the State Aid Guidelines on Rescue and Restructuring Aid.

The Icelandic authorities took over Sementsverksmiðjan hf.'s pension-related liabilities on the basis of an agreement signed between the Ministry of Finance and the Pension Fund of State Employees in October 2003. According to Point 16.6.5 of Chapter 16 of the Authority's State Aid Guidelines as adopted on 16 December 1999, *"[t]he EFTA Surveillance Authority will examine the compatibility with the functioning of the EEA Agreement of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement […] on the basis of the Guidelines in force at the time the aid is granted […]"*. For this reason, although new guidelines were adopted on 1 December 2004, the Authority considers that the 1999 Guidelines are the applicable rules in the case at hand.

As far as the application of the provisions of Chapter 16 of the State Aid Guidelines "Rescue and Restructuring Guidelines" is concerned, it is questionable whether the information provided in the restructuring plan presented by the Icelandic authorities as it stands now fulfils the necessary requirements.

This is so even if reference is made to the recitals of the Guidelines according to which, *"[s]tate aid for rescuing firms in difficulty from bankruptcy and helping them to restructure may be regarded as legitimate only under certain conditions. It may be justified […] exceptionally by the desirability of maintaining a competitive market structure when the disappearance of firms could lead to a monopoly or tight oligopoly situation"* ([14]).

The grant of restructuring aid is conditional on the implementation of a restructuring plan, the duration of which must be as short as possible and which must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. According to Point 16.3.2.2 of the Guidelines, this plan must be submitted in all relevant detail and include a market survey.

Amongst the restructuring measures implemented, the Icelandic authorities have referred to the financial restructuring of the company consisting of the reduction of debts through sale of assets and renegotiation of long term debts, the restructuring of workforce consisting of the laying off of 22 employees, the restructuring of production costs with the renegotiation of prices of raw materials and changes in the composition of cement to reduce energy costs, and finally to the search for an alternative revenue source from burning waste.

Despite this general description of the adopted measures, the Authority has doubts whether the restructuring plan submitted by the Icelandic authorities complies with the requirements of the guidelines since it neither foresees a timetable for the return to viability nor makes a direct link between restructuring costs and aid amount. According to Point 16.3.2.2.(b) of Chapter 16 of the State Aid Guidelines, *"The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the EFTA State concerned commits itself. The plan must be submitted in all relevant detail to the EFTA Surveillance Authority and include, in particular, a market survey"*.

([14]) See also Commission Decision of 13 July 1996 concerning aid granted by the Austrian Government to Head Tyrolia Mares in form of capital injections (C60/95 (ex NN169/95)) and Case T-110/97 *Kneissl Dachstein Sportartikel AG v Commission*, ECT [1999] II-2881.

Moreover, the Authority needs more detailed information on all the restructuring measures adopted to make the return to viability of Sementsverksmiðjan hf. possible. This should also include the sale to the State of financial assets in other companies, as well as the sale of those assets which were not necessary to the operation of cement production. Therefore, the Authority will deal together with the remaining aspects of the formal investigation.

For these reasons, the Authority has doubts that the taking over by the State of Sementsverksmiðjan hf.'s liabilities can be considered compatible with the State aid rules of the EEA Agreement.

5. **Conclusion**

Based on the information submitted by the Icelandic authorities, the Authority preliminarily concludes that the take-over by the Icelandic State of Sementsverksmiðjan hf.'s pension-related liabilities constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts whether any of the exceptions to the general prohibition of State aid under Article 61(1) of the EEA Agreement foreseen under Article 61(2) or (3) of the EEA Agreement apply to the case at hand.

Furthermore, even if the Icelandic authorities notified the Authority of the take-over by the State of Sementsverksmiðjan hf.'s pension-related liabilities as part of the sale of the Icelandic State's shares with a letter dated August 2003, it was put into effect in contravention of Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement. Therefore, should this investigation lead the Authority to the conclusion that the measures under assessment constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the aid would be considered unlawful and may be subject to possible recovery, should the aid not be deemed compatible with the EEA Agreement.

Consequently, and in accordance with Articles 13(1) and 4(4) of Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority.

In the light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement, requests Iceland to submit its comments and to provide all documents, information and data needed for the assessment of the compatibility of the taking over by the Icelandic State of Sementsverksmiðjan hf.'s pension-related liabilities.

The Authority requests the Icelandic authorities to forward a copy of this letter to the potential aid recipient of the aid immediately.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement against Iceland regarding the taking over by the State of Sementsverksmiðjan hf.'s pension-related liabilities.

Article 2

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

Article 3

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

Article 4

This Decision is addressed to the Republic of Iceland.

Article 5

Only the English version is authentic.

Done at Brussels, 29 November 2006.

For the EFTA Surveillance Authority,

Bjørn T. GRYDELAND
President

Kristján A. STEFÁNSSON
College Member

Riigiabi lubamine vastavalt EMP lepingu artiklile 61 ning järelevalve- ja kohtulepingu 3. protokolli I osa artikli 1 lõikele 3

EFTA järelevalveameti otsus mitte esitada vastuväiteid

(2007/C 77/10)

Vastuvõtmise kuupäev: 14. november 2006

EFTA riik: Norra

Abi nr: Juhtum 60971

Nimetus: Audiovisuaaltoodangut, filmidega seotud tegevust ja filme tootvaid äriühinguid toetava kahe abikava pikendamine

Eesmärk: Kahe abikava põhieesmärk on tagada soovitav hulk filme ja kultuuri piisav edendamine kinematograafiateoste kaudu. Filmide toetusmehhanismide eesmärk on luua raamtingimused stabiilse filmide tootmise keskkonna jaoks.

Õiguslik alus: Audiovisuaaltoodangu toetusmehhanisme käsitlev määrus (Forskrift om tilskudd til audiovisuelle produksjoner) ja filme tootvatele äriühingutele antavat riigiabi käsitlev määrus (Forskrift om tilskudd til produksjonsselskaper).

Eelarve/kestus: Kahe abikava eelarve 2006. aastaks on 240,1 miljonit NOK (ligikaudu 29,28 miljonit EUR). Järgnevate aastate eelarved määratakse kindlaks parlamendi iga-aastaste eelarvemenetluste käigus. Abikava pikendatakse kuni 7. augustini 2008.

Otsuse autentne tekst, millest on eemaldatud kogu konfidentsiaalne teave, on kättesaadav aadressil:

http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry

Kutse märkuste esitamiseks vastavalt järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikele 2 seoses Tromsi maakonnas pilootide koolituseks antava abiga

(2007/C 77/11)

13. detsembri 2006. aasta otsusega 389/06/COL, mis on esitatud käesolevale kokkuvõttele järgnevatel lehekülgedel autentses keeles, algatas EFTA järelevalveamet menetluse kooskõlas EFTA riikide vahelise lepingu (mis käsitleb järelevalveameti ja kohtu asutamist, edaspidi "järelevalve- ja kohtuleping") protokolli nr 3 I osa artikli 1 lõikega 2. Norra valitsusele on sellest teatamiseks saadetud otsuse koopia.

EFTA järelevalveamet (edaspidi "järelevalveamet") palub EFTA riikidel, ELi liikmesriikidel ja huvitatud isikutel saata märkused kõnealuse meetme kohta ühe kuu jooksul alates käesoleva teatise avaldamisest aadressil:

EFTA Surveillance Authority
35, rue Belliard/Belliardstraat 35
B-1040 Brussels

Märkused edastatakse Norra valitsusele. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, täpsustades taotluse põhjused.

KOKKUVÕTE

Järelevalveamet on saanud kaebuse, milles väidetakse, et Norra lennukolledž on saanud riigiabi otsetoetuse vormis ülevaadatud riigieelarve kaudu ning Tromsi maakonnalt ja Målselvi vallalt.

13. detsembril 2006, pärast Norra valitsusele kaebusest teatamist ja valitsuse asjakohaste märkuste kättesaamist otsustas järelevalveamet algatada ametliku uurimismenetluse Tromsi maakonnas pilootide koolituseks antud toetuse suhtes.

Norra lennukolledži omanikud on lennukompanii SAS (60 %), Norsk Luftfartshøgskole (29 %) ja väiksemad aktsionärid. Kolledžis pakutakse pilootidele Tromsø/Bardufossi piirkonnas kaheaastast kursust, mis põhineb Euroopa ühistel eeskirjadel (ühinenud lennuametite antav õhusõiduki meeskonna litsents). Kolledžit on rahastanud eri vormides nii keskvalitsus kui ka kohalik omavalitsus. Norra valitsuse sõnul on selle põhjuseks soov säilitada Tromsi maakonnas võimalus koolitada piloote, sõltumata sellest, et SAS vähendas hiljuti kolledžile antavat toetust.

Norra ametiasutuste sõnul on Norsk Luftfartshøgskole sihtasutus, mille Tromsi maakond, SASi lennuakadeemia ning Bardu ja Målselvi vald asutasid Põhja-Norras pilootide koolituse hõlbustamiseks ning lennundusalase hariduse ja koolituse arendamiseks. Kolledž on saanud toetust Tromsi maakonnalt ja ootab ettepanekuid vahendite lõpliku eraldamise heakskiitmiseks.

Järelevalveamet kahtleb, kas Tromsi maakonnas pilootide koolituseks antav abi on kooskõlas EMP lepingu riigiabi eeskirjadega. Sellest tulenevalt on järelevalveamet kohustatud algatama järelevalve- ja kohtulepingu protokolli nr 3 I osa artikli 1 lõikes 2 sätestatud ametliku uurimismenetluse.

EFTA SURVEILLANCE AUTHORITY DECISION

No 389/06/COL

of 13 December 2006

to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to aid granted in the airline pilot education sector in Troms County

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY [1],

Having regard to the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

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

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

Having regard to the Authority's Guidelines [4] on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Whereas:

I. FACTS

1. **Procedure**

By letter dated 17 March 2006, North European Aviation Resources AS (hereinafter referred to as "NEAR" or "the complainant") filed a complaint against the granting of aid, through the Revised National Budget, to the Norwegian Aviation College (hereinafter referred to as "NAC"). The letter was received and registered by the Authority on 20 March 2006 (Event No 366921).

By letter dated 11 April 2006 (Event No 369763), the Authority informed the Norwegian authorities of the complaint and invited them to comment upon the same.

By letter dated 19 May 2006 from the Norwegian Mission to the European Union, forwarding a letter from the Ministry of Government Administration & Reform, together with a letter from the Ministry of Education & Research, both dated 12 May 2006, received and registered by the Authority on 19 May 2006 (Event No 374604), the Norwegian authorities replied to the Authority's invitation to comment.

By letter dated 25 August 2006, NEAR filed an extension to their complaint by which it drew the Authority's attention to various monies granted to NAC by Troms County and the Municipality of Målselv. The letter was received and registered by the Authority on 28 August 2006 (Event No 385471).

By letter dated 7 September 2006 (Event No 385794), the Authority informed the Norwegian authorities of the extension to the complaint and invited them to comment upon the same and to provide any information concerning the relationship, if any, between this alleged aid and the subject matter of the original complaint.

By letters dated 12 and 16 October 2006 from the Norwegian Mission to the European Union, forwarding letters dated 10 and 11 October 2006 from the Ministry of Government Administration & Reform, together with, respectively, a letter from Troms County dated 28 September 2006, and a letter from the Municipality of Målselv, dated 9 October 2006, received and registered by the Authority on 13 and 18 October 2006 (Event Nos 393257 and 394170), the Norwegian authorities replied to the Authority's invitation to comment.

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(1) Hereinafter referred to as "the Authority".
(2) Hereinafter referred to as "the EEA Agreement".
(3) Hereinafter referred to as "the Surveillance and Court Agreement".
(4) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, OJ L 231, 3.9.1994, p. 1, EEA Supplements 3.9.94 No 32, as last amended on 13 December 2006 (hereinafter referred to as "the State Aid Guidelines").

2. **Description of the contested funding**

2.1. *Measures under examination*

a) Grant in favour of NAC

According to the Norwegian Government, Parliament introduced a grant of NOK 4,5 million for "airline pilot education located in Tromsø/Bardufoss" in June 2005. The Ministry of Education & Research allocated this grant directly to NAC.

A further NOK 4,5 million was written into the 2006 State Budget and is proposed again in the draft budget for 2007. However, according to the Norwegian Government, the Ministry of Education & Research will notify the Parliament of the complaint and will propose that further allocations to NAC are postponed pending resolution of the matter.

b) Project Funding for Norsk Luftfartshøgskole

Troms County confirmed that, by decision of 6 July 2006, it granted project funding of NOK 1,9 million to the Norsk Luftfartshøgskole, a body which the Norwegian authorities describe as a non-commercial foundation established for the purposes of facilitating pilot education in the north of Norway. The County Council specified that the foundation is awaiting submission of a project plan in order to authorise the end use of the funding and that, as yet, none of the funding has been disbursed to NAC.

c) Loan to NAC from Troms County and subsequent remission thereof

According to Troms County, it granted a loan of NOK 400 000 to NAC in 1999 in accordance with the Regional Loan Scheme notified to and authorised by the Authority. The original loan foresaw repayment at prevailing interest rates after an initial three-year period. Following extensions to the repayment period, Troms County granted remission of the loan by decision of 6 July 2006 on the condition that all other creditors participate in the sanitation of NAC debts.

d) Loan guarantee

Troms County confirmed that it has guaranteed NOK 500 000 of NAC debt for the period until 1 September 2012 without asking NAC to pay a guarantee premium.

The Norwegian Government should confirm when this guarantee was put in place.

e) Loan to NAC from the Municipality of Målselv

The Municipality of Målselv confirmed that, by decision of 19 July 2006, it granted a loan of NOK 1,3 million to NAC at an interest rate of 8,5 % per annum, the full amount plus interest falling due no later than end 2007.

2.2. *The objective of the measures*

a) Grant

According to the Norwegian Government, both the capacity of the Air Force to train pilots for service outwith the armed forces and the financial support for airline pilot education provided by the SAS airline has been declining in recent years. The contested funding may be seen as a consequence of these changes. The grant may be used only to ensure the continuance of existing airline pilot education at NAC, the concern being to maintain the existing capacity for educating airline pilots in Norway and to avoid a crisis in pilot recruitment.

b) Project Funding for Norsk Luftfartshøgskole

According to Troms County, the project funding aims to ensure that the existing aviation competence in the County is developed and strengthened.

c) Loan to NAC from Troms County and subsequent remission thereof

According to Troms County, the financial situation of NAC made it necessary to grant extensions to the deadline for repayment of the loan and eventually to write it off completely.

d) Loan guarantee

None specified.

e) Loan to NAC from the Municipality of Målselv

None specified.

2.3. *National legal basis for the measures*

The direct grant, amounting to NOK 4,5 million, is provided for in the context of the Revised National Budget for 2005 (Kap. 281, post 1). This budget line also includes NOK 574 000 for other purposes not related to the measures under examination.

The other measures are a result of decisions of the County Council and the Executive Committee of the Municipality, respectively.

2.4. *Recipients*

NAC is a limited liability company registered in Norway since 1993. It is owned by SAS (60 %), Norsk Luftfartshøgskole (29 %), and other smaller shareholders.

NAC, which runs the only airline pilot education in the Tromsø/Bardufoss region, was found to be the only possible beneficiary for the parliamentary grant.

NAC is also the specific beneficiary of the other measures, with the exception of the project funding granted to Norsk Luftfartshøgskole and not yet attributed to a particular project.

Norsk Luftfartshøgskole is a foundation registered in Norway since 1997. Its founding members are Troms fylkeskommune, SAS Flight Academy and the Municipalities of Bardu and Målselv. The purpose of this non profit-making foundation is registered as the renting of property.

If and to the extent that Norsk Luftfartshøgskole performs an economic activity, and independently of where the project funding is directed, the fact that it comes from Troms County could lead to the conclusion that Norsk Luftfartshøgskole is itself a recipient of aid.

3. **Comments by the Norwegian authorities**

The training of airline pilots, although regulated by the State through the provisions in the Aviation Act, is not integrated into the national education system. Citing geographic and demographic reasons, the Norwegian authorities highlight the importance of retaining in Norway a capacity to train airline pilots. Articles 149 and 150 EC are referred to as an indication that educational matters fall within the scope of national responsibility and the case law of the European Court of Justice ([5]) is invoked in support of the view that education falls outside the definition of "service".

Troms County does not consider the remission of the loan to be unlawful State aid and cites the participation of other creditors in the sanitation of the debt in support of this. It also argues that while it is true that no commercial guarantee commission has been levied for the loan guarantee, any such commission would, in any event, have fallen below the *de minimis* threshold.

The Municipality of Målselv considers the loan to have been granted at the appropriate rate in light of the reference rates set out in Chapter 34 of the State Aid Guidelines.

II. ASSESSMENT

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

Article 61(1) EEA 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."*

As demonstrated below, a initial examination of the contested funding would suggest that these elements are all present.

([5]) Case 263/86 *Humbel* [1988] ECR p. 5365 and Case C-109/92 *Wirth* [1993] ECR I-6447.

Before looking at these criteria in turn, a preliminary point should be made regarding the nature of the activity carried out by NAC, namely the provision of airline pilot education. It would appear that a competitive market exists for the provision of such services, the cost of which is not insubstantial. The fact that the service presents an educational aspect does not, of itself, alter the economic nature of the activity. On the contrary, the case law invoked by the Norwegian Government would appear to support the view that while courses provided under the national education system do not constitute services within the meaning of Article 50 EC ([6]), courses which are financed essentially from private funds, in particular by students or their parents, do fall within the scope of that article ([7]).

1.1. *Presence of State resources*

The contested funding consisting of a direct grant allocated in the context of the Revised National Budget, or of monies disbursed by the local authorities, these monies were granted by the State or through State resources.

1.2. *Favouring certain undertakings*

a) NAC

First, the measures, with the possible exception of the project funding, appear to concern NAC directly. To the extent that the monies confer an advantage on NAC, they must be considered as favouring that undertaking to the exclusion of others.

Second, with respect to the parliamentary grant, even if, rather than considering the funding to have been allocated directly to NAC, the more general statement that a grant be introduced for airline pilot education in the Tromsø/Bardufoss region is taken into account, the measure is nevertheless selective to the extent that regional selectivity also satisfies this condition.

With reference in particular to the loan from the Municipality of Målselv, it would appear that the interest rate does not necessarily reflect an appropriate level given the risks involved, particularly in light of the fact that the Municipality itself bases its assessment on an assumption that the previous loan from Troms County has been written off. Therefore, it cannot, without further investigation, be concluded that the private market investor principle applies to those funds such that no advantage was granted.

Finally, regarding the project funding to be distributed by Norsk Luftfartshøgskole, the Norwegian Government is asked to confirm whether any monies have now been disbursed and if so, to whom.

The Norwegian Government should also provide information regarding the relationship between Norsk Luftfartshøgskole and NAC and any actual or envisaged flow of monies between these two bodies.

b) Norsk Luftfartshøgskole

The fact that Norsk Luftfartshøgskole is registered as a non profit-making foundation does not preclude a conclusion that it is engaged in a economic activity and thus an undertaking for the purposes of the State aid rules ([8]). To the extent that the foundation does carry on an economic activity, the monies granted by Troms County confer an advantage on Norsk Luftfartshøgskole.

The Norwegian Government should provide information relating to the foundation, including but not limited to an explanation of the purpose of the foundation and its activities.

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

For the measures to constitute State aid, they must distort competition and affect trade between the Contracting Parties. To the extent that NAC, and possibly Norsk Luftfartshøgskole, is in direct competition with other institutions in Norway and around Europe which offer airline pilot education according to common European rules (Joint Aviation Authorities Flight Crew Licence, or JAA-FCL), it would appear that the funding strengthens the position of the recipient and thus has the potential to distort competition between these various schools and affect trade between the States in which they are established.

([6]) Article 37 EEA is framed in identical terms.
([7]) See Case C-109/92 *Wirth*, cited above at footnote 5, paragraphs 14-17.
([8]) See Case C-41/90 *Höffner and Elser* [1991] ECR I-1979, paragraph 21, and Case C-205/03 P *FENIN*, judgment of 11 July 2006 not yet reported, paragraph 25.

1.4. *De minimis aid*

The Authority notes that the funding referred to in the original complaint amounts to NOK 4,5 million (circa EUR 546 000) and is therefore already above the threshold of EUR 100 000 provided for in the Act referred to at point 1e of Annex XV to the EEA Agreement (*Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to* de minimis *aid*).

2. **Procedural requirements**

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

The Norwegian authorities have not notified any measure relating to the funding of airline pilot education to the Authority. In particular, while the loan from Troms County may have been granted in accordance with the duly authorised Regional Loan Scheme, writing off that loan cannot be considered to fall within the conditions of the authorisation. The Authority therefore concludes that, in the event that the contested funding does indeed constitute aid within the meaning of Article 61(1) EEA, the Norwegian authorities did not respect their obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

3. **Compatibility of the aid**

Supposing that the contested funding constitutes aid within the meaning of Article 61(1) EEA, it must be assessed whether, as a result of the derogations in Article 61(2) and (3) EEA or other relevant rules, it can be declared compatible with the functioning of the EEA Agreement.

None of the situations foreseen in Article 61(2) EEA can be applied to the present case.

The region in question does not fall within the scope of Article 61(3)(a) EEA. Indeed, Decision No 327/99/COL on the map of assisted areas and levels of aid (Norway) notes that the Norwegian authorities have not claimed that Norway has any area eligible for regional aid under that paragraph. Moreover, the Authority notes that, while the contested funding is specifically intended to cover operational costs, the State Aid Guidelines, Chapter 25 relating to national regional aid, clearly that operating aid is normally prohibited. Such aid may only be granted in exceptional cases in regions eligible under the derogation in Article 61(3)(a) EEA or, for aid intended partly to offset additional transport costs, in Article 61(3)(c) EEA on the basis of a population density test.

Paragraph (b) of Article 61(3) EEA does not appear to apply to the present case.

The contested funding does not appear to promote horizontal Community objectives within the meaning of Article 61(3)(c) EEA directly, such as research and development, employment, the environment etc. Indeed, the Norwegian authorities have not invoked this derogation. The Authority therefore considers that it is not in possession of information which suggests that the contested funding could be considered to be compatible with the functioning of the EEA Agreement within the meaning of that paragraph.

To the extent that the Act referred to at point 1d of Annex XV to the EEA Agreement (*Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid*) appears not to apply in the present case and that, in any event, the Norwegian authorities have made no reference to that Act, the Authority considers that the contested funding is not covered by the exemption provided for by that Act.

The Authority is not in possession of any information which suggests that NAC has been entrusted with any public service obligations within the meaning of Article 59(2) EEA. It would therefore appear that the Act referred to at point 1h of Annex XV to the EEA Agreement, (*Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*) does not apply in the present case. Furthermore, in the absence of any instrument specifying the public service obligations, it would appear that Chapter 18.C of the State Aid Guidelines is also inapplicable to the present situation.

4. **Conclusion**

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude the possibility that the contested funding constitutes aid within the meaning of Article 61(1) EEA. Furthermore, the Authority has doubts that this funding can be regarded as complying with Article 61(3)(c) EEA. The Authority thus doubts that the said measures are compatible with the functioning of the EEA Agreement.

Consequently, and in accordance Article 4(4) in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) in Part I of that Protocol. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measures in question do not constitute aid within the meaning of Article 61(1) EEA or, if they do, that they are compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting in accordance with the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, requests that the Norwegian authorities submit their comments within one month of the date of receipt of this Decision.

Furthermore, the Authority requires that, within one month of receipt of this Decision, the Norwegian authorities provide all documents, information and data needed for the assessment of the nature of the contested funding and its compatibility with the functioning of the EEA Agreement, including, in particular, the specific questions raised at points I.2.1(d) and II.1.2(a) and (b). It requests that the Norwegian authorities forward a copy of this letter to the recipients of the funding immediately.

The Authority would also draw the attention of the Norwegian authorities to the fact that Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement constitutes a standstill obligation and that Article 14 in Part III of that Protocol provides that, in the event of a negative decision, all unlawful aid may be recovered from the beneficiary,

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement against Norway regarding the various forms of contested funding described in the foregoing at point I.2.1.

Article 2

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

Article 3

The Norwegian authorities are required to provide, within one month from notification of this Decision, all documents, information and data needed for the assessment of the nature of the funding and its compatibility with the functioning of the EEA Agreement, including, in particular, the specific questions raised at points I.2.1(d) and II.1.2(a) and (b) of the foregoing.

Article 4

Other EFTA States, EC Member States, and interested parties shall be informed of the matter by the publication of this Decision in its authentic language version, accompanied by a meaningful summary in languages other than the authentic language version, in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.

Article 5

This Decision is addressed to the Kingdom of Norway.

Article 6

Only the English version is authentic.

Done at Brussels, 13 December 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND
President

Kristján A. STEFÁNSSON
College Member

V

(Teated)

HALDUSMENETLUSED

KOMISJON

Teade ühisettevõtte SESAR tegevdirektori vaba ametikoha kohta

(2007/C 77/12)

Euroopa Komisjon otsib kandidaate ühisettevõtte SESAR tegevdirektori ametikohale. Töökuulutus avaldatakse järgmisel veebilehel:

http://ec.europa.eu/transport/air_portal/sesame/ju/executive_director_en.htm

KONKURENTSIPOLIITIKA RAKENDAMISEGA SEOTUD MENETLUSED

KOMISJON

RIIGIABI — POOLA

Riigiabi nr C 6/07 (ex N 558/06) — Ümberkorraldusabi äriühingule Techmatrans S.A.

Kutse märkuste esitamiseks Euroopa Ühenduse asutamislepingu artikli 88 lõike 2 kohaselt

(EMPs kohaldatav tekst)

(2007/C 77/13)

Käesoleva kokkuvõtte järel autentses keeles 21. veebruaril 2007 esitatud kirjas teatas komisjon Poolale oma otsusest algatada EÜ asutamislepingu artikli 88 lõikega 2 ettenähtud menetlus seoses eespool nimetatud abi või meetmetega.

Huvitatud isikud võivad esitada oma märkused meetmete kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Faksi nr: (32-2) 296 12 42

Märkused edastatakse Poolale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, esitades taotluse põhjendused.

KOKKUVÕTTE TEKST

MENETLUS

21. augusti 2006. aasta kirjaga teatas Poola sellest, et kavatseb anda kapitalisüsti vormis ümberkorraldusabi äriühingule Techmatrans S.A. (edaspidi "Techmatrans").

ABISAAJA JA ÜMBERKORRALDUSE KIRJELDUS

Techmatrans on täielikult riigi omanduses olev äriühing, kes kavandab ja toodab transpordiseadmeid ja -süsteeme mootorsõiduki-, metallurgia- ja ehitustööstuse tehastele. Äriühingus on 112 töötajat. Äriühing ei kuulu suuremasse kontserni. Techmatransil on väike turuosa Poola turul ja veelgi väiksem osa Euroopa turul. Äriühing asub piirkonnas, mis võib vastavalt EÜ lepingu artikli 87 lõike 3 punktile a saada regionaalabi.

Teatatud abi sisaldab riigile kuuluva tööstuse arendusameti poolt tehtavat kapitalisüsti 0,7 miljoni euro suuruses summas.

Kavandatav ümberkorraldus hõlmab peamiselt varade ümberkorraldust. Techmatrans kavatseb investeerida tootmisvaradesse: osta uusi masinaid, oskusteavet ja litsentse ning ajakohastada IT-süsteeme. Kulude kärpimiseks kavatseb äriühing osta uusi transpordivahendeid ning ajakohastada kütte, vee- ja elektrivarustussüsteemid. Äriühing on juba märgatavalt vähendanud töötajate arvu ega kavatse seda rohkem vähendada.

HINDAMINE

Komisjon on seisukohal, et teatatud meedet, mille moodustab kapitalisüst, tuleb käsitleda riigiabina EÜ asutamislepingu artikli 87 lõike 1 tähenduses.

Komisjon on otsustanud algatada menetluse EÜ asutamislepingu artikli 88 lõike 2 alusel, sest tal on kahtlusi, kas kõik ümberkorraldusabi heakskiitmise tingimused on täidetud. Eelkõige on vaja selgitada, kas:

— ümberkorralduskava täitmine võimaldab elujõulisust taastada, sest ümberkorralduse järgselt oodatav tootlikkus ja kasum on madalad;

— ümberkorralduse omafinatseering on piisav, sest tegelikud ümberkorralduskulud on ilmselgelt kõrgemad äriühingu poolt kavandatutest;

— pakutavad kompenseerivad meetmed on piisavad ning majanduslikult ja tööstuslikult põhjendatud, sest Techmatransi väitel oli tegevus, millest kavatsetakse loobuda, tulusam äriühingu teistest tegevustest.

KIRJA TEKST

"1. Komisja pragnie poinformować Polskę, że po przeanalizowaniu dostarczonych przez polskie władze informacji dotyczących środków zgłoszonych dnia 21 sierpnia 2006 r., podjęła decyzję o wszczęciu postępowania, o którym mowa w art. 88 ust. 2 Traktatu WE.

I. **PROCEDURA**

2. W lutym 2006 r. Komisja zatwierdziła planowaną pomoc na ratowanie przedsiębiorstwa Techmatrans S.A. (zwanego dalej »Techmatrans«) w formie pożyczki w wysokości 0,6 mln PLN (0,1 mln EUR). W dniu 21 sierpnia 2006 r. Polska zgłosiła planowaną pomoc na restrukturyzację na rzecz Techmatrans. W piśmie z dnia 13 października 2006 r. Komisja zwróciła się z prośbą o dodatkowe informacje, które zostały przekazane przez władze polskie dnia 14 grudnia 2006 r.

II. **OPIS BENEFICJENTA I ŚRODKÓW POMOCY**

Beneficjent

3. Techmatrans jest przedsiębiorstwem inżynieryjnym należącym w całości do Skarbu Państwa. Przedsiębiorstwo powstało w 1972 r. Techmatrans projektuje i buduje urządzenia i systemy transportu technologicznego, które mają zastosowanie w zakładach przemysłowych sektora motoryzacyjnego, metalurgicznego i budowlanego. Zatrudnia 112 pracowników. W 2005 r. obroty firmy wyniosły 10 mln PLN (2,6 mln EUR) a suma bilansowa 6,6 mln PLN (1,7 mln EUR). Dane te są wielkościami charakterystycznymi dla małego lub średniego przedsiębiorstwa, jednakże ze względu na fakt, że Techmatrans jest własnością Skarbu Państwa należy go zakwalifikować do kategorii dużych przedsiębiorstw. Techmatrans nie stanowi części większej grupy kapitałowej. Posiada niewielki udział w polskim rynku (0,2-1,0 %) i jeszcze mniejszy udział w rynku europejskim.

4. Główny zakres usług przedsiębiorstwa to: naprawy, serwis i modernizacja systemów transportu technologicznego, jak również dostawy nowych systemów transportu technologicznego z wykorzystaniem przenośników podwieszanych oraz usługi kooperacyjne przy realizacji dużych inwestycji. Te ostatnie realizowane są w oparciu o projekty i dokumentację dostarczoną przez zleceniodawcę. W ostatnim czasie odnotowano stały wzrost udziału dochodów z tej drugiej, (*de facto*) podwykonawczej działalności.

5. Od roku 2002 r. właściciel oraz zarząd przedsiębiorstwa podejmowali działania mające na celu prywatyzację przedsiębiorstwa. W lipcu 2005 r. w odpowiedzi na ogłoszone zaproszenie do rokowań w sprawie nabycia od 51 do 85 % akcji Techmatrans, ofertę złożyło dwóch inwestorów. Procedura została zakończona bez podjęcia żadnych rokowań we wrześniu 2005 r. Władze polskie nie wyjaśniły dlaczego procedura ta została wstrzymana.

6. Techmatrans ma swoją siedzibę w regionie kwalifikującym się do pomocy regionalnej zgodnie z art. 87 ust. 3 lit. a) Traktatu WE.

Trudności przedsiębiorstwa

7. Od 1999 r. Techmatrans odnotowuje straty (nieznaczne zyski odnotowano w 2000 r.). W latach 2001-2004 przedsiębiorstwo poniosło straty netto o łącznej wysokości 7,7 mln PLN (1,9 mln EUR), a kapitał własny przedsiębiorstwa obniżył się z 11,2 mln PLN (2,8 mln EUR) w 2001 r. do 4 mln PLN (1 mln EUR) w 2004 r. W 2005 r. przedsiębiorstwo osiągnęło zysk w wysokości 277 000 PLN (71 000 EUR), jednakże w 2006 r. odnotowało po raz kolejny straty finansowe (szacunkowe dane wskazują na straty sięgające 695 000 PLN w pierwszej połowie 2006 r., tj. 178 000 EUR).

8. Jako główne powody tej sytuacji władze polskie wymieniają brak zleceń od kontrahentów, małą rentowność realizowanych kontraktów, wysoki poziom kosztów stałych oraz wysokie koszty prowadzonej restrukturyzacji zatrudnienia

9. Ponadto Techmatrans wskazuje na następujące problemy: niski poziom technologii produkcji w porównaniu z konkurentami, niewłaściwe zarządzanie produkcją, niska jakość produktów i niski poziom techniczny oferowanych produktów, przestarzałe i zużyte aktywa (średni poziom amortyzacji aktywów produkcyjnych wynosi 90 %).

10. Ze względu na brak środków działania marketingowe są ograniczone; klientami Techmatrans są przede wszystkim firmy, z którymi Spółka nawiązała już wcześniej współpracę.

11. Zbyt niski poziom płynności finansowej oznacza, że przedsiębiorstwo nie posiada zdolności kredytowych. W związku z tym, zobowiązania Techmatrans powstały w wyniku nagromadzenia niespłaconych długów publicznoprawnych lub długów wobec dostawców, nie wynikają natomiast z pozyskania kredytowania na rynku na warunkach komercyjnych.

Restrukturyzacja

12. Planowana restrukturyzacja dotyczy głównie działań w zakresie restrukturyzacji majątku. Techmatrans planuje dokonać poważnych inwestycji w aktywa produkcyjne: zakup nowoczesnych maszyn, licencji, wykorzystanie wiedzy specjalistycznej (*know-how*) oraz modernizację systemów informatycznych. Celem tych inwestycji jest zwiększenie efektywności produkcji i rozszerzenie oferty produktowej przedsiębiorstwa.

13. Aby obniżyć koszty planowany jest zakup nowych środków transportu i modernizacja systemów: ciepłowniczego, wodociągowego i elektrycznego.

14. Według władz polskich niektóre ze środków restrukturyzacyjnych zostały już wprowadzone w życie: zmniejszono koszty ogólnego zarządu, w 2004 r. sprzedano część zbędnych składników majątku oraz zmniejszono stan zatrudnienia z 133 pracowników w 2003 r. do 112 w 2005 r. W rezultacie czego w 2005 r. przedsiębiorstwo odnotowało nieznaczny zysk.

15. Techmatrans twierdzi, że restrukturyzacja zatrudnienia została zakończona i w związku z tym nie planuje dalszych redukcji zatrudnienia.

16. W celu zmniejszenia kosztów stałych i zgromadzenia kapitału na restrukturyzację, przedsiębiorstwo planuje sprzedaż zbędnych składników majątku: nieruchomości w 2007 r. (przewidywane przychody w wysokości 2 mln PLN (0,5 mln EUR), zapasów magazynowych i maszyn w trakcie restrukturyzacji w miarę zakupu nowych maszyn (planowane dochody w wysokości 0,2 mln PLN (0,05 mln EUR)). Ponadto Techmatrans proponuje, aby zysk netto za rok 2005 (277 000 PLN) oraz środki uzyskane ze zwiększenia kredytu kupieckiego (75 000 PLN) uznane zostały za wkład własny przedsiębiorstwa w pokrycie kosztów restrukturyzacji.

17. Przewiduje się, że całkowity koszt restrukturyzacji wyniesie 5,352 mln PLN (1,35 mln EUR). Na kwotę tę powinno składać się: 2,8 mln PLN (0,7 mln EUR) ze środków stanowiących pomoc państwa i 2,552 mln PLN (0,65 mln EUR) ze środków własnych.

18. Odnośnie do środków wyrównawczych przedsiębiorstwo planuje zaprzestanie jednego z rodzajów działalności, tj. projektowania układów sterowania systemów transportu technologicznego. Układy sterowania będą nadal częścią oferty przedsiębiorstwa, lecz ich projektowanie zostanie zlecone innym podwykonawcom. Ponadto Techmatrans proponuje sprzedaż zbędnego budynku obecnie wykorzystywanego do działalności projektowej.

Środek pomocy

19. Zgłoszona pomoc polega na podwyższeniu przez państwową Agencję Rozwoju Przemysłu S.A. (ARP) kapitału zakładowego Techmatrans o kwotę 2,8 mln PLN (0,7 mln EUR). Podstawą prawną dla udzielenia wsparcia finansowego w formie dokapitalizowania jest ustawa o komercjalizacji i prywatyzacji z dnia 30 sierpnia 1996 r. ([1])

20. Obecny właściciel, Ministerstwo Skarbu Państwa, dokona obniżenia kapitału zakładowego przedsiębiorstwa w celu pokrycia strat poniesionych w latach 2001-2004. Następnie nastąpi emisja akcji, z przeznaczeniem do objęcia przez ARP, która w ten sposób przejmie 41,5 % akcji Techmatrans. Środki pozyskane w ten sposób będą służyć finansowaniu inwestycji. Nie planuje się prywatyzacji przedsiębiorstwa.

([1]) Zgodnie z art. 56 ust. 2 ustawy 15 % rocznych przychodów uzyskanych z prywatyzacji oraz odsetki od tych środków przekazywane są na Fundusz Restrukturyzacji Przedsiębiorstw. Aktywa funduszu są przeznaczone na udzielanie pomocy na ratowanie i restrukturyzację przedsiębiorstw znajdujących się w trudnej sytuacji. Zgodnie z art. 56 ust. 5 ustawy Ministerstwo Skarbu Państwa podwyższa kapitał zakładowy Agencji Rozwoju Przemysłu S.A. o kwotę stanowiącą 1/3 przychodów Funduszu Restrukturyzacji Przedsiębiorstw z przeznaczeniem tych środków na udzielanie pomocy na ratowanie i restrukturyzację dużych przedsiębiorstw znajdujących się w trudnej sytuacji, w tym przeznaczonych do prywatyzacji.

21. Ponadto, oprócz zgłoszonego środka, władze polskie poinformowały Komisję, że w 2004 i 2005 r. przedsiębiorstwo Techmatrans uzyskało pomoc państwa w formie rozłożenia zadłużenia na raty. Wsparcie to zostało udzielone w ramach pomocy *de minimis*.

III. **OCENA**

1. **Pomoc państwa w rozumieniu art. 87 ust. 1 Traktatu WE**

22. Artykuł 87 ust. 1 Traktatu WE stanowi, że wszelka pomoc przyznawana przez państwo członkowskie lub przy użyciu zasobów państwowych w jakiejkolwiek formie, która zakłóca lub grozi zakłóceniem konkurencji poprzez faworyzowanie niektórych przedsiębiorstw lub produkcji niektórych towarów i wpływa na wymianę handlową między państwami członkowskimi jest niezgodna ze wspólnym rynkiem.

23. Dokapitalizowanie przez państwową Agencję Rozwoju Przemysłu S.A. (ARP) o kwotę 2,8 mln PLN (0,7 mln EUR) zostanie pokryte ze środków funduszu utworzonego na mocy prawa i finansowanego z dochodów publicznych, a zatem z zasobów państwowych.

24. Techmatrans konkuruje z innymi przedsiębiorstwami europejskimi na rynkach polskim i europejskim. Zatem kryterium wpływu na handel wewnątrz Wspólnoty zostało spełnione.

25. W związku z tym wyżej wymieniony środek uważany jest za pomoc państwa w rozumieniu art. 87 ust. 1 Traktatu WE.

26. Środki przyznane w ramach pomocy *de minimis* w latach 2004-2005 nie spełniają wszystkich kryteriów określonych w art. 87 ust. 1 Traktatu WE, a zatem nie są przedmiotem tego postępowania.

2. **Odstępstwa przewidziane w art. 87 ust. 2 i 3 Traktatu WE**

27. W niniejszym przypadku nie mają zastosowania wyłączenia, o których mowa w art. 87 ust. 2 Traktatu WE. W przypadku wyłączeń na mocy art. 87 ust. 3 Traktatu WE — z uwagi na to, że podstawowy cel pomocy dotyczy przywrócenia zagrożonemu przedsiębiorstwu jego długoterminowej rentowności — można zastosować jedynie wyłączenie zapisane w art. 87 ust. 3 lit. c) Traktatu WE, który zezwala na pomoc państwa przeznaczoną na ułatwianie rozwoju niektórych działań gospodarczych, o ile nie zmienia ona warunków wymiany handlowej w zakresie sprzecznym ze wspólnym interesem. Pomoc ta może być zatem uznana za zgodną w oparciu o art. 87 ust. 3 lit. c) Traktatu WE tylko wtedy, jeśli spełnione są warunki określone w Wytycznych wspólnotowych w sprawie pomocy państwa na ratowanie i restrukturyzację przedsiębiorstw znajdujących się w trudnej sytuacji ([2]) (zwanych dalej »Wytycznymi«).

([2]) Dz.U. C 244 z 1.10.2004, str. 2.

2.1. *Kwalifikowalność przedsiębiorstwa do otrzymania pomocy*

28. Zgodnie z Wytycznymi za przedsiębiorstwo znajdujące się w trudnej sytuacji uznaje się przedsiębiorstwo, które nie jest w stanie odzyskać płynność przy pomocy środków własnych lub środków uzyskanych od akcjonariuszy lub ze źródeł rynkowych i które bez interwencji władz publicznych prawie na pewno zniknie z rynku. Wytyczne te wymieniają również niektóre typowe oznaki świadczące o tym, że przedsiębiorstwo znajduje się w trudnej sytuacji, np. rosnące zadłużenie, zmniejszająca się lub zerowa wartość aktywów netto.

29. W ciągu ostatnich 5 lat Techmatrans straciło ponad połowę kapitału, odnotowało straty zarówno na sprzedaży jak i w wyniku całej działalności. Łączne straty w okresie 2002-2004 wynosiły 7,3 mln PLN (1,9 mln EUR). Obroty przedsiębiorstwa w analizowanym okresie spadły z 15,7 mln PLN (4,1 mln EUR) w 2001 r., do 8,5 mln PLN (2,2 mln EUR) szacowanych na rok 2006, tj. o 46 %.

30. W okresie 2001-2005 kapitał obrotowy obniżył się z 7,7 mln PLN (1,9 mln EUR) do 2,3 mln PLN (0,6 mln EUR). Udział zapasów w kapitale obrotowym w analizowanym okresie wzrósł z 16 % do 38,5 %.

31. Komisja zwraca także uwagę na fakt, że prywatny bank odmówił przedsiębiorstwu Techmatrans udzielenia pożyczki bez uzyskania zabezpieczenia w postaci gwarancji państwowej.

32. W związku z powyższym Komisja uważa, że Techmatrans można uznać za przedsiębiorstwo znajdujące się w trudnej sytuacji w rozumieniu Wytycznych i w związku z tym kwalifikujące się do otrzymania do pomocy na restrukturyzację.

2.2. *Przywrócenie rentowności*

33. Aby środek został uznany za zgodny, na podstawie pkt 34-37 Wytycznych, plan restrukturyzacji musi zawierać szczegółową analizę problemów, które doprowadziły do wystąpienia trudności oraz ustanawiać metody przywracania długoterminowej rentowności i dobrej kondycji finansowej firmy, w rozsądnych ramach czasowych. Plan taki należy przygotować w oparciu o realistyczne założenia, co do przyszłych warunków działania. Oczekiwany zwrot z zaangażowanego kapitału musi być wystarczająco duży, aby zrestrukturyzowane przedsiębiorstwo było w stanie konkurować na rynku o własnych siłach.

34. Na podstawie oceny przedstawionego planu restrukturyzacyjnego Komisja ma wątpliwości, czy zaplanowane środki byłyby zgodne z wymogami określonymi w Wytycznych.

35. Po pierwsze, Komisja ma wątpliwości, czy środki przewidziane w planie restrukturyzacji są wystarczające, aby przywrócić długotrwałą rentowność oraz poprawić konkurencyjność przedsiębiorstwa na rynku, który jest zdominowany przez większe i technologicznie bardziej zaawansowane przedsiębiorstwa. Scenariusz optymalny przedstawiony w planie restrukturyzacji zakłada, że po przeprowadzeniu restrukturyzacji w okresie 2008-2010 Techmatrans osiągnie stopę zysku netto na poziomie od 2,6 % do 3,1 %. Planowana stopa zwrotu z aktywów powinna wynieść 3,6 % w 2008 i 2009 r., oraz 5 % w 2010 r. Komisja ma wątpliwości, czy przyjęty wskaźnik zyskowności byłby możliwy do przyjęcia przez inwestora prywatnego.

36. Przedstawione badanie rynku wykazało, że wydajność przedsiębiorstwa Techmatrans jest znacznie niższa od wydajności jej konkurentów. Wydajność pracy mierzona wartością przychodów na jednego pracownika w 2004 r. wyniosła 66 000 PLN (90 000 w 2005 r. i 76 000 w 2006 r.), podczas gdy w sektorze sterowania procesami przemysłowymi średnia wysokość przychodów na jednego pracownika wynosi ponad 140 000 PLN. Pomimo planowanych znacznych inwestycji przedsiębiorstwo nie przewiduje obniżenia zatrudnienia. Przedsiębiorstwo przewiduje, że wzrost wydajności wynikający z restrukturyzacji wyniesie 1 % w 2006 r. (wzrost niezrealizowany) i 2,5 % w 2007 i 2008 r.; po roku 2008 wydajność pracy powinna utrzymać się na niezmienionym poziomie. Biorąc pod uwagę osiągnięte przez konkurentów wyniki Komisja ma wątpliwości, czy taka skala wzrostu wydajności będzie wystarczająca, aby Techmatrans stało się przedsiębiorstwem konkurencyjnym.

37. Techmatrans twierdzi, że zysk osiągnięty w 2005 r. wskazuje na fakt, że środki, które dotychczas zostały wprowadzone w życie przynoszą efekty i sytuacja przedsiębiorstwa uległa już poprawie. Niemniej jednak w pierwszej połowie 2006 r. łączne przychody przedsiębiorstwa wyniosły 3,2 mln PLN (0,8 mln EUR) w porównaniu z 10 mln PLN (2,6 mln EUR) w 2005 r. Wyniki osiągnięte przez Techmatrans w 2006 r. okazały się o wiele gorsze niż w przypadku najgorszego scenariusza w planie restrukturyzacji. W związku z powyższym istnieją wątpliwości co do wiarygodności planu A zatem należałoby plan zaktualizować, także w zakresie finansowania restrukturyzacji, w celu uwzględnienia strat ostatnio poniesionych przez przedsiębiorstwo.

38. Komisja zauważa również, że jeśli chodzi o finansowanie restrukturyzacji, nie przewiduje się żadnego zewnętrznego finansowania prywatnego, które wskazywałyby, że rynek jest przekonany o możliwości odzyskania przez Techmatrans rentowności. (Zgodnie z wyjaśnieniami, zakłada się, że wkład własny będzie pochodził głównie ze sprzedaży aktywów).

2.3. *Ograniczenie pomocy do niezbędnego minimum*

39. Zgodnie z postanowieniami zawartymi w pkt 43-45 Wytycznych z 2004 r. pomoc musi być ograniczona do niezbędnego minimum i od beneficjentów pomocy oczekuje się znaczącego wkładu w proces restrukturyzacji z własnych środków lub zewnętrznych źródeł finansowania. Wytyczne wyraźnie wskazują, że znaczący wkład w planie restrukturyzacji musi pochodzić ze środków własnych, włącznie ze sprzedażą aktywów, które nie są niezbędne do dalszego istnienia przedsiębiorstwa lub z zewnętrznych źródeł finansowania na warunkach rynkowych.

40. Proponowany wkład własny jest niższy niż wymagany przepisami Wytycznych. Ponadto przy obliczaniu kosztów restrukturyzacji nie uwzględniono spłaty pożyczki w wysokości 0,6 mln PLN (0,15 mln EUR) udzielonej na rzecz Techmatrans jako pomocy na ratowanie oraz potrzeby wyrównania strat poniesionych w 2006 r., które w pierwszej połowie 2006 r. wyniosły 695 000 PLN (178 000 EUR).

41. Gdyby koszty restrukturyzacji zostały należycie obliczone, wkład własny byłby jeszcze niższy niż podany przez przedsiębiorstwo poziom 47 %. Po dodaniu obu kwot do kosztów restrukturyzacji (tj. 5,352 mln + 0,6 mln + 0,695 mln PLN), koszty te wyniosłyby 6,647 mln PLN. Nawet gdyby wszystkie środki proponowane przez władze polskie jako wkład własny przedsiębiorstwa zostały zatwierdzone (2,552 mln PLN) pokryłyby one jedynie 38 % tak obliczonych kosztów restrukturyzacji, a zatem znacznie poniżej 50 % wymaganych przepisami Wytycznych.

42. Ponadto, Komisja ma wątpliwości, czy wszystkie proponowane środki, w szczególności przeszłe zyski i zwiększony kredyt kupiecki, można uznać za własny wkład w rozumieniu Wytycznych.

2.4. *Unikanie zbędnego zakłócania konkurencji*

43. Zgodnie z postanowieniami zawartymi w pkt 38-42 Wytycznych należy przyjąć środki w możliwie największym stopniu łagodzące potencjalne negatywne skutki pomocy w odniesieniu do konkurencji. Pomoc nie powinna nadmiernie zakłócać konkurencji. Oznacza to zazwyczaj ograniczenie obecności przedsiębiorstwa na rynku po zakończeniu restrukturyzacji. Obowiązkowe ograniczenie lub zmniejszenie obecności firmy na danym rynku jest czynnikiem kompensującym na korzyść konkurentów. Ograniczenie takie powinno być proporcjonalne do zakłócenia, jakie wywołała pomoc na rynku oraz do względnej wagi firmy na rynku lub rynkach.

44. Zgodnie z pkt 56 Wytycznych warunki przyznania pomocy są mniej restrykcyjne odnośnie do wdrożenia środków wyrównawczych na obszarach wspieranych. Celem przeanalizowania wpływu pomocy restrukturyzacyjnej na rynek i konkurencję, Komisja bierze pod uwagę fakt, że przedsiębiorstwo Techmatrans jest zlokalizowane na obszarze wspieranym w rozumieniu art. 87 ust. 3 lit. a) Traktatu WE.

45. Jednakże Komisja ma wątpliwości, co do ekonomicznej racjonalności proponowanych środków wyrównawczych. Przedsiębiorstwo Techmatrans przedstawiło dane, wskazujące, że projektowanie i sprzedaż układów sterowania systemów transportu technologicznego — działalność, którą zamierza zaprzestać wykonywać — było bardziej dochodowe niż jakakolwiek inna z prowadzonych działalności. Ponadto projektowanie systemów transportu wydaje się pod względem technologicznym działalnością bardziej zaawansowaną niż produkcja i montaż tych systemów, co budzi pewne wątpliwości, czy z przemysłowego punktu widzenia strategia przedsiębiorstwa jest właściwa, co z kolei poddaje w wątpliwość plan restrukturyzacji.

46. Proponowana przez władze polskie sprzedaż zbędnych budynków, jako dodatkowego środka wyrównawczego, nie może być uznana za takowy, ponieważ powyższe działania wynikają z ekonomicznej racjonalności, a ich celem jest redukcja kosztów i finansowanie restrukturyzacji (wkładu własnego), a nie konieczność zrekompensowania konkurentów.

IV. **DECYZJA**

47. W świetle powyższego Komisja postanowiła o wszczęciu procedury na mocy art. 88 ust. 2 Traktatu WE odnośnie do zgłoszonych środków, z powodu wątpliwości co do ich zgodności ze wspólnym rynkiem.

48. W świetle niniejszych rozważań Komisja, działając na mocy procedury określonej w art. 88 ust. 2 Traktatu WE, zwraca się do władz polskich o przedłożenie swoich uwag i dostarczenie wszelkich informacji, które mogą być pomocne w ocenie przedmiotowej pomocy, w terminie jednego miesiąca od daty otrzymania niniejszego pisma.

49. Komisja zwraca się do Polski z prośbą o natychmiastowe przekazanie kopii niniejszego pisma przedsiębiorstwu Techmatrans.

50. Komisja pragnie przypomnieć Polsce, że art. 88 ust. 3 Traktatu WE ma skutek zawieszający i zwraca uwagę na art. 14 rozporządzenia Rady (WE) nr 659/1999, który stanowi, że wszelka pomoc udzielona bezprawnie może zostać odzyskana w drodze windykacji od beneficjenta.

51. Komisja uprzedza Polskę, że udostępni zainteresowanym stronom informacje, publikując niniejsze pismo wraz z jego streszczeniem w *Dzienniku Urzędowym Unii Europejskiej*. Poinformuje również zainteresowane strony w krajach EFTA, będących sygnatariuszami porozumienia EOG, publikując zawiadomienie w Suplemencie EOG do *Dziennika Urzędowego Unii Europejskiej* oraz poinformuje Urząd Nadzoru EFTA przesyłając kopię niniejszego pisma. Wszystkie zainteresowane strony zostaną wezwane do przedstawienia uwag w ciągu jednego miesiąca od dnia publikacji.

52. Jeśli niniejsze pismo zawiera informacje poufne, które nie powinny zostać opublikowane, należy poinformować o tym Komisję w terminie piętnastu dni roboczych od daty jego otrzymania. Jeżeli Komisja nie otrzyma w wyznaczonym terminie umotywowanej prośby, uzna to za wyrażenie zgody na ujawnianie pełnej treści niniejszego pisma."

Nõukogu määruse (EÜ) nr 1/2003 artikli 27 lõikele 4 vastav teatis juhtumi COMP/B-1/37966 — Distrigaz kohta

(2007/C 77/14)

1. SISSEJUHATUS

1. Euroopa Komisjonile on esitatud kohustuste pakett, mille Distrigaz SA/Distrigas NV (edaspidi "Distrigas") on ametlikult heaks kiitnud uurimise käigus, mille komisjon on läbi viinud vastavalt EÜ asutamislepingu artiklile 82 seoses Distrigasi gaasivarustustegevusega Belgias.

2. Käesoleva teatise avaldamisega soovib komisjon läbi viia turutesti seoses Distrigasi kohustusi käsitleva ettepanekuga, mille eesmärk on lahendada konkurentsialaseid kahtlusi, mida komisjon on käesoleva juhtumi kohta esitanud esialgses hinnangus ja vastuväidetes. Sõltuvalt turutesti tulemustest kavatseb komisjon vastu võtta nõukogu 16. detsembri 2002. aasta määruse (EÜ) nr 1/2003 (asutamislepingu artiklites 81 ja 82 sätestatud konkurentsieeskirjade rakendamise kohta) ([1]) artikli 9 lõike 1 kohase otsuse, millega Distrigasi esitatud kohustused muudetaks siduvaks. Otsuses ei esitataks seisukohta küsimuses, kas õigusrikkumine toimus või toimub.

2. JUHTUMI KOKKUVÕTE

3. 26. veebruaril 2004 võttis komisjon vastu vastuväite, milles käsitletakse Distrigasi gaasitarnelepinguid tööstustarbijaga. 30. juunil 2005 võttis komisjon vastu esialgse hinnangu, milles käsitletakse Distrigasi gaasitarnelepinguid mitme Belgia tarbijaga (tööstustarbijad, elektritootjad, edasimüüjad). 8. mail 2006 võttis komisjon vastu täiendava vastuväite Distrigasi Belgia tööstustarbijatega sõlmitud gaasitarnelepingute kohta. Need kolm dokumenti on eelhinnangud määruse (EÜ) nr 1/2003 artikli 9 lõike 1 tähenduses.

4. Distrigaz kuulub gruppi Suez, kuhu kuuluvad veel Belgia suurim elektritootja ja -tarnija Electrabel ning gaasi ja elektri väiksematele tarbijatele edasimüüja Electrabel Customer Solutions. Enne gaasivaldkonna liberaliseerimist 2000. aastal oli Distrigasil Belgias gaasi transportimise ja maa-aluse ladustamise ainuõigus ning ta oli gaasi ainutarnija suurtarbijaile. 14. novembril 2006 kiitis komisjon heaks Suezi ja Gaz de France'i ühinemise, kuid esitas sellega seoses mitu tingimust, teiste seas Distrigasi müük. ([2]) Neid kohustusi tuleb täita alles pärast ühinemise lõpuleviimist.

5. Esialgse hinnangu kohaselt on Distrigasil Belgias valitsev mõju gaasi suurtarbijaile tarnimise turul (mis võib omakorda jaguneda mitmeks turuks vastavalt tarbijaliikidele, näiteks tööstustarbijad, elektritootjad ja edasimüüjad). Tarbijail on (üksikute eranditega) ainult üks gaasitarnija ja seetõttu tekib gaasivarustusturul konkurents ainult siis, kui leping on lõppemas ja sõlmitakse uut lepingut. Esialgsetes hinnangutes on avaldatud muret, et Distrigasi pikaajalised gaasitarnelepingud võivad piirata teiste gaasitarnijate võimalusi sõlmida tarbijatega lepinguid ja seega sulgeda nende pääsu turule. Takistatud oleks ka tarbijail tarnija vahetamine.

3. KOHUSTUSED

6. Distrigaz vastas komisjoni vastuväidetele suuliselt ja kirjalikult. Ta rõhutas, et ta ei nõustu komisjoni esialgse hinnanguga, kuid tegi ettepaneku, et ta võib järgida kohustuste paketti, mis töötatakse välja komisjoni kahtluste hajutamiseks. Allpool esitatakse kohustuste lühikokkuvõte. Kohustuste täielik tekst avaldatakse inglise keeles konkurentsi peadirektoraadi veebilehel aadressil:

http://europa.eu.int/comm/competition/antitrust/cases

([1]) EÜT L 1, 4.1.2003, lk 1.
([2]) Komisjoni 14. novembri 2006. aasta otsus, vt http://ec.europa.eu/comm/competition/mergers/cases/decisions/m4180_20061114_20600_fr.pdf

7. Ettepaneku peamised osad on järgmised:

   — Distrigas tagab, et igal aastal saadetakse turule tagasi vähemalt 65 % ja kõikide aastate keskmisena vähemalt keskmiselt 70 % gaasikogusest, mille ta tarnib Belgia tööstustarbijaile ja elektritootjaile, et teised tarnijad saaksid neile tarbijaile teha konkureeriva pakkumise. ([1])

   — Kogused arvutatakse välja Distrigasi iga-aastaste lepinguliste (s.h olemasolevate lepingutega ettenähtud) koguste alusel ja Distrigasile jääb teatav võimalus võtta paindlikult arvesse mitme aasta jooksul esinevaid kõikumisi.

   — Tööstustarbijate ja elektritootjatega ei sõlmita lepinguid pikemaks tähtajaks kui viis aastat. Nad saavad õiguse ühepoolselt, etteteatamisega ja ilma hüvitiseta lõpetada olemasolevad viieaastased või pikemad lepingud. See on üleminekumeede, mis võimaldab Distrigasil neid käsitleda üheaastate lepingutena.

   — Kohustuste kohta tehtud ettepanekus ei käsitleta müüki, mis hõlmab: 1) koguseid, mis tarnitakse tööstustarbijatele, kes tarbivad alla 12 GWh, 2) elektritootjaid, kes ostavad gaasi uutele rajatistele, mille võimsus on suurem kui 10 MW, 3) kontsernisisest müüki ning müüki Electrabelile ja Electrabel Customer Solutions'ile vastavalt Suezi ja Gaz de France'i ühinemisel esitatud konkurentsimeetmetele (välja arvatud siis, kui need meetmed kaotavad oma mõju), 4) Distrigasi müügitegevust ja 5) müüki väljapoole Belgiat.

   — Kui Distrigasi müügi kogumaht väheneb võrreldes 2007. aastaga, siis Distrigasi ei peeta kohustuste rikkujaks, kui kogus, mida turule tagasi ei saadeta, ei ole suurem kui teatav kindlaksmääratud gaasi müügi maht (mida kohandatakse ajavahemikul, mis eelneb kas Suezi ja Gaz de France'i ühinemisele või otsusele ühinemist mitte läbi viia), mis moodustab alla 20 % asjaomasest turust (asjaomastest turgudest).

   — Distrigas ei sõlmi edasimüüjatega gaasitarnelepinguid, mille tähtaeg on pikem kui kaks aastat.

   — Distrigas ei võta tulevikus sõlmitavatesse gaasitarnelepingutesse klausleid, milles käsitletakse kasutamist, edasimüüki, sihtkohta ja lepingu automaatset pikenemist ning kõrvaldab sellised klauslid olemasolevatest lepingutest (või jätab need jõustamata).

   — Kohustuste tähtaeg on neli aastat alates 2007. aasta algusest. Kohustusi kohaldatakse nii kaua, kui Distrigasi turuosa on suurem kui 40 % ja vähemalt 20 % suurem kui tema lähima konkurendi turuosa.

   — Kui Distrigas omandatakse pärast seda, kui Gaz de France/Suez on ta müünud, siis lisatakse kohustustele kogus, mida ostja müüb tulevikus Belgia asjaomasel turul. Ostja olemasolevad lepingud lisatakse üheaastase üleminekuperioodi järel, välja arvatud juhul, kui ostja lepingutega ettenähtud müügikogused ei ületa 5 % Distrigasi 2007. aastal müüdavatest kogustest.

4. **KUTSE MÄRKUSTE ESITAMISEKS**

8. Sõltuvalt turutesti tulemustest kavatseb komisjon võtta vastu määruse (EÜ) nr 1/2003 artikli 9 lõike 1 kohase otsuse, millega esitatud kohustused muudetakse Distrigasile siduvaks. Sellega seoses kutsub komisjon huvitatud kolmandaid isikuid esitama nende kohustuste kohta mistahes märkusi ühe kuu jooksul pärast käesoleva teatise avaldamist.

9. Huvitatud kolmandatel isikutel palutakse esitada ka oma märkuste mittekonfidentsiaalne versioon, milles ärisaladus ja muud konfidentsiaalsed lõigud oleksid asendatud kas mittekonfidentsiaalse kokkuvõtte või sõnaga "[ärisaladus]" või "[konfidentsiaalne]". Distrigasile võidakse anda juurdepääs saadud märkuste mittekonfidentsiaalsetele versioonidele või märkuste kokkuvõtetele.

10. Märkused, millele on märgitud viide "COMP/B-1/37966 — Distrigas", tuleb saata kas e-posti aadressil comp-greffe-antitrust@ec.europa.eu või kirja või faksi teel aadressil:

    European Commission
    Directorate General for Competition
    Antitrust Registry
    B-1049 Brussels
    Faks: (32-2) 295 01 28

([1]) Tundub, et kavandatavad kohustused hajutavad komisjoni kahtlused nii juhul, kui turg hõlmab ainult tööstustarbijaid, kui ka juhul, kui see hõlmab ka elektritootjaid.

Eelteatis koondumise kohta

(Juhtum nr COMP/M.4630 — Bear Stearns/Nylstar)

Võimalik lihtsustatud korras menetlemine

(EMPs kohaldatav tekst)

(2007/C 77/15)

1. 30. märtsil 2007 sai komisjon nõukogu määruse (EÜ) nr 139/2004 ([1]) artiklile 4 vastava teatise kavandatava koondumise kohta, mille raames Ühendkuningriigi ettevõtja Bear, Stearns International Limited (edaspidi "Bear Stearns") omandab võlgnevuse osaluse vastu vahetamise teel kontrolli Madalmaade ettevõtja Nylstar N.V. ("Nylstar") üle nimetatud nõukogu määruse artikli 3 lõike 1 punkti b tähenduses.

2. Asjaomaste ettevõtjate majandustegevus hõlmab järgmist:

— Bear Stearns: üleilmne investeerimispangandus, väärtpaberite ja investeeringute haldamine;

— Nylstar: polüamiidlõnga tootmine ja müük.

3. Komisjon leiab pärast teatise esialgset läbivaatamist, et tehing, millest teatatakse, võib kuuluda määruse (EÜ) nr 139/2004 reguleerimisalasse, kuid lõplikku otsust selle kohta ei ole veel tehtud. Vastavalt komisjoni teatisele lihtsustatud korra kohta teatavate ettevõtjate koondumiste käsitlemiseks kooskõlas nõukogu määrusega (EÜ) nr 139/2004 ([2]) tuleks märkida, et käesolevat juhtumit on võimalik käsitleda teatises ettenähtud korra kohaselt.

4. Komisjon kutsub huvitatud kolmandaid isikuid esitama komisjonile oma võimalikke märkusi kavandatava toimingu kohta.

Komisjon peab märkused kätte saama kümne päeva jooksul pärast käesoleva dokumendi avaldamist. Märkusi võib komisjonile saata faksi ((32-2) 296 43 01 või 296 72 44) või postiga järgmisel aadressil (lisada viitenumber COMP/M.4630 — Bear Stearns/Nylstar):

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

([1]) ELT L 24, 29.1.2004, lk 1.
([2]) ELT C 56, 5.3.2005, lk 32.