Europos Sąjungos
oficialusis leidinys

C 40

Leidimas
lietuvių kalba

Informacija ir pranešimai

63 metai

2020 m. vasario 6 d.

Turinys

LT

([2]) Tekstas svarbus EEE.

IV

(Pranešimai)

EUROPOS SĄJUNGOS INSTITUCIJŲ, ĮSTAIGŲ IR ORGANŲ PRANEŠIMAI

EUROPOS KOMISIJA

Euro kursas [1]

2020 m. vasario 5 d.

(2020/C 40/01)

1 euro =

	Valiuta	Valiutos kursas		Valiuta	Valiutos kursas
USD	JAV doleris	1,1023	CAD	Kanados doleris	1,4644
JPY	Japonijos jena	120,94	HKD	Honkongo doleris	8,5572
DKK	Danijos krona	7,4728	NZD	Naujosios Zelandijos doleris	1,7006
GBP	Svaras sterlingas	0,84444	SGD	Singapūro doleris	1,5202
SEK	Švedijos krona	10,5450	KRW	Pietų Korėjos vonas	1 302,97
CHF	Šveicarijos frankas	1,0717	ZAR	Pietų Afrikos randas	16,2246
ISK	Islandijos krona	138,10	CNY	Kinijos ženminbi juanis	7,6858
NOK	Norvegijos krona	10,1173	HRK	Kroatijos kuna	7,4568
BGN	Bulgarijos levas	1,9558	IDR	Indonezijos rupija	15 036,47
CZK	Čekijos krona	25,055	MYR	Malaizijos ringitas	4,5382
HUF	Vengrijos forintas	335,76	PHP	Filipinų pesas	55,961
PLN	Lenkijos zlotas	4,2491	RUB	Rusijos rublis	69,0320
RON	Rumunijos lėja	4,7734	THB	Tailando batas	34,133
TRY	Turkijos lira	6,5975	BRL	Brazilijos realas	4,6614
AUD	Australijos doleris	1,6299	MXN	Meksikos pesas	20,4923
			INR	Indijos rupija	78,4330

[1] *Šaltinis*: valiutų perskaičiavimo kursai paskelbti ECB.

PRANEŠIMAI, SUSIJĘ SU EUROPOS EKONOMINE ERDVE

ELPA PRIEŽIŪROS TARYBA

2019 m. gruodžio 4 d. Sprendimas Nr. 085/19/COL pradėti bendrovei „Remiks Group“ suteiktos galimos valstybės pagalbos, susijusios su atliekų tvarkymo paslaugomis, oficialų tyrimą (byla 84370)

Kvietimas teikti pastabas pagal ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 2 dalį dėl valstybės pagalbos

(2020/C 40/02)

Pirmiau nurodytu sprendimu, kurio tekstas originalo kalba pateiktas po šios santraukos, ELPA priežiūros institucija pranešė Norvegijos valdžios institucijoms apie sprendimą pradėti procedūrą pagal ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 2 dalį dėl pirmiau minėtos priemonės.

EFTA Surveillance Authority
Registry
Rue Belliard 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË
registry@eftasurv.int

Šios pastabos bus perduotos Norvegijos valdžios institucijoms. Pastabas teikiančiai suinteresuotajai šaliai pateikus motyvuotą raštišką prašymą, jos tapatybė gali būti neatskleidžiama.

Santrauka

Procedūra

(1) 2016 m. rugpjūčio 16 d. Institucija gavo prekybos organizacijos „Norsk Industri“ skundą.

(2) Institucijai pateikus prašymus, 2016 m. spalio 5 d., 2017 m. vasario 28 d., kovo 20 d., rugpjūčio 22 d., spalio 31 d., lapkričio 20 d. ir 2018 m. kovo 5 d. Norvegijos valdžios institucijos jai pateikė informaciją.

Priemonių apibūdinimas

(3) Įtariamos pagalbos gavėjai yra bendrovės „Remiks Miljøpark AS“, „Remiks Næring AS“ ir „Remiks Produksjon AS“.

(4) 99,99 proc. bendrovės „Remiks Miljøpark AS“ priklauso Trumsės savivaldybei. Bendrovei „Remiks Miljøpark AS“ priklauso 100 proc. bendrovių „Remiks Næring AS“ ir „Remiks Produksjon AS“ akcijų.

(5) Bendrovei „Remiks Miljøpark AS“ taip pat priklauso 100 proc. bendrovės „Remiks Husholdning AS“ akcijų. Tačiau ši bendrovė teikia paslaugas tik Trumsės savivaldybei ir nevykdo veiklos rinkoje. Bendrovės „Remiks Husholdning AS“ pirkimai priskiriami savivaldybei.

(6) Nuo 2010 m. pradžios iki 2017 m. vasario 1 d. Trumsės savivaldybė iš bendrovės „Remiks Næring AS“ pirko atliekų surinkimo paslaugas savo pramonės atliekoms surinkti.

(7) Nuo 2010 m. pradžios iki šiol Trumsės savivaldybė, turėdama netiesioginę kontrolę, yra nurodžiusi bendrovei „Remiks Husholdning AS“ rinkti buitines atliekas Trumsės savivaldybėje. Nuo vasario 1 d. iki šiol Trumsės savivaldybė yra nurodžiusi bendrovei „Remiks Husholdning AS“ taip pat rinkti Trumsės savivaldybės nuosavas pramonės atliekas. Bendrovė „Remiks Husholdning AS“ šias paslaugas savivaldybės vardu teikia už savikainą, t. y. jai atlyginama atsižvelgiant į visas išlaidas, neįskaitant pelno. Bendrovė „Remiks Husholdning AS“ vykdo atliekų surinkimo veiklą, tačiau būtinas atliekų apdorojimo paslaugas perka iš susijusios bendrovės „Remiks Produksjon AS“.

(8) 2010 ir 2012 m., ryšium su bendrovės „Remiks Group“ įsteigimu, Trumsės savivaldybė kapitalą, skolas, kilnojamąjį turtą ir nekilnojamąjį turtą perleido patronuojančiajai bendrovei „Remiks Miljøpark AS“.

(9) Sprendimas yra susijęs su trimis priemonėmis: i) Trumsės savivaldybės atliekų surinkimo paslaugų pirkimu iš bendrovės „Remiks Næring AS“, ii) bendrovės „Remiks Husholdning AS“ atliekų apdorojimo paslaugų pirkimu iš bendrovės „Remiks Produksjon AS“ ir iii) 2010 ir 2012 m. Trumsės savivaldybės ir bendrovės „Remiks Group“ sandoriais.

Priemonių vertinimas

(10) Dėl i ir ii punktuose nurodytų priemonių Institucija abejoja, ar atitinkamai Trumsės savivaldybė ir bendrovė „Remiks Husholdning AS“ už įsigytas paslaugas mokėjo rinkos kainą. Dėl iii punkte nurodytos priemonės Institucija abejoja, ar Trumsės savivaldybės sandoriai su bendrove „Remiks Group“ buvo vykdomi rinkos sąlygomis ir atitinka rinkos ekonomikos veiklos vykdytojo principą.

(11) Jeigu priemonės laikytinos valstybės pagalba, nebuvo laikomasi ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 3 dalyje nustatytos pareigos prieš patvirtinant valstybės pagalbą apie ją pranešti Institucijai. Todėl valstybės pagalba būtų neteisėta.

(12) Norvegijos valdžios institucijos nepateikė argumentų, kuriais būtų pagrindžiama, kad, jeigu minėtos priemonės laikytinos valstybės pagalba, jos galėtų būti laikomos suderinamomis su EEE susitarimo veikimu. Taigi, Institucija abejoja dėl visų trijų priemonių suderinamumo.

Decision No 085/19/COL of 4 December 2019 to open a formal investigation into potential state aid granted to the Remiks Group related to waste handling services

1. **Summary**

(1) The EFTA Surveillance Authority (the „Authority“) wishes to inform Norway that, having assessed a complaint relating to (i) Tromsø municipality's purchase of waste collection services from Remiks Næring AS, (ii) Remiks Husholdning AS' purchase of waste treatment services from Remiks Produksjon AS, and (iii) transactions from Tromsø municipality to the Remiks Group in 2010 and 2012 (the „measures“), the Authority has doubts as to whether the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement, and as to the compatibility of the measures with the EEA Agreement. Therefore, the Authority is required to open a formal investigation procedure ([1]).

(2) The complainant has also submitted a separate complaint about alleged violations of the public procurement rules. This decision, however, concerns the state aid complaint only, and remains without prejudice to the ongoing investigation concerning public procurement handled by the Authority's Internal Market Affairs Directorate ([2]).

(3) The Authority has based its decision on the following considerations.

2. **Procedure**

(4) By letter dated 16 August 2016, Norsk Industri, the Federation of Norwegian Industries, (the „complainant“) lodged a complaint against the measures ([3]).

([1]) Reference is made to Article 4(4) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

([2]) Case No 78085.

([3]) Document No 814858.

(5) The Norwegian authorities submitted comments to the complaint on 5 October 2016 ([4]). The Authority requested further information from the Norwegian authorities on 18 January 2017 ([5]), which was provided by letters dated 28 February ([6]) and 20 March 2017 ([7]).

(6) The Authority provided the complainant with a preliminary view on the complaint by letter dated 24 May 2017 ([8]). The Authority received further information from the complainant on 22 June 2017 ([9]), and from the Norwegian Authorities on 22 August 2017 ([10]).

(7) By letter dated 31 August 2017, the Authority requested further information from the Norwegian authorities ([11]). By letters dated 31 October and 20 November 2017, the Norwegian authorities replied to the information request ([12]).

(8) By letter dated 16 January 2018, the Authority requested further information from the Norwegian authorities ([13]), and the Norwegian authorities provided information by letter dated 5 March 2018 ([14]).

(9) The complainant sent additional information by emails of 14 December 2016; 15 September and 13 November 2017; and 12 January, 31 January and 22 May 2018 ([15]).

3. **Background**

3.1 ***Historical development***

(10) In Norway, waste handling services are regulated by the Pollution Control Act ([16]). The Act makes a distinction between household waste, which is all waste from the municipalities' households, and industrial waste, which is the waste from public and private enterprises.

(11) Up until 2009, Tromsø municipality organised its waste management services in-house through municipal units and enterprises. In 2009, the municipal council decided to organise the municipality's waste management in a group of limited liability companies ([17]). This was done to put an „arm's length" between the municipality and the activities exposed to competition ([18]).

(12) In June 2009, the municipal council converted the municipal enterprise Tromsø Miljøpark KF ([19]), which had previously performed waste management services for Tromsø municipality, into Remiks Miljøpark AS ([20]). In December 2009, three subsidiaries were established under Remiks Miljøpark AS ([21]): Remiks Husholdning AS („Remiks Husholdning"), Remiks Næring AS („Remiks Næring") and Remiks Produksjon AS („Remiks Produksjon"). Collectively the companies are referred to as the „Remiks Group".

([4]) Document No 821154.
([5]) Document No 840687.
([6]) Document No 844198.
([7]) Document No 848555.
([8]) Document No 854974.
([9]) Document No 862433.
([10]) Document No 870978.
([11]) Document No 870978.
([12]) Documents No 880582 and 884931.
([13]) Document No 882703.
([14]) Document No 901145.
([15]) Documents No 831575, 873959, 882172, 896066, 895954 and 914528.
([16]) *Forurensningsloven*, LOV-1981-03-13-6.
([17]) Attachments 2, 3 and 4b to letter dated 3.5.18, Documents No 901215, 901211 and 901203; Tromsø municipality's letter dated 2017 m. spalio 31 d., Document No 880582, and Attachment 7 to the letter, Document No 880592.
([18]) Preparatory papers from Tromsø municipality's administration to the municipality council, Attachment 2 to letter dated 5.3.18, Document No 901215.
([19]) A municipal enterprise (in Norwegian: *kommunalt foretak*, shortened KF) is an administrative branch of the central municipality, and not a separate legal entity. Municipal enterprises are regulated by the Local Government Act chapter 11.
([20]) Tromsø municipality's letter, dated 2017 m. spalio 31 d., Document No 880582, and Attachments 6 and 7 to the letter, Documents No 880590 and 880592.
([21]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145, and Attachment 4 to the letter, Document No 901219, and Tromsø municipality's letter dated 2017 m. spalio 31 d., Document No 880582 and Attachment 7 to the letter, Document No 880592.

3.2 ***Transactions involving the Remiks Group in 2010 and 2012***

(13) On 23 June 2010, Tromsø municipal council made the formal decision to transfer the capital and liabilities that were left in the municipal enterprises Tromsø Miljøpark KF and Remiks Tromsø KF to Remiks Miljøpark AS ([22]). The transactions involved movables, capital, liabilities, and real estate, including the waste handling facility Remiks Miljøpark (the same name as the parent company) where the Remiks Group companies have their business. The assets were converted into share capital in Remiks Miljøpark AS ([23]).

(14) In 2012, Tromsø municipal council decided to transfer real estate and a loan to Remiks Miljøpark AS, in addition to adjusting the value of the real estate transferred in 2010 ([24]). In both the preparatory paper ([25]) and the decision ([26]), Tromsø municipality specified a requirement for a 9 % return on the investment.

3.3 ***The current company structure***

(15) Per November 2019, the Remiks Group is organised as follows ([27]):

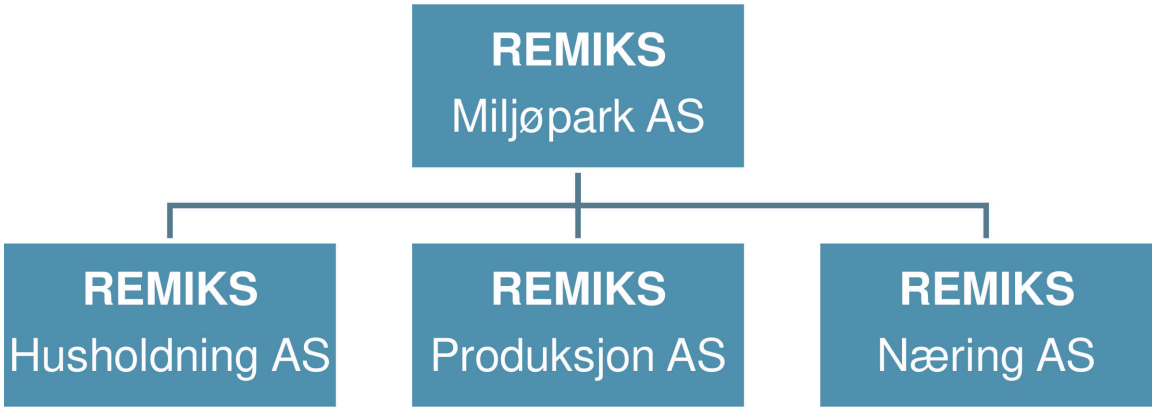
— Remiks Miljøpark AS is the parent company in the Remiks Group. It is owned 99,99 % by Tromsø municipality and 0,01 % by Karlsøy municipality ([28]). It provides services and rents out property to its subsidiaries.

— Remiks Husholdning is owned 100 % by Remiks Miljøpark AS. Until 2017, it only collected household waste for Tromsø municipality. As of 1 February 2017, it also collectes Tromsø municipality's own industrial waste.

— Remiks Næring is owned 100 % by Remiks Miljøpark AS. Remiks Næring specialises in the collection of industrial waste, and offers such services on the market. Until 1 February 2017, it had an agreement with Tromsø municipality for the collection of Tromsø municipality's own industrial waste.

— Remiks Produksjon is owned 100 % by Remiks Miljøpark AS. It provides waste treatment services on the market, primarily to its sister companies.

(16) Below is an illustration of the Remiks Group's structure:



3.4 ***Household waste***

(17) The Norwegian Pollution Control Act, section 27a, first paragraph, defines household waste as waste from private households, including large objects such as furniture, etc.

([22]) Attachment 8a to Tromsø municipality's letter dated 2018 m. kovo 5 d., Document No 901189. The transfers were decided on in 2010, but backdated to the establishment of Remiks Miljøpark AS in 2009.
([23]) Attachments 4, 4c and 8a to Tromsø municipality's letter dated 2018 m. kovo 5 d., Documents No 901219, 901205 and 901189.
([24]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145, and attachments 8, 8b, 8c, 8d and 9 to the letter, Documents No 901183, 901181, 901177, 901179 and 901175.
([25]) In Norwegian: *saksfremlegg*.
([26]) Attachment 9 to the letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901175.
([27]) Based on information obtained at www.purehelp.no 2019 m. lapkričio 21 d..
([28]) The 0,01 % ownership by Karlsøy municipality seems to be related to intentions that Tromsø and Karlsøy would cooperate on waste handling, but this seems not to have materialised. See letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.

(18) Under the Pollution Control Act, sections 29 and 30, the municipalities are obliged to collect and have facilities to treat household waste ([29]). The costs associated with the waste management are to be covered by a fee, levied on the inhabitants ([30]). The municipal waste fee are to be calculated based on a self-cost principle; covering the total costs of collecting and handling the waste on behalf of the municipality, without generating a profit for the municipality, in accordance with the Waste Regulation, chapter 15 ([31]).

(19) When Tromsø municipality reorganised its waste handling services and established the Remiks Group in 2010, by way of its control in Remiks Husholdning it instructed Remiks Husholdning to collect the household waste on behalf of the municipality, based on the self-cost principle. Remiks Husholdning collects and sorts the waste. However, it purchases the waste treatment services, consisting of incineration, depositing and recycling, from its sister company Remiks Produksjon.

3.5 ***Industrial waste***

(20) The Norwegian Pollution Control Act, section 27a, second paragraph, defines industrial waste as waste from public and private enterprises and institutions.

(21) The Norwegian Pollution Control Act does not oblige the municipalities to organise the collection or handling of industrial waste. Any operator can therefore offer these services on the market. However, all producers of industrial waste are obliged to ensure the proper disposal and handling of their waste. Tromsø municipality, as a producer of industrial waste, is therefore obliged to ensure the proper collection and treatment of its own industrial waste, produced by the different municipal units (kindergartens, hospitals, nursing homes, municipal offices, etc.) ([32]).

(22) Before 2010, Tromsø municipality ensured the collection of its own industrial waste through a municipal enterprise ([33]). When Tromsø municipality reorganised its waste handling services and established the Remiks Group, Remiks Næring took over the collection of the municipality's own industrial waste ([34]). Therefore, the agreements for the services were not tendered out or renegotiated. From 2010, Remiks Næring merely continued to provide the same services to the municipality as the municipal enterprise had done before the reorganisation. The only thing that changed was the invoicing system, from internal and centralised to external and decentralised. This meant that each municipal unit (municipal offices, kindergarten, etc.) paid for the service from their budget, and Remiks Næring treated them as individual customers ([35]).

(23) Because of this continuation of the collection services, Remiks Næring and Tromsø municipality never entered into a formal contract for the waste collection services ([36]). The Norwegian authorities have described the arrangement as an unwritten framework agreement where each municipal unit decided its need for waste collection, and was invoiced separately ([37]). The Authority will refer to the arrangement between Tromsø municipality and Remiks Næring, regarding the collection of industrial waste, simply as an agreement.

(24) In 2016, Tromsø municipality decided to terminate the agreement with Remiks Næring, and concluded a new framework agreement with Remiks Husholdning for the collection of the municipality's industrial waste, starting 1 February 2017. The agreement was awarded directly, and based on a self-cost principle, meaning that the compensation covers the full costs, but no profits ([38]).

(25) Remiks Husholdning foresaw a total price for the services in 2017 of approximately NOK 8,2 million. This was NOK 3,2 million less than the combined total price all the individual municipal units paid to Remiks Næring in 2016 ([39]).

([29]) This means that any private operator needs an explicit permission from the municipality, in order to provide the service.

([30]) The Pollution Control Act, section 34. The fees can be secured through a statutory charge pursuant to the Mortgage Act (*panteloven*, LOV-1980-02-08-2).

([31]) The Waste Regulation (*avsfallsforskriften*, FOR-2004-06-01-930), chapter 15.

([32]) The Pollution Control Act, section 32, first paragraph.

([33]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.

([34]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.

([35]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.

([36]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.

([37]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145, and letter of 2017 m. spalio 31 d., Document No 880582.

([38]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145, and attachment 16 to the letter, Document No 901161.

([39]) This is based on calculations conducted by the complainant in letter from the complainant dated 22.6.17, Document No 862433.

4. Measures covered by the complaint

(26) The complainant has complained about three separate measures:

(27) First, alleged overpayment under the agreement between Tromsø municipality and Remiks Næring for collection of industrial waste for the period running from 2010 until 1 February 2017.

(28) Second, alleged overpayment in relation to Remiks Husholdning's purchase of waste treatment services from its sister company Remiks Produksjon. This agreement has been in force since the establishment of Remiks Husholdning in 2010 and is ongoing.

(29) Third, certain transactions from Tromsø municipality to the Remiks Group in 2010 and 2012, which allegedly were not conducted on market terms.

5. Presence of state aid

5.1 *Introduction*

(30) Article 61(1) of the EEA Agreement stipulates 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."

(31) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through state resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

5.2 *Presence of state resources*

5.2.1 *Introduction*

(32) For the measure to constitute aid, it must be granted by the State or through state resources. State resources include all resources of the public sector, including resources of intra-state entities (decentralised, federated, regional or other) ([40]).

(33) The transfer of state resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; waiving revenue that would otherwise have been paid to the state constitutes a transfer of state resources ([41]).

5.2.2 *Tromsø municipality's purchase of industrial waste collection services*

(34) The remuneration Tromsø municipality paid to Remiks Næring for the collection of industrial waste came from the budget of Tromsø municipality, as does the remuneration which Remiks Husholdning is currently receiving for the same services. The remuneration therefore constitutes state resources.

5.2.3 *Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon*

(35) The notion of state aid as expressed in Article 61(1) of the EEA Agreement is to be interpreted widely, therefore it covers not only aid granted directly via the state budget but also compulsory contributions imposed by state legislation. Measures financed through parafiscal charges or compulsory contributions imposed by the State and managed and apportioned in accordance with the provisions of public rules imply a transfer of state resources, even if not administered by the public authorities ([42]).

([40]) See the Authority's Guidelines on the notion of state aid („NoA") (OJ L 342, 21.12.2017, p. 35), and EEA Supplement No 82, 2017 m. gruodžio 21 d., p. 1, para. 48.

([41]) NoA, para. 51.

([42]) See NoA, para. 58; Decision No 306/09/COL of 2009 m. liepos 8 d. on the Norwegian Broadcasting Corporation, section 1.2.1, and judgment in *Italy* v *Commission*, 173/73, EU:C:1974:71, para. 16.

(36) Remiks Husholdning is financed through the waste fee, which is fixed in accordance with the principles laid down in section 34 of the Pollution Control Act and chapter 15 of the Waste Regulation. The fee is collected by the municipality and disbursed via the municipal budget ([43]). Thus, the public authorities determine both the size and use of the fee. Further, its legal basis and the way it is collected indicates that it is under the permanent control of public authorities. The fee must therefore be considered to constitute state resources. This Assessment is in line with the Authority's conclusion in its decision on the financing of municipal waste collectors in Norway in 2013 ([44]).

(37) Further, it must be considered whether Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon is imputable to Tromsø municipality. That is, whether Tromsø municipality must be regarded as having been involved in the adoption of the measures ([45]).

(38) Remiks Husholdning is indirectly owned by Tromsø municipality and subject to public law, such as the public procurement rules ([46]). The purchase of waste treatment services from Remiks Produksjon is conducted under the control and instruction of Tromsø municipality, in accordance with the Pollution Control Act. Furthermore, as Remiks Husholdning has been granted an exclusive right to collect the household waste by Tromsø municipality it is not subject to competition on the market, but rather operating under a monopoly ([47]).

(39) Based on this, Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon appears imputable to Tromsø municipality, so as to constitute state resources for the purposes of Article 61(1) EEA.

5.2.4 *The transactions involving the Remiks Group in 2010 and 2012*

(40) If public authorities or public undertakings provide goods or services at a price below market rates, or invest in an undertaking in a manner that is inconsistent with the market economy operator („MEO") principle, this implies foregoing state resources (as well as the granting of an advantage) ([48]).

(41) Therefore, if the transactions from Tromsø municipality to the Remiks Group in 2010 and 2012 were not conducted on market terms, state resources within the meaning of Article 61(1) of the EEA might have been involved.

5.3 ***Undertaking***

(42) Only advantages granted to „undertakings" are subject to state aid law. The concept of an undertaking covers any entity that engages in an economic activity regardless of its status and the way it is financed. Hence, the public or private status of an entity, or the fact a company is partly or wholly publicly owned, has no bearing on whether or not the entity is an „undertaking" ([49]).

(43) An activity is economic in nature where it consists in offering goods and services on a market ([50]). The assessment of the activity must be based on the factual evidence, and the question is whether there is a market for the services concerned ([51]). In this regard, it is relevant to consider whether the entities receive compensation for the services, at what level, and whether they face competition from other undertakings ([52]).

(44) Remiks Næring has, since its establishment in 2010, been providing services for collection of industrial waste for remuneration in competition with other undertakings. Based on this, Remiks Næring appears to engage in economic activity so as to constitute an undertaking.

(45) Remiks Produksjon offers waste treatment services. The services are offered on the market for remuneration and in competition with other providers. Remiks Produksjon thus appears to engage in economic activity so as to constitute an undertaking.

([43]) The fifth paragraph of section 34 of the Pollution Control Act.
([44]) Decision No 91/13/COL of 2013 m. vasario 27 d., on the financing of municipal waste collectors, para. 26.
([45]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, para. 52.
([46]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145.
([47]) Letter from Tromsø municipality, dated 2018 m. kovo 5 d., Document No 901145. See also NoA, para. 43.
([48]) NoA, para. 52.
([49]) Judgment in *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, para. 42.
([50]) NoA, section 2.1.
([51]) Judgment in *Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven* v *Commission*, T-696/17, EU:T:2019:652, para. 56.
([52]) Case E-29/15 *Sorpa* [2016] EFTA Ct. Rep. 825, paras 51–64.

(46) In relation to the transfers from Tromsø municipality to the Remiks Group in 2010 and 2012, the Group must be considered to form one economic unit ([53]). An entity which, owning controlling shareholdings in a company, actually exercises that control by involving itself directly or indirectly in the management thereof must be regarded as taking part in the economic activity carried on by the controlled undertaking ([54]).

(47) The subsidiaries in the Remiks Group are fully owned by Remiks Miljøpark AS, and the Authority does not have any indications that Remiks Miljøpark AS is not involved in the management of its fully owned subsidiaries. The Authority has preliminarily concluded that both Remiks Næring and Remiks Produksjon undertake economic activity (see immediately above). With this, it is also the Authority's preliminary conclusion that the Remiks Group, as one economic unit, constitutes an undertaking for the purposes of the application of state aid rules, in so far as it is engaged in the economic activities of Remiks Næring and Remiks Produksjon ([55]).

5.4 ***Advantage***

5.4.1 *Introduction*

(48) The qualification of a measure as state aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit that an undertaking could not have obtained under normal market conditions ([56]).

(49) The measure constitutes an advantage not only if it confers positive economic benefits, but also in situations where it mitigates charges normally borne by the budget of the undertaking. This covers all situations in which economic operators are relieved of the inherent costs of their economic activities ([57]).

(50) Economic transactions carried out by public bodies are considered not to confer an advantage on the counterpart of the agreement, and therefore not to constitute aid, if they are carried out in line with normal market conditions ([58]). This is assessed pursuant to the MEO principle ([59]). Therefore, when public authorities purchase a service, it is generally sufficient, to exclude the presence of an advantage, that they pay market price.

(51) Whether a transaction is in line with market conditions can be established on the basis of a generally accepted, standard assessment methodology, relying on the available objective, verifiable and reliable data, which should be sufficiently detailed and should reflect the economic situation at the time at which the transaction was decided, taking into account the level of risk and future expectations ([60]).

5.4.2 *Tromsø municipality's purchase of waste collection services from Remiks Næring*

5.4.2.1 Introduction

(52) According to the MEO principle, the decision to carry out a transaction must have been taken on the basis of economic evaluations comparable to those which, in similar circumstances, a rational MEO (with characteristics similar to those of the public body concerned) would have carried out to determine the profitability or economic advantage of the transaction ([61]). When examining compliance with the principle it is only the information known at the time of the decision which is relevant ([62]).

(53) The purchase of the services through a competitive tender is only one of several methods for ensuring that a transaction does not confer an advantage within the meaning of Article 61(1) of the EEA Agreement. To establish whether a transaction is in line with market conditions, that transaction can be assessed in the light of the terms on which comparable transactions carried out by comparable private operators have taken place in comparable situations (benchmarking) ([63]) or through a qualified financial assessment ([64]).

(54) Below, the Authority examines the different lines of reasoning that the complainant has brought forward in support of its assertion that Remiks Næring has been overcompensated.

([53]) NoA, para. 11.
([54]) Judgment in *AceaElectrabel Produzione* v *Commission*, C-480/09 P, EU:C:2010:787, para. 49.
([55]) NoA, para. 11.
([56]) NoA, para. 66.
([57]) NoA, para. 68.
([58]) Judgment in *SFEI and others*, EU:C:1996:285, C-39/94, paras 60–62.
([59]) NoA, para. 76.
([60]) NoA, para. 101.
([61]) NoA, para. 79.
([62]) NoA, para. 78.
([63]) NoA, paras 98–100.
([64]) NoA, paras 101–105.

5.4.2.2 Benchmarking

(55) The complainant alleges that Tromsø municipality has paid disproportionally more than Bodø municipality for similar waste collection services in the same period.

(56) The complainant states that Tromsø municipality in 2016 paid to Remiks Næring five times what Bodø municipality paid to Retura Iris AS for collection of industrial waste. Both Tromsø and Bodø are municipalities in the North of Norway, located by the coast, and with a road network interrupted by fjords. The complainant argues that the two municipalities are comparable in size and population density. While there are 5 100 people working in Tromsø municipality at 160 municipal locations, there are 3 100 people working in Bodø municipality, at 100 locations. On that basis, the complainant argues that the price paid in Tromsø should not exceed a price which is proportionally higher (approximately 60–65 % higher) than that paid in Bodø for similar services ([65]).

(57) The Norwegian authorities argue that the agreements in Tromsø and Bodø are different in both size and nature, and that the agreement with Bodø municipality therefore cannot serve as an appropriate benchmark. The municipality of Tromsø has paid a fixed price for waste collection services, based on the size of the bins, regardless of the actual weight. Thus, Remiks Næring carried the risk of the municipality disposing of more waste than budgeted for. The fixed price also covered additional services such as picking up waste that had fallen outside of the bins and additional bags placed next to the bins – in addition to educating the public, raising climate and environmental awareness ([66]). The municipality of Bodø had an agreement where it paid a price based on the actual weight of waste collected, which means the municipality carried the risk of disposing of more waste than budgeted for. Thus, the scope of and risk allocation under the two agreements are different.

(58) Further, the Norwegian authorities argue that the difference in geography, the population density, and municipal locations, including the number of municipal employees, justify different prices for the collection of industrial waste in Tromsø and Bodø.

(59) Based on the above, it is the Authority's preliminary conclusion that benchmarking against Bodø municipality is not an appropriate way to evaluate the market price for the waste collection services ([67]).

5.4.2.3 Negotiating a better price

(60) The complainant argues that the municipality of Tromsø is the largest purchaser of waste collection services in the area concerned, and that it therefore should have been able to negotiate a better price ([68]).

(61) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit, which an undertaking could not have obtained under normal market conditions ([69]). To establish whether a transaction complies with market conditions, the transaction can be assessed in the light of the terms under which comparable transactions carried out by a comparable private operator would have taken place in a comparable situation ([70]).

(62) The Norwegian authorities have provided documentation indicating that a number of private undertakings have purchased comparable products at the same or a higher price than Tromsø municipality ([71]). However, it is not clear whether the list includes the majority of Remiks Næring's other customers, or only a smaller selection. The Authority invites the Norwegian authorities to provide further information on the proportion of other customers that have purchased comparable products to a price equal to or higher that paid by Tromsø municipality.

5.4.2.4 Increase in remuneration during the contract period

(63) The complainant further points out that the total compensation paid to Remiks Næring for the relevant services increased from NOK 7,7 million in 2010 to NOK 11,4 million in 2016, so almost 50 % over six years.

([65]) The Complaint, dated 2016 m. rugpjūčio 15 d., Document No 814858, and Annexes IV–VII to the complaint, Documents No 818909–818911.
([66]) Letter from Remiks Group, dated 2017 m. spalio 30 d., Document No 880602.
([67]) See also the Authority's letter dated 2017 m. gegužės 24 d., Document No 854974.
([68]) Letter from the complainant, dated 2016 m. gruodžio 15 d., Document No 831575.
([69]) NoA, para. 66.
([70]) NoA, para. 98.
([71]) Letter from Remiks Næring, dated 2016 m. rugsėjo 29 d., Document No 821156.

(64) The Norwegian authorities have provided documentation showing that the number of inhabitants and municipal employees has increased in the same period, and that the municipality has made several investments in new municipal buildings and units, which has led to an increase in the production of waste. The increase in remuneration to Remiks Næring is also mirrored in a corresponding increase in operating expenditure ([72]).

(65) The Authority, however, has doubts as to whether the information provided can explain a 50 % increase in price over a period of six years. The Authority therefore invites the Norwegian authorities to provide further information on the basis for the increases in the total remuneration paid.

5.4.2.5 Difference compared to the price budgeted by Remiks Husholdning for 2017

(66) As of 1 February 2017, Tromsø municipality terminated the agreement with Remiks Næring, and instructed Remiks Husholdning to collect the municipal industrial waste on an in-house basis, at a price not exceeding the costs (self-cost). Remiks Husholdning estimated budget for 2017 was NOK 8,2 million, which is NOK 3,2 million less than the NOK 11,4 million that Remiks Næring received for the services in 2016.

(67) The complainant argues that, provided the costs for the waste collection services were the same in 2016 and 2017, Remiks Næring would have had a profit of NOK 3,2 million for the services it provided in 2016. This would entail a margin on these services of 30 %, which is considerably higher than the market standard, which the complainant estimates at 0–8 % ([73]).

(68) The Norwegian authorities argue that the services provided by Remiks Næring under the 2016 agreement and the services provided by Remiks Husholdning under the 2017 agreement are materially different. Under the agreement with Remiks Næring, Tromsø municipality had a fixed price agreement whereby Remiks Næring carried the risk of the municipality disposing of more waste than budgeted for ([74]). Under the self-cost agreement with Remiks Husholdning, Tromsø municipality entered into an agreement based on the actual weight disposed, which means that the municipality carries the risk of disposing of more waste than budgeted for. The Norwegian authorities argue that the allocation of risk under the two agreements is thus not comparable, and justifies different prices.

(69) Further, the Norwegian authorities argue that Remiks Husholdning has been able to take advantage of synergies and efficiency gains when coordinating the collection of industrial waste with the collection of household waste, leading to lower overall costs. It is also argued that Remiks Husholdning is currently at its most efficient, and therefore able to take full advantage of its resources. In the view of the Norwegian authorities, this justifies the difference in price between the remuneration paid to Remiks Næring in 2016 and Remiks Husholdning's budget for 2017.

(70) While the Norwegian authorities have provided explanations seeking to justify the difference in remuneration in 2016 and 2017, the Authority has not been provided with documentation underlying these explanations. The Authority therefore invites the Norwegian authorities to provide documentation evidencing the efficiency gains and synergies said to justify the difference.

5.4.2.6 Conclusion

(71) Based on the above, the Norwegian authorities have not at present time provided sufficient evidence showing that the price paid to Remiks Næring for collection of industrial waste, complies with the MEO principle.

(72) In light of the above, and in particular in light of the absence of sufficient evidence supporting that the price paid for the collection of industry waste in the period from 2010 to 1 February 2017 was determined in line with normal market conditions, the Authority has formed the preliminary view that Remiks Næring may have received an advantage, within the meaning of Article 61(1) of the EEA Agreement.

([72]) Letter from Tromsø Municipality, dated 2018 m. kovo 5 d., Document No 901145.
([73]) Letter from the complainant, dated 2017 m. lapkričio 13 d., Document No 882862.
([74]) Further explained in section 7.4.2.2.

5.4.3 *Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon*

(73) The Norwegian authorities argue that it is impossible for Remiks Husholdning to purchase waste treatment services from any other undertaking than Remiks Produksjon. The reason being that for Remiks Husholdning to purchase waste treatment services from such a third party, the waste that goes through Remiks Husholdning's optical sorting machine would have to be transported out of Remiks Miljøpark, through Remiks Produksjon's business area. Remiks Produksjon has not consented to allowing third parties to enter its business area, let alone transport waste through it. This explains why Remiks Husholdning has been purchasing waste treatment services from Remiks Produksjon without tendering out the services ([75]).

(74) The complainant intimates that the purchase of these services, without a tender, has led to Remiks Husholdning paying a price above market price for waste treatment services.

(75) The Norwegian authorities argue that the services Remiks Husholdning purchase from Remiks Produksjon are provided on market terms and in accordance with the arm's length principle in the Limited Liability Companies Act, section 3-9 ([76]).

(76) In determining an appropriate price for Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon, the two parties looked at the price Remiks Næring paid to Remiks Produksjon for waste treatment services. Remiks Husholdning and Remiks Næring considered that the services Remiks Husholdning purchased were comparable in type and volume to those purchased by Remiks Næring, and that the costs for treating household and industrial waste are similar.

(77) The Authority is, however, not convinced that the prices paid by another company in the same group is an appropriate benchmark for establishing market price.

(78) In light of the above, and in particular in light of the absence of evidence supporting that the compensation paid to Remiks Produksjon did not lead to overcompensation, the Authority has formed the preliminary view that Remiks Produksjon may have received an advantage within the meaning of Article 61(1) of the EEA Agreement.

(79) The Authority invites the Norwegian authorities to provide documentation to substantiate that the compensation paid to Remiks Produksjon in line with normal market conditions ([77]).

5.4.4 *Transactions to the Remiks Group in 2010 and 2012*

(80) The complainant argues that Tromsø municipality did not require a sufficient return on the transactions from Tromsø municipality to the Remiks Group in 2010 and 2012.

(81) With the establishment of the Remiks Group in 2010, Tromsø municipality transferred (a) capital, (b) debt, (c) movables and (d) real estate to the Remiks Group ([78]). The assets were converted into share capital. The preparatory paper drafted for the purpose of the transactions ([79]) underlined the importance of complying with the MEO principle. However, it is not clear how the municipality actually ensured compliance with the principle.

(82) In 2012, Tromsø municipality transferred (a) real estate and (b) debt to Remiks Miljøpark AS, in addition to (c) adjusting the value of the real estate transferred in 2010 ([80]). The Tromsø municipal board decided to require a 9 % return. The preparatory paper prepared for the purpose of the transactions underlined the need to determine an appropriate level of return on the basis of the MEO principle. The preparatory paper included a discussion on whether the fact that only 40 % of the Remiks Group's activities are conducted in a competitive market, while the remaining 60 % are activities for which the municipality cannot obtain a profit, is relevant for the MEO principle, but does not seem to reach a conclusion on this point ([81]). The preparatory paper found a 9 % return appropriate ([82]), but did not set out the economic assessment explaining why.

([75]) Letter from Tromsø municipality, dated 5.3.18, Document No 901145.
([76]) *Lov om aksjeselskaper*, LOV-1997-06-13-44.
([77]) NoA, para. 74.
([78]) Attachment 8a to letter dated 2018 m. kovo 5 d., Document No 901189.
([79]) Attachments 4, 4a, 4b and 4c to the letter from Tromsø municipality dated 2018 m. kovo 5 d., Documents No 901219, 901213, 901203 and 901205.
([80]) Attachment 9 to letter dated 2018 m. kovo 5 d., Document No 901175.
([81]) The same assessment is included in the preparatory paper in relation to the 2010 transfer, Attachment 4 to the letter from Tromsø municipality dated 2018 m. kovo 5 d., Document No 901219.
([82]) Attachments 8, 8b, 8c, 8d to letter dated 5.3.18, Documents No 901183, 901181, 901177 and 901197.

(83) The complainant further argues that the 9 % level of return set in 2012 was determined based on only 40 % of the Remiks Group's turnover originating from the group's commercial activities (Remiks Næring and Remiks Produksjon). According to the complainant, the division between commercial and non- commercial activity shifted, and in 2016, 58 % of the turnover was linked to the commercial activities in Remiks Næring and Remiks Produksjon ([83]). Allegedly, as the conditions for setting the relevant rate of return changed, Tromsø municipality should have adjusted the level of return ([84]).

(84) Whether a transaction complies with the MEO principle must be examined on an *ex ante* basis, having regard to the information available at the time the transactions were decided. The relevant evidence is the information which was available, and the developments which were foreseeable, at the time when the investment decision was made ([85]).

(85) The question is therefore whether, based on the information available at the time, a rational market economy operator (with characteristics similar to Tromsø municipality) would have carried out similar transactions.

(86) In relation to the transactions referred to in paragraph (81) above, the Authority invites the Norwegian authorities to provide further information on the transfers and how these comply with the MEO principle.

(87) In relation to the transactions referred to in paragraph (82) above, the Authority invites the Norwegian authorities to provide documentation for, and further elaborate on, the assessments forming the basis for an assessment of compliance with the MEO principle, and the relevant level of return.

5.5 ***Selectivity***

(88) To be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must also be selective in that it favours „certain undertakings or the production of certain goods". Not all measures which favour economic operators fall under the notion of aid, only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors.

(89) The purchase of services from Remiks Næring and Remiks Produksjon are specific transactions benefitting the two undertakings respectively.

(90) Similarly, the transfers to the Remiks Group are specific transactions benefitting the company group.

(91) Accordingly, the alleged measures must be considered selective in the sense of Article 61(1) of the EEA Agreement.

5.6 ***Effect on trade and distortion of competition***

(92) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measures must be liable to distort competition and affect trade between EEA States.

(93) Measures granted by the State are considered liable to distort competition when they are liable to improve the position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 61(1) of the EEA Agreement is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ([86]).

(94) Public support may be liable to distort competition even if it does not help the recipient undertaking to expand or gain market share. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided ([87]).

(95) To the extent that the relevant measures have not been carried out in line with normal market conditions, they have conferred an advantage on the relevant undertakings which may have strengthened the undertakings' position compared to other undertakings competing with them.

([83]) Note that some of the revenues in Remiks Produksjon stem from treating household waste from Remiks Husholdning. The complainant has not explained whether or how this affects the calculations.
([84]) The complainant's letter dated 2018 m. gegužės 22 d., Document No 914528.
([85]) Judgment in *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paras 83–85 and 105; judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paras 71–72.
([86]) NoA, para. 187.
([87]) NoA, para. 189.

(96) The measures must also be liable to affect trade between EEA States. Where state aid strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, this is assumed to have effect on trade between EEA States ([88]).

(97) The Authority has previously found that public support to waste collection services in Norway is liable to distort competition and affect trade between EEA States ([89]). Waste collection and treatment is increasingly an international industry. In 2017, Norway exported 1,7 million tons of waste ([90]). The practice of tendering out waste services also means that undertakings from other EEA States can compete for waste handling contracts in other municipalities ([91]).

(98) The competitive situation is also highlighted in one of the preparatory papers in relation to the establishment of the Remiks Group in 2010. The paper notes an increasing number of undertakings competing on the markets for collection and handling of industrial waste, and highlights that the competition includes both national companies and companies with international owners ([92]).

(99) Thus the Authority cannot exclude that the measures are liable to distort competition and affect trade within the EEA.

5.7 ***Conclusion***

(100) Based on the information provided by the Norwegian authorities and the complainant, the Authority cannot exclude that the measures described above may entail state aid within the meaning of Article 61(1) of the EEA Agreement.

6. Procedural requirements

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

(102) The Norwegian authorities did not notify the measures before putting them into effect. The Authority therefore concludes that, if the measures constitute state aid, the Norwegian authorities will not have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

7. Compatibility of the aid measure

(103) The Norwegian authorities have not provided any arguments substantiating why the measures, if they were to constitute state aid, should be considered compatible with the functioning of the EEA Agreement. The Authority has also not identified any clear grounds for compatibility.

(104) Thus, if the measures constitute state aid, the Authority has doubts as to their compatibility with the functioning of the EEA Agreement

8. Conclusion

(105) As set out above, the Authority has doubts as to whether the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement, and as to their compatibility with the functioning of the EEA Agreement.

(106) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures do not constitute state aid, or are compatible with the functioning of the EEA Agreement.

([88]) Judgment in *Eventech*, C-518/13, EU:C:2015:9, para. 66.

([89]) Decision No 91/13/COL of 2013 m. vasario 27 d., on the financing of municipal waste collectors, para. 41.

([90]) Report from the Nordic Competition Authorities, Competition in the waste management sector, section 3.2.4: https://konkurransetilsynet.no/wp-content/uploads/2018/08/Nordic-Report-2016-Waste-Management-Sector.pdf

([91]) Judgment in *Altmark*, C-280/00, EU:C:2003:415, paras 78–79.

([92]) Preparatory paper 2009 m. balandžio 29 d., attachment 2 to letter dated 2018 m. kovo 5 d., Document 901215. The Authority's office translation.

(107) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by **6 January 2020,** their comments and to provide all documents, information and data needed for the assessment of the measures in light of the state aid rules.

(108) The Norwegian authorities are requested to immediately forward a copy of this decision to the Remiks Group.

(109) If this letter contains confidential information which should not be disclosed to third parties, please inform the Authority by **13 December 2019**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult the Authority's Guidelines on Professional Secrecy in State Aid Decisions ([93]). If the Authority does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on the Authority's website: http://www.eftasurv.int/state-aid/state-aid-register/.

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN	Frank J. BÜCHEL	Högni KRISTJÁNSSON	Carsten ZATSCHLER
President	*College Member*	*College Member*	*Countersigning as Director,*
Responsible College Member			*Legal and Executive Affairs*

([93]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 2006 m. birželio 8 d., p. 1.

2019 m. gruodžio 5 d. Sprendimas Nr. 86/19/COL pradėti galimos valstybės pagalbos, suteiktos bendrovei „Gagnaveita Reykjavíkur“, oficialų tyrimą

Kvietimas teikti pastabas pagal ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 2 dalį dėl valstybės pagalbos

(2020/C 40/03)

Pirmiau nurodytu sprendimu, kurio tekstas originalo kalba pateiktas po šios santraukos, ELPA priežiūros institucija pranešė Islandijos valdžios institucijoms apie sprendimą pradėti procedūrą pagal ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 2 dalį dėl pirmiau minėtos priemonės.

Per vieną mėnesį nuo šios santraukos paskelbimo dienos suinteresuotosios šalys gali pateikti pastabas apie priemonę šiuo adresu:

EFTA Surveillance Authority
Registry
Rue Belliard 35
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Šios pastabos bus perduotos Islandijos valdžios institucijoms. Pastabas teikiančiai suinteresuotajai šaliai pateikus motyvuotą raštišką prašymą, jos tapatybė gali būti neatskleidžiama.

Santrauka

Procedūra

2016 m. spalio 26 d. Institucija gavo Islandijos telekomunikacijų bendrovės „Síminn hf.“ skundą dėl įtariamos valstybės pagalbos, kurią bendrovė „Orkuveita Reykjavíkur“ (toliau – OR) suteikė savo patronuojamajai bendrovei „Gagnaveita Reykjavíkur“ (toliau – GR). Institucija papildomos informacijos ir pastabų iš skundo pateikėjo gavo 2016 m. lapkričio 23 d., 2017 m. sausio 16 d., 2017 m. kovo 28 d., 2018 m. sausio 1 d., 2018 m. balandžio 20 d., 2018 m. rugsėjo 21 d., 2019 m. kovo 26 d. ir 2019 m. rugsėjo 13 d. raštuose ir elektroniniuose laiškuose.

Institucijai pateikus prašymus, 2017 m. vasario 7 d., 2017 m. birželio 22 d., 2018 m. gegužės 25 d. ir 2019 m. birželio 4 d. raštuose Islandijos valdžios institucijos jai pateikė informaciją.

Priemonių apibūdinimas

Skundas yra susijęs su OR investicijomis į plačiajuostį ryšį nuo 1999 m., kai buvo įsteigta GR pirmtakė bendrovė „Lina.Net“, iki šiol. Tačiau skundas yra daugiausia susijęs su laikotarpiu nuo 2007 m. sausio 1 d., kai buvo įsteigta GR. Visų pirma skundas yra susijęs su įtariama valstybės pagalba, kurią bendrovė OR suteikė bendrovei GR įvairiomis priemonėmis, pavyzdžiui, per kapitalo injekcijas ir paskolas, kurios neatitiko rinkos sąlygų.

OR buvo įsteigta 1999 m. sausio 1 d. kaip valstybinė įmonė Reikjaviko miesto tarybai priėmus sprendimą sujungti miestui priklausančių elektros ir šilumos paslaugų įmonių veiklą. OR priklauso trims Islandijos savivaldybėms: i) Reikjaviko miestui (93,5 %), ii) Akraneso savivaldybei (5,5 %) ir iii) Borgarbigdo savivaldybei (1 %). Penkis OR direktorių valdybos narius skiria Reikjaviko miesto taryba, vieną – Akraneso savivaldybės taryba.

GR yra 2007 m. įsteigta telekomunikacijų bendrovė. GR buvo įsteigta kaip nepriklausomas juridinis subjektas, kad atitiktų Islandijos pašto ir telekomunikacijų administracijos (toliau – PTA) reikalavimus dėl OR konkurencinės ir nekonkurencinės veiklos atskyrimo. GR visiškai priklauso bendrovei OR. Pagal GR įstatus jos tikslas – eksploatuoti telekomunikacijų ir duomenų perdavimo tinklą.

GR yra registruotas operatorius (duomenų perdavimas ir paslaugų teikimas) pagal Elektroninių ryšių įstatymą Nr. 81/2003. Elektroninių ryšių įstatymo 36 straipsniu siekiama užtikrinti, kad konkurencinė telekomunikacijų veikla nebūtų subsidijuojama pajamomis, kurios gaunamos iš veiklos, saugomos išimtinėmis teisėmis arba kitomis priemonėmis.

Pagal Elektroninių ryšių įstatymo 36 straipsnį PTA užtikrina, kad iš nekonkurencingų sektorių gautomis pajamomis nebūtų subsidijuojama veikla konkurencingame telekomunikacijų sektoriuje. Todėl PTA pavesta tikrinti OR investicijas į telekomunikacijų rinką ir GR bei OR verslo santykius. Tokie tyrimai gali būti pradėti PTA iniciatyva arba gavus suinteresuotųjų šalių skundus. Bendrovė GR taip pat privalo pranešti PTA apie konkrečias priemones.

2006–2019 m. PTA priėmė devynis oficialius sprendimus dėl OR ir GR finansinio atskyrimo. PTA tyrimai apėmė GR verslo plano, kuris turi būti kasmet atnaujinamas, peržiūrą atsižvelgiant į faktinius finansinius duomenis. Atlikdama peržiūrą PTA, pavyzdžiui, tikrina, ar investuotojo (OR) grąžos norma apskritai atitinka telekomunikacijų rinkos reikalavimus, ir nagrinėja kapitalo struktūrą bei tai, ar OR ir GR sandorių kainos atitinka rinkos sąlygas.

Trimis atvejais PTA nustatė konkrečius Elektroninių ryšių įstatymo 36 straipsnio pažeidimus. Dviem iš šių atvejų PTA nurodė susigrąžinti priemones, o trečiu atveju PTA nenurodė susigrąžinti pranašumų.

Islandijos valdžios institucijos tvirtina, kad visuose savo santykiuose su GR bendrovė OR veikė pagal rinkos ekonomikos veiklos vykdytojo principą ir kad bendrovei GR nebuvo suteikta jokia pagalba. Šiuo atžvilgiu Islandijos valdžios institucijos pabrėžia, kad visos skundžiamos priemonės, susijusios su finansiniais OR ir GR santykiais, buvo įvertintos PTA pagal Elektroninių ryšių įstatymo 36 straipsnį. Islandijos valdžios institucijų teigimu, PTA taikytas kriterijus yra panašus į Institucijos taikytą kriterijų, kuriuo remiantis nustatoma, ar priemonė atitinka rinkos sąlygas (t. y. rinkos ekonomikos veiklos vykdytojo principą). Islandijos valdžios institucijos taip pat pažymėjo, kad Institucija savo 2011 m. spalio 5 d. Sprendime Nr. 300/11/COL jau atmetė skundo pateikėjo teiginius dėl OR investicijų į bendrovę „Lina.Net“.

Priemonių vertinimas

Atsižvelgdama, *inter alia*, į OR teisinį statusą, bendrovės partnerystės sutartį ir jos valdybos sudėtį, Institucija negali atmesti galimybės, kad priemonės priskirtinos valstybei ir kad pagal jas perduodami valstybės ištekliai, jeigu ir tiek, kiek jomis suteikiamas pranašumas GR.

Be to, nors GR neparduoda savo pačios paslaugų savo šviesolaidiniu tinklu, ji teikia neutralią ir atvirą prieigą prie tinklo visiems suinteresuotiems telekomunikacijų paslaugų teikėjams. Institucija mano, kad prieigos prie tinklo suteikimas trečiųjų šalių paslaugų teikėjams už fiksuotą kainą yra ekonominė veikla, todėl atrodo, kad GR veikia kaip įmonė, kaip apibrėžta EEE susitarimo 61 straipsnio 1 dalyje.

Atsižvelgdama į PTA sprendimų dėl GR finansavimo priėmimo praktiką pagal Elektroninių ryšių įstatymo 36 straipsnį ir tikrinimo lygį vertinant įvairias priemones, Institucija laikosi preliminarios nuomonės, kad PTA pagal 36 straipsnį taikomu principu iš esmės užtikrinama, kad visi sandoriai tarp GR ir OR arba kitų susijusių bendrovių vyktų rinkos sąlygomis. PTA metodas gali nebūti identiškas rinkos ekonomikos veiklos vykdytojo vertinimui, kurį Institucija atliktų pagal EEE valstybės pagalbos taisykles, tačiau juo vis tiek užtikrinamas tas pats rezultatas, t. y. užkertamas kelias ne rinkos sąlygomis vykdomiems sandoriams. Todėl šiame etape Institucija laikosi preliminarios nuomonės, kad PTA pateikiamas vertinimas yra lygiavertis Institucijos atliktam rinkos ekonomikos veiklos vykdytojo vertinimui.

Kai PTA *ex post* nustato Elektroninių ryšių įstatymo 36 straipsnio pažeidimų, t. y. kai ji nustato, kad tam tikras sandoris neatitiko rinkos sąlygų, ji turi teisę nurodyti šalims pašalinti bet kokį galimą pranašumą taikant atitinkamas priemones. Tačiau tam, kad PTA nurodytų susigrąžinti suteiktą pranašumą, nesuderinama priemonė turi būti aiškiai apibrėžta ir neginčijama, pvz., konkreti piniginė suma, paskolos sutarties sąlyga ir t. t. Be to, kai PTA nurodė susigrąžinti GR suteiktus pranašumus, ji nereikalavo, kad tie pranašumai būtų susigrąžinti su palūkanomis.

Yra trys pavyzdžiai, kai PTA nustatė konkrečius Elektroninių ryšių įstatymo 36 straipsnio pažeidimus. Dviem iš šių atvejų PTA nurodė susigrąžinti priemones, o trečiu atveju PTA nenurodė susigrąžinti pranašumų. Institucija nustatė, kad tais atvejais PTA įvertintomis priemonėmis bendrovei GR buvo suteiktas pranašumas, kurio ji nebūtų įgijusi įprastomis rinkos sąlygomis. Be to, šie pranašumai nebuvo visiškai susigrąžinti iš GR.

Todėl Institucija laikosi preliminarios nuomonės, kad GR įgijo pranašumą, kaip apibrėžta EEE susitarimo 61 straipsnio 1 dalyje: i) nemokėdama rinkos palūkanų dėl pranašumo, kurį ji gavo laikinai sustabdžius palūkanų mokėjimą, ii) netiesiogiai gavusi lėšų iš OR optinio skaidulinio kabelio tinklui įrengti Elvuso savivaldybėje, iii) gavusi trumpalaikes paskolas iš OR ir iv) į GR paskolų sutartis su privačiais skolintojais įtraukiant sąlygą, kad OR ir toliau turėtų kontrolinį GR akcijų paketą.

Institucija laikosi preliminarios nuomonės, kad šios priemonės yra atrankios, nes tai yra individualios priemonės, skirtos tik GR. Be to, panašu, kad priemonėmis gali būti iškraipoma konkurencija ir daromas poveikis prekybai EEE.

Jeigu priemonės laikytinos valstybės pagalba, nebuvo laikomasi ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 3 protokolo I dalies 1 straipsnio 3 dalyje nustatytos pareigos prieš patvirtinant valstybės pagalbą apie ją pranešti Institucijai. Tokia valstybės pagalba būtų neteisėta.

Islandijos valdžios institucijos nepateikė argumentų, kuriais būtų pagrindžiama, kad, jeigu minėtos priemonės laikytinos valstybės pagalba, jos galėtų būti laikomos suderinamomis su EEE susitarimo veikimu. Taigi, Institucija abejoja dėl visų keturių priemonių suderinamumo.

Decision No 86/19/COL of 5 December 2019 to open a formal investigation into alleged state aid granted to Gagnaveita Reykjavíkur

1 Summary

(1) The EFTA Surveillance Authority („the Authority") wishes to inform the Icelandic authorities that some measures covered by the complaint related to Gagnaveita Reykjavíkur („GR") might entail state aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts concerning the compatibility of these measures with the functioning of the EEA Agreement. Therefore, the Authority is required to open a formal investigation procedure into these measures (*) ([1]).

(2) The Authority has based its decision on the following considerations.

2 Procedure

(3) By a letter dated 26 October 2016 ([2]), Síminn hf. („the complainant") made a complaint regarding alleged state aid granted by Orkuveita Reykjavíkur („OR") to its subsidiary GR. By letter dated 7 November 2016, the Authority acknowledged receipt of the complaint ([3]). By email of 23 November 2016, the complainant submitted further information ([4]).

(4) By letter dated 28 November 2016 ([5]), the Authority forwarded the complaint and the additional information received to the Icelandic authorities, and invited them to submit information and observations. By email dated 16 January 2017, the Authority received additional information from the complainant ([6]). By letter dated 7 February 2017, the Icelandic authorities submitted their comments to the Authority ([7]).The complainant submitted further information by email of 28 March 2017 ([8]).

(5) On 7 June 2017, the Authority discussed the complaint with the Icelandic authorities at the annual package meeting in Reykjavík. On 22 June 2017, the Icelandic authorities provided the Authority with copies of various decisions of the Post and Telecom Administration in Iceland („PTA"), concerning the financing of GR ([9]).

(6) On 25 September 2017, the Authority met with the complainant, at its request, in Reykjavík. On 1 January 2018, the complainant submitted further comments ([10]).

(*) The information in square brackets is covered by the obligation of professional secrecy.

([1]) Reference is made to Article 4(4) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

([2]) Document No 825150, and Annexes 1–43 (Document Nos 825151, 825152, 825152, 825153 and 825156).

([3]) Document No 825249.

([4]) Document No 827877.

([5]) Document No 828509.

([6]) Document No 835622 and three attachments (Document Nos 835623, 835624 and 835625).

([7]) Document Nos 840228 and 840229, and Annex 1 (Document No 840230).

([8]) Document No 850420.

([9]) Document No 862626 and eight attachments (Document Nos 862628, 862635, 862639, 862641, 862645, 862648, 862651 and 862655).

([10]) Document No 892188.

(7) By letter dated 13 March 2018 ([11]), the Authority informed the complainant about its preliminary assessment that the financing of GR did not raise concerns concerning potential state aid within the meaning of Article 61(1) of the EEA Agreement. By letter dated 20 April 2018 ([12]), the complainant submitted its response to the Authority's preliminary assessment.

(8) By letter dated 27 April 2018 ([13]), the Authority forwarded the complainant's response and additional information received to the Icelandic authorities, and invited them to submit their observations. By letter dated 25 May 2018 ([14]), the Icelandic authorities submitted their comments.

(9) On 6 June 2018, the Authority discussed the complaint with the Icelandic authorities and received a presentation from the PTA at the annual package meeting in Reykjavík ([15]). By letter dated 21 September 2018 ([16]), the complainant submitted further information.

(10) By letter dated 26 March 2019 ([17]), the Authority received additional information concerning new developments from the complainant. On 29 April 2019, the Authority requested additional information and clarifications from the Icelandic authorities ([18]). By letter dated 4 June 2019 ([19]), the Icelandic authorities replied to the information request and provided the requested information and clarifications. Finally, the complainant submitted additional comments and information by letter dated 13 September 2019 ([20]).The complaint

2.1 ***The complainant - Síminn hf.***

(11) The complainant is a telecommunications company which provides communication solutions to private and corporate clients in Iceland. It offers a range of services, such as: (i) mobile services on its 2G/3G/4G network, (ii) fixed line telephony, (iii) fixed broadband, and (iv) television. The complainant also offers communications and IT solutions for companies of all sizes. The complainant's subsidiary, Míla ehf.**,** owns and operates a telecommunications network covering the entire country, which builds mostly on fibre optic cables, but also on copper lines and microwave connections. Míla sells its services at a wholesale level to companies with a telecommunications licence in Iceland.

2.2 ***Scope of the complaint***

(12) The complaint concerns OR's investments in fixed broadband from 1999, when GR's predecessor Lina.Net was established, until today. However, the complaint predominantly concerns the period from 1 January 2007 onwards, following the establishment of GR. In particular, the complaint concerns alleged state aid granted by OR to GR through various means, such as capital injections and lending that was not on market terms.

(13) Moreover, the complaint concerns the terms of loans GR has obtained from […]. According to the complainant, the interest rates on GR's loans are not on market terms that reflect the credit risk inherent in an undertaking such as GR, with a very high debt to EBITDA ratio ([21]). The complainant maintains that the interest rates offered to GR are directly connected to its ownership, as no market lender would have offered GR such rates without a direct link to its public ownership.

2.3 ***Arguments brought forward by the complainant***

(14) The complainant maintains, in general terms, that GR's activities represent a political rather than a commercial project. It alleges that the company has been operated with a view to enhance competition on the telecommunications market, and that a private investor would not have acted in the same way as OR, when providing loans and capital injections to GR. The complainant moreover alleges that OR has provided GR with several capital injections and loans to finance their operations, which have not been on market terms, as well as more favourable access to OR infrastructure than other market players could receive.

([11]) Document No 882024.
([12]) Document No 910552 and Annexes 1 and 2 (Document No 910554).
([13]) Document No 911001.
([14]) Document No 915072.
([15]) Document No 919903.
([16]) Document Nos 931137, 931138 and 931139.
([17]) Document No 1060941.
([18]) Document No 1066345.
([19]) Document No 1073306 and Annexes 1–5 (Document Nos 1073308, 1073310, 1073312, 1073314 and 1073316).
([20]) Document No 1087462 and Annexes 1–5 (Document Nos 1087456–1087460).
([21]) Earnings before interest, tax, depreciation and amortization (EBITDA) is a measure of a company's operating performance.

(15) According to the complainant, a major part of the alleged unlawful state aid has been in the form of interest rates for loans granted by OR to GR, which have not corresponded to market terms. Furthermore, after the majority of GR's loans were gradually replaced by loans financed by private lenders (with full replacement at the end of 2017), the interest rates have continued to not correspond to normal market conditions, as OR has provided lenders with a guarantee that it would maintain its majority ownership of GR. The complainant considers that this must be considered as state aid that is incompatible with the functioning of the EEA Agreement.

(16) The complainant puts forward that the assessment performed by the PTA under Article 36 of the Electronic Communications Act is substantially different from the assessment conducted by the Authority under the state aid rules. According to the complainant, the application of the said rule by the PTA has consisted in assessing the return on equity. It seems that PTA has not made a detailed comparison with other market investors. The focus has rather been on assessing the financing generally, concentrating on whether the measures provide a direct loss for OR, as opposed to assessing whether the financing would have been provided by an investor operating on the market.

3 **Description of the measures**

3.1 ***Background***

3.1.1 *OR – Orkuveita Reykjavíkur*

(17) OR was established on 1 January 1999 as a public undertaking with the decision of the City Council of Reykjavík to merge the operations of the electricity and heat utilities owned by the city. A year later, the water utility was also incorporated into the new company. The company was operated on the basis of Regulation No 793/1998, issued by the Ministry of Industry and the City Council of Reykjavik, with reference to legislative Act No 38/1940 on the Reykjavik Heating Utility, and the Power Act No 58/1967. OR currently provides the following services through its three subsidiaries: electricity (Orka Náttúrunar), geothermal water for heating, cold water, sewage services (Veitur) and fibre-optic data connections (GR).

(18) On 1 December 2001, OR merged with a utility company owned by several small municipalities in the western part of Iceland. After the merger, the City of Reykjavík owns 93,5 % of the company, the municipality of Akranes owns 5,5 % and the municipality of Borgarbyggð 1 %. Five members of the board of directors are appointed by the City Council of Reykjavík and one is appointed by the Municipality Council of Akranes ([22]). OR currently operates as a public partnership company, *sameignarfélag* ([23]), on the basis of Act No 136/2013 on OR ([24]) and Regulation No 297/2006 ([25]).

3.1.2 *GR – Gagnaveita Reykjavíkur*

(19) GR is a telecommunications company established in 2007 as an independent legal entity, in order to comply with the requirements of the PTA on separation between the competitive and non-competitive operations of OR. GR is fully owned by OR. The purpose of GR, according to its articles of association, is the operation of a telecommunication and data transmission network. It provides wholesale access to its fibre optic network, for a number of retail service providers that operate in the residential and businesses markets with different fixed broadband and data transmission services. GR also offers services on the household market, where it charges end-users directly for the use of the access network.

(20) OR began investing in the telecommunications market in 1999, when it established the subsidiary Lina.Net, with the purpose of providing general telecommunication services with emphasis on data transmission and internet connections in urban areas in Iceland. Its operations were later expanded into the setting up of an electronic telecommunications network using fibre optic cables. The Authority investigated several capital injections into Lina.Net during the years 1999–2001 in its Decision No 300/11/COL and found that they were in line with the actions of a private investor such that no state aid was granted ([26]).

(21) Lina.Net invested considerable sums in its fibre optic networks and, since 2007, GR has continued to expand the network. In total, the investments between 2002 and 2010 amounted to around ISK 8 billion.

([22]) https://www.or.is/um-or/skipulag-og-stjornhaettir/stjorn/.
([23]) https://www.rsk.is/fyrirtaekjaskra/leit/kennitala/5512983029.
([24]) https://www.althingi.is/lagas/nuna/2013136.html.
([25]) https://www.reglugerd.is/reglugerdir/allar/nr/297-2006.
([26]) OJ C 10, 12.1.2012, p. 6 and EEA Supplement No 2, 2012 m. sausio 12 d., p. 4.

3.2 **National legal basis**

(22) GR is a registered operator (data transmission and service) ([27]) under the Electronic Communications Act No 81/2003. Article 36 of the Electronic Communications Act, on separation of concession activities from electronic communications activities, provides:

„Electronic communications undertakings or consolidations operating public communications networks or publicly available electronic communications services, which enjoy special or exclusive rights in sectors other than electronic communications, must keep their electronic communications activities financially separate from other activities as if they were two separate undertakings. Care shall be taken to ensure that competitive operations are not subsidised by activities enjoying exclusive rights or protected activities". (emphasis added)

(23) According to the legislative proposal (*frumvarp*) of the Electronic Communications Act, Article 36 is meant to ensure that competitive telecommunication operations are not subsidised through income from operations that are protected by exclusive rights or by other means ([28]).The proposal also makes it clear that the provision is applicable regardless of the undertaking's market share and regardless of whether the telecommunications operations are carried out within the same undertaking or by a separate legal entity which it controls ([29]).

3.3 **The PTA's monitoring role**

3.3.1 *General*

(24) The PTA operates according to the Act on Post and Telecom Administration No 69/2003, which implements the provisions of the EU's regulatory framework for electronic communications ([30]). As a supervisory authority, the PTA, *inter alia,* ensures, in accordance with Article 36 of the Electronic Communications Act, that revenues stemming from non-competitive sectors do not subsidise operations in the competitive telecommunications sector. Therefore, the PTA is entrusted with scrutinising OR's investments in the telecommunications market and the business relations between GR and OR. Such investigations can start at the PTA's own initiative or through complaints from interested parties. GR is also obligated to notify specific measures, such as increase in share capital ([31]), to the PTA to obtain prior approval and interested parties can be parties to such cases, if they demonstrate that they have a legitimate interest in the result of the case ([32]).

(25) An interested party can challenge decisions of the PTA before the Rulings Committee for Electronic Communications and Postal Affairs ([33]). This includes decisions taken on the basis of Article 36 of the Electronic Communications Act ([34]).

(26) The following is a brief summary of the PTA's main decisional practice concerning OR's investments in the telecommunications market and the business relations between GR and OR to which the complainant has referred.

3.3.2 *OR's purchase of the fibre-optic network from Lina.Net*

(27) In October 2002, OR purchased the fibre-optic network from Lina.Net for ISK 1 758 811 899. In early 2003, after the enactment of the Electronic Communications Act, the PTA sent OR an inquiry regarding how the company intended to fulfil the conditions for separation of activities stipulated by Article 36 of the Electronic Communications Act ([35]).

([27]) Based on a general authorisation to operate telecommunication networks and services in accordance with Art. 4 of The Electronic Communications Act No 81/2003, see https://www.pfs.is/english/telecom-affairs/registration-and-licences/.

([28]) Submitted to Parliament in the 128 parliamentary session 2002–2003; http://www.althingi.is/altext/128/s/0960.html.

([29]) Ibid.

([30]) The framework is made up of a package of primarily five Directives and two Regulations: Framework Directive 2002/21/EC (OJ L 108, 24.4.2002, p. 33); Access Directive 2002/19/EC (OJ L 108, 24.4.2002, p. 7); Better Regulation Directive 2009/140/EC (OJ L 337, 18.12.2009, p. 37); Authorisation Directive 2002/20/EC (OJ L 108, 24.4.2002, p. 21); the Universal Service Directive 2002/22/EC (OJ L 108, 24.4.2002, p. 51); the Regulation on Body of European Regulators for Electronic Communications (BEREC) (OJ L 337, 18.12.2009, p. 1); and the Regulation on roaming on public mobile communications networks (OJ L 172, 30.6.2012, p. 10).

([31]) PTA Decision No 14/2010 of 2010 m. gegužės 21 d..

([32]) PTA Decision No 20/2013 of 2013 m. spalio 10 d..

([33]) Article 13 of the Act on The Post and Telecom Administration No 69/2003.

([34]) See for example Ruling of the Ruling Committee of 17 July 2006 in Case No 8/2006.

([35]) PTA Decision of 2006 m. lapkričio 13 d., p. 1.

(28) In the ensuing PTA procedure, the PTA requested two expert reports , from the two consultancies KPMG and Rafhönnun ([36]), on the fair market value of the Lina.Net fibre-optic network ([37]). Both reports concluded that there was no indication that the purchase price was below market value. Moreover, the audit firm KPMG analysed certain parts of the operational and financial separation ([38]). The PTA accepted the results of the expert reports.

3.3.3 *The establishment and financing of GR as a separate legal entity*

(29) As part of the aforementioned procedure, the PTA required OR to submit a business plan for the operations of the fibre-network and telecommunication services, demonstrating an adequate rate of return on the investment. KPMG performed a due diligence review of the business plan and determined that the rate of return on the investment was appropriate. Moreover, the PTA instructed OR to fulfil the following conditions ([39]):

(i) Separation of accounts. The PTA instructed OR to establish a separate entity, entrusted with the telecommunications operations, which should keep separate accounts in line with established corporate practices.

(ii) Prepare a foundation balance sheet (*stofnefnahagsreikningur*), comprising the telecommunication assets (valued at an appropriate market price) as well as the liabilities that stemmed from the financing of the telecom operations of OR (with the reservation that if the terms were more favourable than market terms, the new entity would have to compensate OR for any difference).

(iii) Arm's-length terms should apply to all dealings between the new entity and OR.

(30) On 1 January 2007, in accordance with instructions of the PTA described above, OR established the private limited liability company GR as a new legal entity.

(31) On 8 March 2007, a framework agreement was concluded between OR and GR, setting out the terms of the investment and the opening balance sheet of GR. OR transferred assets to GR. GR provided payment in the form of a loan and issuing share capital to OR. The interest rate to be paid by GR to OR on its loan principal over a payback period of […] years was based on the […] plus a margin of […] basis points, and was linked to the exchange rates of several foreign currencies. According to the consulting firm Deloitte, the loan agreement contained normal market practice terms, comparable to agreements concluded between private undertakings, as regards the event of default, the provision of information to the lender, and other covenants. Deloitte submitted a declaration in accordance with Article 5 of the Act on Private Limited Companies No 138/1994 ([40]), dated 7 March 2007, on the value of the assets, and concluded that they had been valued at a fair price. The terms of the loans were also reviewed and approved by the PTA ([41]).

(32) On 21 May 2010, the PTA issued Decision No 14/2010, concerning the financial separation between OR and GR. In its Decision, the PTA confirmed that GR had to obtain prior approval from the PTA for any increase in share capital on behalf of OR or related companies. The PTA also noted that it would only approve such measures if they were on arm's-length terms and if they did not entail the subsidisation of competitive operations ([42]).

(33) Following the financial crisis in Iceland in 2008, the ISK devalued considerably, and GR became unable to fulfil its commitments under the loan agreement. An agreement was made with OR on temporary suspension of interest payments. The PTA was informed and subsequently intervened. The PTA required that the suspension of payments be revoked on the grounds that it did not comply with the required arm's-length terms ([43]). GR complied and paid instalments and accrued interests in full.

3.3.4 *GR's rate of return and the share capital increase of December 2008*

(34) In December 2008, OR increased its share of GR's capital. On 22 December 2010, the PTA adopted Decision No 39/2010, concerning the share capital increase and GR's rate of return on capital.

([36]) Attachments contained in Document No 862628.
([37]) PTA Decision of 2006 m. lapkričio 13 d., p. 5.
([38]) PTA Decision of 2006 m. lapkričio 13 d., p. 16.
([39]) PTA Decision of 2006 m. lapkričio 13 d., p. 15–23.
([40]) Article 5 of the Act (available in English here) concerns the special provisions that a Memorandum of Association should contain. According to section 5 in paragraph 2 there should be attached to the Memorandum of Association a report containing „a declaration to the effect that the specific valuables correspond at least to the agreed remuneration, including the nominal value of the shares to be issued plus a conceivable surcharge on account of overprice; the remuneration must not exceed the amount at which these valuables may be credited in the Company's accounts".
([41]) PTA Decision No 32/2008 of 2008 m. gruodžio 30 d..
([42]) PTA Decision No 14/2010 of 2010 m. gegužės 21 d., p. 15.
([43]) PTA Decision No 25/2010 of 2010 m. rugsėjo 7 d..

(35) With this Decision, the PTA noted that the operations of GR went according to the initial business plan in the year 2007. GR's equity ratio was approximately 52 % at the end of 2007 and the company made a profit of ISK 120 million that year. The financial crisis of 2008 hit the company hard and in spite of increasing operating revenues, the losses of 2008 were close to ISK 3 billion, almost solely attributable to the devaluation of the ISK, which caused the debt of the company to increase.

(36) To urgently restore the viability of GR, OR decided to increase the share capital before the end of 2008. The capital was increased by ISK 1,2 billion, setting an equity ratio of 23 %. The PTA Decision states that in absence of the share capital increase, „practically all equity would have been wiped out", due to the financial collapse and sharp devaluation of the operating currency whilst the liabilities were all linked to foreign currency rates ([44]).

(37) Furthermore, the PTA observed that in 2008 OR and GR had contacted private lenders with the intention to finance further investment in ongoing projects ([45]). The financial markets, however, were completely frozen by the end of the year. The Icelandic authorities maintain that, as an investor, OR inevitably had to invest further, in order to protect its significant initial investment ([46]).

(38) The PTA highlighted that OR's decision to increase the share capital had to be considered not only from its perspective as GR's owner, but also as GR's largest creditor. The PTA noted that creditors of several telecommunication companies had acquired them following the financial crisis, and either converted debts to equity or restructured loans. Moreover, the PTA found that GR's updated business plans convincingly demonstrated a satisfactory level of profitability for a telecommunication company in a competitive market, within a reasonable timeframe, and that there was a normal correlation between the profitability and the owner's contribution ([47]).

3.3.5 *The conversion of debt into equity in 2014*

(39) Like many companies in Iceland, GR needed to reorganize its financial affairs after the financial crisis of 2008. OR's application for permission to increase the share capital of GR in July and August 2013 was the subject of PTA's Decision No 2/2014 of 24 March 2014. The reorganisation involved: (i) a conversion of ISK 3,5 billion of debt into equity, and (ii) that GR would enter the financial markets to refinance all remaining debt owed to OR. Finally, OR intended to dispose of a large portion of its shares post-refinancing.

(40) The PTA accepted that the debt conversion would not increase the total financing of GR by OR, since it only changed the composition of the financing. The PTA also recognised that the conversion would change the equity ratio of GR from 22 % to 52 %, thereby leaving the ratio at the same level as GR's main competitor, Míla ([48]). The PTA also assessed the initial business plan of GR, and determined that it was credible. The cash flow analysis demonstrated that if the devaluation of the operating currency had not hit the company in 2008, there would not have been a need for refinancing. Moreover, the PTA's financial analysis confirmed that the rate of return for the investor and the weighted average cost of capital (WACC) of GR were in conformity with the general benchmark set by the PTA ([49]).

(41) Míla intervened in the procedure before the PTA. The PTA rejected all the objections from Míla. The PTA adopted its Decision No 2/2014 on 24 March 2014, and the debt conversion was finalized in early April 2014. In June 2014, Míla initiated a court case against the PTA, GR and OR, requesting the courts to annul the PTA's decision ([50]). The District Court of Reykjavík dismissed the case on 26 February 2015, and the Supreme Court confirmed the ruling of the District Court by judgment of 27 March 2015 ([51]).

3.3.6 *The implementation of GR's financial separation for 2016–2017*

(42) On 20 March 2019, the PTA adopted Decision No 3/2019, concerning the implementation of GR's financial separation for 2016–2017, and whether it was in compliance with Article 36 of the Electronic Communications Act ([52]).

([44]) PTA Decision No 39/2010 of 2010 m. gruodžio 22 d., p. 21.
([45]) PTA Decision No 39/2010 of 2010 m. gruodžio 22 d., p. 21.
([46]) Document No 840229, p. 8.
([47]) PTA Decision No 39/2010 of 2010 m. gruodžio 22 d., p. 24 and 26.
([48]) PTA Decision No 2/2014 of 2014 m. kovo 24 d., p. 35.
([49]) PTA Decision No 2/2014 of 2014 m. kovo 24 d., p. 40–42.
([50]) According to Article 13, paragraph 4, of the Act on the Post and Telecom Administration No 69/2003, a party can decide to avoid the Ruling Committee and appeal a decision of the PTA directly to the District Court within 3 months from the time they are aware of the decision.
([51]) Supreme Court of Iceland judgment of 2015 m. kovo 27 d. in Case No 219/2015.
([52]) PTA Decision No 3/2019 of 2019 m. kovo 20 d..

(43) The PTA concluded that the financial separation between OR and GR had been in accordance with Article 36 of the Electronic Communications Act in the years 2016 and 2017, except for short-term lending to GR from a shared cash pool by OR and GR. The PTA found that these loan arrangements between OR and GR infringed an earlier PTA decision from 13 November 2006, as well as PTA Decision No 14/2010, since there was no loan agreement concluded between OR and GR reflecting the conditions that prevailed on the market for such loans ([53]).

(44) The PTA also commented on conditions in GR's loan agreements with private lenders, relating to OR's continuing majority ownership of GR. The loan agreements in question had included special conditions that if the ownership of OR in GR went below 50% then the lender was authorised to demand repayment, terminate the loan agreement, or declare the loan immediately due. Such a provision has been included in GR's loan agreements with private lenders since OR's loan financing of GR was replaced by private lenders, starting in 2014 and eventually being completely replaced by the end of 2017 ([54]).

(45) The PTA noted that by including these provisions, private lenders connected the ownership of OR to the loan agreements, in order to minimise the probability of default ([55]). The PTA considered that such arrangements could lead to more advantageous loan terms and more access to loan capital than other comparable telecommunication undertakings and, therefore, distort competition ([56]). Moreover, the PTA considered that this provision in the loan agreements constituted a connection between OR and GR that was not in accordance with the financial separation imposed in order to ensure that the two acted as unrelated parties ([57]).

(46) The PTA concluded that measures were required to ensure an efficient financial separation between OR and GR, in accordance with Article 36 of the Electronic Communications Act. The PTA decided that:

a) OR's lending to GR from a shared cash pool, without a loan agreement reflecting market conditions, infringed the PTA Decision of 13 November 2006 and, therefore, also Article 36 of the Electronic Communications Act.

b) GR's debt from the shared cash pool was not to, at any given time, exceed ISK […].

c) GR was to obtain prior authorisation from the PTA for any loans from OR, or any other undertaking within the company group. GR shall submit an application to the PTA along with the necessary documents, e.g. a draft loan agreement, an appropriate business plan, a calculation of the profitability requirements, as well key social security numbers and the acceptance of other landers. Such a credit increase was to be in line with standard separation of accounts, and was to entail that competitive operations are not subsidised by activities enjoying exclusive rights.

d) New loan agreements with private lenders could not contain a provision stipulating that if the ownership of OR in GR goes below 50 % then the lender is authorised to declare the loan immediately due.

(47) On 4 October 2019, following an appeal from GR, the Rulings Committee for Electronic Communications issued Ruling No 2/2019, confirming the decision of the PTA.

3.3.7 *Other cases*

(48) In addition to the decisions referred to above, the PTA adopted a decision in 2013, under Article 36 of the Electronic Communications Act, to temporarily allow GR to extend its loan agreement with OR ([58]).

(49) Moreover, in 2014, Míla complained to the PTA about certain measures relating to an agreement GR had concluded with Ölfus Municipality, which included funds indirectly deriving from OR. The funds had initially been paid by OR into the Ölfus Revegetation Fund („ÖRF") in connection with OR's geothermal power plant project in the municipality. OR had joint control of the ÖRF together with representatives from the municipality. In 2014, the ÖRF decided to use its funds to finance GR's rollout of a fiber optic network in Ölfus Municipality. After assessing the measures, the PTA found that they were contrary to Article 36 of the Electronic Communications Act, and instructed GR to undertake certain measures to ensure that it did not obtain an advantage from the funds deriving from OR ([59]).

([53]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraphs 372–373.
([54]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 375.
([55]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 353.
([56]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 353.
([57]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 354.
([58]) PTA Decision No 26/2013 of 2013 m. lapkričio 1 d..
([59]) PTA Decision No 11/2015 of 2015 m. birželio 2 d..

4 Comments by the Icelandic authorities

(50) The Icelandic authorities point out that the Authority has already dismissed allegations by the complainant as regards OR's investments in Lina.Net in its Decision No 300/11/COL of 5 October 2011 ([60]).

(51) The Icelandic authorities maintain that in all its relations with GR, OR has acted in accordance with the market economy operator („MEO") test, and that no aid has been granted to GR. In that regard, the Icelandic authorities highlight that all of the measures complained of concerning the financial relations between OR and GR, have been assessed by the PTA on the basis of Article 36 of the Electronic Communications Act. According to the Icelandic authorities, the test applied by the PTA is comparable to the criterion applied by the Authority when determining whether a measure is on market terms (i.e. the MEO test).

(52) The Icelandic authorities have confirmed that GR's current investments are financed with cash provided by its operating activities and loans from […]. According to the Icelandic authorities, these loans do not constitute state aid in any way, and nor do they indicate that state aid has been extended to GR by its owner, as it is clear that the loans from […] to GR were solely based on commercial motives. They state that the loans are fully in line with normal market terms.

5 Presence of state aid

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

„[…] 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."

(54) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through state resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) be liable to distort competition and affect trade.

5.1 *Presence of state resources*

(55) The measure must be granted by the state or through state resources. The transfer of state resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing state revenue is sufficient. Waiving revenue which would otherwise have been paid to the state constitutes a transfer of state resources.

(56) The state, for the purpose of Article 61(1) of the EEA Agreement, covers all bodies of the public administration, from the central government to the city or the lowest administrative level. Resources of public undertakings may also constitute state resources within the meaning of Article 61(1) of the EEA Agreement because the state is capable of directing the use of these resources ([61]). For the purposes of state aid law, transfers within a public group may also constitute state aid if, for example, resources are transferred from the parent company to its subsidiary ([62]). However, the measure must be imputable to the state.

(57) The mere fact that a measure is taken by a public undertaking is not *per se* sufficient to consider it imputable to the state. However, it does not need to be demonstrated that, in a particular case, the public authorities specifically incited the public undertaking to take the measure in question ([63]). Therefore, the imputability to the state of a measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which the measure was taken ([64]). Among the relevant indicators set out by the Court of Justice are:

— the fact that the body in question could not take the contested decision without taking into account the requirements of the public authorities;

([60]) Reply from the Icelandic authorities, dated 2017 m. vasario 7 d., pages 2 and 3. Document No 840228.
([61]) The Authority's Guidelines on the notion of state aid („NoA") (OJ L 342, 21.12.2017, p. 35), and EEA Supplement No 82, 2017 m. gruodžio 21 d., p. 1, paragraph 49.
([62]) Judgment in *SFEI and others*, C-39/94, EU:C:1996:285, paragraph 62.
([63]) NoA, paragraph 41.
([64]) Judgment in *France* v *Commission (Stardust Marine)*, C-482/99, EU:C:2002:294, paragraph 55.

— the nature of the undertaking's activities and the extent to which the activities were exercised on the market in normal conditions of competition with private operators;

— the intensity of the supervision exercised by the public authorities over the management of the undertaking, and the degree of control which the state has over the public undertaking; and

— any other indicator showing an involvement by the public authorities in the adoption of the measure, or the unlikelihood of their not being involved, having regard to the compass of the measure, its content or the conditions which it contains.

(58) The Authority will therefore need to assess, in light of the aforementioned indicators, whether OR, in its dealings with GR, was acting as an autonomous entity, free of any influence from its owners, or whether its actions are imputable to the Icelandic authorities, i.e. the City of Reykjavík and the municipalities of Akranes and Borgarbyggð.

(59) As noted in paragraph (18) above, OR operates as a public partnership company on the basis of Act No 136/2013 on OR ([65]) and Regulation No 297/2006 ([66]). OR is therefore distinct from private companies which are subject to ordinary company law. OR's annual accounts are also reflected in the City of Reykjavík's consolidated financial statements ([67]).

(60) The Board of OR consists of six members, five appointed by the Reykjavík City Council and one by the Municipality Council of Akranes. Currently, three board members are politicians who also serve as either City Council or Municipal Council representatives. According to OR's partnership agreement, the Board is responsible for the company's affairs between owner's meetings and should monitor the company's direction, organisation and that its operations are in good shape and in accordance with the ownership policy. The Board sets an overall policy and future vision for OR and adopts decisions concerning major matters within the limit of the ownership policy. Before adopting unusual or important decisions or policy decisions, the Board must consult with the owners of OR. The same applies to similar decisions regarding subsidiaries (such as GR). The Board is also responsible for recruiting OR's Director, drafting his/her job description and his/her eventual employment termination ([68]).

(61) OR produces and sells electricity in a liberalised market open to competition. The company also has legal obligations to provide utility services (heating and water) and carries out other projects in the municipalities of its owners as well as other municipalities ([69]). Those utility services have since 2014 been carried out by OR's subsidiary, Veitur, in order to comply with the Electricity Act, which prohibits cross subsidisation between utility activities, as well as between activities enjoying exclusive rights and competitive operations ([70]). According to OR's ownership policy, the company's administrative practices shall reflect professionalism, efficiency, prudence, transparency and responsibility. The Board is responsible for adopting the company's policies concerning dividends, risk management, purchasing, etc. ([71]).

(62) Although it appears that OR's owners have taken steps to separate its public utility services and its competitive operations, in order to ensure that the latter are operated in line with commercial practices on the market, with OR's management being somewhat autonomous in its decision making process, there are nevertheless elements to indicate that the public authorities may influence the company's strategy and decisions. As noted above, the Board sets OR's policies in various fields and must approve the company's major decisions, which in some instances requires consulting with OR's owners. It appears that many of the measures complained of concern major investments, loan guarantees and loan transactions between OR and GR, which may have been subject to the Board's scrutiny and approval. The Board, as noted above, is politically appointed, and currently half of the board members also serve as City or Municipal Council representatives. This arrangement has been evaluated by the Enquiry Committee on Orkuveita Reykjavíkur, which in its 2012 report noted that this arrangement could lead to a lack of professional knowledge and experience on the Board, and that its work could be characterised by political conflict and disunity ([72]).

(63) In light of the legal status of OR, the composition of its Board and the general circumstances described above, the Authority is unable to exclude that the measures are imputable to the State and that they entail the transfer of state resources, if and to the extent they confer advantages on GR.

([65]) https://www.althingi.is/lagas/nuna/2013136.html.
([66]) https://www.reglugerd.is/reglugerdir/allar/nr/297-2006.
([67]) See for example: https://reykjavik.is/sites/default/files/ymis_skjol/skjol_utgefid_efni/city_of_ reykjavik_-_financial_statements_2018.pdf.
([68]) https://www.or.is/um-or/skipulag-og-stjornhaettir/stjorn/. .
([69]) See Article 2 of OR's ownership policy: https://www.or.is/um-or/skipulag-og-stjornhaettir/eigendastefna/,
([70]) Article 16 of the Electricity Act No 65/2003.
([71]) See Article 6 of OR's ownership policy: https://www.or.is/um-or/skipulag-og-stjornhaettir/eigendastefna/. .
([72]) See Report of the Enquiry Committee on Orkuveita Reykjavíkur, page 73, https://rafhladan.is/handle/10802/5777.

(64) Against this background, the Icelandic authorities are invited to comment on the issue of imputability.

5.2 ***Conferral of an advantage on an undertaking***

5.2.1 *General*

(65) The qualification of a measure as state aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit, which an undertaking could not have obtained under normal market conditions.

5.2.2 *Does GR constitute an undertaking?*

(66) The EU Courts have consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ([73]). Consequently, the public or private status of an entity or the fact that an entity is partly or wholly publicly owned has no bearing as to whether or not that entity is an „undertaking" within the meaning of state aid law ([74]).

(67) Economic activities are activities consisting of offering goods or services on a market ([75]). Conversely, entities that are not commercially active in the sense that they are not offering goods or services on a given market do not constitute undertakings. A single entity may carry out a number of activities, both economic and non-economic, provided that it keeps separate accounts for the different funds that it receives, so as to exclude any risk of cross-subsidisation of its economic activities by means of public funds received for its non-economic activities ([76]).

(68) As described in paragraph (19) above, GR was established on 1 January 2007, and its role is to provide Icelandic households and businesses access to high quality services on an open access network ([77]). GR operates a telecommunications and data transmission network and it provides wholesale access to its fibre optic network for a number of retail service providers that operate in supplying homes and businesses with different fixed broadband and data transmission services. GR also offers services on the household market, where it charges end-users directly for the use of the access network.

(69) Although GR does not sell its own services in the retail market, it offers neutral and open network access to all interested telecommunications providers. The Authority considers that the provision of network access for a fixed price to third-party service providers and households constitutes an economic activity. Consequently, GR appears to operate as an undertaking within the meaning of Article 61(1) of the EEA Agreement ([78]).

(70) Any advantage involved in the transactions between OR and GR will therefore have been conferred upon an undertaking.

5.2.3 *PTA's monitoring and decisional practice*

(71) The measures complained of, concerning the financial relations between OR and GR, have, as described in Section 3.3 above, all been assessed by the PTA on the basis of Article 36 of the Electronic Communications Act.

(72) The Icelandic authorities maintain that the test applied by the PTA is comparable to the test applied by the Authority when determining whether a measure is on market terms (i.e. the MEO test).

(73) It is the Authority's preliminary view, considering the decisional practice of the PTA under Article 36 of the Electronic Communications Act on the financing of GR and the level of scrutiny involved in the assessment of the various measures, that the test applied by the PTA under Article 36 generally ensures that all transactions between GR and OR, or other related companies, are on market terms.

([73]) Judgments in *Pavlov and others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 74, and *Cassa di Risparmio di Firenze and others*, C-222/04, EU:C:2006:8, paragraph 107; Case E-5/07 *Private Barnehagers Landsforbund* [2008] EFTA Ct. Rep. 62, paragraph 78.

([74]) Judgment in *Congregación de Escuelas Pías Provincia Betania* v *Ayuntamiento de Getafe*, C-74/16, EU:C:2017:496, paragraph 42.

([75]) Judgment in *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 108; and Case E-29/15 *Sorpa* [2016] EFTA Ct. Rep. 825, paragraph 72.

([76]) Judgment in *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 51.

([77]) See https://www.ljosleidarinn.is/gagnaveita-reykjavikur.

([78]) See the Authority's Decision No 444/13/COL, *The Deployment of a Next Generation Access network in the municipality of Skeiða- and Gnúpverjahreppur* (OJ C 66, 6.3.2014, p. 6) and EEA Supplement No 82, 2017 m. gruodžio 21 d., p. 1, paragraph 56.

(74) The PTA's approach may not be identical to the MEO assessment that would be carried out by the Authority under the EEA state aid rules, but it nonetheless ensures the same outcome, i.e. it prevents transactions that are not on market terms. Therefore, at this stage the Authority is of the preliminary view that the PTA provides an assessment similar to the Authority's MEO assessment. The enforcement of Article 36 of the Electronic Communications Act by the PTA thus appears to effectively prevent GR from obtaining an advantage from its dealings with OR and when infringements are found the PTA has the competence to order the clawback of any advantages. However, there are instances where the PTA has either not ordered the full clawback of advantages with interest, or not ordered clawback at all.

(75) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of state intervention, thereby placing it in a more favourable position than its competitors ([79]).

(76) Generally, when examining this question, the Authority applies the MEO test ([80]), whereby the conduct of states or public authorities, when selling or leasing assets, is compared to that of private economic operators ([81]).

(77) The purpose of the MEO test is to assess whether the state has granted an advantage to an undertaking by not acting like a private market economy operator with regard to a certain transaction, e.g. loan agreements or the sale of asset ([82]). In order to fulfil the test, the public authority must disregard public policy objectives and instead focus on the single objective of obtaining a market rate of return or profit on its investments and a market price for the sale or lease of assets ([83]). This assessment must take into account any special rights or obligations attached to the asset concerned, in particular those that could affect the market value.

(78) It follows from this test that an advantage is present whenever a state makes funds available to an undertaking, which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria and disregarding other considerations of a social, political or philanthropic nature ([84]).

(79) The PTA, as described above, has examined the strategy and financial prospect of the relevant measures, in order to determine whether the financing of the operations of GR has been carried out in line with normal market conditions. In its assessment, the PTA has considered independent expert reports and drawn comparisons with other, private operators in the same market. The PTA's assessment is normally carried out on an *ex ante* basis. However, there are also examples of the PTA having carried out an *ex post* assessment of the financial separation between OR and GR, as well as individual measures.

(80) More precisely, from 2006 until 2019, the PTA adopted nine formal decisions regarding the financial separation of OR and GR. The PTA did not make formal comments for the years 2013–2015. The PTA's investigations included a review of GR's business plan, which must be renewed annually, in accordance with actual financial data. In its review, the PTA e.g. checks whether the rate of return for the investor (OR) is in conformity with the telecom market in general, and looks at the capital structure and whether transactions between OR and GR are on market terms.

(81) GR has been obliged to submit to the PTA, on an annual basis, detailed operational and economic information, together with its revised business plans and profitability requirements. Whenever necessary, the PTA has requested additional data and has assessed whether the operations were in line with market terms and, if not, whether there was a reason for taking action.

(82) In a letter from the PTA to the complainant, dated 6 September 2018, the PTA confirmed that it does not have legal powers to perform a cost analysis of the prices OR sets for renting out its facilities. The complainant has argued that because of this, the PTA's assessment of the financial separation cannot replace that of the Authority, when assessing possible state aid.

([79]) Judgments in *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60, and *Spain* v *Commission*, C-342/96, EU:C:1999:210, paragraph 41.

([80]) NoA, chapter 4.2.

([81]) For the application of the MEO test, see Case E-12/11 *Asker Brygge* [2008] EFTA Ct. Rep. 536, and judgment in *Land Burgenland*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

([82]) NoA, paragraph 133.

([83]) Judgment in *Land Burgenland*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

([84]) See for example, the Opinion of Advocate-General Jacobs in *Spain* v *Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:112, paragraph 28. See also judgments in *Belgium* v *Commission*, 40/85, EU:C:1986:305, paragraph 13, *France* v *Commission*, 301/87, EU:C:1990:67, paragraphs 39–40, and *Italy* v *Commission*, 303/88, EU:C:1991:136, paragraph 24.

(83) It is the preliminary view of the Authority that even though the PTA does not have the legal basis to perform a cost analysis of OR's prices, the PTA has other ways to ensure that OR's pricing practices for renting out facilities are on market terms. Article 36 of the Electronic Communications Act obliges OR to ensure equality in pricing when renting out facilities to related and unrelated companies. Furthermore, OR is obliged to ensure that competitive operations are not subsidised by activities enjoying exclusive rights or protected activities. The PTA then enforces these obligations. As the PTA explains in its letter to the complainant, it did in fact open an investigation into OR pricing practices for renting out facilities, and concluded that OR's pricing was in full conformity with Article 36 of the Electronic Communications Act ([85]).

(84) The PTA has found that in order to ensure that the effectiveness of Article 36 of the Electronic Communications Act is guaranteed, the concept of „subsidy" should be understood in a broad sense, so as to include any measures from OR, both direct and indirect, which potentially provide GR with an advantage that its competitors on the market do not enjoy. The PTA has also noted that its monitoring role, pursuant to Article 36, is comparable to the Authority's, when it comes to assessing whether an advantage within the meaning of Article 61(1) of the EEA Agreement is present ([86]).

(85) It is the Authority's preliminary view that there is an efficient system in place in Iceland that entails an assessment similar to the MEO test. Consequently, Article 36 of the Electronic Communications Act sets up a system under which the PTA can ensure that GR's operations are not subsidised through income from OR's operations.

(86) It follows from the test that an advantage is present whenever OR makes funds available to GR, which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria. The PTA can conduct a formal investigation on its own initiative or based on a complaint. If a transaction is not in conformity with Article 36 of the Electronic Communications Act, the PTA can instruct the parties to eliminate any advantage through the adoption of relevant measures set forth in an administrative decision by the PTA. The decisions are challengeable before the Rulings Committee for Electronic Communications and Postal Affairs and the Courts.

(87) The Icelandic authorities have explained that the PTA's monitoring role is primarily focused on an *ex ante* assessment of GR's business plans, financing, profitability requirements, loan arrangements, etc., with the PTA imposing conditions and obligations when necessary in order to ensure financial separation between OR and GR, and that the latter's competitive operations are not subsidised by the mother company ([87]).

(88) Where the PTA *ex post* finds an infringement of Article 36 of the Electronic Communications Act, i.e. where it finds that a particular transaction was not on market terms, it can instruct the parties to eliminate any potential advantage through the adoption of relevant measures. The advantage is then recovered from the beneficiary in accordance with national law ([88]).

(89) However, for the PTA to order an advantage clawed back, the incompatible measure must be clearly defined and be incontestable, e.g. a particular monetary sum, a condition in a loan agreement, etc. ([89]). Moreover, when the PTA has ordered advantages granted to GR to be clawed back, it has not required those advantages to be recovered with interest.

(90) As described in Section 4.3 above, there are three examples of the PTA having established concrete infringements of Article 36 of the Electronic Communications Act. In two of those cases, the PTA ordered that the measures be clawed back. In the third case, the PTA did not order any clawback.

(91) The first case, described in paragraph (33) above, concerned a temporary suspension of interest payments on loans provided by OR to GR ([90]). The PTA concluded that this temporary suspension had been in breach of the requirement imposed by the PTA concerning arm's-length terms in transactions between OR and GR. Moreover, the PTA found that the suspension of interest payments had provided GR with an advantageous subsidy. Considering the facts of this case, the nature of transactions, as well as the PTA's assessment, the Authority is also of the preliminary view that the measure provided GR with an advantage that it would not have obtained under normal market conditions.

([85]) Document No 931139.
([86]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraphs 338–340.
([87]) Document No 1073308.
([88]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 89.
([89]) Document No 1073308.
([90]) PTA Decision No 25/2010 of 2010 m. rugsėjo 7 d..

(92) The PTA ordered GR to pay back the suspended interest payments, however, it did not order the company to pay back interest on those suspended payments ([91]). In order to effectively recover an unlawful advantage at national level, the beneficiary must be ordered to pay interest for the whole of the period in which it benefitted from that aid. The interest must at least be equivalent to that which would have been applied if the beneficiary had had to borrow the amount on the market at the time ([92]). Although GR has paid back the market interest it was obliged to pay in the first place, it has not been required to pay back market interest on the advantage it obtained through the temporary suspension of interest payments. Therefore, the full advantage has not been adequately clawed back.

(93) The second case, briefly described in paragraph (49) above, concerned funds deriving from OR and used to finance GR's fiber optic cable project in Ölfus Municipality ([93]). The PTA concluded that the transfer of funds from ÖRF (but deriving from OR) to GR had amounted to a cross-subsidy between OR's protected geothermal activities and GR's competitive operations. Having considered the facts of the case and the PTA's assessment, the Authority takes the preliminary view that ÖRF's financing of the fibre optic cable network was not on market terms and therefore provided GR with an advantage.

(94) The PTA ordered GR to undertake appropriate measures to repay the funds it received from ÖRF, although it did not stipulate how GR should go about this. Nevertheless, the PTA suggested that GR could either repay the funds to Ölfus Municipality or that the municipality could obtain an appropriate share in the project proportional to its investment. The Authority does not have information concerning how GR reacted to the PTA's proposals and which measures it adopted following the decision. At this stage, it is therefore not clear to the Authority whether the advantage has been fully clawed back from GR.

(95) Finally, in its latest decision concerning the implementation of GR's financial separation for 2016–2017 (see Section 4.3.6 above), the PTA found two infringements of Article 36 of the Electronic Communications Act ([94]):

(i) The first infringement concerned OR's lending to GR from a shared cash pool, without a loan agreement reflecting market conditions.

(ii) The second infringement concerned conditions in GR's loan agreements with private lenders relating to OR's continuing majority ownership of GR. Such provisions had been included in GR's loan agreements with private lenders, since OR's loan financing of GR was replaced by private lenders, starting in 2014 and eventually being completely replaced at the end of 2017. The PTA found that by including these provisions, private lenders connected the ownership of OR to the loan agreements, in order to minimise the probability of default ([95]). The PTA considered that such arrangements could lead to more advantageous loan terms and more access to loan capital than other comparable telecommunications undertakings and, therefore, distort competition ([96]).

(96) The Authority, considering the benchmarks applied by the PTA and its detailed assessment of these measures, takes the preliminary view that these two measures provided GR with an advantage that it would not have obtained under normal market conditions. Due to proportionality considerations, the PTA did not order the clawback of the aforementioned advantages.

5.2.4 *Preliminary conclusions*

(97) Based on the above considerations, it is the Authority's preliminary view that GR has obtained an advantage within the meaning of Article 61(1) of the EEA Agreement, which it could not have obtained under normal market conditions, by: (i) not paying market interest on the advantage it obtained through a temporary suspension of interest payments, (ii) receiving funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) receiving short-term lending from OR, and (iv) through the inclusion of a condition in GR's loan agreements with private lenders on OR's continued majority ownership in GR.

5.3 ***Selectivity***

(98) To be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must also be selective in that it favours „certain undertakings or the production of certain goods". Not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors.

([91]) PTA Decision No 25/2010 of 2010 m. rugsėjo 7 d..
([92]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 142.
([93]) PTA Decision No 11/2015 of 2015 m. birželio 2 d..
([94]) PTA Decision No 3/2019 of 2019 m. kovo 20 d..
([95]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 353.
([96]) PTA Decision No 3/2019 of 2019 m. kovo 20 d., paragraph 353.

(99) The potential aid measures at issue, i.e. (i) not paying market interest on the advantage GR obtained through a temporary suspension of interest payments, (ii) receipt of funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) short-term lending from OR to GR, and (iv) the inclusion of a condition in GR's loan agreements with private lenders on OR's continued majority ownership in GR, are individual measures addressed only to GR. The measures therefore appear to be selective within the meaning of Article 61(1) of the EEA Agreement.

5.4 ***Effect on trade and distortion of competition***

(100) The measures must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

(101) According to CJEU case law, it is not necessary to establish that the aid has a real effect on trade between the Contracting Parties to the EEA Agreement and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition ([97]). Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade. Even a public subsidy granted to an undertaking, which provides only local or regional services and does not provide any services outside its state of origin, may nonetheless have an effect on trade if such internal activity can be increased or maintained as a result of the aid, with the consequence that the opportunities for undertakings established in other Contracting Parties are reduced ([98]).

(102) GR is active in deploying a fibre network infrastructure in a market which can be entered directly or through financial involvement by participants from other EEA States. In general, the markets for electronic communications services (including the wholesale and the retail broadband markets) are open to trade and competition between operators and service providers across the EEA.

(103) Therefore, it is the Authority's preliminary view that the measures are liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

5.5 ***Conclusion***

(104) Based on the information provided by the Icelandic authorities and the complainant, the Authority has formed the preliminary view that the measures, i.e. (i) not paying market interest on the advantage GR obtained through a temporary suspension of interest payments, (ii) receipt of funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) short-term lending from OR to GR, and (iv) the inclusion of a condition in GR's loan agreements with private lenders on OR's, fulfil all criteria in Article 61(1) of the EEA Agreement and therefore constitute state aid.

6 **Procedural requirements**

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

(106) The Icelandic authorities did not notify the potential aid measures to the Authority. It is therefore the Authority's preliminary view that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of the potential aid therefore appears to be unlawful.

7 **Compatibility**

(107) Having reached a preliminary conclusion that the measures might constitute unlawful aid, the Authority must assess whether they would be compatible with the functioning of the EEA Agreement.

(108) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Articles 59(2) and 61(3)(c) provided that certain compatibility conditions are fulfilled.

([97]) Case E-6/98 *Norway* v *ESA* [1999] EFTA Ct. Rep. 76.

([98]) See for example judgments in *Eventech*, C-518/13, EU:C:2015:9, paragraph 66, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77, *Friulia Venezia Giulia*, T-288/97, EU:T:2001:115, paragraph 41.

(109) It is for the Icelandic authorities to invoke possible grounds for compatibility and to demonstrate that the conditions for compatibility are met ([99]). However, the Icelandic authorities have not provided any arguments substantiating why the measures should be considered compatible with the functioning of the EEA Agreement. In particular, no arguments supporting the conclusion that the aid is targeted at a well-defined objective of common interest have been presented. Furthermore, the Icelandic authorities have not presented evidence suggesting that GR has been entrusted with a public service obligation. The Authority has also not identified any clear grounds for compatibility.

(110) To the extent that the measures constitute state aid, the Authority therefore has doubts as to their compatibility with the functioning of the EEA Agreement

8 **Conclusion**

(111) As set out above, the Authority has formed the preliminary view that the measures fulfil all criteria in Article 61(1) of the EEA Agreement and therefore appear to constitute state aid. The Authority furthermore has doubts as to whether the measures are compatible with the functioning of the EEA Agreement.

(112) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures do not constitute state aid or are compatible with the functioning of the EEA Agreement.

(113) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit, by **6 January 2020** their comments and to provide all documents, information and data needed for the assessment of the measures in light of the state aid rules.

(114) The Icelandic authorities are requested to immediately forward a copy of this decision to OR.

(115) If this letter contains confidential information which should not be disclosed to third parties, please inform the Authority by **13 December 2019**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult the Authority's Guidelines on Professional Secrecy in State Aid Decisions ([100]). If the Authority does not receive a reasoned request by that deadline, the Icelandic authorities will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on the Authority's website: http://www.eftasurv.int/state-aid/state-aid-register/ and in the Official Journal of the European Union and the EEA Supplement thereto.

(116) Finally, the Authority will inform interested parties by publishing a meaningful summary of it in the Official Journal of the European Union and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Icelandic authorities.

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN	Frank J. BÜCHEL	Högni KRISTJÁNSSON	Carsten ZATSCHLER
President	*College Member*	*College Member*	*Countersigning as Director,*
Responsible College Member			*Legal and Executive Affairs*

([99]) Judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.
([100]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 2006 m. birželio 8 d., p. 1.

V

(Nuomonės)

TEISINĖS PROCEDŪROS

ELPA TEISMAS

ELPA TEISMAS TEISMO SPRENDIMAS

2019 m. lapkričio 13 d.

byloje E-2/19

D ir E

(Laisvas asmenų judėjimas – Lichtenšteino sektorinės adaptacijos – Teisė gyventi šalyje – Šeimos narių išvestinė teisė gyventi šalyje – Direktyva 2004/38/EB)

(2020/C 40/04)

Byloje E-2/19 *D ir E* dėl Lichtenšteino Kunigaikštystės administracinio teismo (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) PRAŠYMO Teismui pagal ELPA valstybių susitarimo dėl Priežiūros institucijos ir Teisingumo Teismo įsteigimo 34 straipsnį išaiškinti 2004 m. balandžio 29 d. Europos Parlamento ir Tarybos direktyvą 2004/38/EB dėl Sąjungos piliečių ir jų šeimos narių teisės laisvai judėti ir gyventi valstybių narių teritorijoje, kuri suderinta su Europos ekonominės erdvės susitarimu, Teismas, kurį sudaro pirmininkas Pállis Hreinssonas (pranešėjas) ir teisėjai Berndas Hammermannas ir Ola Mestadas (*ad hoc* teisėjas), 2019 m. lapkričio 13 d. priėmė sprendimą, kurio rezoliucinė dalis yra tokia:

Remiantis EEE susitarimo V ir VIII priedų sektoriniais pakeitimais, visų pirma jų III punktu, EEE piliečio šeimos narys, kuris turi galiojantį leidimą gyventi šalyje ir gyvena Lichtenšteine, nepraranda Direktyvos 2004/38/EB 7 straipsnio 1 dalies d punkte nustatytos teisės lydėti EEE pilietį Lichtenšteine arba vykti kartu su juo net tuo atveju, jei Lichtenšteine gyvenančio EEE piliečio turimas leidimas gyventi šalyje jam buvo išduotas ne pagal sektorinėse adaptacijose numatytą sistemą.

PROCEDŪROS, SUSIJUSIOS SU BENDROS PREKYBOS POLITIKOS ĮGYVENDINIMU

EUROPOS KOMISIJA

Pranešimas apie artėjančią tam tikrų antidempingo priemonių galiojimo pabaigą

(2020/C 40/05)

1. Kaip numatyta 2016 m. birželio 8 d. Europos Parlamento ir Tarybos reglamento (ES) 2016/1036 dėl apsaugos nuo importo dempingo kaina iš Europos Sąjungos narėmis nesančių valstybių ([1]) 11 straipsnio 2 dalyje, Komisija praneša, kad jeigu toliau nustatyta tvarka nebus inicijuota peržiūra, toliau nurodytų antidempingo priemonių galiojimas pasibaigs lentelėje nurodytą dieną.

2. **Procedūra**

Sąjungos gamintojai gali pateikti rašytinį prašymą atlikti peržiūrą. Prašyme turi būti pateikta pakankamai įrodymų, kad pasibaigus priemonių galiojimui dempingas ir žala veikiausiai tęstųsi arba pasikartotų. Jeigu Komisija nuspręs peržiūrėti susijusias priemones, importuotojams, eksportuotojams, eksportuojančios šalies atstovams ir Sąjungos gamintojams bus suteikta galimybė papildyti prašyme atlikti peržiūrą išdėstytą informaciją, ją paneigti arba pateikti su ja susijusių pastabų.

3. **Terminas**

Sąjungos gamintojai, remdamiesi tuo, kas išdėstyta, rašytinį prašymą atlikti peržiūrą Europos Komisijos Prekybos generaliniam direktoratui (European Commission, Directorate-General for Trade (Unit H-1), CHAR 4/39, B-1049 Brussels) ([2]) gali pateikti bet kuriuo metu nuo šio pranešimo paskelbimo dienos, bet ne vėliau kaip trys mėnesiai iki lentelėje nurodytos dienos.

4. Šis pranešimas skelbiamas pagal Reglamento (ES) 2016/1036 11 straipsnio 2 dalį.

Produktas	Kilmės arba eksporto šalis (-ys)	Priemonės	Nuoroda	Galiojimo pabaigos diena ([1])
Tam tikri orientuoto grūdėtumo plokšti valcavimo produktai iš silicinio elektrotechninio plieno	Kinijos Liaudies Respublika Japonija Korėjos Respublika Rusijos Federacija Jungtinės Amerikos Valstijos	Antidempingo muitas	2015 m. spalio 29 d. Komisijos įgyvendinimo reglamentas (ES) 2015/1953, kuriuo tam tikriems importuojamiems Kinijos Liaudies Respublikos, Japonijos, Korėjos Respublikos, Rusijos Federacijos ir Jungtinių Amerikos Valstijų kilmės orientuoto grūdėtumo plokštiems valcavimo produktams iš silicinio elektrotechninio plieno nustatomas galutinis antidempingo muitas (OL L 284, 2015 10 30, p. 109).	2020 10 31

([1]) Priemonė nustoja galioti šioje skiltyje nurodytos dienos vidurnaktį.

([1]) OL L 176, 2016 6 30, p. 21.
([2]) TRADE-Defence-Complaints@ec.europa.eu

PROCEDŪROS, SUSIJUSIOS SU KONKURENCIJOS POLITIKOS ĮGYVENDINIMU

EUROPOS KOMISIJA

Išankstinis pranešimas apie koncentraciją

(Byla M.9714 — Viacom / beIN / Miramax)

Bylą numatoma nagrinėti supaprastinta tvarka

(Tekstas svarbus EEE)

(2020/C 40/06)

1. 2020 m. sausio 29 d. Komisija gavo pagal Tarybos reglamento (EB) Nr. 139/2004 ([1]) 4 straipsnį pateiktą pranešimą apie siūlomą koncentraciją.

Šis pranešimas susijęs su šiomis įmonėmis:

— „Viacom International Inc.“ (toliau – „Viacom“, JAV), priklausanti „ViacomCBS Inc.“,

— „beIN Media Group, LLC“ (toliau – „beIN“, Kataras), priklausanti „beIN Corporation“,

— „MMX Media Finance, LLC“ (toliau – „Miramax“, JAV), kurią šiuo metu kontroliuoja „beIN“.

„Viacom“ ir „beIN“ įgyja, kaip apibrėžta Susijungimų reglamento 3 straipsnio 1 dalies b punkte ir 3 straipsnio 4 dalyje, bendrą įmonės „Miramax“ kontrolę.

Koncentracija vykdoma perkant akcijas.

2. Įmonių verslo veikla:

— „Viacom“: pasaulinė žiniasklaidos ir pramogų bendrovė,

— „beIN“: pramogų bendrovė, vykdanti veiklą, be kita ko, sporto žiniasklaidos srityje,

— „Miramax“: pramogų bendrovė, gaminanti ir platinanti filmus ir televizijos laidas.

3. Preliminariai išnagrinėjusi pranešimą Europos Komisija mano, kad sandoriui, apie kurį pranešta, galėtų būti taikomas Susijungimų reglamentas. Europos Komisijai paliekama teisė dėl šio klausimo priimti galutinį sprendimą.

Pagal Komisijos pranešimą dėl supaprastintos tam tikrų koncentracijų nagrinėjimo pagal Tarybos reglamentą (EB) Nr. 139/2004 ([2]) procedūros reikėtų pažymėti, kad šią bylą numatoma nagrinėti pranešime nurodyta tvarka.

4. Komisija kviečia suinteresuotas trečiąsias šalis teikti pastabas dėl pasiūlyto veiksmo.

Pastabos Komisijai turi būti pateiktos ne vėliau kaip per 10 dienų nuo šio pranešimo paskelbimo. Visoje korespondencijoje turėtų būti pateikiama ši nuoroda:

M.9714 – Viacom /beIN / Miramax

Pastabas Komisijai galima siųsti e. paštu, faksu arba paštu. Kontaktiniai duomenys:

([1]) OL L 24, 2004 1 29, p. 1 (Susijungimų reglamentas).
([2]) OL C 366, 2013 12 14, p. 5.

El. paštas: COMP-MERGER-REGISTRY@ec.europa.eu

Faks. +32 22964301

Pašto adresas

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

Išankstinis pranešimas apie koncentraciją

(Byla M.9719 — Fairfax Financial Holdings Limited / OMERS Administration Corporation/Riverstone Barbados Limited)

Bylą numatoma nagrinėti supaprastinta tvarka

(Tekstas svarbus EEE)

(2020/C 40/07)

1. 2020 m. sausio 30 d. Komisija gavo pagal Tarybos reglamento (EB) Nr. 139/2004 ([1]) 4 straipsnį pateiktą pranešimą apie siūlomą koncentraciją.

Šis pranešimas susijęs su šiomis įmonėmis:

— „Fairfax Financial Holdings Limited“ (toliau – FFHL, Kanada),

— „Kingston Infrastructure Holdings Inc.“ (toliau – „Kingston“, Kanada), kontroliuojama „OMERS Administration Corporation“ (toliau – „OMERS“, Kanada),

— „Riverstone Barbados Limited“ (toliau – „Riverstone“, Barbadosas).

Įmonės FFHL ir „Kingston“ įgyja, kaip apibrėžta Susijungimų reglamento 3 straipsnio 1 dalies b punkte ir 3 straipsnio 4 dalyje, bendrą visos įmonės „Riverstone“ kontrolę.

Koncentracija vykdoma perkant akcijas.

2. Įmonių verslo veikla:

— FFHL yra kontroliuojančioji bendrovė, užsiimanti turto ir nelaimingų atsitikimų draudimu, perdraudimu ir susijusių investicijų valdymu.

— „OMERS“ yra Ontarijo savivaldybės darbuotojų pensijų sistemos pirminio pensijų plano administratorė ir pensijų fondų patikėtinė. „OMERS“ valdo diversifikuotą pasaulinį akcijų ir obligacijų portfelį, taip pat nekilnojamąjį turtą, privatų akcinį kapitalą ir investicijas į infrastruktūrą;

— „Riverstone“ valdo likviduojamas draudimo įmones ir portfelius.

3. Preliminariai išnagrinėjusi pranešimą Komisija mano, kad sandoriui, apie kurį pranešta, galėtų būti taikomas Susijungimų reglamentas. Komisijai paliekama teisė dėl šio klausimo priimti galutinį sprendimą.

Pagal Komisijos pranešimą dėl supaprastintos tam tikrų koncentracijų nagrinėjimo pagal Tarybos reglamentą (EB) Nr. 139/2004 ([2]) procedūros reikėtų pažymėti, kad šią bylą numatoma nagrinėti pranešime nurodyta tvarka.

4. Komisija kviečia suinteresuotas trečiąsias šalis teikti pastabas dėl pasiūlyto veiksmo.

Pastabos Komisijai turi būti pateiktos per 10 dienų nuo šio pranešimo paskelbimo. Visoje korespondencijoje turėtų būti pateikiama ši nuoroda:

M.9719 — FFHL / OMERS / Riverstone

Pastabas Komisijai galima siųsti e. paštu, faksu arba paštu. Kontaktiniai duomenys:

El. paštas: COMP-MERGER-REGISTRY@ec.europa.eu

Faks. +32 22964301

Pašto adresas

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

([1]) OL L 24, 2004 1 29, p. 1 (Susijungimų reglamentas).
([2]) OL C 366, 2013 12 14, p. 5.

KITI AKTAI

EUROPOS KOMISIJA

Pranešimo apie vyno sektoriaus produkto specifikacijos standartinio pakeitimo patvirtinimą paskelbimas pagal Komisijos deleguotojo reglamento (ES) 2019/33 17 straipsnio 2 ir 3 dalis

(2020/C 40/08)

Šis pranešimas skelbiamas pagal Komisijos deleguotojo reglamento (ES) 2019/331 ([1]) 17 straipsnio 5 dalį.

PRANEŠIMAS APIE STANDARTINIO PAKEITIMO PATVIRTINIMĄ

„Coteaux d'Ancenis"

PDO-FR-A0928-AM01

Pranešimo data: 2019-11-12

PATVIRTINTO PAKEITIMO APRAŠYMAS IR PAGRINDIMAS

1. **Geografinė vietovė**

Dalis apie geografinę vietovę keičiama taip: „Visi gamybos veiksmai atliekami Nacionalinio kilmės ir kokybės instituto kompetentingo nacionalinio komiteto 2011 m. rugsėjo 28 d. posėdyje patvirtintoje geografinėje vietovėje. Dieną, kai kompetentingas nacionalinis komitetas patvirtino šią specifikaciją, ta vietovė apėmė toliau nurodytų savivaldybių, kaip jos 2018 metais apibrėžtos Oficialiajame geografinių kodų registre, teritoriją:

— Atlanto Luaros departamentas: Ancenis, Carquefou, Le Cellier, Couffé, Divatte-sur-Loire (tik šios deleguotosios savivaldybės teritorija: Barbechat), Ligné, Loireauxence (tik šios deleguotosios savivaldybės teritorija: Varades), Mauves-sur-Loire, Mésanger, Montrelais, Oudon, Saint-Géréon, Thouaré-sur-Loire, Vair-sur-Loire;

— Meno ir Luaros departamentas: Mauges-sur-Loire (tik šios deleguotosios savivaldybės teritorija: La Chapelle-Saint-Florent), Orée d'Anjou (tik šių deleguotųjų savivaldybių teritorijos: Bouzillé Champtoceaux, Drain, Landemont, Liré, La Varenne).

Su geografinės vietovės kartografine medžiaga galima susipažinti Nacionalinio kilmės ir kokybės instituto interneto svetainėje."

Redakcinio pobūdžio pakeitimas: naujajame administracinių vienetų sąraše atsižvelgta į po specifikacijos patvirtinimo sujungtus administracinius vienetus ar kitus skirstymo į administracines zonas pasikeitimus. Siekiant teisinio tikrumo, sąrašas sudarytas atsižvelgiant į galiojantį Oficialųjį geografinių kodų registrą, kurį kasmet peržiūri INSEE.

Galiausiai nurodoma, jog Nacionalinio kilmės ir kokybės instituto interneto svetainėje pateikiama geografinės vietovės kartografinė medžiaga, kad visuomenė galėtų su ja susipažinti.

Atitinkamai iš dalies keičiamas su nustatyta geografine vietove susijęs bendrojo dokumento 6 punktas.

2. **Nustatyti sklypai**

1 skyriaus IV antraštinės dalies 2 punkte žodis „nustatyti" pakeičiamas žodžiu „gamybos".

Tai redakcinio pobūdžio pakeitimas, dėl kurio nustatyta iš sklypų sudaryta vietovė nėra keičiama.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

([1]) OL L 9, 2019 1 11, p. 2..

3. **Arčiausiai esanti vietovė**

1 skyriaus IV antraštinės dalies 3 punkte esantis savivaldybių sąrašas pakeičiamas šiuo sąrašu:

— Atlanto Luaros departamentas: La Boissière-du-Doré, La Chapelle-Heulin, Divatte-sur-Loire (tik šios deleguotosios savivaldybės teritorija: La ChapelleBasse-Mer), Gorges, Haute-Goulaine, Le Landreau, Le Loroux-Bottereau, Maisdonsur-Sèvre, Mouzillon, La Remaudière, Saint-Julien-de-Concelles, Vallet;

— Meno ir Luaros departamentas: Montrevault-sur-Èvre (tik šių deleguotųjų savivaldybių teritorija: Puiset-Doré, Saint-Rémy-en-Mauges), Orée d'Anjou (tik šių deleguotųjų savivaldybių teritorija: Saint-Laurent-des-Autels, Saint-Sauveur-de-Landemont), Sèvremoine (tik šios deleguotosios savivaldybės teritorija: Tillières).

Redakcinio pobūdžio pakeitimas: naujajame administracinių vienetų sąraše atsižvelgta į po specifikacijos patvirtinimo sujungtus administracinius vienetus ar kitus skirstymo į administracines zonas pasikeitimus.

Atitinkamai iš dalies keičiamas su papildomomis sąlygomis susijęs bendrojo dokumento 9 punktas.

4. **Vynuogių veislės**

Nuo šiol raudonuosius ir rožinius vynus galima gaminti kaip papildomą veislę naudojant 'Cabernet franc' veislės vynuoges.

'Cabernet franc' vynuogių veislė istoriškai auga SKVN vietovėje ir suteikia vynams tam tikros struktūros, tačiau nepakeičia jų tipiškumo. Leidus naudoti šią veislę, tapo įmanoma šiek tiek padidinti gamybos saugumą, nes ji ne tokia jautri šalnoms kaip 'Gamay' vynuogių veislė ir yra atsparesnė grybinėms ligoms.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

5. **Maišymas**

— skyriaus V antraštinėje dalyje įterpiama pastraipa:

„2. Dalių taisyklės ūkyje

Papildomos veislės dalis yra ne didesnė nei 10 % visų naudojamų vynuogių veislių.

Atitinkamos vyno spalvos atveju, vertinant naudojamas vynuogių veisles, atsižvelgiama į visus vynuogyno sklypus, kuriuose auginamos saugomos kilmės vietos nuorodos vynui gaminti skirtos vynuogės."

— skyriaus IX antraštinės dalies a punkte įterpiama ši nuostata:

„a) Vynuogių veislių maišymas

Raudonieji ir rožiniai vynai gaminami vynuoges arba vynus maišant tokiomis pat proporcijomis, kokiomis ūkyje auginamos vynuogių veislės."

Pridėjus 'Cabernet franc' vynuogių veislę, tapo būtina įtraukti naudojamų vynuogių veislių ir vynų maišymo taisyklę, apribojančią šios veislės dalį iki 10 %.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

6. **Išpilstymas**

IX antraštinės dalies 2 punkte pakeista išpilstytų partijų tyrimų rezultatų saugojimo trukmė – nuo šiol, siekiant užtikrinti veiksmingesnę kontrolę, rezultatai saugomi ne 6, o 12 mėnesių.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

7. **Vyno išleidimas į apyvartą tarp įgaliotų sandėlių savininkų**

Išbraukiamas 1 skyriaus IX antraštinės dalies 4 punkto b papunktis dėl vyno išleidimo į apyvartą tarp įgaliotų sandėlių savininkų datos.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

8. **Ryšys su geografine vietove**

Ryšys su geografine vietove peržiūrėtas siekiant atnaujinti susijusių savivaldybių skaičių (vietoje 22 savivaldybių dabar yra 16).

Atitinkamai iš dalies keičiamas su ryšiu su geografine vietove susijęs bendrojo dokumento 8 punktas.

9. **Pereinamojo laikotarpio priemonė**

Pasibaigus pereinamajam laikotarpiui, priemonės ir specifikacijos išbraukiamos.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

10. **Ženklinimas**

XII antraštinėje dalyje įterpiamos šios nuostatos: „c) vynų, kuriems suteikta saugoma kilmės vietos nuoroda, etiketėse galima nurodyti mažesnę geografinę vietovę, jeigu ji:

— įtraukta į kadastrą;

— nurodyta derliaus deklaracijoje.

Jos į kadastrą įtrauktas pavadinimas užrašomas rašmenimis, kurių dydis (aukštis, plotis ar storis) nėra didesnis nei pusė rašmenų, kuriais užrašytas saugomos kilmės vietos nuorodos pavadinimas, dydžio. Pavadinimas užrašomas tame pačiame regimajame lauke kaip ir kilmės vietos nuorodos pavadinimas.“

Atitinkamai iš dalies keičiamas su papildomomis sąlygomis susijęs bendrojo dokumento 9 punktas.

11. **Išankstinė sklypų panaudojimo deklaracija**

2 skyriaus 1 dalies 1punkte išbraukiamas pratęsimo savaime po 5 metų laikotarpis. Taip siekiama išvengti problemų, galinčių kilti užmiršus pasirūpinti pratęsimu, ir paliekama nuostata, kad deklaracija savaime atnaujinama, jei veiklos vykdytojas nepraneša apie pasikeitimus.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

12. **Pretendavimo į SKVN deklaracija**

Nuo šiol pretendavimo į SKVN deklaraciją būtina pateikti ne vėliau nei gruodžio 31 d., o ne 10 d., kaip anksčiau.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

13. **Išankstinė neišpilstyto vyno sandorio deklaracija**

2 skyriaus II antraštinės dalies 3 punkto pirmoje pastraipoje prieš žodį „sandoris“ įterpiamas žodis „pirmasis“, o po žodžio „sandoris“ įterpiami žodžiai „pirmosios tų metų vyno partijos ar pirmojo pateikimo rinkai vartotojams“.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

14. **Išankstinė išpilstymo deklaracija**

2 skyriaus II antraštinės 4 punkte įterpiama įtrauka:

„– numatoma išpilstymo data“.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

15. **Nuorodos nenaudojimo deklaracija**

2 skyriaus II antraštinės dalies 6 punkte žodžiai „per vieną mėnesį“ pakeičiami žodžiais „ne vėliau nei gruodžio 15 d.“

Bendrajam dokumentui šis pakeitimas įtakos neturi.

16. **Vynuogynų registras**

2 skyriaus II antraštinės dalies 1 punktas iš dalies keičiamas taip:

„1. Vynuogynų registras

a) Kiekvienas veiklos vykdytojas, auginantis vynuogynus, kuriuose gali būti gaminamas saugoma kilmės vietos nuoroda žymimas produktas, iki derliaus nuėmimo metų birželio 1 d. įrašo į registrą sklypus, kuriuose išaugintos vynuogės nebus naudojamos SKVN vynams gaminti ir kuriems netaikys SKVN vynuogynų gamybos sąlygų.

Apsaugos ir administravimo institucija gali paprašyti veiklos vykdytojų pateikti šio registro kopiją.

b) Kiekvienas veiklos vykdytojas, kuriam taikoma (-os) pereinamojo laikotarpio priemonė(s), turi būti pasirengęs pateikti apsaugos ir administravimo institucijai arba patvirtintai kontrolės institucijai tų sklypų sąrašą, kuriame pateikiami šie duomenys:

— sklypo kadastro nuoroda;

— atitinkama pereinamojo laikotarpio priemonė.“

Bendrajam dokumentui šis pakeitimas įtakos neturi.

17. **Vyno ūkio registras**

2 skyriaus II antraštinės dalies 2 punkte žodis „žurnalas“ pakeičiamas žodžiu „registras“ ir nurodoma, kad šiame registre registruojami atsisakymai naudoti nuorodą.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

18. **Pagrindiniai tikrinami punktai**

Peržiūrėtas 3 skyrius, kad sutaptų Nanto krašto vietovės specifikacijos pagrindinių tikrinamų punktų redakcija.

Bendrajam dokumentui šis pakeitimas įtakos neturi.

BENDRASIS DOKUMENTAS

1. **Produkto pavadinimas**

Coteaux d'Ancenis

2. **Geografinės nuorodos tipas**

SKVN – saugoma kilmės vietos nuoroda

3. **Vynuogių produktų kategorijos**

1. Vynas

4. **Vyno (-ų) aprašymas**

Raudonieji vynai

Tai neputojantys raudonieji vynai.

Vynų analitinės savybės:

— Minimali natūrali alkoholio koncentracija tūrio procentais: raudonieji vynai –10,5 %

— Visuminė didžiausia alkoholio koncentracija tūrio procentais po sodrinimo: raudonieji vynai –12,5 %

— Bendrasis rūgštingumas: raudonieji vynai – 57,1–102,1 miliekvivalento litre

— Didžiausias lakusis rūgštingumas: raudonieji vynai –13,3 miliekvivalento litre

— Fermentuojamų cukrų (gliukozės ir fruktozės) kiekis: raudonieji vynai – ne daugiau kaip 3 g/l

— Didžiausias obuolių rūgšties kiekis: raudonieji vynai – ne daugiau kaip 0,3 g/l Raudonųjų vynų fermentavimas užbaigiamas pienarūgščiu rūgimu.

Raudonųjų vynų bendras sieros dioksido kiekis ir visuminė alkoholio koncentracija atitinka vertes, nustatytas Bendrijos teisės aktuose.

Raudonųjų vynų spalva žvilgi, nuo vyšnių iki granatų raudonumo. Kvape dažnai vyrauja raudonų vaisių ir uogų aromatai, kartais juos papildo prieskonių aromatai. Paprastai šiuose vynuose juntami elegantiški taninai, suteikiantys lankstų ir švelnų, šiek tiek gaivų skonį.

Bendrosios analitinės savybės	
Didžiausia visuminė alkoholio koncentracija (tūrio %)	
Mažiausia faktinė alkoholio koncentracija (tūrio %)	
Mažiausias bendrasis rūgštingumas	
Didžiausias lakusis rūgštingumas (miliekvivalentais viename litre)	
Didžiausias bendras sieros dioksido kiekis (miligramais viename litre)	

Baltieji vynai

Tai neputojantys baltieji vynai.

Vynų analitinės savybės:

— Minimali natūrali alkoholio koncentracija tūrio procentais: baltieji vynai –11,5 %

— Visuminė didžiausia alkoholio koncentracija tūrio procentais po sodrinimo: baltieji vynai –13,5 %

— Bendrasis rūgštingumas: baltieji vynai – 57,1–112,3 miliekvivalento litre

— Fermentuojamų cukrų (gliukozės ir fruktozės) kiekis: baltieji vynai – 20–40 miliekvivalentų litre

Sodriai geltonos spalvos vynams paprastai būdingas stiprus gerai sunokusių ar egzotinių vaisių aromatas. Jų analitinių standartų taisyklės dažniausiai leidžia užtikrinti puikų šių vynų skonio balansą ir fermentuojamų cukrų suteikiamą aptakumą, kuris atsveria Luaros vynams būdingą gaivumą.

Bendrosios analitinės savybės	
Didžiausia visuminė alkoholio koncentracija (tūrio %)	
Mažiausia faktinė alkoholio koncentracija (tūrio %)	10
Mažiausias bendrasis rūgštingumas	
Didžiausias lakusis rūgštingumas (miliekvivalentais viename litre)	13,3
Didžiausias bendras sieros dioksido kiekis (miligramais viename litre)	

Rožiniai vynai

Tai neputojantys rožiniai vynai.

Vynų analitinės savybės:

— Minimali natūrali alkoholio koncentracija tūrio procentais: rožiniai vynai – 10 %

— Visuminė didžiausia alkoholio koncentracija tūrio procentais po sodrinimo: rožiniai vynai – 12 %

— Bendrasis rūgštingumas: rožiniai vynai – 57,1–102,1 miliekvivalento litre

— – Didžiausias lakusis rūgštingumas: rožiniai vynai –10,2 miliekvivalento litre

— Fermentuojamų cukrų (gliukozės ir fruktozės) kiekis: rožiniai vynai – ne daugiau kaip 4 g/l

Rožinių vynų bendro sieros dioksido kiekis ir visuminė alkoholio koncentracija atitinka vertes, nustatytas Bendrijos teisės aktuose.

Rožinių vynų spalva šviesi, nuo blyškaus rožinio iki lašišų rausvumo atspalvio. Subtilus ir diskretiškas vynų aromatas gaivus, dažniausiai – vaisių. Vynų skonis dažniausiai pasižymi lengvumu ir gaivumu, kiek intensyvus.

Bendrosios analitinės savybės	
Didžiausia visuminė alkoholio koncentracija (tūrio %)	
Mažiausia faktinė alkoholio koncentracija (tūrio %)	
Mažiausias bendrasis rūgštingumas	
Didžiausias lakusis rūgštingumas (miliekvivalentais viename litre)	
Didžiausias bendras sieros dioksido kiekis (miligramais viename litre)	

5. **Vyno gamybos metodai**

a) *Pagrindiniai vynininkystės metodai*

Auginimo praktika

Minimalus vynuogyno tankumas –6 000 vynmedžių sodinių viename hektare.

Tarpai tarp eilių ne didesni nei 1,60 m, o tarpai tarp sodinių toje pačioje eilėje – 0,90–1,10 m.

Vynmedžiai genimi ant sodinio paliekant daugiausiai 12 pumpurų ir genimi:

— arba trumpai (*Royat* kordono, taurės, vėduoklės metodu),

— arba paprastuoju *Guyot* metodu.

Genėjimas baigiamas iki derliaus nuėmimo metų gegužės 31 d.

Per fenologinę vaisių užmezgimo stadiją metinių vaisius mezgančių šakų skaičius ant sodinio neturi viršyti 10.

Specifinis vynininkystės metodas

Gaminant rožinius vynus draudžiama taikyti apdorojimą medžio anglimis, nepriklausomai nuo to, ar jos būtų naudojamos vienos, ar mišiniuose su kitais preparatais. Gaminant raudonuosius vynus leidžiama naudoti gryninamojo sodrinimo techniką.

Gaminant raudonuosius vynus leidžiama taikyti sodrinimo pašalinant vandenį metodus. Didžiausia dalinė koncentracija, palyginti su sodrinamu tūriu, yra 10 %.

Po sodrinimo vynų visuminė alkoholio koncentracija tūrio procentais neviršija: baltųjų vynų –13,5 %, rožinių vynų – 12 %, raudonųjų vynų –12,5 %.

Be to, kas nurodyta pirmiau, vynai turi būti gaminami laikantis visoje Sąjungoje taikytinų ir Kaimo ir jūrų žuvininkystės kodekse nustatytų vynininkystės praktikos reikalavimų.

b) *Didžiausias gamybos kiekis*

Baltieji vynai

55 hektolitrai iš vieno hektaro

Raudonieji ir rožiniai vynai

66 hektolitrai iš vieno hektaro

6. **Nustatyta geografinė vietovė**

Visi gamybos veiksmai atliekami Nacionalinio kilmės ir kokybės instituto kompetentingo nacionalinio komiteto 2011 m. rugsėjo 28 d. posėdyje patvirtintoje geografinėje vietovėje. Dieną, kai kompetentingas nacionalinis komitetas patvirtino šią specifikaciją, ta vietovė apėmė toliau nurodytų savivaldybių, kaip jos 2018 metais apibrėžtos Oficialiajame geografinių kodų registre, teritoriją:

— Atlanto Luaros departamentas: Ancenis, Carquefou, Le Cellier, Couffé, Divatte-sur-Loire (tik šios deleguotosios savivaldybės teritorija: Barbechat), Ligné, Loireauxence (tik šios deleguotosios savivaldybės teritorija: Varades), Mauves-sur-Loire, Mésanger, Montrelais, Oudon, Saint-Géréon, Thouaré-sur-Loire, Vair-sur-Loire;

— Meno ir Luaros departamentas: Mauges-sur-Loire (tik šios deleguotosios savivaldybės teritorija: La Chapelle-Saint-Florent), Orée d'Anjou (tik šių deleguotųjų savivaldybių teritorijos: Bouzillé Champtoceaux, Drain, Landemont, Liré, La Varenne).

7. **Pagrindinės vyninių vynuogių veislės**

'Gamay N'

'Pinot gris G'

8. **Ryšys (-iai) su geografine vietove**

Gamtinių veiksnių, darančių įtaką ryšiui, aprašymas

Geografinė vietovė plyti abiejuose Luaros krantuose, pusiaukelėje tarp Nanto ir Anžė miestų. Vynuogynai daugiausia pasodinti tiesiai į upę atgręžtose kalvose, kartais – ant gretutinių slėnių šlaitų. Jie auga pakopomis, dažniausiai 20–80 m aukštyje ir kraštovaizdyje aiškiai išsiskiria iš aplinkinių plokštikalnių, kur daugiausia užsiimama įvairių kultūrų auginimu ir gyvulininkyste. Geografinė vietovė plyti 16-os aplink Ansni savivaldybę išsidėsčiusių Atlanto Luaros ir Meno ir Luaros departamentų savivaldybių teritorijoje.

Vynuogynai auga ant senovinių metamorfinių, daugiausia iš skalūno, žėručio skalūno ir gneiso sudarytų Armorikos aukštumos sanklodų. Iš šių kietų uolienų susiformavo dažnai akmeningi, o ant kažkada Luaros plautų šlaitų – negilūs dirvožemiai, kuriuose yra silicio. Laikantis praktikos, nustatyta iš sklypų sudaryta vietovė apima tik ant kalvų esančius sklypus, kuriuose daugiausia tradiciškai buvo auginamos vynuogės. Šiuose sklypuose dirvožemis sveikas, negilus, nelabai drėgnas ir vidutinio derlingumo. Jis lengvai išgarina drėgmę ir įšyla.

Geografinei vietovei būdingas nuosaikus jūrinis klimatas, nes Luara padeda vandenyno įtakai prasiskverbti į žemyno gilumą, juolab kad Ansni regione upės tėkmė sutampa su vyraujančių vėjų kryptimi. Vidutinė metinė temperatūra – apie 11,5 °C, žiemos švelnios, o vasaros vėsios. Per metus iškrenta maždaug 700 mm kritulių. Jie ganėtinai vienodai pasiskirstę per visus metus, tačiau vasarą drėgmės trūksta. Rudens pradžioje, prieš didžiuosius lygiadienio potvynius, geografinėje vietovėje dažnai stoja sausas ir vėjuotas laikotarpis.

Žmogiškųjų veiksnių, darančių įtaką ryšiui, aprašymas

Nuo labai senų laikų Ansni regione augintos vynuogės ypač jame paplito XI a., kuomet Luaros pakrantėse įsikūrė daugybė mažų vienuolynų. Vynuogių produktais mokėta dešimtinė rodo, kad viduramžiais upės pakrantėje vynuogininkystė klestėjo. Labai greitai Ansni uostas tapo svarbiu regiono vynų prekybos ir gabenimo centru. 1573 m. Karolis IX leido Ansni uoste įsteigti keturias vynų tarpininkų-ekspertų įstaigas. 1584 m. šių įstaigų jau buvo 10, o valdant Liudvikui XVI mieste nuolatos būdavo bent dvi dešimtys prekybai vynu skirtų laivų.

Nuo XVII a. Ansni vyno ūkiuose imta gaminti daugiau baltųjų pusiau saldžių vynų, jiems pradėtos naudoti 'Pinot gris G' veislės vynuogės. Iš jų gaminamas vynas palaipsniui pradėtas vadinti „Malvoisie“. Kitų veislių, pavyzdžiui, 'Gamay N', vynuogės imtos naudoti XIX a. viduryje. Tuomet prekyba vynais buvo pasiekusi klestėjimo viršūnę, vynai per Orleaną pasiekdavo Paryžių, o per Nantą – Šiaurės Europą ir Bretanę.

Po vynuoginių filokserų antplūdžio vynuogynai buvo atsodinti, juose galutinai nusistovėjo auginamos veislės ir iki šiol naudojami auginimo būdai, būtent 6 000–7 000 sodinių viename hektare sodinimo tankumas. Sausų rožinių ir raudonųjų vynų imta gaminti daugiau nei baltųjų pusiau saldžių „Malvoisie“ vynų. Vietos vynuogininkystės suklestėjimą puikiai iliustruoja 1907 m. įsteigta Ansni apygardos vynuogynų profesinė sąjunga. Po Antrojo pasaulinio karo gamintojų nustatytos gamybos taisyklės leido pasiekti, kad 1954 m. būtų pripažinta aukštos kokybės vyno iš nustatytos vietovės kilmės vietos nuoroda „Coteaux d'Ancenis“.

2009 m. vynuogynų plotas siekė 180 hektarų. Juos dirbo maždaug trisdešimt gamintojų. Per metus buvo pagaminama vidutiniškai 10 000 hektolitrų vyno, iš kurių 45 % sudarė rožiniai vynai, 38 % – raudonieji vynai, o 17 % – baltieji vynai. Sodriai geltonos spalvos vynams paprastai būdingas stiprus gerai sunokusių ar egzotinių vaisių aromatas. Jų analitinių standartų taisyklės dažniausiai leidžia užtikrinti puikų šių vynų skonio balansą ir fermentuojamų cukrų suteikiamą aptakumą, kuris atsveria Luaros vynams būdingą gaivumą.

Raudonųjų vynų spalva žvilgi, nuo vyšnių iki granatų raudonumo. Kvape dažnai vyrauja raudonų vaisių ir uogų aromatai, kartais juos papildo prieskonių aromatai. Paprastai šiuose vynuose juntami elegantiški taninai, suteikiantys lankstų ir švelnų, šiek tiek gaivų skonį.

Rožinių vynų spalva šviesi, nuo blyškaus rožinio iki lašišų rausvumo atspalvio. Subtilus ir diskretiškas vynų aromatas gaivus, dažniausiai – vaisių. Vynų skonis dažniausiai pasižymi lengvumu ir gaivumu, kiek intensyvus. Kadangi geografinė vietovė įsikūrusi tarp Nanto ir Anžu vynuogynų, ant Luaros, kuri yra svarbus susisiekimo kelias, kranto, „Coteaux d'Ancenis“ vynų gamintojai sugebėjo gauti naudos iš šios dvigubos įtakos ir susikurti savas, natūraliai vietos aplinkai pritaikytas gamybos technologijas.

Metamorfiniuose Armorikos aukštumos kloduose Luaros upės suformuotų geografinės vietovės kalvų dirvožemis dažniausiai sparčiai įšyla, iš jo greitai natūraliai išteka vanduo ir jo atsargos lieka negausios, o tai padeda gerai sunokti vynuogėms, todėl aplink Ansni uostą jau viduramžiais buvo plėtojama komercinė vynininkystė. Be to, nors geografinės vietovės klimatas yra veikiamas vandenyno, jam dažnai būdingi vėjuoti ir sausi laikotarpiai vasaros pabaigoje ir rudens pradžioje. Šios gamtinės sąlygos kartu su atviru Luaros krantų kraštovaizdžiu nulėmė raudonųjų ir rožinių vynų gamybos suklestėjimą regione. Nederlingas, rūgštus vynuogėms auginti skirtų sklypų dirvožemis ypač tinka 'Gamay N' veislės vynuogėms; dėl tokių sąlygų kiek sumažėja šiai veislei būdingas augimas ir tampa aišku, kodėl, nors ir pradėta auginti vėlai, ši veislė užgožė kitas juodųjų vynuogių veisles. Vynuogynų priežiūrai pasirinkus tinkamą vynmedžių auginimo būdą ir reguliuojant derlingumą, raudonieji vynai gali atskleisti visus savo aromatus, o rožiniai – subtilų vaisių aromatą.

Be to, klimato sąlygos labai tinkamos baltiesiems pusiau saldiems vynams gaminti, nes vynuogės išauga sveikos ir gerai sunoksta. Dėl šių sąlygų vietovėje labai greitai prisitaikė ir jautri 'Pinot gris G' vynuogių veislė. Švelni geografinės vietovės vasaros temperatūra leidžia gerai išsaugoti šios vynuogių veislės subtilumą ir aromatus, nes riboja uogose esančių organinių rūgščių skilimą, ir suteikia vynams jiems būdingo gaivumo. Šie labai originalūs, vietinių vadinami „Malvoisie“ vynai yra pavyzdinis vietos vyndarystės paveldo produktas.

XX a. pradžioje susibūrę į profesinę sąjungą, vyno gamintojai nepaliaujamai tobulino savo produkciją ir gerino jos kokybę. „Coteaux d'Ancenis“ pavadinimo pripažinimas saugoma kilmės vietos nuoroda, nustatytos iš sklypų sudarytos vietovės perkėlimas į geriausias kalvas ir apsiribojimas dviem vynuogių veislėmis – 'Gamay N' ir 'Pinot gris G', taip pat griežtesnės gamybos taisyklės tapo labiau išreikšto vynų tipiškumo garantija ateičiai.

9. **Kitos Svarbios Sąlygos (Išpilstymas, Ženklinimas, Kiti Reikalavimai)**

Teisinis pagrindas:

Nacionalinės teisės aktai

Papildomų sąlygų rūšis:

Su gamyba nustatytoje geografinėje vietovėje susijusi nukrypti leidžianti nuostata

Sąlygos aprašymas:

Pritaikius nukrypti leidžiančią nuostatą nustatyta arčiausiai esanti vyno gamybos ir gaminimo vietovė apima toliau nurodytų savivaldybių, kaip jos apibrėžtos 2018 m. Oficialiajame geografinių kodų registre, teritorijas:

— Atlanto Luaros departamentas: La Boissière-du-Doré, La Chapelle-Heulin, Divatte-sur-Loire (tik šios deleguotosios savivaldybės teritorija: La Chapelle-Basse-Mer), Gorges, Haute-Goulaine, Le Landreau, Le Loroux-Bottereau, Maisdon-sur-Sèvre, Mouzillon, La Remaudière, Saint-Julien-de-Concelles, Vallet;

— Meno ir Luaros departamentas: Montrevault-sur-Èvre (tik šių deleguotųjų savivaldybių teritorija: Puiset-Doré, Saint-Rémy-en-Mauges), Orée d'Anjou (tik šių deleguotųjų savivaldybių teritorija: Saint-Laurent-des-Autels, Saint-Sauveur-de-Landemont), Sèvremoine (tik šios deleguotosios savivaldybės teritorija: Tillières).

Teisinis pagrindas:

Nacionalinės teisės aktai

Papildomų sąlygų rūšis:

Papildomos nuostatos dėl ženklinimo

Sąlygos aprašymas:

Atsižvelgiant į specifikacijoje nustatytas toliau nurodyto pavadinimo naudojimo taisykles, prie saugomos kilmės vietos nuorodos pavadinimo gali būti pateikiama geografinė nuoroda „Val de Loire“.

Atsižvelgiant į specifikacijoje nustatytas toliau nurodyto pavadinimo naudojimo taisykles, prie saugomos kilmės vietos nuorodos pavadinimo gali būti pateikiamas pavadinimas „Malvoisie“. Šiuo pavadinimu žymimi tik baltieji neputojantys vynai.

Visi papildomi užrašai, kurių naudojimą pagal Sąjungos teisės nuostatas gali reglamentuoti valstybės narės, etiketėse rašomi rašmenimis, kurių dydis (aukštis, plotis ar storis) ne didesnis nei dvigubas rašmenų, kuriais užrašytas saugomos kilmės vietos nuorodos pavadinimas, dydis.

Papildomos geografinės nuorodos „Val de Loire“ ir naudojamo pavadinimo „Malvoisie“ rašmenų dydis (aukštis, plotis ar storis) negali būti didesnis nei du trečdaliai rašmenų, kuriais užrašytas saugomos kilmės vietos nuorodos pavadinimas, dydžio.

Teisinis pagrindas:

Nacionalinės teisės aktai

Papildomų sąlygų rūšis:

Papildomos nuostatos dėl ženklinimo

Sąlygos aprašymas:

Vynų, kuriems suteikta saugoma kilmės vietos nuoroda, etiketėse galima nurodyti mažesnę geografinę vietovę, jeigu ji:

— įtraukta į kadastrą;

— nurodyta derliaus deklaracijoje.

Jos į kadastrą įtrauktas pavadinimas užrašomas rašmenimis, kurių dydis (aukštis, plotis ar storis) nėra didesnis nei pusė rašmenų, kuriais užrašytas saugomos kilmės vietos nuorodos pavadinimas, dydžio. Pavadinimas užrašomas tame pačiame regimajame lauke kaip ir kilmės vietos nuorodos pavadinimas.

Nuoroda į produkto specifikaciją

https://info.agriculture.gouv.fr/gedei/site/bo-agri/document_administratif-0569c539-0b4c-4402-9b68-c63cca20f36f

Pranešimas įmonėms, ketinančioms 2021 m. Europos Sąjungos rinkai pateikti pilstomų hidrofluorangliavandenilių

(2020/C 40/09)

1. Šis pranešimas skirtas visoms įmonėms, norinčioms pateikti deklaraciją dėl pilstomų hidrofluorangliavandenilių pateikimo Sąjungos rinkai 2021 m. pagal Europos Parlamento ir Tarybos reglamento (ES) Nr. 517/2014 ([1]) (toliau – Reglamentas) 16 straipsnio 2 ir 4 dalis.

2. Hidrofluorangliavandeniliai – Reglamento I priedo 1 skirsnyje išvardytos medžiagos arba mišiniai, kuriuose yra šių medžiagų:

   HFC-23, HFC-32, HFC-41, HFC-125, HFC-134, HFC-134a, HFC-143, HFC-143a, HFC-152, HFC-152a, HFC-161, HFC-227ea, HFC-236cb, HFC-236ea, HFC-236fa, HFC-245ca, HFC-245fa, HFC-365mfc, HFC-43–10mee.

3. Teikiant rinkai šias medžiagas, išskyrus atvejus, kai jos teikiamos Reglamento 15 straipsnio 2 dalies a–f punktuose nurodytoms reikmėms arba kai bendras metinis šių medžiagų kiekis sudaro mažiau kaip 100 tonų CO_2 ekvivalento per metus, turi būti laikomasi kiekybinių ribų pagal Reglamento 15 ir 16 straipsniuose ir V ir VI prieduose nustatytą kvotų sistemą.

4. Išleisdami hidrofluorangliavandenilius į laisvą apyvartą importuotojai privalo būti tinkamai užsiregistravę kaip pilstomų hidrofluorangliavandenilių importuotojai fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje ([2]), kaip numatyta Komisijos įgyvendinimo reglamente (ES) 2019/661 ([3]). Tokia registracija laikoma privaloma importo licencija. Panaši licencija reikalinga hidrofluorangliavandeniliams eksportuoti ([4]).

5. Bendrajame administraciniame dokumente (BAD) importuotojas nurodomas kaip gavėjas (8 langelyje). Importuotojai primygtinai raginami, išleisdami HFC į laisvą apyvartą, tiesiogiai BAD (44 langelyje) nurodyti jų kiekį CO_2 ekvivalentais, nes tai gali labai palengvinti jų prekių muitinį įforminimą ir jų atitikties Reglamento (ES) Nr. 517/2014 reikalavimams nustatymą.

6. Remiantis reglamento VI priedu, pagal pamatines vertes paskirstytų kvotų suma atimama iš didžiausio 2021 m. leidžiamo kiekio siekiant nustatyti kiekį, kuris bus skirtas iš šio rezervo.

7. Visi įmonių pateikti duomenys, kvotos ir pamatinės vertės saugomi elektroniniame fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje. Visus fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje saugomus duomenis, įskaitant kvotas, pamatines vertes, komercinę informaciją ir asmens duomenis, Europos Komisija laikys konfidencialiais.

8. Įmonės, norinčios gauti kvotą iš šio rezervo, turi laikytis šio pranešimo 9–12 punktuose nustatytos tvarkos.

9. Remiantis Reglamento 16 straipsnio 2 dalimi ir 17 straipsnio 1 dalimi, įmonė privalo būti tinkamai užsiregistravusi kaip hidrofluorangliavandenilių gamintoja ir (arba) importuotoja elektroniniame fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje, o Komisija turi būti patvirtinusi registraciją pagal Įgyvendinimo reglamentą (ES) 2019/661. Siekiant užtikrinti tinkamą registracijos paraiškos tvarkymą, įskaitant galimą papildomos informacijos poreikį, tokia paraiška turi būti pateikta likus ne mažiau kaip vienam mėnesiui iki deklaracijų teikimo laikotarpio pradžios, t. y. iki 2020 m. kovo 14 d. (žr. 10 punktą). Jei paraiška pateikiama po šios datos, neįmanoma užtikrinti, kad galutinis sprendimas dėl registracijos paraiškos galės būti priimtas iki deklaracijų teikimo laikotarpio pabaigos (žr. 10 punktą). Įmonėms, kurios dar neužsiregistravo, Klimato politikos GD interneto svetainėje pateikiamos gairės, kaip tai padaryti ([5]).

10. Įmonė elektroniniame fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje turi užpildyti deklaraciją dėl numatomo kiekio 2021 m. Tokias deklaracijas bus galima užpildyti tik nuo 2020 m. balandžio 14 d. iki gegužės 14 d. 13:00 val. Vidurio Europos laiku.

([1]) 2014 m. balandžio 16 d. Europos Parlamento ir Tarybos reglamentas (ES) Nr. 517/2014 dėl fluorintų šiltnamio efektą sukeliančių dujų ir iš dalies keičiantis reglamentą (EB) Nr. 842/2006 (OL L 150, 2014 5 20, p. 195).

([2]) Registras sukurtas pagal Reglamento (ES) Nr. 517/2014 17 straipsnį:https://webgate.ec.europa.eu/ods2/resources/domain.

([3]) 2019 m. balandžio 25 d. Komisijos įgyvendinimo reglamentas (ES) 2019/661, kuriuo užtikrinamas sklandus hidrofluorangliavandenilių pateikimo rinkai kvotų elektroninio registro veikimas (OL L 112, 2019 4 26, p. 11).

([4]) Taip pat žr. Komisijos įgyvendinimo reglamento (ES) 2017/1375 1 straipsnio 2 dalį (OL L 194, 2017 7 26, p. 4).

([5]) https://ec.europa.eu/clima/sites/clima/files/f-gas/docs/guidance_document_en.pdf.

11. Komisija galiojančiomis laikys tik tinkamai užpildytas deklaracijas, kurios bus be klaidų ir gautos iki 2020 m. gegužės 14 d., 13:00 val. Vidurio Europos laiku.

12. Remdamasi šiomis deklaracijomis, Komisija pagal Reglamento 16 straipsnio 2, 4 ir 5 dalis, taip pat V ir VI priedus atitinkamoms įmonėms paskirstys kvotas.

13. Įgyvendinimo reglamento (ES) 2019/661 7 straipsnyje nustatyta, kad skirstant hidrofluorangliavandenilių pateikimo rinkai kvotas pagal Reglamento (ES) Nr. 517/2014 16 straipsnio 5 dalį, visos įmonės, kurių tikrasis savininkas (-ai) yra tas pats, laikomos vienu deklarantu pagal to reglamento 16 straipsnio 2 ir 4 dalis.

14. Per fluorintųjų dujų portalą ir hidrofluorangliavandenilių licencijavimo sistemą Komisija įmonėms praneš, kokio dydžio bendra kvota paskirstyta 2021 m.

15. Užsiregistravimas fluorintųjų dujų portale ir hidrofluorangliavandenilių licencijavimo sistemoje ir (arba) deklaracijos dėl ketinimo 2021 m. pateikti rinkai hidrofluorangliavandenilių užpildymas savaime nesuteikia teisės 2021 m. pateikti rinkai hidrofluorangliavandenilių.

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