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Informacje i zawiadomienia

PL

Cena: 3 EUR

[1] Tekst mający znaczenie dla EOG

(Ciąg dalszy na następnej stronie)

PL

(Ciąg dalszy na wewnętrznej tylnej stronie okładki)

II

(Komunikaty)

KOMUNIKATY INSTYTUCJI, ORGANÓW I JEDNOSTEK ORGANIZACYJNYCH UNII EUROPEJSKIEJ

KOMISJA EUROPEJSKA

Brak sprzeciwu wobec zgłoszonej koncentracji

(Sprawa COMP/M.5919 – Apollo/Alcan)

(Tekst mający znaczenie dla EOG)

(2010/C 292/01)

W dniu 21 października 2010 r. Komisja podjęła decyzję o niewyrażaniu sprzeciwu wobec powyższej zgłoszonej koncentracji i uznaniu jej za zgodną ze wspólnym rynkiem. Decyzja ta została oparta na art. 6 ust. 1 lit. b) rozporządzenia Rady (WE) nr 139/2004. Pełny tekst decyzji dostępny jest wyłącznie w języku angielskim i zostanie podany do wiadomości publicznej po uprzednim usunięciu ewentualnych informacji stanowiących tajemnicę handlową. Tekst zostanie udostępniony:

— w dziale dotyczącym połączeń przedsiębiorstw na stronie internetowej Komisji poświęconej konkurencji: (http://ec.europa.eu/competition/mergers/cases/). Powyższa strona została wyposażona w różne funkcje pomagające odnaleźć konkretną decyzję w sprawie połączenia, w tym indeksy wyszukiwania według nazwy przedsiębiorstwa, numeru sprawy, daty i sektora,

— w formie elektronicznej na stronie internetowej EUR-Lex jako numerem dokumentu 32010M5919 Strona EUR-Lex zapewnia internetowy dostęp do europejskiego prawa. (http://eur-lex.europa.eu/en/index.htm).

Brak sprzeciwu wobec zgłoszonej koncentracji

(Sprawa COMP/M.5994 – Apotheek Docmorris/K-Mail Order/JV)

(Tekst mający znaczenie dla EOG)

(2010/C 292/02)

W dniu 20 października 2010 r. Komisja podjęła decyzję o niewyrażaniu sprzeciwu wobec powyższej zgłoszonej koncentracji i uznaniu jej za zgodną ze wspólnym rynkiem. Decyzja ta została oparta na art. 6 ust. 1 lit. b) rozporządzenia Rady (WE) nr 139/2004. Pełny tekst decyzji dostępny jest wyłącznie w języku niemieckim i zostanie podany do wiadomości publicznej po uprzednim usunięciu ewentualnych informacji stanowiących tajemnicę handlową. Tekst zostanie udostępniony:

— w dziale dotyczącym połączeń przedsiębiorstw na stronie internetowej Komisji poświęconej konkurencji: (http://ec.europa.eu/competition/mergers/cases/). Powyższa strona została wyposażona w różne funkcje pomagające odnaleźć konkretną decyzję w sprawie połączenia, w tym indeksy wyszukiwania według nazwy przedsiębiorstwa, numeru sprawy, daty i sektora,

— w formie elektronicznej na stronie internetowej EUR-Lex jako numerem dokumentu 32010M5994 Strona EUR-Lex zapewnia internetowy dostęp do europejskiego prawa. (http://eur-lex.europa.eu/en/index.htm).

IV

(Informacje)

INFORMACJE INSTYTUCJI, ORGANÓW I JEDNOSTEK ORGANIZACYJNYCH UNII EUROPEJSKIEJ

KOMISJA EUROPEJSKA

Kursy walutowe euro [1]

27 października 2010 r.

(2010/C 292/03)

1 euro =

	Waluta	Kurs wymiany		Waluta	Kurs wymiany
USD	Dolar amerykański	1,3803	AUD	Dolar australijski	1,4194
JPY	Jen	112,78	CAD	Dolar kanadyjski	1,4210
DKK	Korona duńska	7,4585	HKD	Dolar hong kong	10,7096
GBP	Funt szterling	0,87235	NZD	Dolar nowozelandzki	1,8500
SEK	Korona szwedzka	9,3317	SGD	Dolar singapurski	1,7974
CHF	Frank szwajcarski	1,3639	KRW	Won	1 561,75
ISK	Korona islandzka		ZAR	Rand	9,7120
NOK	Korona norweska	8,1450	CNY	Yuan renminbi	9,2212
BGN	Lew	1,9558	HRK	Kuna chorwacka	7,3452
CZK	Korona czeska	24,663	IDR	Rupia indonezyjska	12 340,46
EEK	Korona estońska	15,6466	MYR	Ringgit malezyjski	4,2960
HUF	Forint węgierski	275,04	PHP	Peso filipińskie	59,646
LTL	Lit litewski	3,4528	RUB	Rubel rosyjski	42,3172
LVL	Łat łotewski	0,7093	THB	Bat tajlandzki	41,402
PLN	Złoty polski	3,9501	BRL	Real	2,3546
RON	Lej rumuński	4,2762	MXN	Peso meksykańskie	17,1847
TRY	Lir turecki	1,9834	INR	Rupia indyjska	61,4720

[1] *Źródło*: referencyjny kurs wymiany walut opublikowany przez ECB.

DECYZJA KOMISJI

z dnia 27 października 2010 r.

w sprawie mianowania członków Komitetu Naukowo-Technicznego i Ekonomicznego ds. Rybołówstwa i utworzenia listy rezerwowej

(2010/C 292/04)

KOMISJA EUROPEJSKA,

uwzględniając Traktat o funkcjonowaniu Unii Europejskiej,

uwzględniając rozporządzenie Rady (WE) nr 2371/2002 z dnia 20 grudnia 2002 r. w sprawie ochrony i zrównoważonej eksploatacji zasobów rybołówstwa w ramach wspólnej polityki rybołówstwa ([1]), w szczególności jego art. 33 ust. 1,

uwzględniając decyzję Komisji 2005/629/WE z dnia 26 sierpnia 2005 r. ustanawiającą Komitet Naukowo-Techniczny i Ekonomiczny ds. Rybołówstwa (STECF) ([2]),

a także mając na uwadze, co następuje:

(1) Trzyletnia Kadencja członków STECF mianowanych przez Komisję w dniu 1 listopada 2007 r. wygasa w dniu 31 października 2010 r.

(2) Na sesji plenarnej STECF należy zatem mianować nowych członków na okres trzech lat od dnia 1 listopada 2010 r.

(3) Należy utworzyć listę rezerwową ważną od dnia 1 listopada 2010 r.

PRZYJMUJE NINIEJSZĄ DECYZJĘ:

Artykuł 1

Mianowanie członków Komitetu Naukowo-Technicznego i Ekonomicznego ds. Rybołówstwa

Zgodnie z przepisami art. 3 ust. 1 oraz art. 6 ust. 1 decyzji 2005/629/WE Komisja mianuje na członków Komitetu Naukowo-Technicznego i Ekonomicznego ds. Rybołówstwa od dnia 1 listopada 2010 r. osoby wymienione na liście zamieszczonej w załączniku 1.

Artykuł 2

Utworzenie listy rezerwowej

Zgodnie z art. 4 ust. 4 decyzji 2005/629/WE Komisja opracowuje listę rezerwową załączoną do niniejszej decyzji, na którą wpisane zostają nazwiska kandydatów kwalifikujących się do zastąpienia członków opuszczających STECF zgodnie z art. 6 ust. 3 wymienionej decyzji.

Sporządzono w Brukseli dnia 27 października 2010 r.

W imieniu Komisji

José Manuel BARROSO

Przewodniczący

([1]) Dz.U. L 358 z 31.12.2002, s. 59.

([2]) Dz.U. L 225 z 31.8.2005, s. 18. Sprostowanie zamieszczone w Dz.U. L 316 z 2.12.2005, s. 23.

ZAŁĄCZNIK 1

Lista naukowców mianowanych jako członkowie STECF

Członek	Instytut
1. ABELLA Alvaro	Agenzia Regionale per la Protezione Ambientale della Toscana — Risorse Idriche, Firenze
2 ANDERSEN Jesper	University of Copenhagen — Institute of Food and Resource Economics (FOI), Copenhagen
3. BAILEY Nicholas	Fisheries Research Services — Marine Laboratory, Aberdeen
4. BERTIGNAC Michel	Ifremer — Département STH, laboratoire de biologie halieutique, Brest
5. CARDINALE Massimiliano	Swedish Board of Fisheries — Institute of Marine Research, Lysekil
6. CASEY John	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
7. CURTIS Hazel	Sea Fish Industry Authority, Edinburgh
8. DASKALOV Georgi	Bulgarian Academy of Sciences — Central Laboratory of General Ecology, Sofia
9. DELANEY Alyne	Aalborg University Research Centre — Innovative Fisheries Management, Hirtshals
10. DI NATALE Antonio	Aquastudio Research Institute, Messina
11. DÖRING Ralf	Federal Research Institute for Rural Areas, Forestry and Fisheries — Institute of Sea Fisheries, Hamburg
12. GARCIA RODRIGUEZ Mariano	Instituto Español de Oceanografía — Departamento de Pesca, Madrid
13. GASCUEL Didier	Agrocampus Ouest — Fisheries and Aquatic Centre, Rennes
14. GRAHAM Norman	Irish Marine Institute — Fisheries Science Service, Galway
15. GUSTAVSSON Tore	Swedish Board of Fisheries, Göteborg
16. JENNINGS Simon	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
17. KENNY Andrew	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
18. KIRKEGAARD Eskild	Technical University of Denmark — National Institute of Aquatic Resources, Charlottenlund
19. KRAAK Sarah	Irish Marine Institute — Fisheries Science Service, Galway
20. KUIKKA Sakari	University of Helsinki — Department of Biosciences, Helsinki
21. MALVAROSA Loretta	Istituto Ricerche Economiche per la Pesca e l'Acquacoltura, Salerno
22. MARTIN Paloma	Consejo Superior de Investigaciones Científicas — Instituto de Ciencias del Mar, Barcelona
23. MOTOVA Arina	Lithuanian Institute of Agrarian Economics, Vilnius
24. MURUA Hilario	AZTI Tecnalia — Unidad de Investigación Marina, Sukarietta

Członek	Instytut
25. NOWAKOWSKI Piotr	West Pomeranian University of Technology — Faculty of Food Science and Fisheries, Department of Fishing Technique, Szczecin
26. PRELLEZO Raúl	AZTI Tecnalia — Unidad de Investigación Marina, Sukarietta
27. SALA Antonello	Consiglio Nazionale della Ricerche – Istituto di Scienze Marine, Ancona
28. SOMARAKIS Stylianos	Hellenic Centre for Marine Research, Heraklion
29. STRANSKY Christoph	Federal Research Institute for Rural Areas, Forestry and Fisheries — Institute of Sea Fisheries, Hamburg
30. THERET François	Ifremer — Laboratoire de technologie des pêches, Lorient
31. ULRICH Clara	Technical University of Denmark — National Institute of Aquatic Resources, Charlottenlund
32. URIARTE Andres	AZTI Tecnalia — Unidad de Investigación Marina, Sukarietta
33. VANHEE Willy	Ministry of the Flemish Community — ILVO, Fishery Department, Oostende
34. VAN OOSTENBRUGGE Hans	Landbouw Economisch Instituut — Fisheries section, Den Haag

ZAŁĄCZNIK 2

Lista naukowców wpisanych na listę rezerwową ekspertów dla STECF

Kandydat	Instytut
1. ACCADIA Paolo	Istituto Ricerche Economiche per la Pesca e l'Acquacoltura, Salerno
2. AGNEW David	Marine Resources Assessment Group, London
3. APPLEGATE Andrew	New England Fishery Management Council, Newburyport
4. ARRIZBALAGA Haritz	AZTI Tecnalia — Unidad de Investigación Marina, Sukarietta
5. BELL Ewen	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
6. BIANCHINI Marco	Consiglio Nazionale della Ricerche — Istituto de Biologia Agroambientale e Forestale, Monterotondo Scalo
7. BUISMAN Erik	Landbouw Economisch Instituut — Fisheries section, Den Haag
8. CAMPOS Aida	Instituto da Investigação das Pescas e do Mar, Lisboa
9. CARBONELL Ana	Instituto Español de Oceanografía — Centro Oceanográfico de Baleares, Palma
10. CARPENTIERI Paolo	Centro Interuniversitario di Biologia Marina, Livorno
11. CATCHPOLE Thomas	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
12. DE OLIVEIRA Jose	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
13. DIMECH Marc	Ministry for Resources and Rural Affairs, Agricultural and Fisheries Regulation Department, Marsaxlokk
14. EBELING Michael	Federal Research Institute for Rural Areas, Forestry and Fisheries — Institute of Sea Fisheries, Hamburg
15. HATCHER Aaron	University of Portsmouth — Centre for the Economics and Management of Aquatic Resources, Department of Economics, Portsmouth
16. JACOME Marine	Fundación Desarrollo Integral del Negro Ecuatoriano, Guayaquil
17. KOUTRAKIS Emmanuil	National Agricultural Research Foundation — Fisheries Research Institute, Kavala
18. KUPSCHUS Sven	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
19. LARGE Philippe	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
20. LESKELÄ Ari	Finnish Game and Fisheries Research Institute, Helsinki
21. LÓPEZ ABBELLÁN Luis	Instituto Español de Oceanografía — Centro Oceanográfico de Canarias, Santa Cruz de Tenerife
22. MARAVELIAS Christos	Hellenic Centre for Marine Research, Institute of Marine Biological Resources, Anavissos Attica
23. MENTE Elena	University of Thessaly — School of Agricultural Sciences, Department of Ichthyology and Aquatic Environment, Volos

Kandydat	Instytut
24. NORD Jenny	Swedish Board of Fisheries — Department of Fisheries Control, Göteborg
25. POLET Hans	Ministry of the Flemish Community — ILVO, Fishery Department, Oostende
26. QUINCOCES ABAD Ignacio	AZTI Tecnalia — Unidad de Investigación Marina, Sukarietta
27. QUIRIJNS Flore	Institute for Marine Resources and Ecosystem Studies, Wageningen
28. RAAKJAER Jesper	Aalborg University Research Centre — Innovative Fisheries Management, Aalborg
29. RADTKE Krysztof	Sea Fisheries Institute, Gdynia
30. RAETZ Hans-Joachim	Federal Research Institute for Rural Areas, Forestry and Fisheries — Institute of Sea Fisheries, Hamburg
31. RAID Tiit	University of Tartu — Estonian Marine Institute, Tartu
32. REEVES Stuart	Centre for Environment, Fisheries and Aquaculture Science, Lowestoft
33. SABATELLA Evelina	Istituto Ricerche Economiche per la Pesca e l'Acquacoltura, Salerno
34. SCARCELLA Giuseppe	Consiglio Nazionale della Ricerche — Istituto di Scienze Marine, Ancona
35. SIMMONDS John	Institute for the Protection and Security of the Citizen, Ispra
36. TSERPES George	Hellenic Centre for Marine Research, Institute of Marine Biological Resources, Heraklion
37. TSIKLIRAS Anthanassios	University of Thessaly — School of Agricultural Sciences, Department of Ichthyology and Aquatic Environment, Volos
38. VALAVANIS Vasilis	Hellenic Centre for Marine Research, Institute of Marine Biological Resources, Heraklion

ZAWIADOMIENIA DOTYCZĄCE EUROPEJSKIEGO OBSZARU GOSPODARCZEGO

URZĄD NADZORU EFTA

Zaproszenie do zgłaszania uwag w sprawie domniemanej pomocy przyznanej przez państwo islandzkie na rzecz funduszy inwestycyjnych i powiązanych przedsiębiorstw zarządzających funduszami, związanych z trzema upadłymi bankami: Glitnir, Kaupthing i Landsbankinn

(2010/C 292/05)

Decyzją nr 338/10/COL z dnia 8 września 2010 r., zamieszczoną w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Urząd Nadzoru EFTA wszczął postępowanie na mocy art. 1 ust. 2 w części I protokołu 3 do Porozumienia pomiędzy państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości. Władze Islandii otrzymały stosowną informację wraz z kopią wyżej wymienionej decyzji.

Urząd Nadzoru EFTA wzywa niniejszym państwa EFTA, państwa członkowskie UE oraz inne zainteresowane strony do zgłaszania uwag w sprawie omawianego środka w terminie jednego miesiąca od daty publikacji niniejszego zawiadomienia na poniższy adres kancelarii w Urzędzie Nadzoru EFTA:

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

Uwagi zostaną przekazane władzom islandzkim. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

STRESZCZENIE

Procedura

Pismem z dnia 8 kwietnia 2009 r. Byr sparisjóður, Rekstrarfélag Byrs, Íslensk verðbréf, Rekstrarfélag íslenskra verðbréfa, MP banki, Mp sjóðir, Sparisjóður Reykjavíkur og nágrennis oraz Rekstrarfélag Spron (zwane dalej łącznie „skarżącymi") złożyły skargę w sprawie domniemanej pomocy państwa udzielonej przy likwidacji funduszy inwestycyjnych powiązanych z trzema upadłymi bankami islandzkimi: Glitnir, Kaupthing i Landsbankinn. Skarżący są przedsiębiorstwami zarządzającymi funduszami zbiorowego inwestowania oraz powiązanymi przedsiębiorstwami finansowymi, które pełnią funkcję depozytariuszy w stosunku do tych funduszy.

Skarżący utrzymują, że jesienią 2008 r., w szczytowym momencie islandzkiego kryzysu finansowego, przedsiębiorstwa zarządzające funduszami, które były ich konkurentami, otrzymały niezgodną z prawem pomoc państwa od władz islandzkich. Miało to rzekomo nastąpić w drodze zakupu aktywów tych funduszy na korzystnych warunkach, co umożliwiło tym przedsiębiorstwom likwidację funduszy i spłacenie inwestorów w czasie, gdy skarżący nie mogli tego dokonać, ponieważ nie było na rynku podmiotów zainteresowanych aktywami znajdującymi się w posiadaniu funduszy.

Fundusze, których dotyczy skarga, były w posiadaniu spółek zależnych trzech upadłych islandzkich banków będących spółkami akcyjnymi (isl. *hf*). Skarżący utrzymują, że władze islandzkie interweniowały na rynku poprzez wywarcie wpływu na decyzje nowo utworzonych po załamaniu finansowym banków (New Glitnir – obecnie Islandsbanki, New Kaupthing – obecnie Arion, oraz (New) Landsbankinn) o zakupie aktywów od tych funduszy po cenie wyższej od ceny rynkowej, co przyniosło korzyści inwestorom funduszy oraz przedsiębiorstwom zarządzającym.

Ocena środka

Władze islandzkie argumentują, że decyzje o zakupie wspomnianych aktywów podjęte w październiku 2008 r. przez trzy nowo powstałe banki były uzasadnione względami handlowymi. Zgromadzone dowody wskazują jednak, że aktywa te zakupiono po cenach wyższych od ich ówczesnej wartości rynkowej. W skład zakupionych aktywów wchodziły obligacje wydane przez upadłe lub upadające przedsiębiorstwa, w związku z czym ich wartość była ograniczona, a ich zakup był obciążony ryzykiem.

Wydaje się, że transakcje można przypisać państwu islandzkiemu, zważywszy na ówczesne okoliczności – każdy z tych banków stanowił własność państwa, a decyzje o zakupie aktywów podejmowały tymczasowe zarządy, powołane przez państwo, zaledwie kilka dni po utworzeniu nowych banków.

Głównymi beneficjentami domniemanej pomocy są islandzkie przedsiębiorstwa i instytucje finansowe, które dokonały inwestycji w te fundusze, oraz przedsiębiorstwa zarządzające funduszami, które mogły uzyskać przewagę konkurencyjną, będąc w stanie zlikwidować fundusze i zminimalizować straty swoich klientów po wydaniu przez Islandzki Urząd Nadzoru Finansowego takiego właśnie zalecenia.

Wniosek

W świetle powyższych rozważań Urząd ma wątpliwości, czy zakup aktywów przez nowo utworzone banki nie wiązał się z pomocą państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG i w związku z tym podjął decyzję o wszczęciu formalnego postępowania wyjaśniającego zgodnie z art. 1 ust. 2 w części I protokołu 3 do porozumienia o nadzorze i Trybunale. Zainteresowane strony zaprasza się do nadsyłania uwag w terminie jednego miesiąca od publikacji niniejszego zawiadomienia w *Dzienniku Urzędowym Unii Europejskiej*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 338/10/COL

of 8 September 2010

to initiate the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement into alleged state aid granted by the Icelandic State to investment funds and associated fund management companies connected to the three failed Icelandic banks Glitnir, Kaupthing and Landsbankinn

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

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

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

Whereas:

I. FACTS

1. Procedure

By letter dated 8 April 2009, Byr sparisjóður, Rekstrarfélag Byrs, Íslensk verðbréf, Rekstrarfélag íslenskra verðbréfa, MP banki, Mp sjóðir, Sparisjóður Reykjavíkur og nágrennis, and Rekstrarfélag Spron (referred to collectively throughout as 'the Complainants') made a complaint against alleged state aid granted in the winding up of investment funds connected to the three failed Icelandic banks Glitnir, Kaupthing and Landsbankinn. The letter was received and registered by the Authority on 17 April 2009 (Event No 515439).

By letter dated 12 May 2009 (Event No 518286), the Authority acknowledged the receipt of the complaint and by letter dated 15 May 2009 (Event No 518114) sent a request for information to the Icelandic authorities. The Icelandic authorities replied by letter dated 26 August 2009, after being granted an extended deadline to reply on two occasions. The letter was received and registered by the Authority on 28 August 2009 (Event No 528492).

By letter dated 29 October 2009 (Event No 534335), the Authority requested additional information from the Icelandic authorities. The Icelandic authorities initially replied to this request by asking for a further extension to the deadline, which was refused by the Authority. The Icelandic authorities subsequently provided additional information by letter dated 7 January 2010 (Event No 542323), on 3 March 2010 (Event No 548874) and on 16 April 2010 (Event No 553782). Further comments were also received from the complainants on 5 March 2010 (Event No 550236), 16 March 2010 (Event No 555011) and 31 March 2010 (Event No 552160).

The case was also subject to discussion between the Icelandic authorities and the Authority in a package meeting held in Reykjavík during the first week of November 2009.

2. **Description of the case**

2.1. *The complaint*

It is alleged that in the autumn of 2008, the Icelandic authorities intervened in the market for investment funds that operated in accordance with Act No 30/2003 on Undertakings for Collective Investment in Transferable Securities ('the UCITS Act'). The complainants are collective investment fund management companies and related financial undertakings that act as depositories for these funds (in total 8 companies). The complainants contend that other, competing, fund management companies and depositories received unlawful state aid from the Icelandic authorities at the height of the Icelandic financial crisis. This is said to have been done through the purchase of those funds' assets on favourable terms, enabling them to wind the funds up and repay investors at a time when the complainants could not as there was no effective market for the assets held by the funds.

The funds subject to the complaint were held by subsidiaries of the three failed Icelandic banks; Glitnir Bank hf, Kaupthing Bank hf and Landsbankinn hf. It is alleged that the Icelandic authorities intervened in the market by influencing decisions of the banks newly created after the financial collapse (Islandsbanki, Arion, and (New) Landsbankinn) to purchase assets from these funds above the market price.

2.2. *Legal and factual background*

2.2.1. The Icelandic UCITS legislation (Act No 30/2003)

The UCITS Act provides that investment funds must be established and operated by independent management companies, which are financial undertakings as defined by the Icelandic Act on Financial Undertakings (Act No 161/2002). Supervision of the funds and deposits of their assets must be undertaken by a separate financial undertaking approved by the Icelandic Financial Supervisory Authority (the 'FME'). Investments subject to the UCITS Act are undertaken through the following structure:

— Depositaries, which administer and ensure safekeeping of financial instruments belonging to the investment funds;

— Management companies, which establish, operate and take decisions on behalf of the investment funds (i.e. on how the funds will invest); and

— the Investment funds themselves, which receive finance from members of the public to be used for collective investments in exchange for unit share certificates that are redeemable at the owner's demand from the fund's assets.

Icelandic legislation on investment funds originated in 1993 and the UCITS Act is based on European Council Directive 85/611/EC on undertakings for collective investment in transferable securities (UCITS) as amended [1]. This Directive forms part of the EEA Agreement [2].

The UCITS Act differentiates between 'UCITS' funds on the one hand, and 'non-UCITS' funds on the other. UCITS funds fulfil all of the criteria set out in the UCITS Directive and can therefore be marketed across the European Economic Area without need for further regulatory consent in individual states. Non-UCITS funds do not fulfil all the conditions of the Directive and must therefore obtain express authority to operate outside Iceland. UCITS funds are required to allow investors to redeem their unit shares at any time while non-UCITS are not under the same obligation. The funds subject to the complaint were in each case non-UCITS funds.

2.2.2. Factual background

In the case of each of the funds subject to the complaint, the depositaries were the three failed Icelandic banks, and the management companies were subsidiaries of the banks (each subsidiary using their parent as the depositary). Large numbers of Icelanders invested their savings in these investment funds. At the end of 2007 the Icelandic pension funds jointly held a quarter of their ISK 1 697 billion worth asset portfolio as unit shares in UCITS and non-UCITS funds [3]; and the value of the UCITS and non-UCITS funds was ISK 682 billion, of which the non-UCITS investment funds accounted for ISK 538 billion. At this time funds affiliated to the three banks held approximately 90 % of the total value invested in Icelandic UCITS and non-UCITS funds [4]. By mid 2009, after the October 2008 financial crisis, the total value of Icelandic UCITS and non-UCITS funds had decreased to approximately ISK 191 billion [5].

The funds subject to the complaint invested mainly in bonds issued by domestic (Icelandic) undertakings (mainly corporations and financial undertakings), and also held a considerable proportion of their assets as deposits in financial institutions.

On 29 September 2008, the Icelandic Government announced plans to rescue Glitnir Bank. This led (among other things) to a run on the investment funds which lasted until the FME decided on Friday 3 October 2008 to suspend redemption of unit shares to protect the interests of the remaining unit shareholders.

On Monday 6 October 2008, the Icelandic Parliament (*Althingi*) passed an Emergency Act (Act No 125/2008 — the 'Emergency Act') giving the FME the power (among other things) to take over Icelandic banks if this proved necessary. Over the following week the three major banks in Iceland collapsed and were brought under state control and ownership. In three decisions taken on the 9th, 14th and 17th of October 2008, the FME restored the banking system by forming new banks and transferring (most) of the domestic assets of each failed bank to corresponding 'New' Glitnir, Kaupthing and Landsbanki [6] banks. The new banks were each also provided with working capital to ensure continued domestic banking operations. Upon their creation the FME appointed temporary boards of directors for each new bank, mostly consisting of civil servants, who were later replaced by permanent appointments made by the Government on 7 November 2008.

On 17 October 2008, the FME issued a recommendation that investment funds should discontinue their operations and liquidate their assets. It advised that all available cash should be paid to the unit shareholders and that assets invested in should be sold gradually and the value paid to unit shareholders until no assets remained in the funds. The liquidation was to be executed in accordance with the principle of equality of unit shareholders.

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[1] Council Directive 85/611/EEC of 20.12.1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) OJ L 375, 31.12.1985, p. 3.
[2] Paragraph 30 of Annex IX to the EEA Agreement.
[3] FME's annual report 2009, published on 26.11.2009, p. 14.
[4] FME's report; 'Heildarniðurstöður ársreikninga fjármálafyrirtækja og verðbréfaö og fjárfestingasjóða fyrir árið 2007', published on 9.9.2008, p. 7.
[5] FME's annual report 2009, published on 26.11.2009, p. 19.
[6] Now called Arion, Islandsbanki and Landsbankinn respectively.

By the end of October 2008, the three management companies subject to the complaint, now owned by the main Icelandic banks in their 'new' form [1], had all wound up their funds and the unit shareholders had received (in the form of deposits in the new banks) between 60 and 85 % (depending on the fund) of the last recorded value of their unit shares. This was achieved by the new banks buying the assets (securities) held by the funds, and as a result of the FME transferring the deposits held by the funds in the collapsed banks to the new banks. Unit shareholders therefore received (in the form of deposits created in the new banks) the full amount of their share of the money held by the investment funds as deposits in the old banks, together with between 61 % and 70 % (depending on the fund) of the book value as at 3 October 2008 of their share of the assets invested in by the funds. The price paid for the assets is claimed to be based on valuations of the assets prepared for the new banks by KPMG and PWC.

The complainants allege that they also approached the government and the new banks asking them to purchase the assets held in their funds. Valuations were prepared by the same independent experts that had estimated the value of the funds connected to the banks, and the assets were offered to the banks on those terms. According to the complainants only one of the banks was willing to discuss a possible purchase, but at a price that was substantially less than the valuation they had obtained and the amount paid for the assets in the fund connected to that bank.

2.3. *The potential state aid measures*

The measures under review are the decisions taken by the boards of directors of the restored main Icelandic banks to acquire the assets held by investment funds subject to the FME's wind up recommendation that were owned by their subsidiary management companies.

2.4. *The recipients of the potential aid*

The first potential recipients of the alleged aid are the fund management companies formerly owned by the three failed Icelandic banks, but now owned by their successor banks. These companies owned the securities that were acquired by the restored banks, and were paid fees for managing them on behalf of investors. However, the fund management companies held these assets on behalf of investors who held unit share certificates, and would ultimately therefore benefit the most. Those who benefit the most, therefore, from the potential aid are undertakings who invested in the funds. Individuals who invested in the funds would also have benefitted, but to the extent that they were not investing as undertakings (i.e. businesses) this would not amount to state aid within the meaning of Article 61(1) of the EEA Agreement.

2.5. *Possible effects of the aid*

The alleged aid has the potential to distort the market for asset management and other investment services to institutional and non-institutional investors. The main effect, however, is that it is likely to have also substantially reduced losses faced by undertakings that had invested in the funds.

3. **Comments of the Icelandic authorities**

The Icelandic authorities deny that the liquidation of the investment funds in question involved state aid. The Icelandic authorities claim that the transactions in question were neither influenced by the state nor funded by state resources, but involved commercial banks acting independently. They also contend that the new deposit accounts created to finance the transactions did not burden the banks themselves because they received assets of the same value as the liabilities created by deposits.

The Icelandic authorities claim that the decisions taken by the boards of directors of the new banks were not imputable to the State. Although it is accepted that the State had some influence over the activities of the banks at the time, the Icelandic authorities deny that they intervened in order to facilitate the liquidation of the investment funds. The Icelandic authorities believe that the measures taken by the banks were taken on the basis of commercial motives only, contending that it was 'unsurprising … that the respective firms took actions to calm the distress of their customers'. The Icelandic authorities are of the opinion that the process of valuing assets transferred from the investment funds seemed to be independent and professional, but acknowledged that this was undertaken 'at a critical point of time in which it must have been difficult to predict the accurate value given the uncertainty of what [the] future might hold for the financial markets'.

[1] The Authority believes that these subsidiary companies were transferred from the old to the new banks as 'domestic assets' under the Emergency Act.

II. **ASSESSMENT**

1. **The presence of state aid**

In order to fall within the scope of the state aid rules of the EEA Agreement, the described measures must constitute state aid as defined by Article 61(1) of the EEA Agreement.

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

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

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

1.2. *Presence of state resources*

The aid measure must be granted by the State or through state resources.

In order to amount to state aid within the meaning of Article 61(1) of the EEA Agreement, the acquisition of the securities held by the investment funds by the new banks must firstly involve the use of state resources, and secondly the use of the resources must be imputable to the State. These are conditions that must both be fulfilled ([1]).

(i) Use of state resources

At the time of acquisition and redemption of the assets, the three banks were all fully owned by the Icelandic State and were under its complete control. According to the Court of Justice of the European Union, the fact that the State is capable of exercising its dominant influence over publicly owned undertakings is normally sufficient to consider their resources as state resources ([2]). It has also been established by the Court that use of state resources in this context covers all of the financial means by which the public authorities may support undertakings ([3]). The Authority believes that this criterion is fulfilled, therefore, given that the new banks were created by and (at the time in question) were fully owned by the Icelandic State.

(ii) Imputable to the State

In order to amount to state aid the use of the state resources must in some way be imputable to the State, meaning that the three new Icelandic banks must have acted on instructions from the State when deciding to acquire the securities. The Icelandic authorities deny any involvement in the decisions taken by the boards of the new banks to acquire assets from the management companies. This is so despite the fact that the acquisitions coincided with, and contributed to, other measures and policies taken by the Government to stabilise the financial system.

Although, the three banks were formed as independent limited liability companies and were not part of the Icelandic State, the Court of Justice held in Stardust Marine ([4]) that:

> '… the mere fact that a public undertaking has been constituted in the form of a capital company under ordinary law cannot, having regard to the autonomy which that legal form is capable of conferring upon it, be regarded as sufficient to exclude the possibility of an aid measure taken by such a company being imputable to the State (Case C-305/89 *Italy* v *Commission* … paragraph 13). The existence of a situation of control and the real possibilities of exercising a dominant influence which that situation involves in practice makes it impossible to exclude from the outset any imputability to the State of a measure taken by such a company'

([1]) Case C-482/99 *France* v *Commission* (Stardust Marine) [2002] ECR I-4397, paragraph 24.
([2]) Case C-482/99 *France* v *Commission* (Stardust Marine), cited above, paragraph 38.
([3]) Case C-83/98 P *France* v *Ladbroke Racing* and *Commission* [2000] ECR I-3271, paragraph 50.
([4]) Case 482/99 *France* v *Commission* (Stardust Marine), cited above, paragraph 57.

While as a general rule imputability cannot be presumed (even if the State is in a position to influence and control the operations of a public undertaking), specific, compelling evidence is not always essential and indeed the Court of Justice will assume in certain circumstances that it will not be available [1]. As the Court stated in Stardust Marine [2]:

> 'it cannot be demanded that it be demonstrated, on the basis of a precise inquiry, that in the particular case the public authorities incited the public undertaking to take the aid measure in question'.

Imputability can, therefore, be inferred from a set of indicators arising from the circumstances of the case, and the context in which the measure was taken. Among the relevant indicators set out by the Court (and by Advocate General Jacobs in his opinion in the Stardust Marine case) were:

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

— 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 [3];

— 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 [4].

From the information available to the Authority, the circumstances suggest that indicators of imputability were present when the decisions were taken. The table below set out a timeline of the major events, which helps illustrate these indicators.

Date	Event
29 September 2008	The Government announces plans to rescue Glitnir Bank (which were never realised)
3 October 2008	The last effective trading day of the investment funds in question
6 October 2008	The Icelandic Parliament passes the Emergency Act
7-9 October 2008	The three main Icelandic banks are taken over by the FME and the Icelandic financial system collapses
9 October 2008	(New) Landsbanki is restored by decision of the FME with a temporary board of directors appointed by the State
14 October 2008	(New) Glitnir is restored by decision of the FME with a temporary board of directors appointed by the State
17 October 2008	(New) Kaupthing is restored by decision of the FME with a temporary board of directors appointed by the State
17 October 2008	The FME issues the recommendation to wind up investment funds

[1] Case 482/99 *France* v *Commission* (Stardust Marine), cited above, paragraph 54. The difficulties of proving collusive behaviour between public authorities and public undertakings would render the state aid rules of the EEA Agreement ineffective by such condition. For this reason the case law of the Court of Justice holds that in the presence of certain indicators, aid measures taken by public undertakings may be inferred as being imputable to the State.

[2] Case C-482/99 *France* v *Commission* (Stardust Marine), cited above, paragraph 53.

[3] AG Jacobs also referred in this context to the scale and nature of the measure.

[4] Case C-482/99 *France* v *Commission* (Stardust Marine), cited above, paragraphs 55-56. See also the opinion of AG Jacobs paragraphs 66-67, where he, inter alia, stated: 'The involvement of the State does not therefore have to go so far as to constitute an explicit instruction. Instead it will in my view be sufficient to establish on the basis of an analysis of the facts and circumstances of the case that the undertaking in question could not take the decision in question "without taking account of the requirements of the public authorities".'.

Date	Event
17-30 October 2008	The new banks (through their temporary boards) decide to acquire assets from the investment funds, paying in total over ISK 80 billion (c. EUR 460 million [1]) for the assets
7 November 2008	The Government appoints permanent boards of directors for the three banks replacing the temporary boards appointed by FME

[1] Based on an exchange rate of ISK 180 to EUR 1.

The first indicator is that at the time of acquisition of the assets, the FME had only very recently seized all managerial and ownership powers over the three main Icelandic banks from their previous shareholders. This gave the FME discretion to appoint caretaker boards that had the power to handle the affairs of the banks in accordance with decisions taken by the FME. The FME also had the power to limit or prohibit the disposal of financial undertakings' capital or assets. When the transactions in question took place in late October 2008 the banks were still under the control of the FME and were run in accordance with Article 5 of the Emergency Act by a temporary board, subject to the FME's managerial supervision as described. The caretaker boards consisted mainly of civil servants from government ministries and other public authorities. It was not until 7 November 2008, that permanent boards of directors were appointed.

As is referred to under section 4.3 below, the Authority also has doubts concerning the extent to which the transactions were exercised on the basis of commercial motives. The first reason for the Authority's doubts is (again) the timing of the transactions — only days after temporary boards were formed. The Authority also questions the scale of the transactions, given the circumstances. Íslandsbanki, Arion and Landsbankinn purchased assets at a price of approximately ISK 12,9 billion (c. EUR 71,6 million), ISK 7,7 billion (c. EUR 42,7 million), and ISK 63 billion (c. EUR 350 million) respectively. While these figures would not be considered to be particularly large under normal circumstances, these were unprecedented times of crisis, and the Authority understands that the new banks had been formed as an emergency measure in order to safeguard basic domestic banking services. The Authority considers it surprising, therefore, that the banks entered into such large and (by the Icelandic authorities' admission) unpredictable and risky transactions days after they were formed. Finally, as referred to in more detail below, the Authority doubts that any reasonable market operator, motivated only by profit, would have purchased the assets; and even if such a market investor could have existed the Authority doubts that such an investor would have been willing to pay the price paid. This suggests, therefore, that the banks would not have been willing to enter into the transactions were it not for the influence of the state.

The Authority also considers it significant that the Icelandic authorities contend that the temporary boards of the banks each, separately, took decisions to invest a total of ISK 80 billion on impaired assets held by the investment funds without consulting the FME. The FME is the (public) body responsible for restoring the banking sector, and as referred to above had (and still has) wide ranging powers in respect of the banks. Considering the size of the investments, their potential impact on the viability of the new banks and the extent of the FME's powers over the banks at the time, the Authority doubts that these decisions could have been taken without the consent of the FME, which would in turn have consulted with the Icelandic Government. Similarly, the Authority considers that the fact that each of the banks took the same decision to purchase the assets of the funds linked to the subsidiaries of their predecessor banks suggests state involvement. This is particularly the case given that this was a highly contentious and prominent issue in Iceland which, by the Icelandic authorities' own admission, was the subject of heated public debate.

The Authority also notes that the Report of the Special Investigation Commission formed to investigate and analyse the processes leading to the collapse of the three main banks in Iceland [1] refers to plans of the Government and the FME to remedy the problems faced by investors in the investment funds. The report also records however that the Minister of Business Affairs at the time states that his Ministry took no measures other than to encourage a resolution of the funds on commercial terms. The former Minister of Finance gave evidence stating that he believed that deciding whether to purchase the funds' assets was a matter for the banks based on their commercial interests [2].

Given the above circumstances, however, the Authority has doubts concerning the position of the Icelandic authorities that the transactions did not involve state resources.

[1] See http://sic.althingi.is/ See Chapter 14.12 of the Report.
[2] Chapter 14.12.2, page 232-233.

1.3. *Favouring certain undertakings or the production of certain goods*

Firstly, for the measure to involve state aid it must confer on the management companies advantages that relieve them of charges that normally should be borne from their budget — such advantages not being obtainable on the open market.

Secondly, for the measure to be state aid it must be selective in that it favours 'certain undertakings or the production of certain goods'.

The existence of an advantage within the meaning of Article 61(1) of the EEA Agreement depends on whether the terms and conditions of the sale of the assets were more favourable than those which would have been acceptable to a market investor at the time of the transaction.

The Icelandic authorities contend that each of the new banks was investing on reasonable commercial terms, and that in consequence, no advantage was gained by the management companies or investors. Further, they claim that the banks did not incur any additional burdens as a result of the transactions on the basis that the value of the deposits issued to the investors should correspond to the real value of the assets acquired by the banks at the time of acquisition.

When the state uses its resources in ways that are compatible with the behaviour of a normal market operator, this does not amount to state aid. The assets acquired were listed bonds issued by Icelandic corporations and financial undertakings. Under normal market conditions these assets could be sold to numerous institutional investors. Under market conditions at the time of the acquisition, however, it would appear that trading had ceased. The Authority understands that there were severe concerns about the viability of the Icelandic economy and companies at this point, which is illustrated by the fact that a significant part of the assets sold were actually bonds issued by companies that were or were about to go into liquidation. The Authority is of the preliminary view, therefore, that valuing such assets at this point would have been a near impossible task. It is perhaps not surprising therefore that independent valuations that the new banks apparently relied upon are, in the Authority's opinion, far from robust. The reports were prepared in haste, are very short and contain a number of disclaimers, most notably stating that they are not intended to be a 'formal due diligence' ([1]) assessment of the value of the funds. The valuations were in the Authority's opinion vague and did not provide specific figures for the value of assets but rather wide-ranging estimates based on worst case and best case scenarios ([2]). The valuations for specific assets in some cases ranged between 0 % of pre-crisis value as a worst case scenario and 100 % as a best case.

The case of Islandsbanki provides an example of why the Authority doubts that the transactions were commercial in nature. The fund bought by Islandsbanki (new Glitnir) from the former subsidiary of its predecessor bank Glitnir, included a large proportion of bonds issued by companies such as the Baugur Group (which in turn held a large proportion of the shares in the Glitnir bank itself), Exista and Milestone which were in serious financial difficulties. The Authority estimates that over 60 % of the fund's book value derived from bonds issued by companies that either were or were shortly to go into liquidation. In the Authority's opinion, therefore, it would not be a case of applying the benefit of hindsight to doubt the commercial accuracy of the value of an investment fund that contained so many assets linked to failed companies.

The Glitnir fund was purchased by Islandsbanki (in October 2008) for ISK 12,9 billion (c. EUR 71,6 million), or 70 % of its former book value. This sum was apparently based on a report prepared for Islandsbanki by KPMG which set out a range of estimated values of between approximately 56 % and 82 % (these figures were later changed, downwards to between 48 % and 78 %, by KPMG but Islandsbanki proceeded regardless on the same terms) ([3]). The latest accounts of Islandsbanki have, however, now made provision for a loss of ISK 11 billion on this transaction, suggesting that the true value of the fund was actually 10 % of the book value (and was potentially less — the final loss is apparently yet to be established). This equates to a loss (so far) of over EUR 60 million.

([1]) Words translated by the Authority, the full Icelandic wording is as follows: 'áreiðanleika könnun'.

([2]) The method used was to estimate the recovery rates of the underlying assets of the funds on a best case-worst case basis on a scale of 0 %, 25 %, 50 %, 75 % and 100 %.

([3]) The Authority has been provided with an email sent by the newly appointed CEO of Islandbanki informing the board of directors that KPMG had amended its value assessment downwards. The CEO nevertheless recommended that the new bank should proceed with the original price despite it being based on a higher valuation.

While smaller in percentage terms, the other banks also made significant losses, most notably (new) Landsbankinn, which purchased the largest of the funds and has so far made accounting provisions for ISK 23 billion of losses (approx EUR 222 million). 47 % (ISK 48 billion) of the nominal value of the fund linked to Landsbankinn was made up of bonds issued by (old) Landsbankinn and Kaupthing, which had both gone into liquidation. KPMG's valuation estimated a 0 % recovery for these bonds but nevertheless the Authority understands that (new) Landsbankinn bought the assets at a price corresponding to 87 % of their book value in the case of the (old) Landsbankinn bonds, and 45 % in the case of Kaupthing ([1]). Similarly Arion (New Kaupthing) appears to have purchased bonds issued by its predecessor bank for 30 % of book value despite KPMG valuing them as being worthless.

Tables setting out the percentage valuations used and price paid in the case of each of the banks are set out in the Annex to this decision. The table below reflects the Authority's understanding of the losses made by new banks when purchasing assets of the investment funds.

Bank	Book value at closure 3 October 2008	Acquisition price in late October 2008	Acquisition price as a % of 3 October 2008 book value	Book value at the end of 2008	Value end 2008 as a % of book value 3 October 2008
Kaupthing/Arion	ISK 11 Billion	ISK 7,7 Billion	70 %	ISK 2,3 Billion	21 %
Glitnir/Íslandsbanki	ISK 18 Billion	ISK 12,9 Billion	71,5 %	ISK 1,9 Billion ([1])	10 %
(New) Landsbankinn	ISK 103 Billion	ISK 63 Billion	61 %	ISK 23 Billion	22 %
Total:	ISK 132 Billion	ISK 83,6 Billion	63,5 %	ISK 27,6 Billion	21 %

([1]) This includes a further loss provision of ISK 416 million made in the financial statement for the first six months of 2009.

As referred to above, the Icelandic authorities have also contended that the actions taken by the banks were not surprising given the public debate about the investment funds' status, and that the rationale of the decisions was economic — a desire to calm their own customers. Again, the Authority doubts that this can be a realistic contention. In circumstances where the financial services sector (and to an extent the wider economy) had effectively ceased to function and where capital controls had been imposed, it is difficult to understand why a newly formed bank would, within days of its formation, enter into a transaction of (in the case of Landsbanki) approximately EUR 350 million on the premise that it feared the reaction of customers if it didn't.

The Authority is also of the preliminary view that the measures taken by the state owned banks were selective because they only allowed specific management companies to sell their assets to a state-backed buyer while their competitors, who also were subject to the windup recommendation by the FME, were unable to do so.

Given the uncertainty caused by the unprecedented circumstances in Iceland, and the experience of the complainants, the Authority doubts that any market investor would have been willing to acquire the assets in question at this time. In the event that a market investor was willing to purchase the assets, the Authority also doubts that it would have been willing to pay the price paid by the Icelandic authorities. On that basis, the actions of the state appear to have favoured certain undertakings.

1.4. *Distortion of competition and affect on trade between Contracting Parties*

The aid measure must distort competition and affect trade between the Contracting Parties to the EEA Agreement. At the level of the fund management companies, the provision of financial services is a highly competitive market across the EEA. Competition is likely to have been severely distorted in this case, given that future investors are likely to favour fund management companies that have previously been supported by the state as opposed to those who were not. The Authority is of the view, therefore, that there is likely to have been both an affect on trade between the Contracting Parties and a distortion of competition. Similarly at the level of the investors, undertakings that received an advantage through these measures are in a better position in comparison to their competitors than would have been the case had the state not intervened. It is also likely that these undertakings are engaged in activities which are tradable across the EEA meaning that these criteria are again likely to have been fulfilled.

([1]) See page 237, Chapter 14 of the Report of the Special Investigation Commission formed to investigate and analyse the processes leading to the collapse of the three main banks in Iceland.

2. **Procedural requirements**

The Icelandic authorities did not notify the alleged intervention to the Authority. The Authority, therefore, takes the preliminary view that the Icelandic authorities did not respect their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. **Compatibility of the aid**

Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation under Article 61(2) or (3) of the EEA Agreement.

It is possible that the measures may qualify as compatible aid to remedy a serious disturbance in the economy of an EFTA State under Article 61(3)(b) given the apparent connection with the financial crisis in Iceland. This is particularly possible in the case of the investors in the fund, especially to the extent that they are institutional investors such as pension funds.

The Icelandic authorities have, however, not argued that the measures should be allowed on that basis nor have they provided information to justify the intervention. In consequence the Authority has been unable to assess whether potential aid could be regarded as compatible with the state aid provisions of the EEA Agreement.

4. **Conclusion**

Based on the information submitted by the Icelandic authorities, the Authority cannot exclude the possibility that the aid measures constitute aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that the measure can be regarded as complying with Article 61(3) (b) or (c) of the EEA Agreement. The Authority has doubts, therefore, that the above measures are compatible with the functioning of the EEA Agreement.

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

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit their comments within one month of the date of receipt of this Decision.

Within one month of receipt of this decision, the Authority also requests that the Icelandic authorities provide all documents, information and data needed for assessment of the compatibility of the rescue aid.

The Authority also requests that the Icelandic authorities forward a copy of this decision to the potential aid recipients of the aid immediately.

Finally, the Authority reminds the Icelandic authorities that, according to the provisions of Protocol 3 to the Surveillance and Court Agreement, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered with interest, unless this recovery would be contrary to the general principle of law,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the alleged state aid granted by the Icelandic State to investment funds and associated fund management companies connected to the three failed Icelandic banks Glitnir, Kaupthing and Landsbanki Íslands.

Article 2

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

Article 3

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

Article 4

This Decision is addressed to the Republic of Iceland.

Article 5

Only the English language version of this decision is authentic.

Done at Brussels, on 8 September 2010.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sverrir Haukur GUNNLAUGSSON
College Member

ANNEX

Assessment and acquisition of bonds in funds affiliated to Landsbankinn [1]

	KPMG's assessment of likely recovery [2]		
Name of issuing company	Negative scenario (%)	Positive scenario (%)	Assets sold to NBI [3] (%)
Atorka	50	100	100
Avion	25	75	0
Baugur (unsecured)	0	50	0
Baugur (secured) [4]	50	100	80
Egla	0	25	0
Eimskip	25	50	70
Erlend bankabréf	0	0	100
Exista	0	50	50
FL/Stoðir [5]	50	100	100
Glitnir	0	0	30
Kaupthing bonds	0	0	45

Assessment and acquisition of bonds in funds affiliated to Landsbankinn [1]			
	KPMG's assessment of likely recovery [2]		
Name of issuing company	Negative scenario (%)	Positive scenario (%)	Assets sold to NBI [3] (%)
Landsbankinn bonds	0	0	87
Marel	75	100	100
Mosaic	50	100	100
Nýsir	0	0	0
Samson [6]	0	25	0
Sparisjóður Bolungavíkur	0	0	100

[1] Source: Landsvaki (Fund management company of Landsbankinn) — Table 26, Page 237, Chapter 14 of the Special Investigation Committee's report.
[2] KPMG's report to Landsbankinn, dated 22.10.2008.
[3] Presentation given by the asset management division of Landsbankinn to its Board, dated 22.10.2008.
[4] Prioritised collateral in BG Holding.
[5] Collateral in subordinated bonds issued by Landic Property (190 % collateral coverage).
[6] Collateral in shares in Landsbankinn.

KPMG's assessment of Glitnir's Fund 9 recovery value [1]		
Name of issuing company	Negative scenario (%)	Positive scenario (%)
Fjárfestingafélagið Atorka hf	50	100
Atorka	50	100
Bakkavör hf	75	100
Baugur Group hf (secured) [2]	50	75
BG Capital ehf	0	0
Clearwater Fine Foods Inc	75	100
Eignarhaldsfélagið Fasteign hf (secured) [3]	75	100
Eik Fasteignafélag	75	100
Exista hf	0	50
Eyrir Fjárfestingarfélag ehf	75	100
Hf Eimskipafélag Íslands	50	75
Icelandair Group hf	75	100
Invik og Co AB	75	100
Eignarhaldsfélagið Kirkjuhvoll ehf	50	75
Marel Food Systems hf	75	100
Milestone ehf	50	100
N1 hf	75	100

KPMG's assessment of Glitnir's Fund 9 recovery value (1)		
Name of issuing company	Negative scenario (%)	Positive scenario (%)
Norðurturninn ehf	50	100
Nýsir hf	25	75
Samson eignarhaldsfélag ehf	0	25
Sparisjóður Hafnarfjarðar	75	100
Straumborg ehf	75	100
Fasteignafél.Stoðir hf	50	75
Straumur Fjárfestingabanki hf	75	100
Kaupþing Bank hf	0	25

(1) Source: Glitnir Funds — Table 25, Page 235, Chapter 14 of the Special Investigation Committee's report. The Authority does not have information on how the value of individual bonds were assessed when the board of Islandsbanki decided to acquire them. The Authority assumes that the price was based on the average of the negative and positive scenarios assessed by KPMG. The price paid was 70 % of the book value which is close to the median of 69 % in KPMG's original estimate of a value of between 56 % and 82 % of book value. KPMG however subsequently revised the assessment due to concerns (among other things) over the value of Kaupthing bonds, and lowered the valuation to a range between 48 % and 78 %, of which 63 % is the median. The new bank nevertheless proceeded with the transaction at a price of 70 % of book value.
(2) Collateral in BG Holding.
(3) Collateral in ISK 750 million of cash according to Glitnir.

Assessments of investment funds affiliated to Kaupthing (1)				
	KPMG's assessment of likely recovery (2)		PWC's assessment of likely recovery (3)	
Name of issuing company	Negative scenario (%)	Positive scenario (%)	Negative scenario (%)	Positive scenario (%)
Atorka	0	0	100	100
Alfesca	75	100	100	100
Bakkavör	75	100	80	90
Baugur (unsecured)	0	0	60	80
Egla	0	0	0	0
Eik fasteignafélag	0	0	100	100
Eimskip	0	0	0	0
Exista	0	50	40	60
Exista (subordinated)	0	0	30	50
Glitnir	0	0	0	10
Hagar	75	100	90	100
HB Grandi	0	0	100	100
Hekla	0	0	100	100

Assessments of investment funds affiliated to Kaupthing [1]				
	KPMG's assessment of likely recovery [2]		PWC's assessment of likely recovery [3]	
Name of issuing company	Negative scenario (%)	Positive scenario (%)	Negative scenario (%)	Positive scenario (%)
Hótel Saga	0	0	100	100
Icebank	0	0	0	5
Kaupthing bonds	0	0	10	20
Kaupthing (subordinated)	0	0	0	0
Kögun	0	0	65	85
Landic Property	50	75	65	75
Landsbankinn bonds	0	0	0	10
Marel	75	100	90	100
Mosaic	50	100	0	0
Samson (unsecured)	0	0	0	0
Síminn	0	0	100	100
Sorpa	0	0	100	100
Sparisjóður Hafnarfjarðar	100	100	75	95
Sparisjóður Hafnarfjarðar (subordinated)	0	0	65	85
Sparisjóður Keflavíkur (subordinated)	0	0	25	45
SPRON (subordinated)	0	25	30	50
Straumur	0	0	70	90
Vinnslustöðin	75	100	100	100

[1] Source: Rekstrarfélag Kaupþings banka (Fund management company of Kaupthing) — Table 27, Page 239, Chapter 14 of the Special Investigation Committee's report. It again seems that the weighted median of KPMG's negative and positive scenario valuations was the basis for the acquisition price of the bonds. However, bonds issued by Kaupthing were bought for 30 % of book value despite being assessed as being worthless by KPMG.

[2] KPMG's assessment for Kaupthing funds assessing likely recovery of assets as percentage of the last recorded value on 3.10.2008.

[3] PWC's assessment for Kaupthing funds assessing likely recovery of assets as percentage of the last recorded value on 3.10.2008, presented on 7.11.2008.

V

(Ogłoszenia)

POSTĘPOWANIA ADMINISTRACYJNE

KOMISJA EUROPEJSKA

ZAPROSZENIE DO SKŁADANIA WNIOSKÓW – DG ENTR ENT-SAT-10/5010

Program nagród GALILEO-EGNOS

(2010/C 292/06)

1. **Cele i opis**

Współfinansowanie mechanizmu przyznawania nagród za innowacyjne wnioski oparte na technologii GNSS (globalny system nawigacji satelitarnej) UE (EGNOS i GALILEO), które będą promowały innowacje przemysłowe i stosowanie wysokich technologii w całej Europie.

Rodzaje działań objętych wsparciem:

— organizacja dorocznego konkursu, w ramach którego przyznawane będą nagrody, oraz zarządzanie nim (publikacja zaproszeń do przedstawiania pomysłów, na podstawie których składane będą wnioski przedsiębiorców; ocena pomysłów przez ekspertów; przyznawanie nagród),

— zbieranie funduszy uzupełniających dotację Komisji,

— upowszechnianie „skierowane do wewnątrz", tj. zwiększanie liczby innowacyjnych pomysłów zgłaszanych każdego roku do konkursu o nagrody GALILEO,

— upowszechnianie „skierowane na zewnątrz", tj. nadanie projektowi odpowiedniej rangi w światowej branży GNSS w celu wypromowania konkursu, jego uczestników i laureatów,

— monitorowanie laureatów i uczestników,

— koordynacja z programami wspierania innowacji i instrumentami finansowania na późniejszym etapie, tak by nagroda GALILEO stanowiła pośredni krok na drodze do uzyskania finansowania lub innego wsparcia dla innowacji/przedsiębiorczości.

2. **Kwalifikujący się wnioskodawcy**

Wnioski powinny być składane przez organizacje prywatne lub publiczne mające swoją siedzibę w jednym z następujących państw:

— 27 państw Unii Europejskiej,

— państwa EOG: Islandia, Liechtenstein, Norwegia.

3. **Budżet i czas trwania projektu**

Całkowity budżet przeznaczony na współfinansowanie projektów wynosi 900 000 EUR.

Planowany termin rozpoczęcia działania: maj 2011 r.

Maksymalny czas trwania projektu wynosi 36 miesięcy.

4. **Termin składania wniosków**

Wnioski należy przesłać do Komisji najpóźniej do dnia 15 stycznia 2011 r.

5. **Dodatkowe informacje**

Pełny tekst zaproszenia do składania wniosków oraz formularze zgłoszeniowe dostępne są na stronie internetowej: http://ec.europa.eu/enterprise/funding/index.htm

Wnioski muszą spełniać wymogi określone w pełnym tekście zaproszenia i zostać złożone na formularzu przeznaczonym do tego celu.

ZAPROSZENIE DO SKŁADANIA WNIOSKÓW – DG ENTR ENT-SAT-10/5011

Wsparcie dla działań międzynarodowych: Ośrodki informacyjne, szkoleniowe i wsparcia

(2010/C 292/07)

1. **Cele i opis**

Zwrócenie uwagi na europejskie działania w zakresie nawigacji satelitarnej, monitorowanie lokalnych inicjatyw dotyczących nawigacji satelitarnej oraz wspomaganie branży nawigacji satelitarnej w UE poprzez wspieranie działań oraz ośrodków informacyjnych, szkoleniowych i wsparcia w Izraelu i Ameryce Łacińskiej.

Rodzaje działań objętych wsparciem:

— opracowanie i wdrożenie strategii komunikacyjnej, której celem będzie informowanie o wynikach europejskich programów GNSS (globalny system nawigacji satelitarnej) i promowanie ich w powyższych państwach trzecich oraz wspieranie współpracy,

— utworzenie i prowadzenie serwisu internetowego na okres trwania projektu,

— promocja europejskich produktów poprzez dystrybucję na imprezach branżowych stosownej dokumentacji przygotowywanej przez przedsiębiorstwa z UE,

— śledzenie rozwoju technologicznego, a w szczególności publikacja comiesięcznych sprawozdań poświęconych monitorowaniu rozwoju systemów nawigacji satelitarnej w docelowym państwie/regionie,

— zwiększanie świadomości zagadnienia poprzez organizację seminariów, podczas których prezentowane będą możliwości współpracy z wykorzystaniem różnych dostępnych instrumentów (siódmy program ramowy w zakresie badań naukowych),

— zapewnianie zachęt dla europejskich MŚP zainteresowanych prowadzeniem działalności eksportowej we współpracy, przykładowo, z Europejskim Bankiem Inwestycyjnym,

— ułatwianie nawiązywania kontaktów z organizacjami z docelowego państwa/regionu.

2. **Kwalifikujący się wnioskodawcy**

Wnioskodawcami powinny być organizacje prywatne lub publiczne mające swoją siedzibę w docelowym państwie/regionie (Izrael, Ameryka Łacińska) lub mające siedzibę w Unii Europejskiej, ale działające w docelowym państwie/regionie.

Wnioskodawcy muszą mieć swoją siedzibę w jednym z następujących państw:

— 27 państw Unii Europejskiej,

— inne państwa: Brazylia, Argentyna, Chile i Izrael.

3. **Budżet i czas trwania projektu**

Całkowity budżet przeznaczony na współfinansowanie projektów wynosi 250 000 EUR. Pomoc finansowa Komisji nie może przekroczyć 70 % całkowitych kosztów kwalifikowalnych.

W ramach niniejszego zaproszenia współfinansowanie powinno zostać przyznane dwóm projektom.

Maksymalna kwota dotacji wyniesie 250 000 EUR. Szczegółowe informacje znajdują się w rozdziale 4 zaproszenia do składania wniosków.

Rozpoczęcie działań planowane jest na maj 2011 r.

Maksymalny czas trwania projektów wynosi 24 miesięcy.

4. **Termin składania wniosków**

Wnioski należy przesłać do Komisji najpóźniej do dnia 15 stycznia 2011 r.

5. **Dodatkowe informacje**

Pełny tekst zaproszenia do składania wniosków oraz formularze zgłoszeniowe dostępne są na stronie internetowej: http://ec.europa.eu/enterprise/funding/index.htm

Wnioski muszą spełniać wymogi określone w pełnym tekście zaproszenia i zostać złożone na formularzu przeznaczonym do tego celu.

EUROPEJSKIE URZĄD DOBORU KADR (EPSO)

OGŁOSZENIE O KONKURSACH OTWARTYCH

(2010/C 292/08)

Europejski Urząd Doboru Kadr (EPSO) organizuje następujące konkursy otwarte:

— EPSO/AD/204/10 – Zarządzanie funduszami strukturalnymi/Funduszem Spójności – Administratorzy (AD 6)

— EPSO/AD/205/10 – Podatki/Cła – Administratorzy (AD 7)

— EPSO/AST/102/10 – Usługi audiowizualne/Projektowanie stron internetowych – Asystenci (AST 3)

— EPSO/AST/103/10 – Zarządzanie archiwami i dokumentacją – Asystenci (AST 3)

— EPSO/AST/104/10 – Inspekcje jądrowe – Asystenci (AST 4)

Ogłoszenia o konkursie zostaną opublikowane w Dzienniku Urzędowym C 292 A z dnia 28 października 2010 r.

Szczegółowe informacje można znaleźć na stronie internetowej EPSO http://eu-careers.eu

POSTĘPOWANIA SĄDOWE

TRYBUNAŁ EFTA

Skarga wniesiona w dniu 10 sierpnia 2010 r. przez Urząd Nadzoru EFTA przeciwko Liechtensteinowi

(Sprawa E-11/10)

(2010/C 292/09)

Skarga przeciwko Liechtensteinowi została wniesiona do Trybunału EFTA w dniu 10 sierpnia 2010 r. przez Urząd Nadzoru EFTA, reprezentowany przez Xaviera Lewisa i Markusa Schneidera, działających w charakterze pełnomocników Urzędu Nadzoru EFTA, rue Belliard/Belliardstraat 35, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË.

Urząd Nadzoru EFTA występuje do Trybunału EFTA o:

1) orzeczenie, że nie przyjmując w wyznaczonym terminie środków niezbędnych do pełnego wykonania aktu przywołanego w pkt 21b załącznika XVIII do Porozumienia o Europejskim Obszarze Gospodarczym (dyrektywa 2006/54/WE Parlamentu Europejskiego i Rady z dnia 5 lipca 2006 r. w sprawie wprowadzenia w życie zasady równości szans oraz równego traktowania kobiet i mężczyzn w dziedzinie zatrudnienia i pracy (wersja przekształcona)), dostosowanego do Porozumienia EOG Protokołem 1 do tego Porozumienia, lub nie powiadamiając Urzędu w wyznaczonym terminie o przyjęciu takich środków, Księstwo Liechtensteinu uchybiło zobowiązaniom ciążącym na nim na mocy art. 33 wspomnianej dyrektywy oraz art. 7 Porozumienia EOG;

2) obciążenie Księstwa Liechtensteinu kosztami postępowania.

Kontekst prawny i faktyczny oraz zarzuty prawne przytoczone na poparcie skargi:

— skarga dotyczy niepełnego zastosowania się przez Liechtenstein do przepisów dyrektywy 2006/54/WE Parlamentu Europejskiego i Rady z dnia 5 lipca 2006 r. w sprawie wprowadzenia w życie zasady równości szans oraz równego traktowania kobiet i mężczyzn w dziedzinie zatrudnienia i pracy (wersja przekształcona),

— w skardze stwierdza się, że zgodnie z art. 33 dyrektywy w powiązaniu z decyzją Wspólnego Komitetu EOG nr 33/2008, Liechtenstein był zobowiązany do podjęcia środków niezbędnych do osiągnięcia pełnej zgodności z dyrektywą nie później niż w terminie do dnia 1 lutego 2009 r. i do przekazania Urzędowi Nadzoru EFTA tekstu tych środków,

— Urząd Nadzoru EFTA twierdzi, że nie otrzymał informacji o pełnym wdrożeniu aktu do prawa krajowego od rządu Liechtensteinu oraz że nie posiada żadnych innych informacji pozwalających to stwierdzić,

— rząd Liechtensteinu nie zakwestionował opóźnienia w pełnym wdrożeniu aktu.

POSTĘPOWANIA ZWIĄZANE Z REALIZACJĄ POLITYKI KONKURENCJI

KOMISJA EUROPEJSKA

Zgłoszenie zamiaru koncentracji

(Sprawa COMP/M.6012 – CD&R/CVC/Univar)

(Tekst mający znaczenie dla EOG)

(2010/C 292/10)

1. W dniu 19 października 2010 r., zgodnie z art. 4 rozporządzenia Rady (WE) nr 139/2004 ([1]), Komisja otrzymała zgłoszenie planowanej koncentracji, w wyniku której przedsiębiorstwo Clayton, Dubilier & Rice, LLC, („CD&R", Stany Zjednoczone) poprzez jeden ze swoich funduszy oraz fundusze inwestycyjne, którym doradza przedsiębiorstwo CVC Capital Partners SICAV-FIS SA oraz jego spółki zależne i podmioty powiązane („CVC", Stany Zjednoczone), przejmują w rozumieniu art. 3 ust. 1 lit. b) rozporządzenia w sprawie kontroli łączenia przedsiębiorstw wspólną kontrolę nad przedsiębiorstwem Univar Inc. („Univar", Stany Zjednoczone) w drodze zakupu akcji.

2. Przedmiotem działalności gospodarczej przedsiębiorstw biorących udział w koncentracji jest:

— w przypadku przedsiębiorstwa CD&R: grupa inwestycyjna *private equity* rozpoczynająca, strukturyzująca i przeprowadzająca jako główny inwestor kapitałowy MBO (ang. *management buyout*), strategiczne mniejszościowe inwestycje kapitałowe oraz inne inwestycje,

— w przypadku przedsiębiorstwa CVC: grupa inwestycyjna *private equity* świadcząca doradztwo inwestycyjne na rzecz funduszy inwestycyjnych i/lub zarządzająca w ich imieniu inwestycjami w przedsiębiorstwa prowadzące działalność w wielu sektorach, w tym w sektorze chemicznym, infrastruktury publicznej, produkcji, sprzedaży detalicznej i dystrybucji,

— w przypadku przedsiębiorstwa Univar: dystrybucja produktów chemicznych.

3. Po wstępnej analizie Komisja uznała, że zgłoszona koncentracja może wchodzić w zakres rozporządzenia WE w sprawie kontroli łączenia przedsiębiorstw. Jednocześnie Komisja zastrzega sobie prawo do podjęcia ostatecznej decyzji w tej kwestii.

4. Komisja zwraca się do zainteresowanych osób trzecich o zgłaszanie ewentualnych uwag na temat planowanej koncentracji.

Komisja musi otrzymać takie uwagi w nieprzekraczalnym terminie dziesięciu dni od daty niniejszej publikacji. Można je przesyłać do Komisji faksem (+32 22964301), pocztą elektroniczną na adres: COMP-MERGER-REGISTRY@ec.europa.eu lub listownie, podając numer referencyjny: COMP/M.6012 – CD&R/CVC/Univar, na poniższy adres Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej:

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

([1]) Dz.U. L 24 z 29.1.2004, s. 1 („rozporządzenie WE w sprawie kontroli łączenia przedsiębiorstw").

INNE AKTY

RADA

Ogłoszenie skierowane do osób i podmiotów, do których mają zastosowanie art. 19 ust. 1 lit. b) i art. 20 ust. 1 lit. b) decyzji Rady 2010/413/WPZiB (załącznik II) oraz art. 16 ust. 2 rozporządzenia Rady (UE) nr 961/2010 (załącznik VIII)

(2010/C 292/11)

RADA UNII EUROPEJSKIEJ

Poniższa informacja skierowana jest do osób i podmiotów wymienionych w załączniku II do decyzji Rady 2010/413/WPZiB z dnia 26 lipca 2010 r. [1], zmienionej decyzją Rady 2010/644/WPZiB [2], oraz w załączniku VIII do rozporządzenia Rady (UE) nr 961/2010 [3].

Po dokonaniu przeglądu wykazów osób i podmiotów, do których mają zastosowanie odpowiednio art. 19 ust. 1 lit. b) i art. 20 ust. 1 lit. b) decyzji 2010/413/WPZiB oraz art. 16 ust. 2 rozporządzenia (UE) nr 961/2010 w sprawie środków ograniczających wobec Iranu, Rada Unii Europejskiej stwierdziła, że osoby i podmioty wymienione w wyżej wymienionych załącznikach powinny nadal podlegać środkom ograniczającym przewidzianym w ww. decyzji Rady i rozporządzeniu Rady.

Zwraca się uwagę zainteresowanych osób i podmiotów na możliwość złożenia wniosku do właściwych organów w odpowiednim państwie członkowskim lub w odpowiednich państwach członkowskich, wskazanych na stronach internetowych wymienionych w załączniku V do wspomnianego rozporządzenia, po to by otrzymać zezwolenie na użycie zamrożonych środków finansowych w celu zaspokojenia podstawowych potrzeb lub dokonania określonych płatności (por. art. 17, 18 i 19 rozporządzenia).

Zwraca się także uwagę zainteresowanych osób i podmiotów na możliwość zaskarżenia decyzji Rady do Sądu Unii Europejskiej, zgodnie z warunkami określonymi w art. 275 akapit drugi i art. 263 akapity czwarty i szósty Traktatu o funkcjonowaniu Unii Europejskiej.

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[1] Dz.U. L 195 z 27.7.2010, s. 39.
[2] Dz.U. L 281 z 27.10.2010, s. 81.
[3] Dz.U. L 281 z 27.10.2010, s. 1.

KOMISJA EUROPEJSKA

POMOC PAŃSTWA – REPUBLIKA WŁOSKA

Pomoc państwa C 20/10 (ex N 536/08 i ex NN 32/10)

SOGAS – Società per la gestione dell'aeroporto dello Stretto

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 TFUE

(Tekst mający znaczenie dla EOG)

(2010/C 292/12)

Pismem z dnia 20 lipca 2010 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Republikę Włoską o swojej decyzji w sprawie wszczęcia postępowania określonego w art. 108 ust. 2 TFUE dotyczącego wyżej wspomnianych środków pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat środka pomocy, w odniesieniu do którego Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i następującego po nim pisma. Uwagi należy kierować do Kancelarii ds. Pomocy Państwa w Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej na następujący adres lub numer faksu:

European Commission
Directorate-General for Competition
State aid Greffe
Office: J-70, 3/225
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Faks +32 22961242

Uwagi te zostaną przekazane Republice Włoskiej. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

PROCEDURA

Dnia 27 października 2008 r. władze włoskie zgłosiły Komisji zamiar przyznania przez region Kalabria pomocy mającej na celu pokrycie strat finansowych spółki SOGAS SpA – Società per la Gestione dell'Aeroporto dello Stretto (dalej „SOGAS"), będącej operatorem portu lotniczego Reggio Calabria.

OPIS ŚRODKA

Z informacji przedstawionych przez władze włoskie wynika, że w czerwcu 2005 i 2006 r. akcjonariusze SOGAS podjęli decyzję o dofinansowaniu spółki (wł. *versamento a fondo perduto*) w celu pokrycia strat poniesionych przez nią w dwóch poprzednich latach, a dofinansowanie to miało formę dotacji w wysokości proporcjonalnej do ich udziału w spółce w czasie podejmowania decyzji. W tym czasie region Kalabria był właścicielem 50 % kapitału, natomiast właścicielami pozostałych akcji były: gmina Reggio Calabria, prowincja Reggio Calabria, prowincja Mesyna, gmina Mesyna, Izba Handlowa w Reggio Calabria oraz Izba Handlowa w Mesynie.

Środek zgłoszony przez władze włoskie odnosi się wyłącznie do wkładu regionu w wysokości 1 824 964 EUR.

Z informacji, którymi dysponuje Komisja, wynika, że prowincja Reggio Calabria, gmina Mesyna, gmina Reggio Calabria oraz Izba Handlowa w Mesynie już przekazały odpowiednie wkłady na rzecz SOGAS.

W grudniu 2007 r., po kolejnych stratach poniesionych w 2006 r., akcjonariusze SOGAS podjęli decyzję o przekształceniu kapitałów rezerwowych spółki w kapitał własny, a następnie o zmniejszeniu kapitału własnego w celu pokrycia pozostałych strat. Kapitał własny, który pozostał, był natomiast poniżej poziomu wymaganego od operatorów portów lotniczych na podstawie przepisów włoskiego prawa.

W związku z tym akcjonariusze SOGAS zatwierdzili dokapitalizowanie spółki kwotą 2 742 919 EUR w celu przywrócenia kapitału własnego do poziomu wymaganego przepisami włoskiego prawa.

Dokapitalizowania spółki dokonano poprzez zamianę obligacji już subskrybowanych przez niektórych akcjonariuszy SOGAS Region Kalabria nie należał do grona akcjonariuszy, będących w posiadaniu tych obligacji zamiennych. Wskutek tego udział regionu Kalabria w spółce zmalał z 50 % do 6,74 %.

OCENA ŚRODKA

Komisja uważa, że zgłoszona pomoc stanowi pomoc państwa. Komisja ma także wątpliwości co do tego, czy wkłady wniesione wcześniej do spółki przez akcjonariuszy SOGAS na zasadzie proporcjonalnej i późniejsze dokapitalizowanie spółki nie stanowiły pomocy państwa.

Komisja uważa, że zgodność zgłoszonego środka ze wspólnym rynkiem należy ocenić na podstawie art. 107 ust. 3 lit. a) TFUE oraz Wytycznych w sprawie krajowej pomocy regionalnej na lata 2007–2013 (dalej „Wytyczne w sprawie pomocy regionalnej").

Wytyczne w sprawie pomocy regionalnej przewidują, że w niektórych przypadkach ograniczenia strukturalne danego regionu mogą być na tyle poważne, że możliwe jest udzielenie regionalnej pomocy operacyjnej w celu pobudzenia procesu rozwoju regionalnego. W szczególności takiej pomocy można udzielić w regionach kwalifikujących się do odstępstwa przewidzianego w art. 107 ust. 3 lit. a), o ile: (i) jest to uzasadnione ze względu na wkład pomocy w rozwój regionalny oraz jej charakter; (ii) poziom pomocy jest proporcjonalny do ograniczeń, które ma ona złagodzić; (iii) pomoc jest udzielana w odniesieniu do z góry określonej grupy kosztów kwalifikowalnych i ograniczona do pewnej części tych kosztów a także; (iv) ma charakter tymczasowy i z czasem ulega zmniejszeniu.

Na obecnym etapie Komisja przyjmuje wstępną opinię, że pomocy nie można uznać za uzasadnioną ze względu na jej wkład w rozwój regionalny.

Ponadto pomoc jest przeznaczona na pokrycie kosztów, których charakter nie został wcześniej określony, i nie istnieje ograniczenie do określonego procentu tych kosztów.

Zatem obecnie Komisja ma wątpliwości, czy środek zgłoszony przez władze włoskie, jest zgodny z wymogami wytycznych w sprawie pomocy regionalnej.

TEKST PISMA

«La Commissione desidera informare l'Italia che, dopo aver esaminato le informazioni fornite dalle Vostre autorità sulla misura succitata, ha deciso di avviare un procedimento ai sensi dell'articolo 108, paragrafo 2, del TFUE [1].

1. **PROCEDIMENTO**

(1) Mediante notifica elettronica del 27 ottobre 2008, le autorità italiane hanno notificato alla Commissione l'intenzione della Regione Calabria di concedere aiuti a copertura delle perdite finanziarie di SOGAS SpA — Società per la Gestione dell'Aeroporto dello Stretto (di seguito "SOGAS"), l'impresa che gestisce l'aeroporto di Reggio Calabria. La notifica è stata protocollata con il numero N 536/08.

(2) Tuttavia, poiché la Commissione nutre dubbi in merito al fatto che il contributo statale sia stato realizzato prima che la Commissione potesse prendere posizione in merito alla sua compatibilità con il mercato interno, e poiché la Commissione, nel corso dell'esame preliminare, ha constatato l'esistenza di altre misure di sostegno a favore dello stesso beneficiario che sembrano costituire aiuti di Stato già concessi, la misura è stata dunque registrata come aiuto non notificato con il numero NN 32/10.

(3) La Commissione ha richiesto ulteriori informazioni sulla misura notificata con lettere del 27 novembre 2008 e del 23 febbraio 2009, a cui l'Italia ha risposto il 9 gennaio 2009 e il 26 marzo 2009. La Commissione ha chiesto ulteriori chiarimenti il 19 maggio 2009 ed ha inviato un sollecito alle autorità italiane il 18 settembre 2009. Il 9 ottobre 2009 le autorità italiane hanno trasmesso le informazioni richieste. Il 28 ottobre 2009 la Commissione ha informato le autorità italiane del fatto che erano necessarie informazioni aggiuntive, richiesta alla quale la Commissione non ha finora ricevuto una risposta formale.

2. **DESCRIZIONE DELLA MISURA**

2.1. **Aeroporto di Reggio Calabria**

(4) L'aeroporto di Reggio Calabria è uno dei tre aeroporti della regione Calabria, situata all'estremità meridionale della penisola italiana.

(5) Il traffico presso tale aeroporto è stato inferiore a 600 000 passeggeri e a 350 tonnellate di merci nel 2007 e nel 2008. Esso rientra pertanto tra i piccoli aeroporti regionali (categoria D) ai sensi degli orientamenti comunitari concernenti il finanziamento degli aeroporti e gli aiuti pubblici di avviamento concessi alle compagnie aeree operanti su aeroporti regionali [2] (di seguito "gli orientamenti 2005").

2.2. **Beneficiario**

(6) Il beneficiario delle misure è la società di gestione dell'Aeroporto di Reggio Calabria, SOGAS SpA.

(7) SOGAS è una società di capitali in base al diritto italiano, costituita nel marzo 1981. Il capitale sociale è interamente detenuto da enti pubblici. Secondo quanto dichiarato dalle autorità italiane, dall'inizio del 2009 i soci sono: Provincia di Reggio Calabria (ca. 69 %), Comune di Reggio Calabria (ca. 23,7 %), Regione Calabria (ca. 6,7 %) e Camera di Commercio di Reggio Calabria (ca. 0,44 %).

[1] A decorrere dal 1º dicembre 2009, gli articoli 87 e 88 del trattato CE diventano, rispettivamente, gli articoli 107 e 108 del TFUE, ma non cambiano nella sostanza. Ai fini della presente decisione, i riferimenti agli articoli 107 e 108 del TFUE si intendono fatti, ove opportuno, agli articoli 87 e 88 del trattato CE.

[2] GU C 312 del 9.12.2005 pag 1 (punti 53-63).

(8) Nel luglio 2007 è stata avviata una privatizzazione parziale di SOGAS In base alle informazioni trasmesse dalle autorità italiane, la procedura avrebbe dovuto concludersi nel 2009.

(9) Le autorità italiane hanno confermato che SOGAS non è gravata da oneri di servizio pubblico.

2.3. **Descrizione dettagliata delle misure**

(10) La misura notificata dalla Regione Calabria consiste in un contributo regionale pari a 1 824 964 EUR a copertura delle perdite subite da SOGAS nel 2004 e nel 2005.

(11) Secondo le informazioni fornite dalle autorità italiane, nel giugno 2005 e 2006, i soci hanno deciso di ripianare le perdite subite dall'impresa (rispettivamente, 1 392 900 EUR e 2 257 028 EUR) nei due anni precedenti mediante versamento a fondo perduto delle somme equivalenti alla loro quota di partecipazione all'impresa al momento della decisione. All'epoca la Regione Calabria deteneva il 50 % del capitale, mentre il resto delle azioni erano detenute dal Comune di Reggio Calabria, dalla Provincia di Reggio Calabria, dalla Provincia di Messina, dal Comune di Messina, dalla Camera di Commercio di Reggio Calabria e dalla Camera di Commercio di Messina.

(12) In base alle informazioni di cui dispone la Commissione, la Provincia di Reggio Calabria, il Comune di Messina, il Comune di Reggio Calabria e la Camera di Commercio di Messina hanno già concesso i rispettivi contributi a SOGAS.

(13) Nel dicembre 2007, dopo aver registrato ulteriori perdite pari a 6 018 982 EUR per il 2006, gli azionisti di SOGAS hanno deciso di convertire le riserve della società in capitale proprio e la contestuale riduzione del capitale sociale per coprire le rimanenti perdite. Il capitale sociale così determinato risultava inferiore al minimo previsto dalla normativa italiana in materia di società di gestione degli scali aeroportuali. Gli azionisti di SOGAS hanno pertanto deliberato di aumentare il capitale sociale di 2 742 919 EUR per ripristinare il livello minimo di capitale sociale previsto dalla legge italiana.

(14) L'aumento di capitale è stato realizzato mediante la conversione in azioni di obbligazioni in precedenza sottoscritte da alcuni degli azionisti di SOGAS, per un totale di 2 742 919 EUR. Poiché la Regione Calabria non faceva parte degli azionisti che detenevano tali obbligazioni convertibili, la sua partecipazione al capitale della società è scesa dal 50 % al 6,74 %.

(15) In seguito, come illustrato al punto 7 di cui sopra, dall'inizio del 2009 gli azionisti di SOGAS sono i seguenti: Provincia di Reggio Calabria (69 %), Comune di Reggio Calabria (23,7 %), Regione Calabria (6,7 %) e Camera di Commercio di Reggio Calabria (0,44 %).

(16) Le autorità italiane hanno ripetutamente garantito alla Commissione che la Regione Calabria non attuerà la misura in assenza di una decisione della Commissione che ne valuti la compatibilità con il mercato interno. SOGAS è tuttavia ricorsa in giudizio dinanzi al Tribunale di Reggio Calabria contro la decisione della Regione di non concedere il contributo prima della decisione della Commissione. Il Tribunale si è espresso a favore dell'impresa e l'opposizione della Regione è stata disattesa nel maggio 2009.

(17) Pur riconoscendo la competenza della Commissione a decidere in merito alla compatibilità con il mercato interno delle misure di aiuto, il giudice italiano ha tuttavia ritenuto che rientrasse nelle competenze dei giudici nazionali decidere se una misura di aiuto costituisca o meno aiuto di Stato. Il Tribunale di Reggio Calabria ha dunque ritenuto che, nel caso di specie, il finanziamento pubblico non dovesse essere considerato aiuto di Stato nella misura in cui la misura non è atta ad incidere sulla concorrenza o sugli scambi tra gli Stati membri. Il suddetto giudice ha inoltre ritenuto che il principio dell'investitore operante in economia di mercato fosse soddisfatto nel caso di specie nella misura in cui, a prescindere dalle perdite subite nel 2004 e nel 2005, esistevano prospettive di redditività a lungo termine.

(18) La Regione ha successivamente presentato un ulteriore reclamo eccependo la natura di aiuto di Stato della misura e sostenendo che, in quanto tale, detta misura non dovrebbe dunque essere attuata prima che la Commissione abbia adottato una decisione di autorizzazione.

(19) Nel dicembre 2009 le autorità regionali hanno informato la Commissione che l'ultimo reclamo era stato rigettato e che non era possibile compiere alcun altro passo procedurale per opporsi alla concessione del contributo pubblico a SOGAS. In questa fase, la Commissione non è stata informata se la misura sia stata in effetti già attuata.

2.4. **Autorità che concede l'aiuto**

(20) La Regione Calabria è l'autorità che concede l'aiuto per quanto riguarda la misura notificata. Tuttavia, come già chiarito sopra, risulterebbe che anche gli altri azionisti pubblici, ossia la Provincia di Reggio Calabria, il Comune di Messina, il Comune di Reggio Calabria e la Camera di Commercio di Messina hanno concesso a SOGAS fondi pubblici mediante contributi pro quota destinati a coprire le perdite subite nel 2004 e nel 2005, nonché sottoscrivendo obbligazioni convertibili e convertendole successivamente in capitale sociale nel dicembre 2007.

2.5. **Bilancio**

(21) La dotazione complessiva della misura notificata è di 1 824 964 EUR. Inoltre, come già sottolineato, le perdite rimanenti, pari a 1 824 964 EUR, sono state coperte dagli altri azionisti pubblici.

(22) Il conferimento di capitale di 2 742 919 EUR è stato effettuato successivamente.

2.6. **Forma dell'aiuto**

(23) Il finanziamento pubblico viene concesso alla società di gestione dell'aeroporto a titolo di sovvenzione diretta.

3. **VALUTAZIONE DELLA MISURA**

3.1. **Base giuridica di valutazione**

(24) Ai sensi dell'articolo 107, paragrafo 1, del TFUE sono incompatibili con il mercato comune, nella misura in cui incidano sugli scambi tra Stati membri, gli aiuti concessi dagli Stati, ovvero mediante risorse statali, sotto qualsiasi forma che, favorendo talune imprese o talune produzioni, falsino o minaccino di falsare la concorrenza.

(25) I criteri fissati all'articolo 107, paragrafo 1, sono cumulativi. Pertanto, per stabilire se le misure notificate costituiscano aiuti di Stato ai sensi dell'articolo 107, paragrafo 1, del TFUE, si deve accertare la presenza di tutte le condizioni suindicate. In particolare il sostegno finanziario:

a) è concesso dallo Stato, ovvero mediante risorse statali;

b) favorisce talune imprese o talune produzioni;

c) falsa o minaccia di falsare la concorrenza;

d) incide sugli scambi fra Stati membri.

3.2. **Esistenza di un aiuto**

3.2.1. *Risorse statali e imputabilità*

(26) È considerato aiuto di Stato qualsiasi vantaggio diretto o indiretto, finanziato con risorse pubbliche e concesso direttamente dallo Stato o da organismi intermedi che agiscano nell'esercizio delle competenze conferite loro dallo Stato. Di conseguenza, questo si applica anche tutti gli aiuti attribuiti da enti regionali o locali degli Stati membri, indipendentemente dal loro statuto e dalla loro denominazione ([1]).

(27) La Commissione nota che la misura notificata consiste in un trasferimento di fondi da una serie di autorità regionali e locali, ossia Regione Calabria, Provincia di Reggio Calabria, Comune di Messina e Comune di Reggio Calabria, a SOGAS. I trasferimenti sono stati decisi dalle relative autorità. La misura riguarda pertanto risorse statali ed è imputabile allo Stato.

(28) Per quanto riguarda la Camera di Commercio di Messina, la Commissione rileva che in Italia le camere di commercio sono considerate enti locali autonomi di diritto pubblico a norma della legge n. 580/93. Pertanto, le loro risorse sono risorse dello Stato. Riguardo all'imputabilità delle decisioni della Camera di Commercio di Messina allo Stato italiano, la Commissione nota, in questa fase, che alla Camera di Commercio sono affidate determinate funzioni pubbliche, il che sembra indicare prima facie che le sue decisioni sono imputabili all'Italia.

3.2.2. *Vantaggio economico selettivo*

(29) Nel caso in esame il finanziamento pubblico è selettivo in quanto si rivolge a una sola impresa, nella fattispecie SOGAS. In questo caso particolare, esso copre perdite subite dalla società nello svolgimento della sua attività ordinaria.

(30) Per stabilire se le risorse statali concesse al gestore dell'aeroporto gli conferiscono un vantaggio economico, la Commissione deve valutare se il principio dell'investitore operante in economia di mercato è soddisfatto in questo caso. La Corte ha chiarito che è opportuno determinare "se, in circostanze analoghe, un socio privato, basandosi sulle prevedibili possibilità di redditività, astrazion fatta da qualsiasi considerazione di carattere sociale, di politica regionale e settoriale, avrebbe effettuato un conferimento di capitale del genere" ([2]).

(31) Nel caso di specie, la Commissione deve valutare la probabilità che l'investimento statale sia finanziariamente proficuo, nel qual caso il finanziamento pubblico in questione non costituirebbe aiuto di Stato.

(32) In primo luogo, va notato che la Regione non ha indicato alcun elemento per dimostrare che il proprio comportamento potrebbe essere comparabile a quello di un investitore privato operante in un'economia di mercato. La Commissione non dispone inoltre di elementi a conferma di una simile ipotesi.

(33) In questa fase non vi è alcuna indicazione del fatto che il principio dell'investitore privato sarebbe applicabile nel caso di specie. Risulta che un investitore privato razionale non investirebbe in un'impresa che ha subito perdite significative negli ultimi anni, in particolare in assenza di un piano di ristrutturazione redditizio o di strategie di investimento proficue. La Commissione ritiene pertanto, in via preliminare, che la misura in questione conceda un vantaggio economico al gestore dell'aeroporto.

(34) Analogamente, la Commissione si chiede se i contributi concessi pro quota da altri azionisti per coprire le perdite subite nel 2004 e nel 2005 non concedano al gestore dell'aeroporto un vantaggio selettivo.

([1]) Sentenza della Corte del 14 ottobre 1987 nella causa 248/84, *Repubblica Federale di Germania/Commissione delle Comunità europee*, Racc. 1987, pag. 04013.

([2]) Cause riunite T-129/95, T-2/96 e T-97/96, *Neue Maxhütte Stahlwerke e Lech-Stahlwerke/Commissione*, Racc. 1999, II-17, punto 120.

(35) Inoltre, la Commissione esprime dubbi sul fatto che il conferimento di capitale deciso dagli azionisti di SOGAS nel dicembre 2007 sia stato effettuato a condizioni comparabili a quelle di un investitore privato operante in un'economia di mercato. Anche tale conferimento di capitale potrebbe concedere un vantaggio selettivo a SOGAS.

3.2.3. *Distorsione della concorrenza e incidenza sugli scambi tra Stati membri*

(36) Per quanto riguarda la distorsione della concorrenza, la Commissione ritiene che gli aiuti di Stato a favore di una società di gestione aeroportuale possano falsare la concorrenza sia al livello degli aeroporti che a quello delle linee aeree.

(37) Per quanto riguarda gli aeroporti, la Commissione nota che i passeggeri che utilizzano l'aeroporto dello Stretto possono, in funzione del loro luogo di residenza, utilizzare alternativamente gli aeroporti di Catania, Lamezia Terme e Crotone. Se, come nel caso di specie, uno di questi aeroporti riceve un contributo finanziario, questo può permettergli in primo luogo di restare sul mercato o di applicare tasse aeroportuali inferiori ai suoi costi e dunque al di sotto del prezzo di mercato. La Commissione conclude pertanto che le misure sono potenzialmente atte a falsare la concorrenza al livello degli aeroporti.

(38) Per quanto riguarda le linee aeree, la Commissione nota che il contributo finanziario per un aeroporto, come nel caso in esame, può essere trasferito alle linee aeree sotto forma di tasse di atterraggio più basse. Questo può a sua volta falsare la concorrenza tra linee aeree che operano su aeroporti situati nello stesso bacino di utenza. La Commissione conclude pertanto che le misure sono potenzialmente atte a falsare la concorrenza al livello delle compagnie aeree.

(39) Riguardo all'incidenza sugli scambi tra gli Stati membri, la Commissione ricorda la sentenza della Corte nella causa *Altmark* [1], secondo la quale non è affatto escluso che una sovvenzione pubblica concessa a un'impresa attiva solo nella gestione di servizi di trasporto locale o regionale e non di servizi di trasporto al di fuori del suo Stato d'origine possa, tuttavia, incidere sugli scambi tra Stati membri, in quanto, quando uno Stato membro concede una sovvenzione pubblica a un'impresa, la fornitura di servizi di trasporto da parte della suddetta impresa può risultarne invariata o incrementata, con la conseguenza che le possibilità delle imprese aventi sede in altri Stati membri di fornire i loro servizi di trasporto sul mercato di tale Stato membro ne risultano diminuite. La Corte sottolinea inoltre che non esiste una soglia o una percentuale al di sotto della quale si possa ritenere che gli scambi fra Stati membri non siano stati pregiudicati. L'entità relativamente esigua di un aiuto o le dimensioni relativamente modeste dell'impresa beneficiaria non escludono a priori l'eventualità che vengano influenzati gli scambi tra Stati membri.

(40) La Commissione nota innanzi tutto che il mercato per la gestione aeroportuale è un mercato aperto alla concorrenza, nel quale opera una serie di imprese private e pubbliche in tutta l'Unione, compresi i piccoli aeroporti regionali. Questo aspetto è confermato anche dal fatto che l'Italia prevede apparentemente di privatizzare la società di gestione dell'aeroporto dello Stretto.

(41) Nel caso di specie, SOGAS non opera al di fuori dell'Italia. Tuttavia, mantenendo in attività SOGAS, le imprese che operano nella gestione di aeroporti site in altri Stati membri hanno minori occasioni di fornire i loro servizi in Italia. Pertanto, gli scambi tra Stati membri sono pregiudicati al livello degli aeroporti.

(42) Gli scambi tra gli Stati membri sono inoltre pregiudicati al livello delle linee aeree. La Commissione osserva in questo contesto che il bacino di utenza dell'aeroporto è costituito principalmente dalla Calabria e dalla zona di Messina e rappresenta circa un milione di abitanti. L'aeroporto offre soprattutto destinazioni nazionali. In particolare, su 491 302 passeggeri registrati nel 2008, il 93,5 % ha viaggiato su rotte nazionali. Tuttavia, erano interessate anche 2 rotte internazionali (Parigi e Malta). Alla luce della giurisprudenza *Altmark*, questo è di per sé sufficiente a stabilire che vi è un'incidenza sugli scambi, in quanto non esiste una soglia o una percentuale al di sotto della quale gli scambi fra Stati membri non vengono pregiudicati.

(43) Sulla base di queste considerazioni, la Commissione conclude che le misure falsano la concorrenza e incidono sugli scambi tra Stati membri.

(44) Di conseguenza, la Commissione ritiene, in questa fase, che la misura notificata contenga elementi di aiuto di Stato. La Commissione esprime inoltre dubbi riguardo alla presenza di aiuto nei contributi precedentemente concessi pro quota da altri azionisti di SOGAS e nel successivo conferimento di capitale.

3.3. **Compatibilità dell'aiuto**

3.3.1. *Base giuridica*

(45) Come già specificato, la Commissione prende nota del fatto che le autorità italiane hanno confermato che SOGAS non è gravata da oneri di servizio pubblico nell'interesse generale.

(46) La Commissione rileva inoltre che le autorità italiane hanno precisato che la misura notificata non si riferisce ad alcun investimento specifico dell'aeroporto. La compatibilità della misura non può pertanto essere valutata in base ai criteri previsti dagli orientamenti comunitari concernenti il finanziamento degli aeroporti e gli aiuti pubblici di avviamento concessi alle compagnie aeree operanti su aeroporti regionali [2] (di seguito "gli orientamenti 2005").

[1] Cfr. la causa C-280/2000, *Altmark Trans e Regierungspräsidium Magdeburg*, Racc. 2003, pag. I-7747, punti 77-82.

[2] GU C 312 del 9.12.2005, pag. 1 (punti 53-63).

(47) La Commissione sottolinea inoltre che le autorità italiane hanno sostenuto che SOGAS sarebbe un'impresa in difficoltà ai sensi degli orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà (di seguito "gli orientamenti sugli aiuti al salvataggio e alla ristrutturazione") ([1]). L'Italia, tuttavia, ha specificato anche che la misura notificata non faceva parte di un piano di ristrutturazione e che non esisteva in effetti alcun piano di questo tipo relativamente a SOGAS. In questa fase la Commissione ritiene pertanto che gli orientamenti sugli aiuti al salvataggio e alla ristrutturazione non si applichino nel caso di specie per l'analisi della compatibilità della misura notificata.

(48) Gli orientamenti in materia di aiuti di Stato a finalità regionale 2007-2013 (di seguito "gli orientamenti sugli aiuti a finalità regionale") ([2]) forniscono il quadro per la valutazione degli aiuti concessi in base all'articolo 107, paragrafo 3, lettere a) e c), del TFUE, volti a promuovere lo sviluppo economico di talune regioni svantaggiate all'interno dell'Unione europea. L'articolo 107, paragrafo 3, lettera a), stabilisce infatti che possono essere considerati compatibili con il mercato comune "gli aiuti destinati a favorire lo sviluppo economico delle regioni ove il tenore di vita sia anormalmente basso, oppure si abbia una grave forma di sottoccupazione" (di seguito "gli aiuti a finalità regionale").

(49) In base alla "carta degli aiuti di Stato a finalità regionale" ([3]), la Calabria può essere considerata una regione ove il tenore di vita è anormalmente basso, o ove si ha una grave forma di sottoccupazione.

(50) Di conseguenza, in questa fase la Commissione ritiene che la compatibilità delle misure notificate potrebbe essere valutata in base all'articolo 107, paragrafo 3, lettera a), del TFUE e degli orientamenti sugli aiuti a finalità regionale.

3.3.2. *Valutazione della compatibilità*

(51) Gli orientamenti sugli aiuti a finalità regionale prevedono che, in alcuni casi, gli svantaggi strutturali di una regione possono essere così gravi da consentire la concessione di aiuti a finalità regionale al funzionamento onde innescare un processo di sviluppo regionale. In particolare, aiuti di questo genere possono essere concessi in regioni ammissibili a beneficiare della deroga di cui all'articolo 107, paragrafo 3, lettera a), purché i) siano giustificati in funzione del loro contributo allo sviluppo regionale e della loro natura, ii) il loro livello sia proporzionale agli svantaggi che intendono compensare, iii) siano concessi relativamente ad una serie predefinita di spese o costi ammissibili e iv) siano temporanei e ridotti nel tempo.

(52) La compatibilità degli aiuti deve pertanto essere valutata alla luce dei succitati criteri.

Contributo allo sviluppo regionale e proporzionalità della misura (punto 76 degli orientamenti sugli aiuti a finalità regionale)

(53) La Calabria è una delle regioni più svantaggiate d'Italia: il PIL pro capite corrisponde al 64,5 % della media nazionale.

(54) Secondo quanto dichiarato dalle autorità italiane, l'indice di infrastrutturazione della Calabria è pari soltanto al 76 % dell'indice medio a livello nazionale. La scarsa accessibilità e l'insufficiente offerta di mobilità per le merci costituiscono attualmente criticità per la regione, essenzialmente a causa della mancanza di adeguate infrastrutture.

(55) Le autorità italiane affermano che la misura notificata costituisce parte di un progetto più ampio di potenziamento della rete dei trasporti in Calabria. L'attuazione della misura in questione consentirebbe a SOGAS di migliorare le infrastrutture ed i servizi offerti dall'aeroporto di Reggio Calabria, nell'ambito di una strategia regionale volta a migliorare la rete dei trasporti e a garantire il potenziamento dell'accesso alla Calabria.

(56) La Commissione ha riconosciuto l'importanza del miglioramento dell'accessibilità, della connettività e dello sviluppo regionale attraverso lo sviluppo di infrastrutture aeree sicure e redditizie.

(57) Nel piano d'azione per migliorare le capacità degli aeroporti del 2007 ([4]), la Commissione sottolinea l'importanza degli aeroporti regionali per lo sviluppo di una rete di trasporti aerei europei integrati ([5]). Il piano d'azione riconosce inoltre la necessità di sbloccare le capacità latenti che esistono negli aeroporti regionali, a condizione che gli Stati membri rispettino le norme in materia di aiuti di Stato.

(58) L'aiuto in questione non è tuttavia volto al sostegno di una nuova infrastruttura in un aeroporto regionale né all'utilizzo più efficiente di un'infrastruttura esistente, ma è diretto soltanto a sollevare l'impresa da costi che essa dovrebbe di norma sostenere. In questa fase la Commissione ritiene che il finanziamento pubblico non possa essere considerato direttamente collegato all'obiettivo del miglioramento della connettività regionale. Di conseguenza, la Commissione ritiene che non sia possibile considerare l'aiuto giustificato in termini di contributo allo sviluppo regionale.

(59) Sulla base di queste considerazioni, la Commissione ritiene, in questa fase, che la misura notificata non possa essere considerata proporzionale all'obiettivo del miglioramento della rete di trasporto e dell'accessibilità della regione. La Commissione nota che le stesse considerazioni sono applicabili in merito ai contributi degli altri azionisti e al conferimento di capitale descritti sopra ai punti 12-14.

([1]) GU C 244 dell'1.10.2004, pag. 2.
([2]) GU C 54 del 4.3.2006, pag. 13.
([3]) GU C 90 dell'11.4.2008, pag. 4, Orientamenti in materia di aiuti di Stato a finalità regionale 2007-2013 — Carta degli aiuti di Stato a finalità regionale: Italia.
([4]) Comunicazione della Commissione al Consiglio, al Parlamento europeo, al Comitato economico e sociale europeo e al Comitato delle regioni — Un piano d'azione per migliorare le capacità, l'efficienza e la sicurezza degli aeroporti in Europa, COM(2006) 819 definitivo del 24 gennaio 2007.
([5]) Punto 12 ibidem.

Serie predefinita di costi ammissibili e limitazione ad una determinata percentuale di detti costi (punto 77 degli orientamenti sugli aiuti a finalità regionale)

(60) In base al punto 77 degli orientamenti sugli aiuti a finalità regionale, gli aiuti al funzionamento dovrebbero essere concessi, in linea di principio, solo relativamente ad una serie predefinita di spese o costi ammissibili ed essere limitati ad una determinata percentuale di detti costi.

(61) La Commissione nota che gli aiuti sono volti a coprire le perdite sostenute negli esercizi finanziari 2004 e 2005. Tali perdite, per loro stessa natura, non erano predefinite.

(62) La Commissione rileva inoltre che la misura di aiuto riguarda la totalità del contributo della Regione, in qualità di azionista della società, a copertura delle perdite subite dal gestore dell'aeroporto nel 2004 e nel 2005.

(63) La Commissione nutre pertanto dubbi in merito al fatto che l'aiuto notificato soddisfi la condizione prevista al punto 77 degli orientamenti sugli aiuti a finalità regionale. La medesima considerazione si applica alle misure di aiuto supplementari illustrate sopra al punto 59.

Aiuti temporanei e ridotti nel tempo (punto 79 degli orientamenti sugli aiuti a finalità regionale)

(64) La Commissione ritiene che, relativamente alla misura notificata, l'aiuto sia temporaneo e ridotto nel tempo, poiché consiste in un contributo una tantum a copertura di perdite subite negli esercizi finanziari 2004 e 2005.

(65) Tuttavia, come illustrato sopra, in questa fase la Commissione non può escludere il carattere di aiuto dei contributi concessi in precedenza da altri azionisti di SOGAS e del successivo conferimento di capitale. Nella misura in cui tali misure sono considerate aiuto, la Commissione esprime dubbi in merito al carattere temporaneo del aiuto.

(66) In questa fase la Commissione ritiene dunque che questa condizione non risulti soddisfatta nel caso di specie.

3.3.3. *Conclusione*

(67) In considerazione di quanto sopra esposto, la Commissione nutre dubbi in merito al fatto che la misura notificata dalle autorità italiane soddisfi le condizioni previste negli orientamenti sugli aiuti a finalità regionale.

(68) Inoltre, in base al punto 9 degli orientamenti sugli aiuti a finalità regionale, possono essere concessi unicamente aiuti ad imprese in difficoltà quali definite dagli orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà a norma di detti orientamenti; la Commissione ritiene che le relative condizioni non siano soddisfatte nel caso di specie.

(69) Come illustrato sopra al punto 47, le autorità italiane non hanno fornito elementi dettagliati a dimostrazione del fatto che le condizioni degli orientamenti sugli aiuti al salvataggio e alla ristrutturazione (in particolare il punto 10 di tali orientamenti) siano rispettate nel caso in esame. In base a tali presupposti, in questa fase sussistono dubbi sul rispetto della condizione di cui al punto 9 degli orientamenti sugli aiuti a finalità regionale.

(70) Alla luce di quanto sopra esposto, la Commissione nutre dubbi sul fatto che gli aiuti notificati dalle autorità italiane e volti a coprire le perdite sostenute da SOGAS negli esercizi finanziari 2004 e 2005 possano essere considerati compatibili con il mercato interno in quanto destinati a favorire lo sviluppo economico delle regioni ove il tenore di vita sia anormalmente basso, oppure si abbia una grave forma di sottoccupazione, ai sensi dell'articolo 107, paragrafo 3, lettera a), del TFUE.

(71) Inoltre, la Commissione si chiede se i contributi concessi pro quota da altri azionisti per coprire le perdite subite nel 2004 e nel 2005 non configurino aiuti a favore di SOGAS. La Commissione non può altresì escludere il carattere di aiuto del conferimento di capitale deciso dagli azionisti SOGAS nel dicembre 2007. In questa fase la Commissione ritiene che anche il conferimento di capitale potrebbe configurare aiuti di Stato a favore di SOGAS.

(72) Come precisato sopra ai punti 16-19, è stato fatto più volte ricorso al giudice nazionale contro la decisione della Regione di non concedere il contributo prima dell'autorizzazione dalla Commissione.

(73) La Commissione ritiene che, data la supremazia del diritto UE sul diritto nazionale, nella misura in cui la notifica non è stata ritirata e il presente procedimento è pendente, l'Italia ha l'obbligo di conformarsi alla cosiddetta clausola di *standstill* di cui all'articolo 108, paragrafo 3, del TFUE. La posizione adottata dal giudice nazionale dovrebbe pertanto essere disattesa e le autorità italiane non dovrebbero dare esecuzione alla misura notificata fintantoché sarà pendente il presente procedimento, in virtù della primazia dell'obbligo di *standstill* di cui all'articolo 108, paragrafo 3, del TFUE.

4. **DECISIONE**

(74) La Commissione, ai sensi della procedura di cui all'articolo 108, paragrafo 2, del TFUE, invita la Repubblica italiana a presentare le proprie osservazioni e a fornire tutte le informazioni utili ai fini della valutazione della misura entro un mese dalla data di ricezione della presente. La Commissione invita l'Italia a trasmettere immediatamente copia della presente lettera ai potenziali beneficiari dell'aiuto.

(75) La Commissione invita le autorità italiane a presentare osservazioni e a fornire quanto segue:

— tutte le informazioni necessarie affinché la Commissione possa svolgere una valutazione approfondita della compatibilità della misura notificata con il mercato interno, in particolare: dettagli sull'attuazione della misura, base giuridica per la valutazione della compatibilità, informazioni dettagliate per comprovare l'effetto di incentivazione dell'aiuto e dimostrare la compatibilità dell'aiuto notificato con il mercato interno,

— informazioni dettagliate in merito ai contributi concessi da altri azionisti per coprire perdite sostenute nel 2004 e 2005, nonché al conferimento di capitale di 2 742 918 EUR deciso nel dicembre 2007, in particolare in merito alla qualifica della misura come aiuto di Stato e alla sua compatibilità con il mercato interno,

— informazioni in merito allo stato della procedura di privatizzazione parziale della società di gestione dell'aeroporto.

(76) La Commissione richiama l'attenzione delle autorità italiane sul fatto che l'articolo 108, paragrafo 3, del TFUE ha effetto sospensivo e che l'articolo 14 del regolamento (CE) n. 659/1999 del Consiglio stabilisce che ogni aiuto illegale può formare oggetto di recupero presso il beneficiario.

(77) Con la presente la Commissione comunica alla Repubblica italiana che intende informare i terzi interessati attraverso la pubblicazione della presente lettera e di una sintesi della stessa nella *Gazzetta ufficiale dell'Unione europea*. La Commissione informerà inoltre le parti interessate degli Stati EFTA firmatari dell'accordo SEE, pubblicando una comunicazione nel supplemento SEE della *Gazzetta ufficiale dell'Unione europea*, e informerà l'Autorità di vigilanza EFTA inviandole copia della presente. Le parti interessate saranno invitate a presentare osservazioni entro un mese dalla data della suddetta pubblicazione.»

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([1]) Tekst mający znaczenie dla EOG

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