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(Nadaljevanje na naslednji strani)

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II

(Sporočila)

SPOROČILA INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Poziv k predložitvi pripomb v zvezi z osnutkom Uredbe Komisije o uporabi členov 107 in 108 Pogodbe o delovanju Evropske unije pri pomoči *de minimis*

(2013/C 229/01)

Zainteresirane strani lahko predložijo svoje pripombe v roku enega meseca od dneva objave tega osnutka Uredbe na naslednji naslov:

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

E-naslov: stateaidgreffe@ec.europa.eu

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OSNUTEK UREDBA KOMISIJE (EU) št. …/…

z dne 17. julija 2013

o uporabi členov 107 in 108 Pogodbe o delovanju Evropske unije pri pomoči *de minimis*

(Besedilo velja za EGP)

(2013/C 229/02)

EVROPSKA KOMISIJA JE –

ob upoštevanju Pogodbe o delovanju Evropske unije, zlasti člena 108(4) Pogodbe,

ob upoštevanju Uredbe Sveta (ES) št. 994/98 z dne 7. maja 1998 o uporabi členov 92 in 93 Pogodbe o ustanovitvi Evropske skupnosti za določene vrste horizontalne državne pomoči [1],

po objavi osnutka te uredbe [2],

po posvetovanju s Svetovalnim odborom za državno pomoč,

ob upoštevanju naslednjega:

(1) Dodeljevanje državnih sredstev, ki izpolnjuje merila iz člena 107(1) Pogodbe o delovanju Evropske unije (v nadaljnjem besedilu: Pogodba), pomeni državno pomoč, ki jo je treba priglasiti Komisiji v skladu s členom 108(3) Pogodbe. Vendar lahko v skladu s členom 109 Pogodbe Svet določi vrste pomoči, ki so izvzete iz te zahteve po priglasitvi. Komisija lahko v skladu s členom 108(4)

[1] UL L 142, 14.5.1998, str. 1.
[2] UL C 229, 8.8.2013, str. 1.

Pogodbe sprejme uredbe glede te vrste državnih pomoči. Na podlagi Uredbe (ES) št. 994/98 je Svet v skladu s členom 109 Pogodbe sklenil, da pomoči *de minimis* lahko tvorijo takšno vrsto pomoči. Na tej podlagi se šteje, da pomoč *de minimis*, odobrena istemu podjetju v določenem časovnem obdobju, ki ne presega določenega zneska, ne izpolnjuje vseh meril iz člena 107(1) Pogodbe in zato ni predmet priglasitve.

(2) Komisija je v številnih sklepih pojasnila pojem pomoči v smislu člena 107(1) Pogodbe. Komisija je tudi razložila svojo politiko v zvezi z zgornjo mejo pomoči *de minimis*, pod katero se lahko šteje, da se člen 107(1) Pogodbe ne uporablja, najprej v svojem obvestilu o pravilu *de minimis* za državno pomoč [1] in nato v Uredbi Komisije (ES) št. 69/2001 [2] in Uredbi Komisije (ES) št. 1998/2006 [3]. Glede na izkušnje, pridobljene z uporabo Uredbe (ES) št. 1998/2006, se zdi primerno, da se revidirajo nekateri pogoji, določeni z navedeno uredbo, in da se jo nadomesti.

(3) Primerno je ohraniti zgornjo mejo 200 000 EUR za znesek pomoči *de minimis*, ki jo lahko prejme eno podjetje na državo članico v katerem koli obdobju treh let. Ta zgornja meja je še vedno potrebna za zagotovitev, da noben ukrep, ki sodi v to uredbo, ne vpliva na trgovino med državami članicami in/ali ne izkrivlja ali ne grozi, da bo izkrivil konkurenco.

(4) Za namene pravil o konkurenci iz Pogodbe je podjetje vsak gospodarski subjekt, ki opravlja gospodarsko dejavnost, ne glede na njegov pravni status in način financiranja [4]. Sodišče je odločilo, da bi bilo treba gospodarske subjekte, ki jih nadzira (na pravni ali dejanski podlagi) isti gospodarski subjekt, obravnavati kot eno samo podjetje [5]. Zaradi pravne varnosti ter za zmanjšanje upravnega bremena bi morala ta uredba določiti izčrpen seznam jasnih meril za določanje, kdaj se dve ali več podjetij obravnava kot eno samo podjetje. Komisija je iz dobro uveljavljenih meril za opredelitev „povezanih podjetij“ v opredelitvi MSP v Prilogi I k Uredbi (ES) št. 800/2008) [6] izbrala tista merila, ki so ustrezna za namen te uredbe. Navedena merila so že znana javnim organom in naj bi se glede na področje uporabe te uredbe uporabljala tako za MSP kot za velika podjetja.

(5) Da bi se upoštevala povprečna majhna velikost podjetij, ki delujejo v sektorju cestnega tovornega prevoza, je primerno določiti zgornjo mejo na 100 000 EUR za podjetja, ki opravljajo komercialni cestni tovorni prevoz. Zagotavljanje integriranih storitev, pri čemer je dejanski prevoz le en element, kot so selitvene storitve, poštne ali kurirske storitve ali storitve zbiranja in obdelave odpadkov, se ne bi smelo šteti za prevozno storitev. Zaradi presežnih zmogljivosti v sektorju cestnega tovornega prometa ter ciljev prometne politike v zvezi s cestnimi zastoji in prevozom tovora, bi bilo treba pomoč za nabavo vozil za prevoz tovora v podjetjih, ki opravljajo komercialni cestni tovorni prevoz, izključiti iz področja uporabe te uredbe. Glede na razvoj sektorja cestnega potniškega prometa ni več primerno, da se zanj uporablja nižja zgornja meja.

(6) Ker v sektorjih primarne proizvodnje kmetijskih proizvodov, ribištva in ribogojstva veljajo posebni predpisi in ker obstaja možnost, da bi pri teh sektorjih zneski pomoči, ki so manjši od zgornje meje, navedene v tej uredbi, lahko kljub temu izpolnili merila iz člena 107(1) Pogodbe, se ta uredba za zadevne sektorje ne bi smela uporabljati.

(7) Na podlagi podobnosti med predelavo in trženjem kmetijskih proizvodov ter nekmetijskih proizvodov bi se morala ta uredba ob izpolnjevanju določenih pogojev uporabljati za predelavo in trženje kmetijskih proizvodov. Niti dejavnosti na kmetiji, ki so potrebne za pripravo proizvoda za prvo prodajo, kot so žetev, spravilo in mlatenje žit ali pakiranje jajc, niti prva prodaja prodajnim posrednikom ali predelovalcem se v tem primeru ne sme šteti za predelavo ali trženje. Sodišče je odločilo [7], da države članice, takoj ko Unija izda predpise za uvedbo skupne ureditve trga v določenem sektorju kmetijstva, ne smejo sprejeti nobenih ukrepov, ki bi lahko to ureditev trga omajali ali uvedli izjeme.

[1] UL C 68, 6.3.1996, str. 9.
[2] Uredba Komisije (ES) št. 69/2001 z dne 12. januarja 2001 o uporabi členov 87 in 88 Pogodbe Evropske skupnosti pri *de minimis* pomoči, (UL L 10, 13.1.2001, str. 30).
[3] Uredba Komisije (ES) št. 1998/2006 z dne 15. decembra 2006 o uporabi členov 87 in 88 Pogodbe pri pomoči *de minimis* (UL L 379, 28.12.2006, str. 5).
[4] Zadeva C-222/04, Ministero dell 'Economia e delle Finanze proti Cassa di Risparmio di Firenze SPA et al., ZOdl. 2006, str. I-289.
[5] Zadeva C-382/99 Nizozemska proti Komisiji, Recueil 2002, str. I-5163.
[6] Uredba Komisije (ES) št. 800/2008 z dne 6. avgusta 2008 o razglasitvi nekaterih vrst pomoči za združljive s skupnim trgom z uporabo členov 87 in 88 Pogodbe (UL L 214, 9.8.2008, str. 3).
[7] Zadeva C-456/00, Francija proti Komisiji, Recueil 2002, str. I-11949.

Iz tega razloga se ta uredba ne bi smela uporabljati za pomoči, katerih višina je določena na podlagi cene ali količine kupljenih proizvodov ali proizvodov, danih na trg. Ne bi se smela uporabljati tudi za podporo, ki je povezana z obveznostjo, da se pomoč deli s primarnimi proizvajalci.

(8) Te uredbe se ne bi smelo uporabljati za izvozno pomoč ali pomoč, ki daje prednost domačim proizvodom pred uvoženimi. Ta uredba se zlasti ne bi smela uporabljati za pomoč, s katero se financirata vzpostavitev in delovanje distribucijske mreže v drugih državah članicah ali tretjih državah. Pomoč, ki omogoča sodelovanje na sejmih, študije ali svetovalne storitve, potrebne za uvajanje novega ali obstoječega proizvoda na novem trgu, se običajno ne šteje za izvozno pomoč.

(9) Ta uredba se ne sme uporabljati za podjetja v težavah, ker ni primerno dodeliti finančno podporo podjetjem v težavah zunaj načrta za prestrukturiranje. Poleg tega obstajajo težave, povezane z določanjem bruto ekvivalenta pomoči, dodeljene takšnim podjetjem. Za zagotovitev pravne varnosti je primerno določiti jasna merila, ki ne zahtevajo ocene vseh posebnih značilnosti stanja podjetja, da se ugotovi, ali gre za podjetje v težavah za namene te uredbe.

(10) Za namene te uredbe je treba triletno obdobje obravnavati spremenljivo glede na vsak primer pomoči, kar pomeni, da je pri vsaki novi dodelitvi pomoči *de minimis* treba določiti skupni znesek pomoči *de minimis*, dodeljen v zadevnem proračunskem letu ter v prejšnjih dveh proračunskih letih.

(11) Kadar podjetja opravljajo dejavnost v sektorjih, ki so izključeni iz področja uporabe te uredbe, kakor tudi v drugih sektorjih ali dejavnostih, bi se morala ta uredba uporabljati za te druge sektorje ali dejavnosti, če države članice na ustrezen način, kot je ločevanje dejavnosti ali razlikovanje med stroški, zagotovijo, da dejavnosti na izključenih področjih nimajo koristi od pomoči *de minimis*. Isto načelo bi bilo treba uporabiti za podjetja, dejavna v sektorjih, za katere se uporabljajo nižje zgornje meje *de minimis*. Če ni mogoče zagotoviti, da so dejavnosti v sektorjih, za katere se uporabljajo nižje zgornje meje *de minimis*, deležne pomoči *de minimis* le do teh nižjih zgornjih mej, bi bilo treba uporabiti najnižjo zgornjo mejo za vse dejavnosti podjetja.

(12) Ta uredba bi morala določiti pravila, ki bi onemogočila izogib največjim intenzivnostim pomoči, kakor so določene v posebnih uredbah ali sklepih Komisije. Morala bi tudi določiti jasna pravila o kumulaciji, ki se uporabljajo brez težav.

(13) Ta uredba ne izključuje možnosti, da se ukrep ne bi štel za državno pomoč v smislu člena 107(1) Pogodbe, in sicer iz razlogov, ki niso določeni v tej uredbi, na primer zato, ker je ukrep v skladu z načelom udeleženca v tržnem gospodarstvu ali ker ukrep ne vključuje prenosa državnih sredstev.

(14) Zaradi preglednosti, enakega obravnavanja in učinkovitega spremljanja bi bilo treba to uredbo uporabljati le za pomoč *de minimis*, za katero je mogoče vnaprej in brez ocene tveganja natančno izračunati bruto ekvivalent nepovratnih sredstev („pregledna pomoč“). Takšen natančen izračun se lahko na primer izvede za nepovratna sredstva, subvencionirane obrestne mere, limitirane davčne oprostitve ali druge instrumente, ki določajo omejitev in tako zagotovijo, da se veljavna zgornja meja ne preseže. Zagotovitev zgornje meje pomeni, da mora država članica, dokler ni znan natančen znesek pomoči, predpostavljati, da je znesek enak zgornji meji ter tako zagotoviti, da več ukrepov pomoči skupaj ne presega zgornje meje, določene v tej uredbi, in uporabiti pravila kumulacije.

(15) Zaradi preglednosti, enakega obravnavanja in pravilne uporabe zgornje meje pomoči *de minimis* bi morale vse države članice uporabljati enake načine obračunavanja. Za lažji izračun bi bilo treba zneske pomoči, ki se ne dodelijo v obliki denarnih nepovratnih sredstev, pretvoriti v njihov bruto ekvivalent nepovratnih sredstev. Izračun bruto ekvivalenta nepovratnih sredstev drugih preglednih vrst pomoči razen nepovratnih sredstev in pomoči, plačljivih v več obrokih, zahteva uporabo tržnih obrestnih mer, ki veljajo v času dodelitve zadevne pomoči. Za enotno, pregledno in enostavno uporabo pravil o državni pomoči bi morale veljavne tržne obrestne mere za namene te uredbe biti referenčne, kakor so opredeljene v Sporočilu Komisije o spremembi metode določanja referenčnih obrestnih mer in diskontnih stopenj ([1]).

(16) Pomoč v obliki posojil bi se morala šteti za pregledno pomoč *de minimis*, če je bil bruto ekvivalent nepovratnih sredstev izračunan na podlagi tržnih obrestnih mer, ki so veljale v času dodelitve pomoči. Za poenostavitev obravnave majhnih kratkoročnih posojil bi morala ta uredba opredeliti jasno določbo, ki se uporablja brez težav in upošteva tako znesek posojila kot njegovo trajanje. Po izkušnjah Komisije se posojila, ki ne presegajo 1 000 000 EUR in so najeta za obdobje do največ pet

([1]) UL C 14, 19.1.2008, str. 6.

let ali pa posojila, ki ne presegajo 500 000 EUR in so najeta za obdobje desetih let, ter so zavarovana s premoženjem v višini najmanj 50 % posojila, lahko štejejo za posojila z bruto ekvivalentom nepovratnih sredstev, ki je enak zgornji meji pomoči *de minimis*.

(17) Pomoč v obliki kapitalskih injekcij bi bilo treba šteti za pregledno pomoč *de minimis* le, če skupni znesek injekcije javnega kapitala ne presega zgornje meje pomoči *de minimis*. Pomoč v obliki ukrepov tveganega financiranja v obliki vlaganj lastniškega ali nepravega lastniškega kapitala iz *[nove smernice o tveganem financiranju]* bi se morala obravnavati kot pregledna pomoč *de minimis* le, če zadevni ukrep zagotavlja kapital, ki ne presega zgornje meje pomoči *de minimis* za vsako ciljno podjetje.

(18) Pomoč v obliki jamstev bi bilo treba šteti za pregledno, če je bil bruto ekvivalent nepovratnih sredstev izračunan na podlagi premij varnega pristana iz obvestila Komisije za vrsto zadevnega podjetja. Na primer za mala in srednja podjetja Obvestilo Komisije o uporabi členov 87 in 88 Pogodbe ES za državno pomoč v obliki jamstev ([1]) določa ravni letnih premij, nad katerimi se državno jamstvo ne šteje za državno pomoč. Za poenostavitev obravnavanja kratkoročnih jamstev, ki zagotavljajo do 80 % sorazmerno majhnega posojila, bi morala ta uredba opredeliti jasno določbo, ki se uporablja brez težav in upošteva tako znesek osnovnega posojila kot tudi trajanje jamstva. To pravilo se ne bi smelo uporabljati za jamstva za osnovne transakcije, ki niso posojila, kot so na primer jamstva za transakcije lastniškega kapitala. Kadar jamstvo ne presega 80 % osnovnega posojila, zajamčeni znesek ne presega 1 500 000 EUR in trajanje jamstva ni daljše od petih let, je jamstvo mogoče šteti za bruto ekvivalent nepovratnih sredstev, ki je enak zgornji meji pomoči *de minimis*. Enako velja, kadar jamstvo ne presega 80 % osnovnega posojila, zajamčeni znesek ne presega 750 000 EUR in trajanje jamstva ni daljše od desetih let.

(19) Kadar je posojilo ali jamstvo za manjši znesek ali krajše obdobje od tistih, ki so navedeni v uvodnih izjavah 16 in 18, bi bilo treba bruto ekvivalent nepovratnih sredstev izračunati tako, da se pomnoži količnik med dejanskim zneskom in najvišjim zneskom, navedenim v uvodnih izjavah 16 in 18, s količnikom med dejanskim trajanjem in petimi leti, nato pa se zmnožek pomnoži z 200 000 EUR. Tako bi se na primer štelo, da ima posojilo v višini 500 000 EUR za obdobje 2,5 let bruto ekvivalent nepovratnih sredstev v višini 50 000 EUR.

([1]) UL C 155, 20.6.2008, str. 10.

(20) Po priglasitvi s strani države članice lahko Komisija preveri, ali ima ukrep pomoči, ki ni v obliki nepovratnih sredstev, posojila, jamstva, kapitalske injekcije ali ukrepa tveganega financiranja v obliki vlaganj lastniškega ali nepravega lastniškega kapitala, bruto ekvivalent nepovratnih sredstev, ki ne presega zgornje meje pomoči *de minimis*, in bi zato lahko spadal v področje uporabe te uredbe.

(21) Dolžnost Komisije je zagotoviti, da se pravila o državnih pomočeh upoštevajo in so v skladu z načelom sodelovanja iz člena 4(3) Pogodbe o Evropski uniji. Države članice bi morale olajšati izpolnjevanje te naloge, in sicer tako da vzpostavijo potrebne mehanizme, ki zagotovijo, da skupni znesek pomoči *de minimis*, dodeljene istemu podjetju po pravilu *de minimis*, ne preseže splošne dopustne zgornje meje.

(22) Države članice bi morale pred dodelitvijo kakršne koli pomoči *de minimis* v okviru svoje države preveriti, da nova pomoč *de minimis* ne bo presegla zgornje meje *de minimis* in da so izpolnjeni ostali pogoji iz te uredbe.

(23) Države članice bi morale vzpostaviti centralni register pomoči *de minimis*, ki vsebuje popolne podatke o vseh pomočeh *de minimis*, ki jih v skladu s to uredbo dodeljuje kateri koli organ v zadevni državi članici, da bi imele na voljo natančne, zanesljive in popolne podatke, ki dokazujejo, da z dodelitvijo nove pomoči *de minimis* v zvezi z zadevnim podjetjem ni presežena veljavna zgornja meja. Države članice lahko po svoji volji oblikujejo register in se odločijo glede ustreznega mehanizma za njegovo vzpostavitev v skladu s svojo ustavno in upravno strukturo, pri tem pa bi morale zagotoviti, da register zagotavlja vsem javnim organom v državi članici, da preverijo znesek pomoči *de minimis*, ki ga je prejelo posamezno podjetje. Državam članicam bi bilo treba dati dovolj časa za vzpostavitev takega registra.

(24) Dokler država članica ne vzpostavi centralnega registra in dokler ta register ne zajema obdobja treh let, bi morala država članica ob sklicevanju na to uredbo obvestiti zadevno podjetje o dodeljenem znesku pomoči *de minimis* in o tem, da gre za pomoč *de minimis*. Poleg tega bi morala zadevna država članica pred odobritvijo take pomoči od podjetja prejeti izjavo o drugih pomočeh

de minimis na podlagi te uredbe ali drugih uredb *de minimis*, ki jih je podjetje prejelo v zadevnem proračunskem letu in v obdobju dveh prejšnjih proračunskih let.

(25) Da se Komisiji omogoči spremljanje uporabe te uredbe in ugotavljanje morebitnega izkrivljanja konkurence, bi bilo treba od držav članic zahtevati, da vsako leto predložijo osnovne podatke o zneskih, dodeljenih v skladu s to uredbo. Če je država članica obvestila Komisijo o mestu, kjer so vsi potrebni podatki iz poročil javno dostopni, državi članici ni treba predložiti poročila Komisiji.

(26) Ob upoštevanju izkušenj Komisije in zlasti potrebe, da se njena politika državnih pomoči redno revidira, je primerno omejiti obdobje uporabe te uredbe. Če po poteku veljavnosti ta uredba ni podaljšana, bi države članice morale imeti šestmesečno prilagoditveno obdobje v zvezi s pomočjo *de minimis*, ki jo zajema ta uredba –

SPREJELA NASLEDNJO UREDBO:

Člen 1

Področje uporabe

1. Ta uredba se uporablja za pomoč, dodeljeno podjetjem v vseh sektorjih, razen za:

(a) pomoč, dodeljeno podjetjem, dejavnim na področju ribiškega in ribogojskega sektorja, kakor ju zajema Uredba Sveta (ES) št. 104/2000 ([1]);

(b) pomoč, dodeljeno podjetjem, dejavnim na področju primarne proizvodnje kmetijskih proizvodov;

(c) pomoč, dodeljeno podjetjem, dejavnim na področju predelave in trženja kmetijskih proizvodov, v naslednjih primerih:

(i) če je znesek pomoči določen na podlagi cene ali količine zadevnih proizvodov, ki so kupljeni od primarnih proizvajalcev ali jih zadevna podjetja dajo na trg;

(ii) kadar je pomoč pogojena s tem, da se delno ali v celoti prenese na primarne proizvajalce;

(d) pomoč za z izvozom povezane dejavnosti v tretje države ali države članice, kot je pomoč, neposredno povezana z izvoženimi količinami, z ustanovitvijo in delovanjem distribucijske mreže ali drugimi tekočimi izdatki, povezanimi z izvozno dejavnostjo;

(e) pomoč, pogojeno s prednostjo rabe domačega blaga pred rabo uvoženega blaga;

(f) pomoč, dodeljeno podjetjem v težavah, kakor je določeno v členu 2(e).

([1]) Uredba Sveta (ES) št. 104/2000 z dne 17. decembra 1999 o skupni ureditvi trgov za ribiške proizvode in proizvode iz ribogojstva (UL L 17, 21.1.2000, str. 22).

2. Če je podjetje dejavno v sektorjih iz točk (a), (b) ali (c) odstavka 1 ter sektorjih, ki sodijo na področje uporabe te uredbe, se ta uredba uporablja za pomoč, dodeljeno v zvezi s slednjimi sektorji ali dejavnostmi, če države članice na ustrezen način, kot je ločevanje dejavnosti ali razlikovanje med stroški, zagotovijo, da dejavnosti v izključenih sektorjih ne prejemajo pomoči *de minimis* v okviru te uredbe.

Člen 2

Opredelitev pojmov

V tej uredbi:

(a) „kmetijski proizvodi“ pomeni proizvode s seznama v Prilogi I k Pogodbi, razen ribiških proizvodov in proizvodov iz ribogojstva s seznama v Prilogi I k Uredbi (EU) št. (še ni bila sprejeta, glej predlog Komisije COM(2011) 416) o skupni ureditvi trgov za ribiške proizvode in proizvode iz ribogojstva;

(b) „predelava kmetijskih proizvodov“ pomeni vsak postopek na kmetijskem proizvodu, po katerem proizvod ostane kmetijski proizvod, razen dejavnosti na kmetiji, potrebnih za pripravo živalskega ali rastlinskega proizvoda za prvo prodajo;

(c) „trženje kmetijskih proizvodov“ pomeni imeti na zalogi ali razstavljati z namenom prodaje, ponudbe za prodajo, dobave ali katerega koli drugega načina dajanja na trg, razen prve prodaje primarnega proizvajalca prodajnemu posredniku ali predelovalcu in katere koli dejavnosti priprave proizvoda za tako prvo prodajo. Prodaja, ki jo opravi primarni proizvajalec končnemu potrošniku, se šteje za trženje, če se opravlja v ločenih, za to namenjenih prostorih;

(d) „eno samo podjetje“ za potrebe te uredbe pomeni vse gospodarske subjekte, ki imajo med seboj vsaj eno od naslednjih razmerij:

(i) en gospodarski subjekt ima večino glasovalnih pravic delničarjev ali družbenikov v drugem gospodarskem subjektu;

(ii) en gospodarski subjekt ima pravico, da imenuje ali odstavi večino članov upravnega, upravljavskega ali nadzornega organa v drugem gospodarskem subjektu;

(iii) en gospodarski subjekt ima pravico, da izvaja prevladujoč vpliv nad drugim gospodarskim subjektom na podlagi pogodbe, podpisane s tem gospodarskim subjektom, ali določbe v statutu slednjega;

(iv) en gospodarski subjekt, ki je delničar ali družbenik drugega gospodarskega subjekta, na podlagi sporazuma z drugimi delničarji ali družbeniki tega gospodarskega subjekta sam nadzoruje večino glasovalnih pravic delničarjev ali družbenikov v tem gospodarskem subjektu.

Gospodarski subjekti, ki so v katerem koli razmerju, navedenim zgoraj, z enim ali več drugih gospodarskih subjektov, se tudi štejejo za eno samo podjetje;

(e) „podjetje v težavah“ pomeni podjetje, ki izpolnjuje vsaj enega od naslednjih pogojev:

(i) v primeru družbe z omejeno odgovornostjo je več kot polovica njegovega vpisanega kapitala izginila zaradi nakopičenih izgub; v tem primeru odštetje nakopičene izgube od rezerv (in vseh drugih elementov, ki se na splošno štejejo za del lastnih sredstev družbe) daje negativen rezultat, ki presega polovico vpisanega delniškega kapitala;

(ii) v primeru podjetja, v katerem imajo vsaj nekateri člani neomejeno odgovornost za dolg družbe in je več kot polovico kapitala, prikazanega v računovodskih izkazih družbe, izginilo zaradi nakopičenih izgub;

(iii) podjetje je v kolektivnem stečajnem postopku ali izpolnjuje merila po domači zakonodaji za uvrstitev v kolektivni stečajni postopek na zahtevo svojih upnikov;

(iv) knjigovodsko razmerje med dolgovi in lastnim kapitalom je večje od 7,5;

(v) razmerje med dobičkom podjetja pred obrestmi in davki (EBIT) in kritjem obresti je bilo zadnji dve leti nižje od 1,0;

(vi) ocena podjetja je enakovredna CCC + („plačilna sposobnost je odvisna od trajno ugodnih razmer“) ali nižji, ki jo dodeli vsaj ena od bonitetnih agencij, registriranih v skladu z Uredbo (ES) št. 1060/2009 ([1]).

Za namene točke (e) prvega pododstavka se MSP, ki obstajajo manj kot tri leta, ne štejejo, da so v težavah, razen če izpolnjujejo merila določena v točki (iii) te točke.

Člen 3

Pomoč *de minimis*

1. Za ukrepe pomoči se šteje, da ne izpolnjujejo vseh meril iz člena 107(1) Pogodbe in so zato izvzeti iz zahteve glede priglasitve iz člena 108(3) Pogodbe, če izpolnjujejo pogoje, določene v odstavkih 2 do 8 tega člena ter v členih 4 in 5.

2. Skupni znesek pomoči *de minimis*, ki ga država članica dodeli enemu podjetju, kot je opredeljeno v členu 2(d), ne presega 200 000 EUR v katerem koli obdobju treh proračunskih let.

Skupna pomoč *de minimis* na državo članico, dodeljena enemu samemu podjetju, kot je opredeljeno v členu 2(d), ki deluje v komercialnem cestnem tovornem prevozu, ne presega 100 000 EUR v katerem koli obdobju treh proračunskih let. Pomoč *de minimis* se ne uporablja za nabavo vozil za cestni prevoz tovora.

3. Če podjetje opravlja komercialni cestni tovorni prevoz in druge dejavnosti, za katere se uporablja zgornja meja v višini 200 000 EUR, se zgornja meja v višini 200 000 EUR uporablja za to podjetje, če države članice na ustrezen način, kot je ločevanje dejavnosti ali razlikovanje med stroški, zagotovijo, da korist za dejavnost cestnega tovornega prevoza ne presega 100 000 EUR ter da se pomoč *de minimis* ne uporablja za nabavo vozil za cestni tovorni prevoz.

4. Pomoč *de minimis* se odobri takrat, ko se zakonska pravica za prejem pomoči dodeli podjetju v skladu z veljavnim nacionalnim pravnim režimom.

5. Zgornje meje, določene v odstavku 2, se uporabljajo ne glede na obliko pomoči *de minimis* ali zastavljene cilje ter ne glede na to, ali se pomoč, ki jo dodeli država članica, v celoti ali le delno financira iz sredstev Unije. Obdobje treh proračunski let se določi glede na proračunska leta, ki jih uporablja podjetje v zadevni državi članici.

6. Zgornje meje, določene v odstavku 2, se izrazijo v denarnih nepovratnih sredstvih. Vsi uporabljeni zneski so bruto zneski, tj. zneski pred odbitkom davka ali drugih dajatev. Kadar je pomoč dodeljena v drugačni obliki, kot so nepovratna sredstva, je znesek pomoči enak bruto ekvivalentu nepovratnih sredstev pomoči.

Pomoč, plačljiva v več obrokih, se diskontira na vrednost, ki jo je imela ob času dodelitve. Obrestna mera, ki se uporablja za diskontiranje, je diskontna stopnja, ki velja ob času dodelitve pomoči.

7. Če bi nova pomoč *de minimis* presegla zgornjo mejo *de minimis* iz odstavka 2, ta nova pomoč ne more izkoristiti ugodnosti iz te uredbe.

8. V primeru združitev ali prevzemov se vse prejšnje pomoči *de minimis*, dodeljene kateremu koli od podjetij, ki se združujejo, upoštevajo pri ugotavljanju, ali nova pomoč *de minimis* za novo ali prevzemno podjetje presega zgornjo mejo, ne da bi zaradi tega postala vprašljiva pomoč *de minimis*, ki je bila zakonito dodeljena pred združitvijo ali prevzemom.

([1]) Uredba (ES) št. 1060/2009 Evropskega parlamenta in Sveta z dne 16. septembra 2009 o bonitetnih agencijah (UL L 302, 17.11.2009, str. 1).

Če se eno podjetje razdeli v dve ali več ločenih podjetij, se pomoč *de minimis*, ki je bila dodeljena pred razdelitvijo, dodeli podjetju, ki je bilo upravičeno do nje, to pa je načeloma podjetje, ki je prevzelo dejavnosti, za katere se je uporabljala pomoč *de minimis*. Če takšna dodelitev ni mogoča, se pomoč *de minimis* dodeli sorazmerno na podlagi knjigovodske vrednosti lastniškega kapitala novih podjetij.

Člen 4

Izračun bruto ekvivalenta nepovratnih sredstev

1. Ta uredba se uporablja le za pomoč, pri kateri je mogoče vnaprej brez ocene tveganja natančno izračunati bruto ekvivalent nepovratnih sredstev („pregledna pomoč"). Za pregledno pomoč se štejejo predvsem ukrepi pomoči, navedeni v odstavkih od 2 do 6.

2. Pomoč v obliki posojil se obravnava kot pregledna pomoč *de minimis*, če:

(a) se posojilo zavaruje s premoženjem v višini najmanj 50 % posojila in posojilo ne presega 1 000 000 EUR (ali 500 000 EUR za podjetja, ki opravljajo komercialni cestni tovorni prevoz) za obdobje petih let ali 500 000 EUR (ali 250 000 EUR za podjetja, ki opravljajo komericalni cestni tovorni prevoz) za obdobje desetih let. Če je posojilo za manj kot eno od omenjenih zneskov in/ali je dodeljeno za obdobje krajše od petih let, se bruto ekvivalent nepovratnih sredstev navedenega posojila izračuna kot delež veljavne zgornje meje iz člena 3(2); ali

(b) je bil bruto ekvivalent nepovratnih sredstev izračunan na podlagi referenčne obrestne mere, ki se je uporabljala v času dodelitve.

3. Pomoč v obliki dotoka svežega kapitala se obravnava kot pregledna pomoč *de minimis* samo, če skupni znesek dotoka javnega kapitala ne presega zgornje meje pomoči *de minimis*.

4. Pomoč v obliki ukrepov tveganega financiranja v obliki vlaganj lastniškega ali nepravega lastniškega kapitala se za ciljno podjetje obravnava kot pregledna pomoč *de minimis* samo, če zadevni ukrep zagotavlja kapital, ki ne presega zgornje meje pomoči *de minimis* za vsako ciljno podjetje.

5. Pomoč v obliki jamstev se obravnava kot pregledna pomoč *de minimis*, če:

(a) jamstvo ne presega 80 % osnovnega posojila in zajamčeni znesek ne presega 1 500 000 EUR (ali 750 000 EUR za podjetja, ki opravljajo komercialni cestni tovorni prevoz), trajanje jamstva pa ni daljše od petih let, ali zajamčeni znesek ne presega 750 000 EUR (ali 375 000 EUR za podjetja, ki opravljajo komercialni cestni tovorni prevoz), trajanje jamstva pa ni daljše od desetih let. Če je zajamčeni znesek nižji od enega od omenjenih zneskov in/ali jamstvo traja manj kot pet let oziroma deset let, se bruto ekvivalent nepovratnih sredstev navedenega jamstva izračuna kot ustrezni delež veljavne zgornje meje iz člena 3(2); ali

(b) se bruto ekvivalent nepovratnih sredstev izračuna na podlagi premij varnega pristana, določenih v obvestilu Komisije ([1]); ali

(c) če je bila metodologija za izračun bruto ekvivalenta nepovratnih sredstev tega jamstva, preden se je začela uporabljati, sprejeta po njeni priglasitvi Komisiji v skladu s katero koli uredbo, ki jo je Komisija sprejela na področju državne pomoči in je bila takrat veljavna, ter se odobrena metodologija izrecno nanaša na vrsto jamstva in vrsto zadevne osnovne transakcije v okviru uporabe te uredbe.

6. Pomoč v obliki drugih instrumentov se šteje za pregledno pomoč *de minimis*, če instrument določa omejitev, ki zagotavlja, da veljavna zgornja meja ni presežena.

Člen 5

Kumulacija

1. Pomoč *de minimis*, dodeljena v skladu s to uredbo, se lahko kumulira s pomočjo *de minimis*, dodeljeno v skladu z Uredbo Komisije (EU) št. 360/2012 ([2]) do zgornjih meja, določenih v navedeni uredbi. Lahko se kumulira s pomočjo *de minimis*, dodeljeno v skladu z drugimi uredbami *de minimis*, in sicer do zgornje meje, določene v členu 3(2).

2. Pomoč *de minimis* se ne kumulira z državno pomočjo v zvezi z istimi upravičenimi stroški ali z državno pomočjo za isti ukrep tveganega financiranja, če bi takšna kumulacija presegla največjo intenzivnost pomoči ali znesek pomoči za posebne okoliščine vsakega primera, ki ga določi uredba o skupinskih izjemah ali sklep Komisije.

Člen 6

Spremljanje in poročanje

1. Države članice morajo do 31. decembra 2015 vzpostaviti centralni register pomoči *de minimis*. Ta register vsebuje informacije o vsakem upravičencu (vključno z velikostjo (malo, srednje ali veliko podjetje) in gospodarskim sektorjem (koda

([1]) Trenutno je to Obvestilo Komisije o uporabi členov 87 in 88 Pogodbe ES za državno pomoč v obliki poroštev (UL C 155, 20.6.2008, str. 10).

([2]) Uredba Komisije (EU) št. 360/2012 z dne 25. aprila 2012 o uporabi členov 107 in 108 Pogodbe o delovanju Evropske unije pri pomoči *de minimis* za podjetja, ki opravljajo storitve splošnega gospodarskega pomena (UL L 114, 26.4.2012, str. 8).

NACE na ravni oddelka ([1])) njegove glavne dejavnosti), datum odobritve in bruto ekvivalent nepovratnih sredstev vsakega ukrepa pomoči *de minimis*, ki ga v skladu s to uredbo sprejme kateri koli organ v tej državi članici. Register vsebuje vse ukrepe pomoči *de minimis*, dodeljene v skladu s to uredbo od 1. januarja 2016 dalje.

2. Dokler država članica ne vzpostavi centralnega registra in register ne zajema obdobja treh let, se uporablja odstavek 3.

3. Kadar namerava država članica podjetju dodeliti pomoč *de minimis* v skladu s to uredbo, ga pisno obvesti o predvidenem znesku pomoči, izraženem v bruto ekvivalentu nepovratnih sredstev, in o tem, da gre za pomoč *de minimis*, pri tem pa se izrecno sklicuje na to uredbo ter navede naslov in mesto objave v *Uradnem listu Evropske unije*. Kadar je pomoč *de minimis* v skladu s to uredbo dodeljena različnim podjetjem na podlagi sheme in se v okviru sheme tem podjetjem dodelijo različni zneski individualne pomoči, lahko zadevna država članica izpolni to obveznost obveščanja tako, da podjetja obvesti o fiksnem znesku, ki ustreza največjemu znesku pomoči, ki se dodeli v okviru sheme. V takem primeru se fiksni znesek uporabi za določitev, ali je bila dosežena zgornja meja iz člena 3(2). Preden država članica dodeli pomoč, mora pridobiti izjavo od zadevnega podjetja v pisni ali elektronski obliki o vseh drugih pomočeh *de minimis*, ki jih je podjetje prejelo na podlagi te ali drugih uredb *de minimis* v prejšnjih dveh proračunskih letih in v tekočem proračunskem letu.

4. Država članica dodeli novo pomoč *de minimis* na podlagi te uredbe šele potem, ko preveri, da skupni znesek pomoči *de minimis*, dodeljen zadevnemu podjetju, s tem ne bo presegel zgornjih mej iz člena 3(2) ter da so izpolnjeni vsi pogoji iz členov od 1 do 5.

5. Države članice evidentirajo in zbirajo vse informacije v zvezi z uporabo te uredbe. Tako zbrane evidence vsebujejo vse informacije, potrebne kot dokaz, da so bili izpolnjeni pogoji iz te uredbe. Evidence o individualni pomoči *de minimis* se hranijo 10 proračunskih let od datuma dodelitve pomoči. Evidence o shemah pomoči *de minimis* se hranijo 10 let od datuma, ko je bila dodeljena zadnja individualna pomoč v okviru takšne sheme. Komisija lahko od zadevne države članice pisno zahteva, da v 20 delovnih dneh ali daljšem roku, če je tako določeno v zahtevku, predloži vse informacije, za katere Komisija meni, da so potrebne za oceno, ali so izpolnjeni pogoji iz te uredbe, še zlasti skupni znesek pomoči *de minimis*, ki ga je prejelo posamezno podjetje v skladu s to uredbo in drugimi uredbami *de minimis*.

6. Države članice vsako leto poročajo Komisiji o uporabi te uredbe. Poročilo vključuje:

(a) skupni znesek pomoči *de minimis*, dodeljene v zadevni državi članici v skladu s to uredbo v preteklem koledarskem letu, razčlenjen po gospodarskih sektorjih in velikosti (mala, srednja in velika podjetja) upravičencev;

(b) skupno število upravičencev do pomoči *de minimis*, dodeljene v zadevni državi članici v skladu s to uredbo v preteklem koledarskem letu, razčlenjen po gospodarskih sektorjih in velikosti (mala, srednja in velika podjetja) upravičencev;

(c) vse druge informacije glede uporabe te uredbe, ki jih zahteva Komisija in se opredelijo pravočasno pred predložitvijo poročila.

Prvo poročilo se predloži do 30. junija 2017 in zajema koledarsko leto 2016. Če država članica omogoči javni dostop do vseh podatkov, ki jih zahtevajo poročila, ji poročila ni treba predložiti Komisiji. Komisija vsako leto objavi povzetek podatkov iz letnih poročil, vključno s skupnim zneskom pomoči *de minimis*, ki ga je dodelila vsaka država članica v skladu s to uredbo.

Člen 7

Prehodne določbe

1. Za vsako individualno pomoč *de minimis*, ki je bila dodeljena med 2. februarjem 2001 in 30. junijem 2007 in izpolnjuje pogoje iz Uredbe (ES) št. 69/2001, se šteje, da ne izpolnjuje vseh meril iz člena 107(1) Pogodbe in je zato izvzeta iz zahteve glede priglasitve iz člena 108(3) Pogodbe.

2. Za vsako individualno pomoč *de minimis*, ki je bila dodeljena med 1. januarjem 2007 in 30. junijem 2014 in izpolnjuje pogoje iz Uredbe (ES) št. 1998/2006, se šteje, da ne izpolnjuje vseh meril člena 107(1) Pogodbe in je zato izvzeta iz zahteve glede priglasitve iz člena 108(3) Pogodbe.

3. Po prenehanju veljavnosti te uredbe lahko izvajanje kakršne koli pomoči *de minimis*, ki izpolnjuje pogoje iz te uredbe, poteka še nadaljnjih šest mesecev.

([1]) V skladu s členom 2(1)(b) in Prilogo I k Uredbi (ES) št. 1893/2006 Evropskega Parlamenta in Sveta z dne 20. decembra 2006 o uvedbi statistične klasifikacije gospodarskih dejavnosti NACE Revizija 2 in o spremembi Uredbe Sveta (EGS) št. 3037/90 kakor tudi nekaterih uredb ES o posebnih statističnih področjih; Besedilo velja za EGP (UL L 393, 30.12.2006, str. 1).

Člen 8

Začetek in obdobje veljavnosti

Ta uredba začne veljati 1. januarja 2014 in se uporablja od 1. januarja 2014 do 31. decembra 2020.

Ta uredba je v celoti zavezujoča in se neposredno uporablja v vseh državah članicah.

V Bruslju, 17. julija 2013

Za Komisijo
Predsednik
[…] […]

IV

(Informacije)

INFORMACIJE INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Menjalni tečaji eura [1]

7. avgusta 2013

(2013/C 229/03)

1 euro =

	Valuta	Menjalni tečaj		Valuta	Menjalni tečaj
USD	ameriški dolar	1,3305	AUD	avstralski dolar	1,4878
JPY	japonski jen	129,21	CAD	kanadski dolar	1,3868
DKK	danska krona	7,4571	HKD	hongkonški dolar	10,3197
GBP	funt šterling	0,85955	NZD	novozelandski dolar	1,6826
SEK	švedska krona	8,7261	SGD	singapurski dolar	1,6868
CHF	švicarski frank	1,2321	KRW	južnokorejski won	1 486,17
ISK	islandska krona		ZAR	južnoafriški rand	13,2109
NOK	norveška krona	7,8995	CNY	kitajski juan	8,1416
BGN	lev	1,9558	HRK	hrvaška kuna	7,4975
CZK	češka krona	25,978	IDR	indonezijska rupija	13 683,68
HUF	madžarski forint	299,52	MYR	malezijski ringit	4,3301
LTL	litovski litas	3,4528	PHP	filipinski peso	58,258
LVL	latvijski lats	0,7025	RUB	ruski rubelj	43,9480
PLN	poljski zlot	4,2170	THB	tajski bat	41,831
RON	romunski leu	4,4330	BRL	brazilski real	3,0641
TRY	turška lira	2,5713	MXN	mehiški peso	16,8685
			INR	indijska rupija	81,4960

[1] *Vir*: referenčni menjalni tečaj, ki ga objavlja ECB.

INFORMACIJE DRŽAV ČLANIC

Informacije, ki jih sporočijo države članice glede zaprtja ribolova

(2013/C 229/04)

V skladu s členom 35(3) Uredbe Sveta (ES) št. 1224/2009 z dne 20. novembra 2009 o vzpostavitvi nadzornega sistema Skupnosti za zagotavljanje skladnosti s pravili skupne ribiške politike [1] je bila sprejeta odločitev o zaprtju ribolova, kot prikazuje preglednica:

Datum in čas zaprtja	4.7.2013
Trajanje	4.7.2013–31.12.2013
Država članica	Portugalska
Stalež ali skupina staležev	BFT/AE45WM
Vrsta	navadni tun (*Thunnus thynnus*)
Območje	Atlantski ocean, vzhodno od 45° Z in Sredozemsko morje
Vrste ribiških plovil	—
Referenčna številka	16/TQ40

[1] UL L 343, 22.12.2009, str. 1.

Informacije, ki jih sporočijo države članice glede zaprtja ribolova

(2013/C 229/05)

V skladu s členom 35(3) Uredbe Sveta (ES) št. 1224/2009 z dne 20. novembra 2009 o vzpostavitvi nadzornega sistema Skupnosti za zagotavljanje skladnosti s pravili skupne ribiške politike [1] je bila sprejeta odločitev o zaprtju ribolova, kot prikazuje preglednica:

Datum in čas zaprtja	4.7.2013
Trajanje	4.7.2013–31.12.2013
Država članica	Združeno kraljestvo
Stalež ali skupina staležev	SAN/2A3A4. in območja upravljanja SAN/123_1, _2, _3, _4, _6
Vrsta	prava peščenka in z njo povezan prilov (*Ammodytes* spp.)
Območje	vode EU območij IIa, IIIa in IV ter vode EU območij upravljanja prave peščenke 1, 2, 3, 4 in 6 (brez voda znotraj šestih morskih milj od temeljnih črt Združenega kraljestva pri Šetlandskih otokih, otokih Fair in Foula)
Vrste ribiških plovil	—
Referenčna številka	17/TQ40

[1] UL L 343, 22.12.2009, str. 1.

INFORMACIJE V ZVEZI Z EVROPSKIM GOSPODARSKIM PROSTOROM

NADZORNI ORGAN EFTE

Podatki, ki so jih predložile države Efte o državni pomoči, dodeljeni na podlagi akta iz točke 1j Priloge XV k Sporazumu EGP (Uredba Komisije (ES) št. 800/2008 o razglasitvi nekaterih vrst pomoči za združljive s skupnim trgom z uporabo členov 87 in 88 Pogodbe (Uredba o splošnih skupinskih izjemah))

(2013/C 229/06)

DEL I

Št. pomoči	GBER 8/13/REG	
Država Efte	Norveška	
Regija	Vse regije v Romuniji	Status regionalne pomoči
Organ, ki dodeli pomoč	Naziv	Innovation Norway
	Naslov	PO Box 448 Sentrum 0104 Oslo NORWAY
	Spletna stran	http://www.innovationnorway.no
Naziv ukrepa pomoči	Norveški finančni mehanizem 2009–2014 Program za inovacije v zeleni industriji Romunija	
Nacionalna pravna podlaga (sklic na ustrezno nacionalno uradno publikacijo)	Predl. 1 S (2012–2013) „The Ministry of Foreign Affairs“, strani 85–95 http://www.regjeringen.no/nb/dep/ud/dok/regpubl/prop/2012-2013/prop-1-s-20122013.html?id=703276	
Spletna povezava na celotno besedilo ukrepa pomoči	http://www.norwaygrants-greeninnovation.no	
Vrsta ukrepa	Shema pomoči	Da
	Ad hoc pomoč	N. r.
Trajanje	Shema pomoči	Od 12.3.2013 do 30.4.2016
Zadevni gospodarski sektor(ji)	Vsi gospodarski sektorji, upravičeni do pomoči	Vsi gospodarski sektorji
Vrsta upravičenca	MSP	Da
	Velika podjetja	Da
	Mikropodjetja	Da
	Nevladne organizacije	Da

Proračun	Skupni letni znesek načrtovanih proračunskih sredstev na podlagi sheme pomoči	Celotni znesek (2013–2016) 21 768 200 EUR
Instrument pomoči (člen 5).	Nepovratna sredstva	Da

DEL II

Splošni cilji (seznam)	Cilji (seznam)	Največja intenzivnost pomoči v % ali najvišji znesek pomoči v NOK	MSP – bonusi v %
Regionalna pomoč za naložbe in pomoč za zaposlovanje (člen 13)	Shema pomoči	Intenzivnost pomoči v sedanjem bruto ekvivalentu nepovratnih sredstev ne presega praga regionalne pomoči, ki se uporablja ob dodelitvi pomoči za zadevno regijo v Romuniji.	20 % za mala podjetja 10 % za srednje velika podjetja
Pomoč MSP za naložbe in zaposlovanje (člen 15)		20 % za mala podjetja 10 % za srednje velika podjetja	
Pomoč za varstvo okolja (členi 17 do 25)	Pomoč za naložbe, ki podjetjem omogoča preseganje standardov Skupnosti na področju varstva okolja oziroma povišanje ravni varstva okolja v odsotnosti standardov Skupnosti (člen 18) Navedite poseben sklic na ustrezni standard	35 %	20 % za mala podjetja 10 % za srednje velika podjetja
	Pomoč za nakup novih prevoznih sredstev, ki presegajo standarde Skupnosti ali ki povečujejo stopnjo varstva okolja v odsotnosti standardov Skupnosti (člen 19)	35 %	20 % za mala podjetja 10 % za srednje velika podjetja
	Pomoč za čimprejšnjo prilagoditev na prihodnje standarde Skupnosti za MSP (člen 20)	15 % za mala podjetja in 10 % za srednje velika podjetja, če se naložba izvede in konča več kot tri leta pred začetkom veljavnosti zadevnega standarda (10 % za mala podjetja, če se naložba konča in izvede v manj kot treh letih pred začetkom veljavnosti zadevnega standarda)	
	Pomoč za okoljske naložbe v ukrepe varčevanja z energijo (člen 21)	60 %	20 % za mala podjetja 10 % za srednje velika podjetja

Splošni cilji (seznam)	Cilji (seznam)		Največja intenzivnost pomoči v % ali najvišji znesek pomoči v NOK	MSP – bonusi v %
	Pomoč za okoljske naložbe v soproizvodnjo z visokim izkoristkom (člen 22)		45 %	20 % za mala podjetja 10 % za srednje velika podjetja
	Pomoč za okoljske naložbe za spodbujanje energije iz obnovljivih virov energije (člen 23)		45 %	20 % za mala podjetja 10 % za srednje velika podjetja
	Pomoč za okoljske študije (člen 24)		50 %	20 % za mala podjetja 10 % za srednje velika podjetja
Pomoč za svetovalne storitve v korist MSP in pomoč za udeležbo MSP na sejmih (člena 26 in 27)	Pomoč za svetovalne storitve v korist MSP (člen 26)		50 %	
	Pomoč za udeležbo MSP na sejmih (člen 27)		50 %	
Pomoč za raziskave, razvoj in inovacije (členi 30 do 37)	Pomoč za raziskovalne in razvojne projekte (člen 31)	Temeljne raziskave (člen 31(2)(a))	100 %	
		Industrijske raziskave (člen 31(2)(b))	50 %	10 % za srednje velika podjetja 20 % za mala podjetja Bonus v višini 15 % se lahko doda do največje intenzivnosti pomoči v višini 80 %, če so izpolnjeni pogoji v členu 31(4)(b).
		Eksperimentalni razvoj (člen 31(2)(c))	25 %	10 % za srednje velika podjetja 20 % za mala podjetja Bonus v višini 15 % se lahko doda do največje intenzivnosti pomoči v višini 80 %, če so izpolnjeni pogoji v členu 31(4)(b).

Splošni cilji (seznam)	Cilji (seznam)	Največja intenzivnost pomoči v % ali najvišji znesek pomoči v NOK	MSP – bonusi v %
	Pomoč za študije tehnične izvedljivosti (člen 32)	75 % (industrijske raziskave) in 50 % (eksperimentalni razvoj) za MSP 65 % (industrijske raziskave) in 40 % (eksperimentalni razvoj) za velika podjetja	
	Pomoč za stroške pravic industrijske lastnine za MSP (člen 33)	Intenzivnost pomoči ne presega intenzivnosti pomoči za raziskovalne in razvojne projekte (člen 31(3–4))	
	Pomoč mladim inovativnim podjetjem (člen 35)	1 milijon EUR	
	Pomoč za svetovalne in podporne storitve za inovacije (člen 36)	200 000 EUR na prejemnika v katerem koli triletnem obdobju	
	Pomoč za posojanje visokokvalificiranega osebja (člen 37)		
Pomoč za usposabljanje (člena 38 in 39)	Posebno usposabljanje (člen 38(1))	25 %	10 % za srednje velika podjetja 20 % za mala podjetja
	Splošno usposabljanje (člen 38(2))	60 %	10 % za srednje velika podjetja 20 % za mala podjetja

Ukrep ne pomeni državne pomoči v smislu člena 61(1) Sporazuma EGP

(2013/C 229/07)

Nadzorni organ Efte meni, da spodaj navedeni ukrep ne pomeni državne pomoči v smislu člena 61(1) Sporazuma EGP.

Datum sprejetja odločitve:	10. april 2013
Št. zadeve:	69933
Številka odločitve:	144/13/COL
Država Efte:	Norveška
Naziv (in/ali ime upravičenca):	Bergen Kirkelige Fellesråd
Vrsta ukrepa:	ni pomoč
Naziv in naslov organa, ki dodeli pomoč:	Bergen Kirkelige Fellesråd Bjørns gate 1 5008 Bergen NORWAY

Verodostojno besedilo odločitve, iz katerega so bili odstranjeni vsi zaupni podatki, je na voljo na spletni strani Nadzornega organa Efte:

http://www.eftasurv.int/state-aid/state-aid-register/

Ukrep ne pomeni državne pomoči v smislu člena 61(1) Sporazuma EGP

(2013/C 229/08)

Nadzorni organ Efte meni, da spodaj navedeni ukrep ne pomeni državne pomoči v smislu člena 61(1) Sporazuma EGP.

Datum sprejetja odločitve: 10. april 2013

Št. zadeve: 70521

Številka odločitve: 145/13/COL

Država Efte: Islandija

Naziv (in/ali ime upravičenca): domnevna državna pomoč banki Landsbankinn prek odpovedi pričakovanemu donosu javnih sredstev

Pravna podlaga: člen 61(1) Sporazuma EGP

Vrsta ukrepa: ni pomoč

Gospodarski sektor: finančne storitve

Verodostojno besedilo odločitve, iz katerega so bili odstranjeni vsi zaupni podatki, je na voljo na spletni strani Nadzornega organa Efte:

http://www.eftasurv.int/state-aid/state-aid-register/

Poziv k predložitvi pripomb o državni pomoči, povezani s financiranjem koncertne dvorane in konferenčnega centra Harpa, na podlagi člena 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča

(2013/C 229/09)

Z Odločbo št. 128/13/COL z dne 20. marca 2013 v verodostojnem jeziku na straneh, ki sledijo temu povzetku, je Nadzorni organ Efte začel postopek v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča. Islandskim organom je bil v vednost poslan izvod odločbe.

Nadzorni organ Efte poziva države Efte, države članice EU in zainteresirane strani, naj pošljejo svoje pripombe o zadevnem ukrepu v enem mesecu od objave tega obvestila na naslednji naslov:

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

Pripombe bodo poslane islandskim organom. Zainteresirana stran, ki predloži pripombe, lahko pisno zaprosi za zaupno obravnavo svoje identitete in navede razloge za to.

POVZETEK

Postopek

Nadzorni organ Efte (v nadaljnjem besedilu: Nadzorni organ) je septembra 2011 prejel pritožbo, da naj bi država Islandija in mesto Reykjavik subvencionirala konferenčne in gostinske storitve v koncertni dvorani in konferenčnem centru Harpa (v nadaljnjem besedilu: objekt Harpa). Nadzorni organ je nato poslal dve zahtevi po informacijah, na kateri so islandski organi odgovorili.

Opis ukrepa

Država Islandija in mesto Reykjavik sta leta 2004 oblikovala ponudbo za javno-zasebno partnerstvo v povezavi z gradnjo, oblikovanjem ter upravljanjem koncertne dvorane in konferenčnega centra s površino 28 000 m^2. Gradnja koncertne dvorane in konferenčnega centra Harpa se je začela 12. januarja 2007, po določitvi najugodnejše ponudbe. Zaradi finančnega zloma na Islandiji je bila gradnja centra Harpa leta 2008 začasno ustavljena. Kmalu zatem sta se župan mesta Reykjavik in minister za izobraževanje dogovorila, da bosta država in mesto nadaljevala gradnjo projekta brez zasebnega partnerja. Uradna otvoritev objekta je bila 20. avgusta 2011.

Center Harpa je namenjen različnim storitvam in dejavnostim. Tako islandski simfonični orkester kot islandska opera sta sklenila dolgoročni pogodbi za uporabo nekaterih prostorov v centru Harpa. Poleg tega v centru Harpa potekajo tudi konference v štirih konferenčnih dvoranah različnih velikosti. V centru Harpa potekajo tudi druge umetniške prireditve, na primer pop in rock koncerti islandskih in tujih glasbenikov. Druge dejavnosti v centru Harpa, na primer pripravo in postrežbo hrane, restavracije, glasbeno prodajalno in prodajalno pohištva, upravljajo zasebne družbe, ki v njem najemajo prostore. Ti prostori se oddajajo zasebnim subjektom pod tržnimi pogoji, v zvezi z njimi pa so bili organizirani javni razpisi, na katerih so bile sprejete najugodnejše ponudbe.

Center Harpa je v popolni lasti države Islandije (54 %) in mesta Reykjavik (46 %), ki mu sorazmerno svojima deležema v projektu namenjata precejšnje letne prispevke. Center Harpa od otvoritve obratuje z velikim letnim primanjkljajem, ki se je kril iz proračunov države Islandije in mesta Reykjavik.

Pripombe islandskih organov

Po navedbah islandskih organov financiranje centra Harpa ne vključuje državne pomoči, saj so ustrezno zagotovili, da se za različne dejavnosti koncertne dvorane in konferenčnega centra vodijo ločeni računi. V podporo tej trditvi so islandski organi predložili poročili dveh računovodskih podjetij o ločenosti računov družb, vključenih v dejavnosti centra Harpa. Islandski organi so predložili tudi analizo oblikovanja cen, v kateri so primerjali cene konferenčnih dvoran v Reykjaviku, ki so primerljive z vidika velikosti in zmogljivosti. Poleg tega islandski organi trdijo, da konferenčne poslovne dejavnosti pozitivno prispevajo k drugim dejavnostim v centru Harpa, katerih stroški bi bili precej višji, če navedenih konferenčnih poslovnih dejavnosti ne bi bilo.

Prisotnost državne pomoči

Prednosti državnih sredstev, ki se dodelijo podjetju

Ker država Islandija in mesto Reykjavik skupaj pokrivata letni primanjkljaj delovanja centra Harpa tako, da vsako leto prispevata določen znesek iz svojih proračunov, so vključena državna sredstva v smislu člena 61 Sporazuma EGP.

Nadzorni organ meni, da tako gradnja kot upravljanje neke infrastrukture pomenita gospodarsko dejavnost samo po sebi, če se ta infrastruktura uporablja za zagotavljanje blaga ali storitev na trgu ali se bo za to uporabljala v prihodnje ([1]). Nekatere dejavnosti, ki potekajo v centru Harpa, predvsem konference, gledališke predstave, koncerti popularne glasbe itd., lahko pritegnejo velik krog strank, hkrati pa konkurirajo zasebnim konferenčnim centrom, gledališčem ali drugim glasbenim prizoriščem. Zato je Nadzorni organ sprejel predhodno mnenje, da se družbe, vključene v upravljanje centra Harpa, kolikor se ukvarjajo s poslovnimi dejavnostmi, štejejo kot podjetja.

Poleg tega Nadzorni organ meni, da javno financiranje gradnje centra Harpa pomeni gospodarsko prednost in s tem pomoč, saj projekt dejansko ne bi bil izveden, če tovrstnega financiranja ne bi bilo. Poleg navedenega imajo družbe, vključene v poslovanje centra Harpa, prednost tudi v obliki dobička, ki sta se mu država in mesto odpovedala, ker ne zahtevata donosnosti svoje naložbe v koncertno dvorano in konferenčni center, kolikor se te družbe ukvarjajo s poslovnimi dejavnostmi, na primer prirejanjem konferenc ali drugih umetniških prireditev. Predhodna ocena Nadzornega organa torej kaže, da na nobeni ravni (gradnja, poslovanje in uporaba) ni mogoče izključiti selektivne gospodarske prednosti.

Izkrivljanje konkurence in vpliv na trgovino med pogodbenicami

Ker je trg za organizacijo mednarodnih dogodkov, na primer konferenc in prireditev, odprt za konkurenco med ponudniki prizorišč in organizatorji prireditev, ki na splošno opravljajo dejavnosti, ki so predmet trgovine med državami EGP, se lahko predpostavlja, da gre za vpliv na trgovino. V tem primeru je vpliv na trgovino med nekaterimi sosednimi državami EGP še verjetnejši zaradi narave poslovnega sektorja konferenčnih dejavnosti ([2]). Zato je predhodno mnenje Nadzornega organa, da bi ukrep lahko izkrivljal konkurenco in vplival na trgovino znotraj EGP.

Združljivost pomoči

V skladu s členom 61(3)(c) Sporazuma EGP, kakor ga razlaga Nadzorni organ in ga je razvila Evropska komisija v okviru nekdanjega člena 87(3)(d) PES (zdaj člena 107(3)(d) PDEU, se pomoč za pospeševanje kulture in ohranjanja kulturne dediščine lahko šteje za združljivo z delovanjem Sporazuma EGP, kadar ne škoduje trgovinskim pogojem in konkurenci v EGP v obsegu, ki je v nasprotju s skupnimi interesi. Islandski organi so navedli, da je bil prvotni namen zadevnega ukrepa pospeševanje kulture z gradnjo koncertne dvorane, v kateri bi lahko domovala tako islandski simfonični orkester kot islandska opera. Nadzorni organ priznava, da bi se lahko glede na kulturni namen prostorov za simfonični orkester in opero njihova gradnja in poslovanje štela za pomoč za pospeševanje kulture.

([1]) Glej sklep Komisije v zadevi št. SA.33618 (Švedska) – *Financiranje večnamenske dvorane v Uppsali*, UL C 152, 30.5.2012, str. 18, točka 19.

([2]) Glej Sklep Splošnega sodišča z dne 26. januarja 2012 v zadevi Mojo Concerts in Amsterdam Music Dome Exploitatie proti Komisiji (T-90/09, še ni objavljeno v ZOdl., točka 45, UL C 89, 24.3.2012, str. 22).

Nadzorni organ priznava, da bi se lahko infrastruktura, kakršna je center Harpa, uporabljala tudi za izvajanje različnih poslovnih dejavnosti, na primer restavracij, kavarn, prodajaln, konferenc in koncertov popularne glasbe. Vendar pa morajo biti zaradi preprečevanja izkrivljanja konkurence vzpostavljeni zaščitni ukrepi, da med poslovnimi dejavnostmi in subvencioniranimi kulturnimi dejavnostmi zagotovo ne bi prihajalo do navzkrižnega subvencioniranja. Nadzorni organ meni, da islandski organi niso vzpostavili zaščitnih ukrepov, s katerimi bi preprečili tovrstno navzkrižno subvencioniranje. Posledično Nadzorni organ po predhodni oceni dvomi, da bi se lahko gradnja in poslovanje centra Harpa štela za združljiva v skladu s členom 61(3)(c) Sporazuma EGP.

Zaključek

Glede na zgornje navedbe se je Nadzorni organ v zvezi s financiranjem koncertne dvorane in konferenčnega centra Harpa odločil za začetek formalnega postopka preiskave v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča. Zainteresirane strani lahko predložijo svoje pripombe v enem mesecu od objave tega obvestila v *Uradnem listu Evropske unije*.

V skladu s členom 14 Protokola 3 se lahko vse nezakonite pomoči izterjajo od prejemnika.

EFTA SURVEILLANCE AUTHORITY DECISION

No 128/13/COL

of 20 March 2013

to initiate the formal investigation procedure into potential State aid involved in the financing of the Harpa Concert Hall and Conference Centre

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING REGARD to:

The Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61 and Protocol 26,

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

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

Whereas:

I. **FACTS**

1. **Procedure**

(1) On 19 September 2011, the Authority received a complaint, dated 13 September 2011 (Event No 608967), concerning the alleged subsidising by the Icelandic State and the City of Reykjavík ('the City') of conference services and restaurant/catering services in the Harpa Concert Hall and Conference Centre ('Harpa') ([3]).

(2) By letter dated 14 October 2011, the Authority requested additional information from the Icelandic authorities (Event No 609736). By a letter dated 30 November 2011 (Event No 617042), the Icelandic authorities replied to the request and provided the Authority with the relevant information.

(3) The case was the subject of discussions between the Authority and the Icelandic authorities as well as the lawyer representing the holding company responsible for Harpa's operations, at the package meeting in Reykjavík on 5 June 2012. Shortly after the meeting, the Authority sent a follow up letter, dated 9 July 2012 (Event No 637627), to the Icelandic authorities inviting them to provide information on certain outstanding issues.

([3]) For the purposes of this Decision, 'Harpa' will refer to the building itself and its facilities.

(4) By letter dated 21 August 2012 (Event No 644771), the Icelandic authorities submitted additional information. By letter dated 27 September 2012 (Event No 648320), the Icelandic authorities submitted a memorandum concerning the separation of accounts as well as a statement from the accounting firm PWC.

(5) Finally, the Icelandic authorities submitted information by e-mail dated 11 February 2013 (Event No 662444) and by letter dated 7 March 2013 (Event No 665434).

2. **The complaint**

(6) The complainant has alleged that unlawful State aid is being provided by the Icelandic State and the City to the companies involved in the operation of Harpa. The complainant referred to the State budget for the year 2011 where the Ministry of Finance allocated ISK 419 400 000 to the operation of Harpa and additional ISK 44 200 000 for building costs and maintenance. The Municipality's budget foresaw a substantial allocation of funds to the Harpa project for the year 2011 amounting to a total of ISK 391 526 000. Furthermore, the Municipality contributed a substantial amount to the project in the years 2009-2010.

(7) The complainant claims that the contribution from both the Icelandic Government and the City is partly being used to subsidise the conference service and the restaurant/catering services in the music hall and conference centre. The contributions in question are fairly high and according to the complainant, there is no transparency in how they are being used. The complainant maintains that this State aid affects the market for the conference business in the European Economic Area ('EEA') as a whole and is not limited to competitors on the Icelandic market. It therefore constitutes an infringement of Article 61 of the EEA Agreement.

(8) The complainant provided the Authority with extracts from the Icelandic State budget for the year 2011 as well as an extract from the City's budget for the same year. Furthermore, the complainant provided a purchase agreement for Harpa and general information on the conference market in Iceland. However, the complainant noted that due to the lack of transparency it was difficult to gather detailed information on the obligations of the Icelandic State and the City to contribute funds to the companies involved in the operation of Harpa as well as information on Harpa's business model and on the separation of accounts.

3. **Harpa Concert Hall and Conference Centre**

3.1. *Background*

(9) In 1999, the Mayor of Reykjavík along with representatives of the Icelandic Government announced that a concert and conference centre would be constructed in the centre of Reykjavík. In late 2002, the Icelandic State and the City signed an agreement regarding the project and the following year the company Austurhöfn-TR ehf. was founded with the purpose of overseeing the project.

(10) In 2004, the Icelandic State and the City initiated a public-private partnership ('PPP') bid concerning the construction, design and operation of the concert hall and conference centre. There were four companies that bid for the contract. In 2005, the evaluation committee of Austurhöfn-TR ehf. concluded that the offer from Portus ehf. was the most favourable one and subsequently the Icelandic State and the City entered into a contract with Portus ehf. for the construction and operation of a concert and conference centre ([4]). The construction of Harpa began on 12 January 2007.

(11) Due to the financial collapse in Iceland in October 2008, the construction of Harpa was put on hold. However, shortly after the collapse, the Mayor of Reykjavík and the Minister for Education reached an agreement which entailed that the State and the City would continue with the construction of Harpa without the private partner. After an amended and restated project agreement was concluded, the construction project continued (hereinafter referred to as 'the project agreement') ([5]). On 20 August 2011, Harpa was formally opened. The building is 28 000 square meters and is located at Austurbakki 2, 101 Reykjavík.

(12) Harpa is meant to accommodate various services and operations. Both the Icelandic Symphony Orchestra and the Icelandic Opera have entered into long-term contracts for the use of certain facilities within Harpa. Moreover, Harpa accommodates conferences and there are four conference halls of different sizes. Harpa also houses various other events such as pop and rock concerts with both Icelandic and foreign artists.

([4]) Project agreement between Austurhofn-TR ehf. and Eignarhaldsfelagid Portus ehf, signed on 9 March 2006.
([5]) Amended and restated project agreement between Austurhofn-TR ehf. and Eignarhaldsfelagid Portus ehf, signed on 19 January 2010.

(13) Other activities in Harpa such as catering, restaurants, a music shop and a furniture shop are operated by private companies who rent the facilities. According to the Icelandic authorities, these facilities are leased on market terms and were subject to public tenders, where the most favourable offers were accepted.

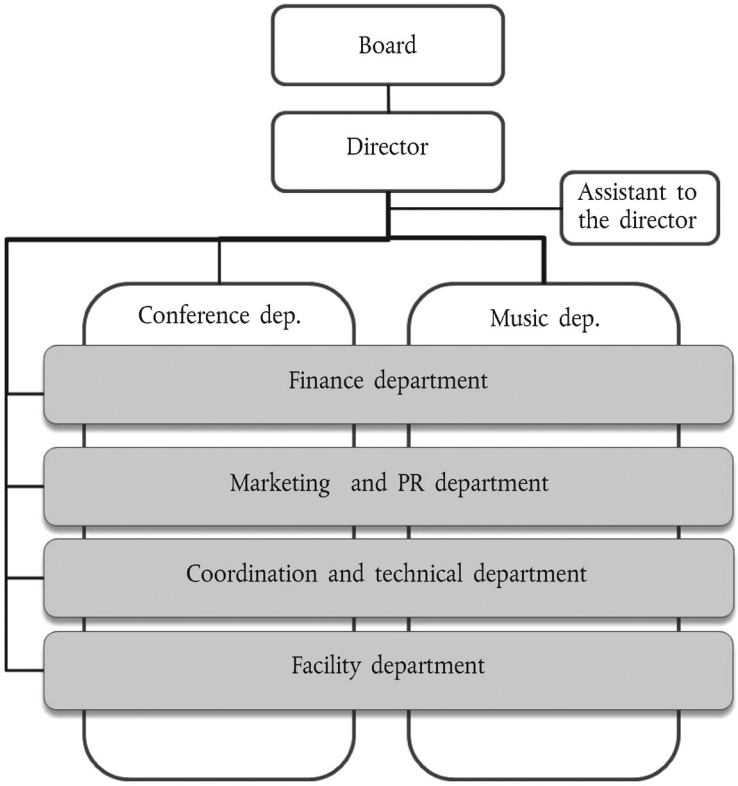
3.2. *The ownership and corporate structure of Harpa*

(14) Harpa Concert Hall and Conference Centre is owned by the Icelandic State (54 %) and Reykjavík City (46 %) and therefore constitutes a public undertaking. The entire Harpa project has been overseen by Austurhöfn-TR ehf. which is a limited liability company, established by the Ministry of Finance on behalf of the Icelandic State and the City in order to take over the construction and running of the Harpa project ([6]).

(15) Until recently there were several limited liability companies involved in Harpa's operations, namely: Portus ehf., which was responsible for Harpa real estate and operations, and Situs ehf., which was responsible for other buildings planned in the same area. Portus had two subsidiaries: Totus ehf., which owned the real estate itself, and Ago ehf., which was responsible for all operations in Harpa and leased the property from Totus. Situs also had two subsidies: Hospes ehf., which would have owned and operated a hotel which is to be constructed in the area, and Custos ehf., which was to own and operate any other buildings in the area.

(16) However, in order to minimise operational costs and increase efficiency, the board of Austurhöfn-TR ehf. decided in December 2012 to simplify the operational structure of Harpa by merging most of the limited liability companies involved in its operations into one company. The State and the City therefore founded the company Harpa — tónlistar- og ráðstefnuhús ehf. which is to oversee all of Harpa's operations. Simplifying the infrastructure of Harpa is a part of a long-term plan to make Harpa's operations sustainable.

(17) The following chart explains in broad terms the organisational structure of Harpa after the changes to its corporate structure entered into effect ([7]):



([6]) Further information on Austurhöfn-TR ehf. can be found on their website: http://www.austurhofn.is/
([7]) Information available online at: http://en.harpa.is/media/english/skipur-1.jpg

3.3. *The financing of Harpa's operations*

(18) As previously noted, Harpa is fully owned by the Icelandic State and the City through Austurhöfn-TR ehf. The obligations of the State and the City are regulated by Article 13 of the project agreement from 2006 ([8]). The annual payments of the State and the City are covered by their respective budgets. According to the State budget for 2011, the annual State contribution was expected to amount to ISK 424,4 million. For the year 2012, the expected amount to be contributed by the State was ISK 553,6 million. In the year 2013, there is expected to be an increase in the public funding of Harpa as the City and the State have approved an additional ISK 160 million contribution. All public contributions to Harpa are borne in accordance with the participation in the project, i.e. the State pays 54 % and the City 46 %. The contributions are also indexed with the consumer price index.

(19) In addition to the contribution provided for in the State and the City's budgets, the Government and the City have undertaken an obligation to grant a short-term loan for the operation of Harpa until long-term financing necessary to fully cover the cost of the project is completed. As from 2013, the total amount of the loan was ISK 794 million with an interest rate of 5 % and a 200 bp premium. The Icelandic authorities have however announced their intention to convert the loan into share capital in the companies operating Harpa ([9]).

(20) The State and the City allocate funds on a monthly basis in order pay off loan obligations in connection with Harpa. Since the project is meant to be self-sustainable, the profits must cover all operational costs. The funds from the owners are therefore, according to the Icelandic authorities, only meant to cover outstanding loans ([10]).

(21) According to the project agreement, there is to be a financial separation between the different companies involved in the operation of Harpa and between the different operations and activities:

(22) **13.11.1** *The private partner will at all times ensure that there is financial separation between the real estate company, the operation company, Hringur and the private partner. Each entity shall be managed and operated separately with regards to finances.*

(23) **13.11.2** *The private partner will at all times ensure that there is sufficient financial separation, i.e. separation in book-keeping, between the paid for work and other operations and activities within the CC. The private partner shall at all times during the term be able to demonstrate, upon request from the client, that such financial separation exists.*

(24) The operations of Harpa are divided into several categories: 1. the Icelandic Symphony Orchestra; 2. the Icelandic Opera; 3. other art events; 4. conference department; 5. operations; 6. ticket sales; 7. operating of facilities; 8. management cost. All these cost categories now fall under Harpa — tónlistar- og ráðstefnuhús ehf. and the revenue and costs attributed to each of these categories are included in the budget under the relevant category. Common operational costs such as salary, housing (heating and electricity) and administrative costs are divided among the categories according to a cost allocation model ([11]).

(25) According to the projected annual account of Austurhöfn-TR ehf. for the year 2012, the company was expected to sustain a significant operating loss corresponding to a total negative EBITDA of ISK 406,5 million. The conference part of Harpa's operation was run at a negative EBITDA of ISK 120 million in 2012 and the same goes for 'other art events' (negative EBITDA of ISK 131 million). The projected annual accounts and earning analysis for the year 2013 also foresee a considerable operating loss, a total negative EBITDA of around ISK 348 million, with both the conference activities and 'other art events' operating at a loss ([12]).

(26) As previously noted, the operation in Harpa is now overseen by a single company, Harpa — tónlistar- og ráðstefnuhús ehf., which is devoted to making the Harpa project as profitable as possible. According to the Icelandic authorities, the overall aim is to make the operations gradually sustainable. Nevertheless, Harpa has since its opening been operated with an annual

([8]) As amended and restated in 2010.
([9]) The Icelandic authorities have not yet outlined the particulars of this arrangement.
([10]) See memorandum issued by the Director of Harpa, dated 24 September 2012 (Event No 648320).
([11]) See report by KPMG, dated 7 February 2013 (Event No 662444).
([12]) Ibid.

deficit that has been covered over the budgets of the Icelandic State and Reykjavík City ([13]). According to projections submitted by the Icelandic authorities, the conference activities in Harpa are expected to become gradually sustainable and by the year 2016 the authorities project that Harpa's conference operations will run at a positive EBITDA of ISK 3,5 million ([14]). However, by the year 2016 the 'other art events' are still expected to run at a negative EBITDA of around ISK 93 million.

4. **Comments by the Icelandic authorities**

(27) The Icelandic authorities argue that the financing of the companies involved in the operation of Harpa does not involve State aid since they have properly ensured that the companies keep separate accounts for the different activities within the concert hall and the conference centre.

(28) The Icelandic authorities have claimed that revenues from conference and concert activities have been accounted for separately from other activities, while costs had not been accounted for separately up until now. The Icelandic authorities have acknowledged the need for accounting for conference activities separately from concert activities, as well as costs associated with these activities, and they aimed at having such a separation functional in January 2012.

(29) Furthermore, the Icelandic authorities claim that there is now a sufficient separation of accounts. In order to validate this claim, they have put forward statements from two accounting firms, PWC and KPMG. According to PWC, the separation of accounts for the companies involved in the operation of Harpa is sufficient. The profits are attributed to the relevant operational category and the common operational costs are divided between all operational categories. According to the report from KPMG, the property management team of Harpa has divided the building's square meters based on function and usage and the related costs are allocated accordingly.

(30) With regard to the conference operations, according to the Icelandic authorities, Harpa — tónlistar- og ráðstefnuhús ehf. is not itself active on the conference market. The company however leases conference rooms either to one-off conference organisers or to specialised conference businesses. Furthermore, the Icelandic authorities have noted that that there are no competing conference centres in Iceland capable of hosting large-scale conferences like Harpa. According to the Icelandic authorities, the conference business positively contributes to other activities in Harpa. If Harpa — tónlistar- og ráðstefnuhús ehf. would not operate the conference business, the costs other activities would have to carry would be considerably higher. In order to show that the conference aspect of Harpa is not being subsidised, the Icelandic authorities submitted a pricing analysis from KPMG where they compared the prices of comparable conference facilities, based on size and capacity. According to KPMG's analysis, the price for a full day, the price per guest and the price per square meter are on average much higher for the facilities in Harpa than for comparable facilities offered in competing conference facilities.

(31) Lastly, the Icelandic authorities maintain that the financial contributions from the State and the City are fully allocated for payment of outstanding loans and are not used in order to subsidise the conference hosting aspect.

II. **ASSESSMENT**

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

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

(33) '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.'

([13]) According to the Icelandic authorities, Harpa's losses mostly stem from high real estate taxes.
([14]) The key factor in this revenue growth is the expected increase in the conference business.

(34) In the following chapters the financing of the companies involved in the operation of Harpa Concert Hall and Conference Centre will be assessed with respect to these criteria.

1.1. *State resources*

(35) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute State aid.

(36) At the outset, the Authority notes that both local and regional authorities are considered to be equivalent to the State ([15]). Consequently, the state for the purpose of Article 61(1) covers all bodies of the State administration, from the central government to the City level or the lowest administrative level as well as public undertakings and bodies. Furthermore, municipal resources are considered to be State resources within the meaning of Article 61 of the EEA Agreement ([16]).

(37) Since the Icelandic State and the City of Reykjavík cover jointly the annual deficit of the companies involved in the operation of Harpa by annually contributing a certain amount from their budgets, State resources are involved. Furthermore, the converting of loans into share capital also entails a transfer of State resources since the State and the City would forgo their entitlement to receive a full repayment of the outstanding loans. Therefore, the first criterion of Article 61(1) of the EEA Agreement is fulfilled.

1.2. *Undertaking*

(38) In order to constitute State aid within the meaning of Article 61 of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ([17]). Economic activities are activities consisting of offering goods or services on a market ([18]). Conversely, entities that are not commercially active in the sense that they are not offering goods and services on a given market do not constitute undertakings.

(39) The Authority is of the opinion that both the construction and operation of an infrastructure constitute an economic activity in itself (and are thus subject to State aid rules) if that infrastructure is, or will be used, to provide goods or services on the market ([19]). In this case, the conference hall and concert centre is intended for e.g. hosting conferences as well as music, culture and 'other art events' on a commercial basis, i.e. for the provision of services on the market. This view has been confirmed by the Court of Justice of the European Union in the *Leipzig/Halle* case ([20]). Consequently, in infrastructure cases, aid may be granted at several levels: construction, operation and use of the facilities ([21]).

(40) As previously noted, Harpa Concert Hall and Conference Centre hosts concerts by the Icelandic Symphony Orchestra, the Icelandic Opera, various other art events as well as conferences. In the view of the Icelandic authorities, only the conference aspect of Harpa's operation constitutes an economic activity. All other activities should therefore be classified as non-economic. However, the Authority has certain doubts in this regard.

(41) Some of the activities taking place in Harpa, notably conferences, theatre performances, popular music concerts etc., can attract significant numbers of customers while they are in competition with private conference centres, theatres or other music venues. Therefore, the Authority takes the view

([15]) See Article 2 of Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings (OJ L 318, 17.11.2006, p. 17), incorporated at point 1a of Annex XV to the EEA Agreement.

([16]) See the Authority's Decision No 55/05/COL, Section II.3, p. 19 with further references, published in OJ L 324, 23.11.2006, p. 11 and EEA Supplement No 56, 23.11.2006, p. 1.

([17]) Case C-41/90 *Höfner and Elser* v *Macroton* [1991] ECR I-1979, paragraphs 21-23 and Case E-5/07 *Private Barnehagers Landsforbund* v *EFTA Surveillance Authority* [2008] Ct. Rep. 61, paragraph 78.

([18]) Case C-222/04 *Ministero dell'Economica e delle Finanze* v *Cassa di Risparmio di Firenze SpA* [2006] ECR I-289, paragraph 108.

([19]) See the Commission Decision in Case SA.33618 (Sweden) *Financing of the Uppsala arena* (OJ C 152, 30.5.2012, p. 18), paragraph 19.

([20]) Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *The European Commission*, 19 December 2012, paragraphs 40-43, not yet published.

([21]) See the Commission Decision in Case SA.33728 (Denmark) *Financing of a new multiarena in Copenhagen* (OJ C 152, 30.5.2012, p. 6), paragraph 24.

that the Harpa Concert Hall and Conference Centre and the companies involved in its operation, in so far as they engage in commercial activities, qualify as an undertaking ([22]). The companies involved in the operation of Harpa must be regarded as vehicles for pursuing the common interest of its owners, that is to support cultural activities in Iceland.

1.3. *Advantage*

(42) In order to constitute State aid within the meaning of Article 6l of the EEA Agreement, the measure must confer an economic advantage on the recipient.

(43) Regarding the financing of the construction of Harpa, State aid can only be excluded if it is in conformity with the market economy investor principle ('MEIP') ([23]). According to the Icelandic authorities, the State and the City had initially hoped that a private investor would finance the realisation of the project. However, due to the financial crisis, it became impossible to carry out the project without public funding. The direct grant by the State and the City is thus claimed to be necessary, as without it there were not enough funds to finance the project. The Authority therefore considers, at this stage, that the public financing of the construction of Harpa would constitute an economic advantage and thus aid, since the project would admittedly not have been realised in the absence of public funding and the participation by the State and the City was essential to the Harpa project as a whole.

(44) It follows from the Authority's decisional practice that when an entity carries out both commercial and non-commercial activities, a cost-accounting system that ensures that the commercial activities are not financed through State resources allocated to the non-profit making activities must be in place ([24]). This principle is also laid down in the Transparency Directive ([25]). The Directive does not apply directly to the case at hand. However, the Authority is of the opinion that the principles of operating economic activities on commercial terms with separate accounts, and a clear establishment of the cost accounting principles according to which separate accounts are maintained, still apply.

(45) As described in Section I.3 above, the operations of Harpa are divided into several categories, e.g. hosting the Icelandic Symphony Orchestra and the Icelandic Opera as well as other art events and conferences, which can be divided into economic and non-economic activities (i.e. cultural activities). The Icelandic authorities have however not properly ensured, through either amending the organisational structure of Harpa or by other administrative action, that there is a clear and consistent separation of the accounts for the different activities of the concert hall and conference centre. Simply dividing the losses associated with the operation of the building and common administrative costs between the different activities of Harpa, both the economic and non-economic, based on estimated usage and other criteria cannot be seen as a clear separation of accounts under EEA law. This situation therefore may lead to cross-subsidisation between non-economic and economic activities.

(46) Additionally, an advantage is conferred on the companies involved in the operation of Harpa in the form of foregone profits when the State and the City do not require a return on their investment in the concert hall and conference centre, in so far as those companies engage in commercial activities, such as the hosting of conferences or 'other art events'. Any business owner or investor will normally require a return on its investment in a commercial undertaking. Such a requirement effectively represents an expense for the undertaking. If a State- and municipally-owned undertaking is not required to generate a normal rate of return for its owner this effectively means that the undertaking benefits from an advantage whenever the owner foregoes that profit ([26]).

(47) The Authority considers that the announced conversion of loans, in the amount of ISK 904 million, could also constitute an advantage, should the conversion not be concluded on market terms. However, since the Authority has not received a detailed description of the loan conversion agreement it is not in the position to assess whether an advantage is present or not.

([22]) See the Commission Decision in Case N 293/08 (Hungary) *Cultural aid for multifunctional community cultural centres, museums, public libraries* (OJ C 66, 20.3.2009, p. 22), paragraph 19.

([23]) See the Commission Decision in Case SA.33728 (Denmark) *Financing of a new multiarena in Copenhagen* (OJ C 152, 30.5.2012, p. 6), paragraph 25.

([24]) ESA Decision No 142/03/COL regarding reorganisation and transfer of public funds to the Work Research Institute (OJ C 248, 16.10.2003, p. 6, EEA Supplement No 52, 16.10.2003, p. 3), ESA Decision No 343/09/COL on the property transactions engaged in by the Municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32 (OJ L 123, 12.5.2011, p. 72, EEA Supplement No 27, 12.5.2011, p. 1).

([25]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17), incorporated at point 1a of Annex XV to the EEA Agreement.

([26]) Case C-234/84 *Belgium* v *Commission* [1986] ECR I-2263, paragraph 14.

(48) The preliminary assessment of the Authority thus shows that an economic advantage cannot be excluded at any level (construction, operation and use).

1.4. *Selectivity*

(49) In order to constitute State aid within the meaning of Article 6l of the EEA Agreement, the measure must be selective.

(50) The Icelandic authorities provide funding to the companies involved in the operation of Harpa. The funding is used to cover the losses stemming from the different activities within Harpa, including economic activities such as the hosting of conferences. This system of compensation, under which cross-subsidisation may occur, is not available to other companies that are active on the conference market in Iceland or elsewhere.

(51) In light of the above, it is the Authority's preliminary view that the companies involved in the operation of Harpa receive a selective economic advantage compared to their competitors on the market.

1.5. *Distortion of competition and effect on trade between contracting parties*

(52) The measure must be liable to distort competition and affect trade between the contracting parties to the EEA Agreement to be considered State aid within the meaning of Article 61(1) of the EEA Agreement.

(53) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade is considered to be sufficient in order to conclude that the measure is likely to affect trade between contracting parties and distort competition between undertakings established in other EEA States ([27]). The State resources allocated to the companies involved in the operation of Harpa, in order to cover their losses, constitute an advantage that strengthens Harpa's position compared to that of other undertakings competing in the same market.

(54) As the market for organising international events is open to competition between venue providers and event organisers, which generally engage in activities which are subject to trade between EEA States, the effect on trade can be assumed. In this case, the effect on trade between certain neighbouring EEA States is even more likely due to the nature of the conference industry. Moreover, the General Court has recently, in its Order concerning the Ahoy complex in the Netherlands, held that there was no reason to limit the market to the territory of that Member State ([28]).

(55) Therefore, in the preliminary view of the Authority, the measure threatens to distort competition and affect trade within the EEA.

1.6. *Conclusion with regard to the presence of State aid*

(56) With reference to the above considerations the Authority cannot, at this stage and based on its preliminary assessment, exclude that the measure under assessment includes elements of State aid within the meaning of Article 61(1) of the EEA Agreement. Under the conditions referred to above, it is thus necessary to consider whether the measure can be found to be compatible with the internal market.

2. **Compatibility assessment**

(57) The Icelandic authorities have not put forward any arguments demonstrating that the State aid involved in the financing of the companies involved in the operation of Harpa could be considered as compatible State aid.

([27]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] Report of the EFTA Court p. 76, paragraph 59; Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11.

([28]) Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV* v *The European Commission*, Order of the General Court of 26 January 2012, paragraph 45, published in OJ C 89, 24.3.2012, p. 36.

(58) 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) or Article 59(2) of the EEA Agreement and are necessary, proportional and do not cause undue distortion of competition.

(59) The derogation in Article 61(2) is not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision. Further, the aid under assessment in this case cannot be considered to qualify as public service compensation within the meaning of Article 59(2) of the EEA Agreement.

(60) The EEA Agreement does not include a provision corresponding to Article 107(3)(d) of the Treaty on the Functioning of the European Union. The Authority nevertheless acknowledges that State aid measures may be approved on cultural grounds on the basis of Article 61(3)(c) of the EEA Agreement ([29]).

(61) On the basis of Article 61(3)(c) of the EEA Agreement, aid to promote culture and heritage conservation may be considered compatible with the functioning of the EEA Agreement, where such aid does not affect trading conditions and competition in the EEA to the extent that is considered to be contrary to the common interest. The Authority must therefore assess whether granting aid to the various activities in Harpa can be justified as aid to promote culture on the grounds of Article 61(3)(c) of the EEA Agreement.

(62) It should be noted that the principles laid down in Article 61(3)(c) of the EEA Agreement have been applied to cases somewhat similar to the case at stake ([30]). The Icelandic authorities have stated that the primary objective of the measure in question was to promote culture through the construction of a concert hall that could house both the Icelandic Symphony Orchestra and the Icelandic Opera. Similar multipurpose cultural centres already exist in most other European cities. Harpa is to be Iceland's national concert hall, providing a necessary cultural infrastructure that was missing in Iceland and it will act as the focal point for the development and advancement of those performance arts in Iceland. The concert centre will therefore contribute to the development of cultural knowledge and bring access to cultural educational and recreational values to the public ([31]).

(63) In view of the above, the Authority considers that, given its cultural purpose, the construction and operation of a Symphony and Opera facility would qualify as aid to promote culture within the meaning of Article 61(3)(c) of the EEA Agreement. However, the Authority has doubts as to whether aid granted to subsidise conference and other art events, on a commercial basis, can be justified under Article 61(3)(c) and this aid must therefore be assessed separately.

(64) Concerning necessity, proportionality and whether the measure is likely to distort competition, the Authority has the following observations. As previously noted the main reason for constructing Harpa was the apparent need for a suitable concert hall to accommodate both the Icelandic Symphony Orchestra and the Icelandic Opera. Given the scale of the project it is understandable that an infrastructure such as Harpa would also be used to house various commercial activities such as restaurants, coffee shops, stores, conferences and popular concerts. However, in order not to distort competition, safeguards must be put in place to ensure that there is no cross subsidisation between the commercial activities and the heavily subsidised cultural activities. This can be achieved by either tendering out facilities for the commercial activities, thereby ensuring that the economic operator pays market price for the facilities and does not benefit from cross subsidisation, or by sufficiently separating the economic activities from the non-commercial activities by establishing a separate legal entity or a sufficient system of cost allocation and separate accounts that ensures a reasonable return on investment. The Icelandic authorities have already taken the former approach with regard to the restaurants, catering services and shops within Harpa. The same approach has however not been taken with regard to the hosting of conference and 'other art events' which are currently overseen by a company owned by the State and the City, Harpa — tónlistar- og ráðstefnuhús ehf., and run at a considerable negative EBITDA. The Authority therefore cannot see that the Icelandic authorities have put the necessary safeguards in place to ensure that cross subsidisation does not occur between the cultural and the purely commercial activities within Harpa.

([29]) See for example paragraph 7 (with further references) of the Authority's Guidelines on State aid to cinematographic and other audiovisual work, available at the Authority's webpage at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/

([30]) See Commission Decision in Case N 122/10 (Hungary) *State aid to Danube Cultural Palace* (OJ C 147, 18.5.2011, p. 3) and Commission Decision in Case N 293/08 (Hungary) *Cultural aid for multifunctional community cultural centres, museums, public libraries* (OJ C 66, 20.3.2009, p. 22).

([31]) See Commission Decision in Case SA.33241 (Cyprus) *State support to the Cyprus Cultural Centre* (OJ C 377, 23.12.2011, p. 11), paragraphs 36-39.

(65) Consequently, following its preliminary assessment, the Authority has doubts whether the proposed project could be deemed compatible under Article 61(3)(c) of the EEA Agreement, at this stage at all three levels of possible aid (construction, operation and use) in accordance with the above.

(66) At this stage, the Authority has not carried out an assessment with respect to other possible derogations, under which the measure could be found compatible with the functioning of the EEA Agreement. In this respect, the Icelandic authorities have not brought forward any further specific arguments.

3. **Procedural requirements**

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

(68) The Icelandic authorities did not notify the aid measures to the Authority. Moreover, the Icelandic authorities have, by constructing and operating Harpa, put those measures into effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid involved is therefore unlawful.

4. **Opening of the formal investigation procedure**

(69) Based on the information submitted by the complainant and the Icelandic authorities, the Authority, after carrying out the preliminarily assessment, is of the opinion that the financing of the companies involved in the operation of the Harpa Concert Hall and Conference Centre — within the context of the project as outlined above — might constitute State aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, as outlined above, the Authority has doubts as regards the compatibility of the potential State aid with the functioning of the EEA Agreement.

(70) Given these doubts and the impact of potential State aid on the investments of private operators it appears necessary that the Authority opens the formal investigation procedure.

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

(72) The opening of the procedure will also enable interested third parties to comment on the questions raised and on the impact of the Harpa project on relevant markets.

(73) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, hereby invites the Icelandic authorities to submit their comments and to provide *all documents, information and data* needed for the assessment of the compatibility of the measures within one month from the date of receipt of this Decision.

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

(75) Attention is drawn to the fact that the Authority will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties, by publication of a notice in the EEA Supplement to the *Official Journal of the European*. All interested parties will be invited to submit their comments within one month of the date of such publication,

HAS ADOPTED THIS DECISION:

Article 1

The financing and operation of the Harpa Concert Hall and Conference Centre constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts as regards the compatibility of the State aid with the functioning of the EEA Agreement.

Article 2

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is initiated regarding the aid referred to in Article 1.

Article 3

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 from the notification of this Decision.

Article 4

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 measures under the State aid rules of the EEA Agreement.

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Done at Brussels, 20 March 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

Poziv k predložitvi pripomb v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča v zvezi z morebitno državno pomočjo za Nasjonal digital læringsarena (NDLA)

(2013/C 229/10)

Z Odločbo št. 136/13/COL z dne 27. marca 2013 v verodostojnem jeziku na straneh, ki sledijo temu povzetku, je Nadzorni organ Efte začel postopek v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča. Norveškim organom je bil v vednost poslan izvod odločbe.

Nadzorni organ Efte poziva države Efte, države članice EU in zainteresirane strani, naj sporočijo svoje pripombe o zadevnem ukrepu v enem mesecu od objave tega obvestila na naslednji naslov:

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

Pripombe se posredujejo norveškim organom. Zainteresirana stran, ki predloži pripombe, lahko pisno zaprosi za zaupno obravnavo svoje identitete, pri čemer navede razloge za to.

POVZETEK

Ozadje

Izobraževanje je na Norveškem obvezno za vse otroke med šestim in šestnajstim letom starosti, zagotavlja pa ga sistem brezplačnih javnih šol. Leta 2006, ko je potekala „Pobuda za spodbujanje znanja“ (Kunnskapsløftet), so norveški organi sklenili, da morajo vse norveške šole nameniti večjo pozornost sposobnosti učenja učnih predmetov ob uporabi informacijske in komunikacijske tehnologije. V teh okoliščinah so norveški organi spremenili Zakon o izobraževanju in okrožjem naložili, da morajo učencem brezplačno zagotavljati potrebna tiskana in digitalna učna gradiva.

Maja 2006 je norveška vlada razvoju in uporabi tovrstnih digitalnih učnih virov namenila 50 milijonov NOK. Junija 2006 je Ministrstvo za izobraževanje okrožja povabilo, naj skupaj zaprosijo za razpoložljiva sredstva. Avgusta 2006 so se pristojni za izobraževanje pri 18 od 19 okrožij odločili, da pristopijo k medokrožnemu sodelovanju in vzpostavijo NDLA kot organ za sodelovanje med okrožji v skladu s členom 27 Zakona o lokalni upravi.

Sodelujoča okrožja so nato pri Ministrstvu za izobraževanje zaprosila za sredstva, ministrstvo pa je projektu namenilo 30,5 milijonov NOK pod pogojem, da bo pristojna pravna oseba poskrbela za obveznosti, ki jih imajo okrožja iz pobude, da se ta pravna oseba ne ukvarja z gospodarsko dejavnostjo ter da sta nakup digitalnih učnih gradiv in razvoj storitev izvedena v skladu s pravili za javna naročila.

V skladu s tem so okrožja projektu dodelila zneske v višini 21,1 milijona NOK (2008), 34,7 milijona NOK (2009), 58,8 milijona NOK (2010) in 57,7 milijona NOK (2011). Ta sredstva so se prispevala deloma iz rednih sredstev okrožij za šolske dejavnosti, deloma pa iz zgoraj omenjenih sredstev, ki jih je okrožjem za ta projekt dalo na razpolago Ministrstvo za izobraževanje.

Odločba in sodba sodišča

Nadzorni organ je 12. oktobra 2011 sprejel Odločbo št. 311/11/COL, s katero je odločil, da ukrep ni državna pomoč v smislu člena 61(1) Sporazuma EGP (v nadaljnjem besedilu: Odločba). Tožeča stranka je 9. januarja 2012 vložila tožbo proti Odločbi in Sodišče Efte je Odločbo s sodbo z dne 11. decembra 2012 razveljavilo ([1]).

([1]) Zadeva E-1/12 *Den norske Forleggerforening* (še neobjavljena).

Ocena ukrepa

Prisotnost državne pomoči

Glede na sodbo Nadzorni organ ni prepričan, ali se NDLA ukvarja z gospodarsko dejavnostjo ali ne. Nadzorni organ namreč potrebuje podrobnejše podatke o prehodu pobude iz faze projekta na NDLA kot formalno ustanovljen organ za sodelovanje med okrožji v skladu s členom 27 Zakona o lokalni upravi.

Nadalje Nadzorni organ potrebuje več podatkov o tem, do kolikšne mere je sprememba pravnega statusa vplivala na postopek sprejemanja odločitev. Natančneje, Nadzorni organ mora ugotoviti, v kolikšni meri lahko NDLA razširi obseg svojih dejavnosti brez privolitve sodelujočih okrožij ali celo proti njihovi volji in ali se sedanje stanje razlikuje od stanja pred formalno ustanovitvijo.

Poleg tega bo Nadzorni organ natančneje proučil financiranje NDLA tako v fazi projekta kot po pridobitvi formalnega statusa.

Nadzorni organ mora tudi natančneje ugotoviti, kako so določeni parametri za postopke javnega naročanja, s katerimi NDLA kupuje blago in najema osebje.

Poleg vsega tega potrebuje Nadzorni organ več podatkov o učinkih ukrepa na konkurenco in trgovino.

Združljivost pomoči

Nadzorni organ glede na podatke, s katerimi razpolaga, v tem trenutku ne more sklepati o združljivosti ukrepa. Nadzorni organ zato potrebuje dodatne podatke v zvezi s tem.

Zaključek

Na podlagi navedenega se je Nadzorni organ odločil za začetek formalnega postopka preiskave v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča. Zainteresirane strani so vabljene, da predložijo svoje pripombe v enem mesecu od datuma objave tega obvestila v *Uradnem listu Evropske unije*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 136/13/COL

of 27 March 2013

opening the formal investigation procedure into potential aid to the Nasjonal digital læringsarena (NDLA)

(Norway)

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,

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

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

Whereas:

I. **FACTS**

1. **Procedure**

(1) By letter dated 15 April 2010 Den Norske Forleggerforening, the Norwegian Publishers Association ('NPA'), sent a complaint alleging that illegal State aid has been granted to the Nasjonal digital

læringsarena ('NDLA'). The letter was received and registered by the Authority on 16 April 2010 (Event No 553723). Following a telephone conference on 15 July 2011 the complainant provided additional information by email on the same day (Event No 608593).

(2) By letter dated 2 July 2010 (Event No 558201), the Authority requested additional information from the Norwegian authorities. By letter dated 9 August 2010 (Event No 566179), the Norwegian authorities requested an extension of the time limit for sending a response. The request for an extension was granted by the Authority by letter dated 12 August 2010 (Event No 566397). By letter dated 9 September 2010 (Event No 568942), the Norwegian authorities replied to the information request. In addition, discussions between the Authority and the Norwegian authorities regarding the case took place at a meeting in Norway on 13-14 October 2010. Additional information from the Norwegian authorities was sent to the Authority by letter dated 1 December 2010 (Event No 579405).

(3) The Authority considered that further information was necessary and sent another request for information by letter dated 4 February 2011 (Event No 574762). The Norwegian authorities replied to the information request by letter dated 7 March 2011 (Event No 589528). Upon request the Norwegian authorities provided further clarifications by emails 2 May 2011 (Event No 596402) and 12 August 2011 (Event No 608596).

(4) On 12 October 2011 the Authority adopted Decision No 311/11/COL deciding that the measure did not constitute State aid within the meaning of Article 61(1) EEA (hereafter: the Decision). On 9 January 2012 the applicant brought an action against the decision and by its judgment dated 11 December 2012 the EFTA Court annulled the decision (hereafter: the Judgment) ([2]).

2. **The complaint**

(5) The complainant is the Norwegian Publishers Association, which represents i.a. companies which are or could be active in the development and distribution of digital learning material. The complaint concerns the Norwegian government's and the county municipalities granting of funds as well as the transfer of a content management system to the NDLA. The NDLA is an entity which has been founded as an inter-county cooperation body by 18 Norwegian municipalities ([3]) in order to develop or purchase digital learning material with a view to publishing the material on the internet free of charge.

(6) The complainant submits that the NDLA has four main areas of activity: firstly, the NDLA develops and supplies learning resources for the upper secondary school; secondly, the NDLA procures learning resources from third party suppliers; thirdly, the NDLA ensures the quality of learning resources; and fourthly, the NDLA develops and manages the content management system which operates the website through which the digital learning material is published (these activities are hereafter also referred to as 'purchase, development and supply of digital learning materials').

(7) The complainant submits that the granting of funds to the NDLA for the purchase, development and supply of digital learning material constitutes illegal State aid to the NDLA. In that regard the complainant emphasises that — in his view — the NDLA is not an integrated part of the public administration but rather an undertaking within the meaning of State aid rules. The complainant recalls that according to established case law an undertaking is an entity which is engaged in economic activities. The complainant suggests that according to the ECJ case law an economic activity is an activity, which could, at least in principle, be carried out by a private undertaking in order to make profits. Then, the complainant argues that any entity, which carries out an activity which could be carried out to make profits, is engaged in an economic activity. The complainant further submits that there was a market for digital learning material prior to the activities of the NDLA and that the NDLA competes at present with private undertakings offering digital learning resources. The complainant claims that on this basis the development and supply of digital learning resources constitutes an economic activity. The complainant further suggests that the other activities of the NDLA are closely linked to the development and supply of digital learning resources and are therefore also to be considered as economic in nature.

([2]) See footnote 1.

([3]) Norway is divided into 19 municipalities, all of which participate in the NDLA project with the exception of the county municipality of Oslo. Participants are therefore the municipalities of Akershus, Aust-Agder, Buskerud, Finnmark, Hedmark, Hordaland, Nordland, Nord-Trøndelag, Møre og Romsdal, Oppland, Rogaland, Sogn og Fjordane, Sør-Trøndelag, Telemark, Troms, Vest-Agder, Vestfold and Østfold.

(8) Furthermore, the complainant argues that the funds offered by the Ministry of Education and from the county municipalities to the NDLA for the purchase of digital learning material from third party suppliers also constitute State aid. Finally, the complainant submits that the fact that the State also made its content management system available to the NDLA free of charge — according to the complainant — also amounts to State aid.

(9) The complainant notes that the measure has not been notified. He continues to argue that Article 59(2) EEA is not applicable and concludes that — in the absence of a notification — the Norwegian State has granted State aid contrary to State aid rules.

3. **Background**

3.1. ***The educational system in Norway***

(10) Education in Norway is mandatory for all children aged from 6 to 16 and is provided through a system of free public schools. This system is divided into a compulsory elementary school (age 6 to 13), a compulsory lower secondary school (age 13 to 16), and the upper secondary school (age 16 to 19).

(11) In 2006 the Norwegian authorities decided in the course of the 'Knowledge Promotion Initiative' (Kunnskapsløftet) that all Norwegian schools were to emphasise certain basic skills in all subjects. One of these skills is the ability to learn a given subject by using information and communication technology. This requirement was introduced in the national curricula for pupils in the 10-year compulsory school (i.e. school for grades 1 to 9) and for pupils in the first year of upper secondary education (i.e. school for grades 10 to 12) and apprenticeships. Under the Norwegian Education Act [4] the county municipalities are responsible for meeting these requirements. Furthermore, in 2007 the Norwegian authorities amended the Education Act and obliged the county municipalities to provide the pupils with the necessary printed and digital learning materials free of charge.

(12) It should be noted that until that time, pupils in Norwegian upper secondary school (grades 10 to 12) had to purchase their learning material themselves based on the choice of learning material designated by the schools in compliance with the national curricula [5]. Under the new Education Act, county municipalities are obliged to provide all learning material, i.e. digital learning material as well as physical learning material such as books, to pupils free of charge [6].

Provisions in the revised State budget

(13) The obligation of providing digital and physical learning material for free constitutes a considerable financial burden for the Norwegian county municipalities. In view of these additional costs, the Norwegian government decided already in 2006 to provide additional funds. The provision of these funds is laid down in a revised State budget which was adopted in May 2006:

'The Government aims to introduce free teaching material for secondary education. At the same time, it is desirable to encourage the use of digital learning materials in secondary education. As part of the efforts to bring down the cost for each student through increased access to and use of digital teaching aids, the Government proposes to allocate NOK 50 million as a commitment to the development and use of digital learning resources.

Counties are invited to apply for funding for the development and use of digital learning resources. Applications from counties may include one, several, or all secondary schools in the county, and may include one or more subjects. The objective of the grant is to encourage the development and use of digital learning resources, and to help reduce students' expenses for teaching aids.

The funds can be used for the provision or for local development of digital learning resources. The funds shall not be used for the preparation of digital infrastructure for learning. The intention is to give priority to applications that involve inter-county cooperation.' [7]

[4] Act of 17 July 1998 No 61 relating to Primary and Secondary Education and Training (The Education Act).
[5] As the national curricula set out the objectives for the learning outcome of all classes, the content of the learning material must respect the objectives of the national curricula.
[6] Sections 3-l and 4A-3 of the Education Act states that the county municipality is responsible for providing pupils with the necessary printed and digital teaching material as well as digital equipment free of charge.
[7] Translation made by the Authority.

Invitation to submit an application

(14) In June 2006 the Ministry of Education submitted an invitation to the county municipalities to jointly apply for the available funds of NOK 50 million. The letter describes the objectives and the concept of the initiative as follows:

'The Ministry of Education has the following objectives for the initiative:

— To increase access to and use of digital learning materials in secondary education.

— To develop secondary schools and school owners' competence as developers and/or purchasers of digital learning materials.

— To Increase the volume and diversity of digital teaching materials aimed at secondary schools.

— Over time to reduce students' expenses for teaching aids.

[…]

The funds can be used to purchase digital learning resources and to locally develop digital learning resources.' ([8])

Creation of the NDLA

(15) In August 2006 the heads of education of the 19 Norwegian county municipalities met to discuss the possibility of a joint application for the funds in question based on the requested inter-county cooperation. While the municipality of Oslo decided not to participate in a cooperative project, the other 18 municipalities decided to enter into the inter-county cooperation and to set up the NDLA to manage the process. Each of these municipalities subsequently adopted the following resolution:

'The County Council passes a resolution for the following counties, Akershus, Aust-Agder, Buskerud, Finnmark, Hedmark, Hordaland, Nordland, Nord-Trondelag, More og Romsdal, Oppland, Rogaland, Sogn og Fjordane, Sor-Trondelag, Telemark, Troms, Vest-College, Vesold and Østfold, to establish an inter-county cooperation body, the NDLA, with its own Board in accordance with §27 of the Local Government Act. The purpose of this collaboration is to facilitate the purchase, development, deployment and organisation of digital learning resources for all subjects in upper secondary education. The result shall be free digital learning material that facilitates active learning and sharing…' ([9])

Funds for the county municipalities

(16) Subsequently, an application for the State funds was submitted to the Ministry of Education, which in April 2007 granted the funds under a number of conditions:

'The Ministry requests further that the counties jointly identify a responsible legal entity that will take care of the counties' responsibility for digital learning resources under this initiative. Such an entity can be e.g. a corporation, an inter (county) municipal corporation or a host (county) municipality but it cannot itself engage in economic activity.

[…]

The Ministry expects that the purchase of digital learning materials and development services are performed in accordance with the regulations for public procurement. The development of digital learning resources by county employees is to be regarded as an activity for its own account, provided that the counties do not gain any profits from this activity. The development by people who are not county employees must be regarded as the purchase of services and should be evaluated based on the rules and regulations for public procurement in the usual way.' ([10])

(17) Following the approval of the funds the Ministry of Education transferred over a period of three years NOK 30,5 million (NOK 17 million in 2007, NOK 9 million in 2008 and NOK 4,5 million in 2009) to the participating municipalities for the NDLA project.

([8]) See footnote 7.
([9]) See footnote 7.
([10]) See footnote 7.

(18) Besides, following the amendment of the Education Act in 2007, the county municipalities were compensated for the obligations to provide (physical and digital) learning material through an increase in the county municipal grant scheme. This compensation was based on the estimated costs of providing learning materials in all subjects. The compensation amounted to NOK 287 million in 2007, NOK 211 million in 2008, NOK 347 million in 2009 and NOK 308 million in 2010.

Funding of NDLA by the municipalities

(19) The participating municipalities decided to use part of these funds for the NDLA project. The county municipalities allocated NOK 21,1 million (2008), NOK 34,7 million (2009), NOK 58,8 million (2010) and NOK 57,7 million (2011) to the project.

Legal status

(20) The EFTA Court emphasised that it is apparent from the case file that the NDLA was active as an ad hoc cooperation before it was formally established as an inter-county cooperation body pursuant Article 27 of the Norwegian Local Government Act ([11]).

Related projects

(21) There are currently two other projects concerning digital learning in Norway. Firstly, the municipality of Oslo has applied for a similar grant for its own project (Real Digital). Secondly, the Ministry of Education itself is working on a similar project (Utdanning).

(22) The municipality of Oslo does not participate in the NDLA project and has submitted an application for funding for its own project called Real Digital. The Norwegian government accepted the application from Oslo and granted NOK 13,5 million to the municipality of Oslo over a period of two years (NOK 8 million in 2007 and NOK 5,5 million in 2008). It should be noted that the funds provided to the municipality of Oslo are not subject to the complaint at hand.

(23) The Ministry of Education has decided to provide its own system for access to digital learning material. In that regard the Ministry can both develop digital learning material and/or acquire such learning material from third party suppliers. The Ministry acknowledges that there might be areas where the activities of the Ministry of Education might overlap with the activities of the NDLA. In its letter stating the conditions of the grant the Ministry of Education reserved itself the right to reallocate funds originally earmarked for the NDLA to the Ministry's own project. The relevant funds provided to the Ministry of Education are not subject to the complaint at hand.

3.2. ***National legal basis for the measure***

(24) The legal basis for the funds paid by the Ministry of Education to the NDLA is the State budget resolution of the Stortinget in combination with the delegation of competence to the Ministry of Education to approve applications for grants. The legal basis for the grants from the county municipalities to the NDLA is budget resolution of the participating county municipalities.

3.3. ***Recipient***

(25) The NDLA is organised as an inter-county cooperation body under Article 27 of the Local Government Act. This provision stipulates that municipalities or county municipalities may join forces to solve mutual tasks. The cooperation should take place through a board appointed by the relevant municipal or county municipal boards. The board may be empowered to adopt decisions concerning the operation and organisation of the inter municipal cooperation. Moreover, the provision stipulates that the articles of association of such cooperation shall determine the appointment and representation in the board, the area of activities, whether the participating municipalities shall make financial contributions, whether the board may enter into loan agreements or in other ways make the participating municipalities liable for financial obligations and, finally, how such cooperation shall be abolished.

(26) Participation in such cooperation is only open for municipalities and county municipalities. Neither the State nor other State entities or private parties can participate. The cooperation must be sincere in the sense that the law prohibits that the competence to govern the cooperation is delegated to one municipality. This is so since municipal tasks and obligations shall remain the responsibility of each municipality ([12]).

([11]) Case E-1/12 *Den norske Forleggerforening*, para. 117 (not yet published).
([12]) NOU 1996:5 pkt. 8.1.2.

3.4. ***Amount***

(27) As indicated above, so far the county municipalities have transferred NOK 21,1 million in 2008, NOK 34,7 million in 2009 and NOK 61,6 million in 2010 to the NDLA project. In 2010 the county municipalities allocated NOK 58,8 million to the project and in 2011 this amount was NOK 56,9 million.

3.5. ***Duration***

(28) The NDLA project is not subject to a limited duration.

4. **The Decision**

(29) On 12 October 2011 the Authority adopted Decision No 311/11/COL holding that the measure did not constitute State aid within the meaning of Article 61(1) EEA. The Authority found that the NDLA was not to be considered as an undertaking because it did not carry out an economic activity.

(30) In that regard the Authority, firstly, noted that, according to established case law and decision practice, in setting up and maintaining the national education system the State fulfils its duties towards its own population in the social, cultural and educational fields ([13]). The Authority observed that the purchase, development and supply of learning material is inextricably linked to the provision of teaching content and is thus an inherent part of the actual teaching itself. In that regard it noted that the learning material forms both the basis and the framework for teaching and that the development of learning material is closely linked to the curriculum which is also established by the public authorities.

(31) Secondly, the Authority pointed out that, for a service to be considered as non-economic, it must be provided based on the principle of national solidarity, which means that the activity must be funded by the public purse and not through remuneration. In other words, there should be no connection between the actual costs of the service provided and the fee paid by those benefiting from the activity ([14]). In that regard the Authority concluded that this requirement was fulfilled because the NDLA is entirely funded by the State and distributes the developed or purchased learning material free of any charge.

(32) Thirdly, the Authority noted that in cases in which the activity in question is carried out by entities other than the State itself, the recipient of the funds (public or private) must be subject to the control of the State to the extent that the recipient merely applies the law and cannot influence the statutory conditions of the service (i.e. the amount of the contributions, the use of assets and the fixing of the level of benefits) ([15]). In that regard the Authority noted that the participating municipalities have established the NDLA as an inter-county cooperation body in accordance with Article 27 of the local government act, referred to above. In view of the above, the Authority concluded in its Decision that the NDLA did not carry out an economic activity. Consequently, the NDLA did not act as an undertaking and the funds which the county municipalities transferred to it did not constitute State aid.

5. **Judgment in Case E-1/12**

(33) On 11 December 2012 the EFTA Court annulled Decision No 311/11/COL. The EFTA Court concluded that the Authority did not carry out a sufficient examination into several issues and should have opened the formal investigation procedure.

(34) Firstly, the EFTA Court noted that the NDLA was active as an ad hoc cooperation before it was formally established as an inter-county cooperation body pursuant to Article 27 of the Norwegian Local Government Act. According to the EFTA Court it remains unclear how this change in the legal and organisational status may have changed the decision-making process and the source of funding ([16]).

([13]) Case 263/86 *Humbel* [1988] ECR 5383, para. 18; Case E-05/7 *Private Barnehagers Landsforbund* [2008] EFTA Ct. Rep. 64, para. 82; Commission decision No 118/2000 *France — Aide aux clubs sportifs professionels*, OJ C 333, 28.11.2001, p. 6.

([14]) Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, para. 47; Case C-160/91 Poucet [1993] ECR I-637, paras. 11 and 12.

([15]) Case C-160/91 *Poucet* [1993] ECR I-637, para. 15 and 18; Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paras. 46-57; Case C-218/00 *Cisal die Battistello Venanzi* [2002] ECR I-691, para. 31-46. These cases concern health and social insurances. However, the fact that the Commission explicitly refers to these cases in the context of professional services indicates that the assessment can be generally applied (see Commission Communication 'Report on Competition in Professional Services' of 9.2.2004 (COM(2004) 83 final, Fn. 22).

([16]) See footnote 11.

(35) Secondly, the EFTA Court stated that it remains unclear whether the legislation imposes the obligation to provide the services free of charge on the counties or on the NDLA ([17]). According to the EFTA Court this circumstance raises serious difficulties with regard to the application of the principle of solidarity.

(36) Thirdly, the EFTA Court stated that there are aspects related to the autonomy of the NDLA which remain unclear. First, the EFTA Court noted that it is unclear, how the decisions to expand the NDLA's activities were taken and by whom ([18]). Furthermore, the EFTA Court pointed out that Article 8 of the Articles of Association of the NDLA states that 'the board (of the NDLA) has the competence to impose financial obligations on the participants ([19]).' Moreover, it follows from the judgment that the annulled decision lacked information as regards the autonomy of the the NDLA to set the parameters for the public procurement procedure through which it purchases goods on the market and hires staff ([20]).

II. **ASSESSMENT**

1. **The presence of State aid**

(37) According to Article 61(1) EEA '[s]ave 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.'

1.1. ***State resources***

(38) A measure is financed *by the State or through State resources*, if it results in a burden on the budget of a public authority or on a public or private undertaking provided that the measure is imputable to the State ([21]). In the case at hand the financing of the project results in a burden on the budget of the counties and of the Ministry of Education and Research. Consequently, the measure is financed by the State within the meaning of Article 61(1) of the EEA.

1.2. ***Advantage to an undertaking***

(39) As mentioned above, the Authority concluded in its previous decision that the county municipalities' provision of free, and in this case digital learning material for pupils in the national elementary and secondary school system to be a part of the State's fulfilment of its duty in the educational field and hence a non-economic activity provided under the principle of solidarity as such material is fully funded by the State.

(40) However, in its judgment the EFTA Court addressed several aspects relating not to the nature of the activity as such but rather to organisational aspects of the NDLA, its financing and autonomy, which should have led the Authority to open a formal investigation procedure.

The legal status of the NDLA

(41) The EFTA Court noted that the Articles of Association of the NDLA foresaw that the formalised cooperation would enter into force on 1 July 2009 ([22]). At the same time, the EFTA Court noted that the county municipalities resolutions of August 2006 foresaw that the inter-county cooperation would enter into force on 1 January 2010 ([23]). In view of the above and taking into account that the NDLA was already active as an ad hoc cooperation before it was formally established, the EFTA Court found that the Authority should have investigated the effects of the organisational changes and legal status of the NDLA may have affected its decision making process and the sources of its funding and how it may have changed over time ([24]).

(42) The Authority's Decision described the project phase of the NDLA; the Authority thus acknowledges that the information in the case file does indeed suggest that the NDLA entered into force on 1 July 2009 and thus six months earlier than originally foreseen in the resolutions which the county-municipalities had adopted several years earlier.

([17]) Case E-1/12 *Den norske Forleggerforening*, para. 123 (not yet published).
([18]) Case E-1/12 *Den norske Forleggerforening*, para. 127 (not yet published).
([19]) Case E-1/12 *Den norske Forleggerforening*, paras. 128-130 (not yet published).
([20]) Case E-1/12 *Den norske Forleggerforening*, para. 131 (not yet published).
([21]) Case C-482/99 *France* v *Commission (Stardust)* [2002] ECR I-4397, para. 52.
([22]) Case E-1/12 *Den norske Forleggerforening*, para. 115 (not yet published).
([23]) The EFTA Court refers to the submission from Norway dated 9 September 2010, p. 3.
([24]) See footnote 11.

(43) The complainant has not alleged that the NDLA in its project phase, i.e. before its entry into force as a inter municipal cooperation under Article 27 of the local government act, did engage in any other activities than what it has done after its formal establishment Nevertheless, the EFTA Court points out that the lack of information about how the county municipalities organised their cooperation to comply with their obligations to provide learning material in the NDLA project phase may have an impact on the classification of the activities as non-economic. For that reason the Court emphasised that the Authority should have carried out an investigation on the effects of the change in legal status on the decision making process in the NDLA ([25]).

(44) In that regard it is the Authority's understanding that prior to the formal establishment the project was managed by the 'forum for the county municipalities Heads of Education' (hereafter: FFU) ([26]), which appointed board members to carry out delegated tasks in the project phase.

(45) After the NDLA had been formally established and according to §7(2) of the Articles of Association the forum of the counties' Heads of Education became the Supervisory Board which remains responsible for the overall management. The forum of the counties' Heads of Education appoints the Management Board management board. According to §7(1) of the Articles of Association the Management Board is composed of five members with one member of the FFU and at least one representative of the training regions (i.e. Northern Region, South Western Region and Eastern Region. According to §8 of the Articles of Association, the task of the Management Board is to ensure that the NDLA is able to perform its duties under §2 of the Articles of Association, namely to ensure that (1) that digital educational materials are available to users free of charge, (2) that secondary school is characterised by collaboration and sharing (3) that students and teacher actively participate in teaching and learning, (4) that academic institutions and networks across the country are a driving force in the development of excellent digital learning material and (5) that the market provides content and services for students and teachers needs. Furthermore, the Management Board has the authority to incur financial obligations on the participants in that regard. However, §7(2) of the Articles of Association explicitly states that the Management Board only exercises its authority on the basis of delegation decisions of the Supervisory Board and that the Supervisory Board may instruct the Management Board and overrule its decisions.

(46) The Authority requests the Norwegian government and any interested third parties to explain whether they consider the NDLA to be an undertaking within the meaning of Article 61(1) EEA. In particular they are asked to explain in more detail how the counties cooperated in the NDLA project phase and, in particular, to clarify at what time the NDLA entered into force and whether this entry into force of the municipal cooperation affected the decision making process and the sources of the NDLA's funding. Moreover, the Norwegian authorities are invited to elaborate on the nature, practice and use of inter municipal cooperation under Article 27 of the local government act, including whether such cooperation is considered separate legal entities or not under Norwegian law.

(47) The Authority moreover requests the Norwegian authorities to explain to what extent the change in legal status effected the decision making process, in particular, to what extent the NDLA can expand the scope of its activities without the consent of the participating municipalities or even against their will, and if the present situation differs from the situation prior to the formal establishment of the NDLA on 1 July 2009 ([27]). The Authority also invites the Norwegian authorities to explain in more detail the funding of the NDLA, both in its project phase and after the formal entry into force up to and including 2012 ([28]).

The principle of solidarity and the autonomy of the NDLA

(48) The EFTA Court also found that it was unclear from the Decision whether the obligation to provide digital learning material free of charge falls upon the county municipalities or upon the NDLA ([29]). The EFTA Court noted that in the annulled Decision, the Authority 'refers to the Norwegian legislation and states that it obliged the counties to provide the pupils with the necessary printed and digital learning materials free of charge' (emphasis added) ([30]). The EFTA Court further noted that in the assessment on the autonomy of the NDLA, the annulled decision states that the NDLA cannot decide on charging fees to the end consumer '… since the legal framework obliges the NDLA to provide its services free of charge' (emphasis added) ([31]). The judgment also refers to that the

([25]) See footnote 11.
([26]) The Norwegian wording is: 'Forum for fylkesutdanningssjefer'.
([27]) See footnote 11.
([28]) See footnote 11.
([29]) Case E-1/12 *Den norske Forleggerforening*, paras. 121-123 (not yet published).
([30]) The EFTA Court seems to refer to para. 12 and footnote 4 of the annulled decision according to which 'Section 3-1 and 4A-3 of the Education Act states that the county municipality is responsible for providing pupils with the necessary printed and digital teaching material as well as digital equipment free of charge.'
([31]) The EFTA Court refers to para. 45 of the annulled decision in para. 121 of the Judgment.

Authority at the oral hearing explained that it is the counties which bear the statutory obligation to offer this service free of charge and that they had decided to offer this service jointly through the NDLA ([32]).

(49) In the view of that the EFTA Court considered the above mentioned statements in the decision to represent an implicit contradiction (as it was not clear who was the client of the NDLA), the Authority notes that the notion of 'legal framework' is wider than that of 'legislation'. The reference to the legal framework encompasses not only the statutory obligation in national law (such as the Education Act), but also resolutions (such as the resolutions passed by the county municipalities in August 2006), as well as administrative acts (such as the April 2007 award of funding by the Ministry of Education) and the Articles of Association of the NDLA. The Authority does therefore not consider the above mentioned statements to contain any implicit contradiction.

(50) However, based on the EFTA Court's judgment the Authority invites the Norwegian authorities to explain in more details how the obligation to provide free learning material has been imposed on the county municipalities in the Public Education Act, and how the county municipalities involved in the NDLA have fulfilled this obligation through the NDLA cooperation as set out in the Articles of Association.

(51) Finally, the Court found that the decision did not contain sufficient information on the possibility of the NDLA to set the parameters for the public procurement procedures through which it purchases goods and hires staff ([33]).

(52) The Authority therefore invites the Norwegian authorities to provide more detail on how the parameters for the public procurement procedures through which the NDLA purchases goods and hires staff are set.

(53) Consequently the Authority expresses doubts as to whether the NDLA, wholly or partly, before or after its formal entry into force, may be considered as an undertaking under the EEA State aid rules.

1.3. ***Selectivity***

(54) It is established case law that a measure is selective if it derogates from the common regime inasmuch as it differentiates between economic operators who are otherwise in the same legal and factual situation ([34]). In that regard the Authority notes that if the NDLA were to be considered as an undertaking, the funding of it would be selective since other operators would not benefit from a similar funding.

1.4. ***Effect on competition and trade***

(55) It is established case law that a measure distorts or threatens to distort competition in a way that affects trade between Contracting Parties if it strengthens the position of the recipient compared with other companies ([35]) and if the recipient is active in a sector, in which trade between Contracting Parties takes place ([36]). In that regard the Norwegian authorities noted that the relevant geographic market for provision of learning materials made to fit the national Norwegian curricula should to a great extent be limited to Norway, so that the effects on cross-border trade are not significant. The Authority cannot at this stage and based on the information at hand conclude on the effects of the measure on competition and trade. The Authority therefore invites Norway to provide further information in that regard.

2. **Compatibility**

(56) The Norwegian authorities submitted that if one were to view the funding of the NDLA as State aid, then it would qualify as a compensation for a service of general economic interest under Article 59(2) EEA. However, based on the information at hand the Authority cannot at this stage conclude on the compatibility of the measure. The Authority therefore invites Norway to provide further information in that regard.

([32]) See footnote 17.
([33]) See footnote 20.
([34]) Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, para. 41; Cases C-106/09 P and C-107/09 P *Commission and Spain* v *Gibraltar and UK (Gibraltar corporate tax)* [2011] not yet published, para. 36.
([35]) Case 730/79 Philip Morris *Holland* BV v Commission, [2005] ECR, 2671, para. 11.
([36]) Case 102/87, *France* v *Commission* (SEB), [1988], 4067, Case C-310/99, Italian Republic v Commission, [2002] EC R I-289, para. 85, Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH (Altmark)*, [2003] ECR, I-7747, para. 77; Case T-55/99, *Confederación Espanola de Tranporte de Mercancias (CETM)* v *Commission*, [2000] ECR II-3207, para. 86.

3. **Conclusion**

(57) Based on the information submitted by the complainant and by the Norwegian authorities, and taking into account the judgment of the EFTA Court, the Authority has doubts as to whether the grants to the NDLA constitute State aid within the meaning of Article 61(1) EEA. Furthermore, the Authority has doubts regarding the compatibility of the measure with the functioning of the EEA Agreement.

(58) Given these doubts and the impact of potential State aid on the investments of private operators it appears necessary that the Authority opens the formal investigation procedure. Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3.

(59) The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement or that they do not constitute State aid.

(60) The opening of the procedure will also enable interested third parties to comment on the questions raised and on the impact of the measure on the relevant markets.

(61) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, hereby invites the Norwegian authorities to submit their comments and to provide *all documents, information and data* needed for the assessment of the compatibility of the measures within one month from the date of receipt of this Decision.

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

(63) The Authority would like to remind the Norwegian authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered, unless this recovery would be contrary to a general principle of EEA law. Moreover, according to Article 15 Part II of Protocol 3, the powers of the Authority to order the recovery of aid are subject to a limitation period of 10 years. This period begins on the day on which the unlawful aid is awarded. Any action taken by the Authority with regard to this unlawful aid shall interrupt the limitation period.

(64) Attention is drawn to the fact that the Authority will inform interested parties by publishing this letter and a meaningful summary of it in the EEA Supplement of the *Official Journal of the European Union*. It will also inform interested parties, by publication of a notice in the EEA Supplement to the Official Journal of the European. All interested parties will be invited to submit their comments within one month of the date of such publication,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure, provided for in Article 1(2) of part I of Protocol 3 is initiated regarding the potential State aid to the NDLA.

Article 2

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

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English version of this Decision is authentic.

Done at Brussels, 27 March 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

V

(Objave)

DRUGI AKTI

EVROPSKA KOMISIJA

Objava vloge v skladu s členom 50(2)(a) Uredbe (EU) št. 1151/2012 Evropskega parlamenta in Sveta o shemah kakovosti kmetijskih proizvodov in živil

(2013/C 229/11)

V skladu s členom 51 Uredbe (EU) št. 1151/2012 Evropskega parlamenta in Sveta [1] je ta objava podlaga za uveljavljanje pravice do ugovora zoper vlogo.

ENOTNI DOKUMENT

UREDBA SVETA (ES) št. 510/2006

o zaščiti geografskih označb in označb porekla za kmetijske proizvode in živila [2]

„ANTEP BAKLAVASI“/„GAZİANTEP BAKLAVASI“

ES št.: TR-PGI-0005-0781-10.07.2009

ZGO (X) ZOP ( )

1. **Ime**

„Antep Baklavası“/„Gaziantep Baklavası“

2. **Država članica ali tretja država**

Turčija

3. **Opis kmetijskega proizvoda ali živila**

3.1 *Vrsta proizvoda*

Skupina 2.4 Kruh, fino pecivo, slaščice in drugi pekovski izdelki

3.2 *Opis proizvoda, za katerega se uporablja ime iz 1. točke*

„Antep Baklavası“/„Gaziantep Baklavası“ je sladko pecivo, narejeno iz plasti vlečenega testa, polnjeno s kremo iz pšeničnega zdroba in pistacije antep ter osladkano s sirupom.

Povprečni odstotek osnovnih surovin mora odvisno od komercialnega tipa (suho ali sveže) znašati (dovoljeno odstopanje ± 3 %):

	Običajno (sveže)	Suho
Testo	25 %	30 %
Pistacija antep (*Antep fıstığı*):	10 %–11 %	10 %–11 %

[1] UL L 343, 14.12.2012, str. 1.
[2] Nadomeščena z Uredbo (EU) št. 1151/2012.

	Običajno (sveže)	Suho
Krema iz pšeničnega zdroba	12 %–13 %	—
Navadno maslo	15 %–20 %	20 %–25 %
Sirup	35 %–36 %	35 %–36 %

Razlika med suho in svežo baklavo je v tem, da prva ne vključuje kreme iz pšeničnega zdroba.

Značilnosti baklave „Antep Baklavası“/„Gaziantep Baklavası“:

vonj: vonj ji dajeta pistacija antep (*Antep fıstığı*) in navadno maslo;

barva: površina baklave „Antep Baklavası“/„Gaziantep Baklavası“ je zlato rumena, spodnji del pa temno zelen zaradi pistacije antep (*Antep fıstığı*);

tekstura: zgornji del je polhrustljav zaradi plasti testa. Spodnji del je sirupast;

oblika: proizvod je treba razrezati pred pečenjem. Rezine so lahko različnih oblik, po navadi pa so v obliki pravokotnikov, rombov, trikotnikov ali kvadratov ali v obliki korenčka (dolgi trikotni koščki od sredine proti robu okroglega pladnja).

3.3 *Surovine (samo za predelane proizvode)*

Sestavine baklave „Antep Baklavası“/„Gaziantep Baklavası“:

— pistacija antep (*Antep fıstığı*): uporaba pistacije antep je za baklavo „Antep Baklavası“/„Gaziantep Baklavası“ obvezna. Pistacija antep, ki je značilna za provinco Gaziantep, je v Turčiji registriran kmetijski proizvod. Je temno zelena z močno aromo. V skladu s specifikacijami proizvoda se lahko uporabi pet vrst pistacije, ki je podolgovate, ovalne ali okrogle oblike in temno zelena. Vsebnost beljakovin znaša od 21,77 % do 23,77 %, vsebnost maščob pa od 56,27 % do 59,89 %. Pistacija antep se lahko naseklja na večje ali manjše koščke,

— navadno maslo: 99,9 % čistega masla iz mleka ter brez soli in drugih dodatkov,

— krema iz pšeničnega zdroba (uporabi se samo za „običajen“ (svež) proizvod): mleko se segreje od 105 °C–108 °C in doda pšenični zdrob (100 g pšeničnega zdroba na 1 kg mleka). Zmes se segreva do 100 °C, dokler se ne strdi, nato se jo pusti ohladiti,

— moka: iz trde pšenice,

— škrob: pšenični škrob,

— sirup: iz sladkorja ali sladila (za sladkorne bolnike). Na en kilogram zmesi za baklavo se doda približno 350 g–360 g sirupa. Med se ne sme uporabiti,

— jajca: tri jajca na en kilogram moke (za pripravo testa),

— sol: 10 g kamene soli na en kilogram moke (za pripravo testa).

3.4 *Krma (samo za proizvode živalskega izvora)*

—

3.5 *Posebni proizvodni postopki, ki jih je treba izvajati na opredeljenem geografskem območju*

Priprava testa, izdelava in pečenje baklave.

3.6 *Posebna pravila za rezanje, ribanje, pakiranje itn.*

Baklava „Antep Baklavası“/„Gaziantep Baklavası“ se lahko prodaja po teži ali po delih na pladnjih ali zapakirana. Če se zapakira, se uporabijo kartonske škatle, ki morajo biti obložene s tanko folijo ali podobnim vodoodpornim materialom. Na embalaži se lahko navede opomba glede predlagane postrežbe „Isıtarak servis yapını“ („pred uporabo segrejte“).

3.7 *Posebna pravila za označevanje*

Če se baklava „Antep Baklavası“/„Gaziantep Baklavası“ prodaja v suhi obliki, mora biti na embalaži naveden izraz *kuru* (suha).

Na vidni površini embalaže morajo biti nameščene etikete z izrazi „ZGO“ in „Antep Baklavası“ ali „Gaziantep Baklavası“ ter naslednji logotip:

4. **Kratka opredelitev geografskega območja**

Proizvodno območje vključuje celotno provinco Gaziantep na jugovzhodu Anatolije. Provinca meji na jugu na Sirijo, na vzhodu na Birecik in Halfeti, na severovzhodu na Adiyaman. na severu na Kahramanmaras, na zahodu na Osmaniye in na jugozahodu na Hatay.

5. **Povezanost z geografskim območjem**

5.1 *Posebnosti geografskega območja*

Provinca Gaziantep je središče gojenja pistacije v Turčiji. V Turčiji pistacije imenujejo *antep fıstığı* (pistacija antep), ker je mesto Gaziantep posodilo svoje ime turški besedi za pistacijo.

V Gaziantepu že stoletja v prehrani pripravljajo in uporabljajo proizvode iz pistacije antep.

Izkušnje pekov:

priprava testa za baklavo, njegovo razvaljanje in tanjšanje, posipanje škroba med sloje, polaganje plasti na pladenj, premazovanje s kremo in pistacijo antep, razrez baklave na enake rezine, premaz z navadnim maslom, pečenje in dodajanje sirupa – za vse to je potrebna velika spretnost. Baklavo „Antep Baklavası“/„Gaziantep Baklavası“ morajo pripraviti in speči peki, ki so pridobili navedene spretnosti na območju Gaziantepa.

5.2 *Posebnosti proizvoda*

„Antep Baklavası“/„Gaziantep Baklavası“ se od drugih baklav razlikuje po svetli zlato rumeni barvi, teksturi, strukturi in temno zelenem spodnjem delu. Glavna razlika pa je v okusu in aromi pistacij antep in navadnega masla.

Za pripravo baklave „Antep Baklavası“/„Gaziantep Baklavası“ je potrebna velika spretnost.

Sloves baklave „Antep Baklavası“/„Gaziantep Baklavası“ temelji na kombinaciji bogatih sestavin in postopka ročne peke, ki ga uporabljajo izkušeni peki. Pred zaužitjem prevladuje čisti vonj masla. Dobro pripravljena baklava se v ustih takoj stopi. To so najpomembnejše posebne značilnosti baklave „Antep Baklavası“/„Gaziantep Baklavası“.

5.3 *Vzročna povezanost geografskega območja s kakovostjo ali značilnostmi proizvoda (pri ZOP) oziroma z določeno kakovostjo, slovesom ali značilnostjo proizvoda (pri ZGO)*

Baklava „Antep Baklavası“/„Gaziantep Baklavası“ iz Gaziantepa je že od 19. stoletja zelo cenjena zaradi značilnega načina proizvodnje, posebnih značilnosti sestavin in ročnega postopka peke izkušenih pekov. Baklavo „Antep Baklavası“/„Gaziantep Baklavası“ je od sedemdesetih let devetnajstega stoletja naprej tradicionalno izdelovalo več generacij znanih družin.

Najpomembnejša surovina je pistacija antep (*Antep fıstığı*), ki je registriran kmetijski proizvod v Turčiji. Njena močna okus in aroma sta ohranjena v končnem izdelku, spodnjemu delu baklave „Antep Baklavası"/„Gaziantep Baklavası" pa daje temno zeleno barvo.

Baklava „Antep Baklavası"/„Gaziantep Baklavası" je predstavljena v knjigah o provinci Gaziantep in turški kuhinji ter v brošurah Ministrstva za kulturo in turizem o tej provinci.

V knjigi *Gaziantep Folklorundan Notlar* (Zapisi o folklori Gaziantepa), ki jo je leta 1959 napisal raziskovalec iz Gaziantepa, je na strani 86 navedeno, da „pistacije uporabljajo izdelovalci baklave". Knjiga vsebuje tudi zgodbo (na strani 87) o potovanju turškega ministra za zdravje v Gaziantep. Potem ko so mu postregli juho s pistacijo, riž s pistacijo, baklavo s pistacijo in končno pistacijev sladoled, se je pošalil: „Ali lahko, prosim, dobim kozarec vode brez pistacije?".

V izdaji popotniškega vodnika *Frommer's Turkey* (Lynn A. Levine, 2001; John Wiley & Sons) iz leta 2001 je navedeno, da „upravičeni sloves Gazientepa temelji predvsem na njegovi čudoviti baklavi. V mestu z več kot 500-timi pekarnami baklav je zlasti septembra med obiranjem pistacije pohajkovanje od ene do druge nekaj, kar morate doživeti."

Tudi v knjigi *Kuhanje po turško* (*Cooking the Turkish Way*, Kari Cornell, 2004) je navedeno (na strani 14), da je vzhodno-anatolsko mesto Gaziantep znano po svojih pistacijah in sirupasto sladki baklavi.

Sklic na objavo specifikacije

(Člen 5(7) Uredbe (ES) št. 510/2006 ([3]))

Turška vlada je začela nacionalni postopek ugovora z objavo registracije za priznanje baklave „Antep Baklavası"/„Gaziantep Baklavası" kot proizvoda z ZGO v *Uradnem listu Turške republike* št. 26505 z dne 27. aprila 2007.

Celotno besedilo proizvodne specifikacije je na voljo na spletni strani Turškega patentnega inštituta:

http://www.turkpatent.gov.tr/portal/default_en.jsp?sayfa=172 (izberite „Antep Baklavası"/„Gaziantep Baklavası").

([3]) Prim. opombo 2.

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