Uradni list Evropske unije

C 236

Slovenska izdaja

Informacije in objave

Zvezek 59

30. junij 2016

Vsebina

SL

([1]) Besedilo velja za EGP

POSTOPKI V ZVEZI Z IZVAJANJEM POLITIKE KONKURENCE

Evropska komisija

([1]) Besedilo velja za EGP

II

(Sporočila)

SPOROČILA INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Nenasprotovanje priglašeni koncentraciji

(Zadeva M.8039 – Freudenberg/Vibracoustic)

(Besedilo velja za EGP)

(2016/C 236/01)

Komisija se je 22. junija 2016 odločila, da ne bo nasprotovala zgoraj navedeni priglašeni koncentraciji in jo bo razglasila za združljivo z notranjim trgom. Ta odločitev je sprejeta v skladu s členom 6(1)(b) Uredbe Sveta (ES) št. 139/2004 ([1]). Celotno besedilo odločitve je na voljo samo v angleščini in bo objavljeno po tem, ko bodo iz besedila odstranjene morebitne poslovne skrivnosti. Na voljo bo:

— v razdelku o združitvah na spletišču Komisije o konkurenci (http://ec.europa.eu/competition/mergers/cases/). Spletišče vsebuje različne pripomočke za iskanje posameznih odločitev o združitvah, vključno z nazivi podjetij, številkami zadev, datumi ter indeksi področij,

— v elektronski obliki na spletišču EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=sl) pod dokumentarno številko 32016M8039. EUR-Lex zagotavlja spletni dostop do evropskega prava.

([1]) UL L 24, 29.1.2004, str. 1.

Nenasprotovanje priglašeni koncentraciji

(Zadeva M.8049 – TPG Capital/Partners Group/TH Real Estate Portfolio)

(Besedilo velja za EGP)

(2016/C 236/02)

Komisija se je 23. junija 2016 odločila, da ne bo nasprotovala zgoraj navedeni priglašeni koncentraciji in jo bo razglasila za združljivo z notranjim trgom. Ta odločitev je sprejeta v skladu s členom 6(1)(b) Uredbe Sveta (ES) št. 139/2004 ([1]). Celotno besedilo odločitve je na voljo samo v angleščini in bo objavljeno po tem, ko bodo iz besedila odstranjene morebitne poslovne skrivnosti. Na voljo bo:

— v razdelku o združitvah na spletišču Komisije o konkurenci (http://ec.europa.eu/competition/mergers/cases/). Spletišče vsebuje različne pripomočke za iskanje posameznih odločitev o združitvah, vključno z nazivi podjetij, številkami zadev, datumi ter indeksi področij,

— v elektronski obliki na spletišču EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=sl) pod dokumentarno številko 32016M8049. EUR-Lex zagotavlja spletni dostop do evropskega prava.

([1]) UL L 24, 29.1.2004, str. 1.

Nenasprotovanje priglašeni koncentraciji

(Zadeva M.8041 – M&G/Anchorage/PHS Group Investment)

(Besedilo velja za EGP)

(2016/C 236/03)

Komisija se je 23. junija 2016 odločila, da ne bo nasprotovala zgoraj navedeni priglašeni koncentraciji in jo bo razglasila za združljivo z notranjim trgom. Ta odločitev je sprejeta v skladu s členom 6(1)(b) Uredbe Sveta (ES) št. 139/2004 ([1]). Celotno besedilo odločitve je na voljo samo v angleščini in bo objavljeno po tem, ko bodo iz besedila odstranjene morebitne poslovne skrivnosti. Na voljo bo:

— v razdelku o združitvah na spletišču Komisije o konkurenci (http://ec.europa.eu/competition/mergers/cases/). Spletišče vsebuje različne pripomočke za iskanje posameznih odločitev o združitvah, vključno z nazivi podjetij, številkami zadev, datumi ter indeksi področij,

— v elektronski obliki na spletišču EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=sl) pod dokumentarno številko 32016M8041. EUR-Lex zagotavlja spletni dostop do evropskega prava.

([1]) UL L 24, 29.1.2004, str. 1.

Nenasprotovanje priglašeni koncentraciji

(Zadeva M.8054 – 3i Group/Deutsche Alternative Asset Management/TCR Capvest)

(Besedilo velja za EGP)

(2016/C 236/04)

Komisija se je 24. junija 2016 odločila, da ne bo nasprotovala zgoraj navedeni priglašeni koncentraciji in jo bo razglasila za združljivo z notranjim trgom. Ta odločitev je sprejeta v skladu s členom 6(1)(b) Uredbe Sveta (ES) št. 139/2004 ([1]). Celotno besedilo odločitve je na voljo samo v angleščini in bo objavljeno po tem, ko bodo iz besedila odstranjene morebitne poslovne skrivnosti. Na voljo bo:

— v razdelku o združitvah na spletišču Komisije o konkurenci (http://ec.europa.eu/competition/mergers/cases/). Spletišče vsebuje različne pripomočke za iskanje posameznih odločitev o združitvah, vključno z nazivi podjetij, številkami zadev, datumi ter indeksi področij,

— v elektronski obliki na spletišču EUR-Lex (http://eur-lex.europa.eu/homepage.html?locale=sl) pod dokumentarno številko 32016M8054. EUR-Lex zagotavlja spletni dostop do evropskega prava.

([1]) UL L 24, 29.1.2004, str. 1.

IV

(Informacije)

INFORMACIJE INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Menjalni tečaji eura [1]

29. junija 2016

(2016/C 236/05)

1 euro =

	Valuta	Menjalni tečaj		Valuta	Menjalni tečaj
USD	ameriški dolar	1,1090	CAD	kanadski dolar	1,4407
JPY	japonski jen	113,85	HKD	hongkonški dolar	8,6041
DKK	danska krona	7,4376	NZD	novozelandski dolar	1,5565
GBP	funt šterling	0,82550	SGD	singapurski dolar	1,4951
SEK	švedska krona	9,4311	KRW	južnokorejski won	1 283,15
CHF	švicarski frank	1,0854	ZAR	južnoafriški rand	16,6016
ISK	islandska krona		CNY	kitajski juan	7,3680
NOK	norveška krona	9,3065	HRK	hrvaška kuna	7,5273
BGN	lev	1,9558	IDR	indonezijska rupija	14 577,25
CZK	češka krona	27,114	MYR	malezijski ringit	4,4594
HUF	madžarski forint	316,95	PHP	filipinski peso	52,106
PLN	poljski zlot	4,4261	RUB	ruski rubelj	71,0452
RON	romunski leu	4,5253	THB	tajski bat	39,028
TRY	turška lira	3,2157	BRL	brazilski real	3,6216
AUD	avstralski dolar	1,4911	MXN	mehiški peso	20,7331
			INR	indijska rupija	74,9693

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

Novi motiv na nacionalni strani eurokovancev, namenjenih obtoku

(2016/C 236/06)

Motiv na nacionalni strani novega spominskega dvoeurskega kovanca, namenjenega obtoku, ki ga izda Španija

Eurokovanci, namenjeni obtoku, so zakonito plačilno sredstvo na celotnem euroobmočju. Komisija objavi opis motivov vseh novih eurokovancev, da bi z njim seznanila javnost in vse, ki s kovanci rokujejo ([1]). V skladu s sklepi Sveta z dne 10. februarja 2009 ([2]) lahko države članice euroobmočja in države, ki so z Evropsko unijo sklenile monetarni sporazum o izdaji eurokovancev, izdajo obtoku namenjene spominske eurokovance, če izpolnjujejo določene pogoje, zlasti da uporabijo samo kovanec v vrednosti 2 EUR. Takšni kovanci imajo enake tehnične lastnosti kot ostali dvoeurski kovanci, le da je na nacionalni strani kovanca vgraviran spominski motiv z velikim simbolnim pomenom v nacionalnem ali evropskem merilu.

Država izdajateljica: Španija

Priložnostni motiv: Unescove znamenitosti svetovne kulture in naravne dediščine – cerkve kraljevine Asturije

Opis motiva: Motiv v ospredju prikazuje cerkev Santa Maria del Naranco. Na vrhu jedra je v loku izpisano ime države izdajateljice, „ESPAÑA“, pod njim na desni pa leto izdaje, „2017“. Na levi strani jedra je oznaka kovnice.

Na obročku je dvanajst zvezd evropske zastave.

Obseg izdaje: 4 milijone

Datum izdaje: 1. februar 2017

([1]) Za vse motive na nacionalnih straneh kovancev, ki so bili izdani leta 2002, glej UL C 373, 28.12.2001, str. 1.

([2]) Glej sklepe Sveta za ekonomske in finančne zadeve z dne 10. februarja 2009 in Priporočilo Komisije z dne 19. decembra 2008 o skupnih smernicah za nacionalne strani in izdajo eurokovancev, namenjenih obtoku (UL L 9, 14.1.2009, str. 52).

RAČUNSKO SODIŠČE

Posebno poročilo št. 14/2016

Pobude politik in finančna podpora EU za integracijo Romov: v zadnjem desetletju je bil dosežen velik napredek, toda potrebna so dodatna prizadevanja na terenu

(2016/C 236/07)

Evropsko računsko sodišče vas obvešča, da je bilo pravkar objavljeno Posebno poročilo št. 14/2016 – Pobude politik in finančna podpora EU za integracijo Romov: v zadnjem desetletju je bil dosežen velik napredek, toda potrebna so dodatna prizadevanja na terenu.

Poročilo lahko preberete na spletni strani Evropskega računskega sodišča http://eca.europa.eu ali na spletni strani EU Bookshop https://bookshop.europa.eu ali si ga z njiju prenesete.

INFORMACIJE DRŽAV ČLANIC

Posodobitev seznama mejnih prehodov iz člena 2(8) Uredbe (EU) 2016/399 Evropskega parlamenta in Sveta o Zakoniku Skupnosti o pravilih, ki urejajo gibanje oseb prek meja (Zakonik o schengenskih mejah) ([1])

(2016/C 236/08)

Objava seznama mejnih prehodov iz člena 2(8) Uredbe (EU) 2016/399 Evropskega parlamenta in Sveta z dne 9. marca 2016 o Zakoniku Skupnosti o pravilih, ki urejajo gibanje oseb prek meja (Zakonik o schengenskih mejah), temelji na informacijah, ki jih Komisiji sporočijo države članice v skladu s členom 39 Zakonika o schengenskih mejah (kodifikacija).

Poleg objave v *Uradnem listu Evropske unije* je na voljo mesečna posodobitev na spletnih straneh Generalnega direktorata za notranje zadeve.

FRANCIJA

Sprememba informacij, objavljenih v UL C 229, 14.7.2015

SEZNAM MEJNIH PREHODOV

Zračne meje:

(1) Abbeville

(2) Agen-la Garenne

(3) Ajaccio-Campo dell'Oro

(4) Albert-Bray

(5) Amiens-Glisy

(6) Angers-Marcé

(7) Angoulême-Brie-Champniers

(8) Annecy-Methet

(9) Annemasse

(10) Auxerre-Branches

(11) Avignon-Caumont

(12) Bâle-Mulhouse

(13) Bastia-Poretta

(14) Beauvais-Tillé

(15) Bergerac-Roumanière

(16) Besançon-la Vèze

(17) Béziers-Vias

(18) Biarritz-Bayonne-Anglet

(19) Bordeaux-Mérignac

(20) Brest-Guipavas

(21) Brive-Souillac

(22) Caen-Carpiquet

(23) Calais-Dunkerque

(24) Calvi-Sainte-Catherine

([1]) Glej seznam prejšnjih objav na koncu dokumenta.

(25) Cannes-Mandelieu

(26) Carcassonne-Salvaza

(27) Châlons-Vatry

(28) Chambéry-Aix-les-Bains

(29) Châteauroux-Déols

(30) Cherbourg-Maupertus

(31) Clermont-Ferrand-Aulnat

(32) Colmar-Houssen

(33) Deauville-Saint-Gatien

(34) Dijon-Longvic

(35) Dinard-Pleurtuit

(36) Dôle-Tavaux

(37) Epinal-Mirecourt

(38) Figari-Sud Corse

(39) Grenoble-Saint-Geoirs

(40) Hyères-le Palivestre

(41) Issy-les-Moulineaux

(42) La Môle

(43) Lannion

(44) La Rochelle-Laleu

(45) Laval-Entrammes

(46) Le Castelet

(47) Le Havre-Octeville

(48) Le Mans-Arnage

(49) Le Touquet-Paris-Plage

(50) Lille-Lesquin

(51) Limoges-Bellegarde

(52) Lognes-Emerainville

(53) Lorient-Lann-Bihoué

(54) Lyon-Bron

(55) Lyon-Saint-Exupéry

(56) Marseille-Provence

(57) Metz-Nancy-Lorraine

(58) Monaco-Héliport

(59) Montbéliard-Courcelles

(60) Montpellier-Méditérranée

(61) Nantes-Atlantique

(62) Nevers-Fourchambault

(63) Nice-Côte d'Azur

(64) Nîmes-Garons

(65) Orléans-Bricy

(66) Orléans-Saint-Denis-de-l'Hôtel

(67) Paris-Charles de Gaulle

(68) Paris-le Bourget

(69) Paris-Orly

(70) Pau-Pyrénées

(71) Perpignan-Rivesaltes

(72) Poitiers-Biard

(73) Pontoise-Cormeillcs-en-Vexin, začasno:

— Od srede, 10. junija, do nedelje, 14. junija 2015, od 10.00 do 15.30.

To začasno odprtje velja v času mednarodnega sejma o aeronavtiki in vesolju v Bourgetu, zaradi katerega je potrebna preusmeritev neschengenskih letov na letališče Pontoise.

— Od ponedeljka, 15. junija, do nedelje, 21. junija 2015, od 06.00 do 16.30.

To začasno odprtje velja v obdobju vzpostavitve sezonske neschengenske povezave (Quimper – London).

(74) Quimper-Cornouailles, v obdobju od 19. maja 2016 do 4. septembra 2016.

(75) Rennes Saint-Jacques

(76) Rodez-Marcillac

(77) Rouen-Vallée de Seine

(78) Saint-Brieuc-Armor

(79) Saint-Etienne-Bouthéon

(80) Saint-Nazaire-Montoir

(81) Strasbourg-Entzheim

(82) Tarbes-Ossun-Lourdes

(83) Toulouse-Blagnac

(84) Tours-Saint-Symphorien

(85) Troyes-Barberey

(86) Vichy-Charmeil

Meje na morju

(1) Ajaccio

(2) Bastia

(3) Bayonne

(4) Bonifacio

(5) Bordeaux

(6) Boulogne

(7) Brest

(8) Caen-Ouistreham

(9) Calais

(10) Calvi

(11) Cannes-Vieux Port

(12) Carteret

(13) Cherbourg

(14) Dieppe

(15) Douvres

(16) Dunkerque

(17) Granville

(18) Honfleur

(19) La Rochelle-La Pallice

(20) Le Havre

(21) Les Sables-d'Olonne-Port

(22) L'Ile-Rousse

(23) Lorient

(24) Marseille

(25) Monaco-Port de la Condamine

(26) Nantes-Saint-Nazaire

(27) Nice

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

(29) Port-la-Nouvelle

(30) Porto-Vecchio

(31) Port-Vendres

(32) Roscoff

(33) Rouen

(34) Saint-Brieuc (maritime)

(35) Saint-Malo

(36) Sète

(37) Toulon

Meje na kopnem

Z ZDRUŽENIM KRALJESTVOM:

(stalna linija preko Rokavskega preliva)

(1) Gare d'Ashford International

(2) Gare d'Avignon-Centre

(3) Cheriton/Coquelles

(4) Gare de Chessy-Marne-la-Vallée

(5) Gare de Fréthun

(6) Gare de Lille-Europe

(7) Gare de Paris-Nord

(8) Gare de St-Pancras International

(9) Gare d'Ebbsfleet International

(10) Gare TGV Haute-Picardie, 1. julija 2016.

Z ANDORO

(1) Pas de la Case-Porta

Seznam prejšnjih objav

UL C 316, 28.12.2007, str. 1

UL C 134, 31.5.2008, str. 16

UL C 177, 12.7.2008, str. 9

UL C 200, 6.8.2008, str. 10

UL C 331, 31.12.2008, str. 13

UL C 3, 8.1.2009, str. 10

UL C 37, 14.2.2009, str. 10

UL C 64, 19.3.2009, str. 20

UL C 99, 30.4.2009, str. 7

UL C 229, 23.9.2009, str. 28

UL C 263, 5.11.2009, str. 22

UL C 298, 8.12.2009, str. 17

UL C 74, 24.3.2010, str. 13

UL C 326, 3.12.2010, str. 17

UL C 355, 29.12.2010, str. 34

UL C 22, 22.1.2011, str. 22

UL C 37, 5.2.2011, str. 12

UL C 149, 20.5.2011, str. 8

UL C 190, 30.6.2011, str. 17

UL C 203, 9.7.2011, str. 14

UL C 210, 16.7.2011, str. 30

UL C 271, 14.9.2011, str. 18

UL C 356, 6.12.2011, str. 12

UL C 111, 18.4.2012, str. 3

UL C 183, 23.6.2012, str. 7

UL C 313, 17.10.2012, str. 11

UL C 394, 20.12.2012, str. 22

UL C 51, 22.2.2013, str. 9

UL C 167, 13.6.2013, str. 9

UL C 242, 23.8.2013, str. 2

UL C 275, 24.9.2013, str. 7

UL C 314, 29.10.2013, str. 5

UL C 324, 9.11.2013, str. 6

UL C 57, 28.2.2014, str. 4

UL C 167, 4.6.2014, str. 9

UL C 244, 26.7.2014, str. 22

UL C 332, 24.9.2014, str. 12

UL C 420, 22.11.2014, str. 9

UL C 72, 28.2.2015, str. 17

UL C 126, 18.4.2015, str. 10

UL C 229, 14.7.2015, str. 5

UL C 341, 16.10.2015, str. 19

UL C 84, 4.3.2016, str. 2.

Posodobljene vzorčne izkaznice, ki jih ministrstva za zunanje zadeve držav članic izdajajo pooblaščenim osebam diplomatskih misij in konzularnih predstavništev ter njihovim družinskim članom, kakor je navedeno v členu 20(2) Uredbe (EU) 2016/399 Evropskega parlamenta in Sveta o Zakoniku Skupnosti o pravilih, ki urejajo gibanje oseb prek meja (Zakonik o schengenskih mejah) ([1])

(2016/C 236/09)

Objava vzorčnih izkaznic, ki jih ministrstva za zunanje zadeve držav članic izdajajo pooblaščenim osebam diplomatskih misij in konzularnih predstavništev ter njihovim družinskim članom, kakor je navedeno v členu 20(2) Uredbe (EU) 2016/399 Evropskega parlamenta in Sveta z dne 9. marca 2016 o Zakoniku Skupnosti o pravilih, ki urejajo gibanje oseb prek meja (Zakonik o schengenskih mejah), temelji na informacijah, ki jih Komisiji sporočijo države članice v skladu s členom 39 Zakonika o schengenskih mejah (kodifikacija).

Poleg objave v Uradnem listu Evropske unije je na voljo mesečna posodobitev na spletnih straneh Generalnega direktorata za notranje zadeve.

ŠVICA

Zamenjava informacij, objavljenih v UL C 133, 1.5.2014.

POSEBNA DOVOLJENJA ZA PREBIVANJE, KI JIH IZDA MINISTRSTVO ZA ZUNANJE ZADEVE

Izkaznice (dovoljenja za prebivanje) Zveznega oddelka za zunanje zadeve:

— Izkaznica „B“ (z rožnato črto): vodje stalnih ali posebnih diplomatskih predstavništev, vodstveni delavci mednarodnih organizacij in njihovi družinski člani, ki imajo isti status / Carte de légitimation « B » (à bande rose) : chefs de mission diplomatique, permanente ou spéciale, membres de la haute direction des organisations internationales et membres de famille qui jouissent du même statut / Legitimationskarte „B“ (mit rosafarbigem Streifen): Missionschefs der diplomatischen, ständigen oder Spezialmissionen, leitende Beamte internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „B“ (a banda rosa): Chefs de mission diplomatique, permanente ou spéciale, membres de la haute direction des organisations internationales et membres de famille qui jouissent du même statut;

— Izkaznica „C“ (z rožnato črto): člani diplomatskega osebja stalnih ali posebnih diplomatskih predstavništev, visoki uradniki mednarodnih organizacij in njihovi družinski člani, ki imajo isti status / Carte de légitimation « C » (à bande rose) : membres du personnel diplomatique des missions diplomatiques, permanentes ou spéciales, hauts fonctionnaires des organisations internationales et membres de famille qui jouissent du même statut / Legitimationskarte „C“ (mit rosafarbigem Streifen): Mitglieder des diplomatischen Personals der diplomatischen, ständigen oder Spezialmissionen, Beamte internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „C“ (a banda rosa): membri del personale diplomatico di missioni diplomatiche permanenti o speciali, funzionari di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

— Izkaznica „D“ (z modro črto): člani administrativnega in tehničnega osebja stalnih ali posebnih diplomatskih predstavništev in njihovi družinski člani, ki imajo isti status / Carte de légitimation « D » (à bande bleue) : membres du personnel administratif et technique des missions diplomatiques, permanentes ou spéciales et membres de famille qui jouissent du même statut / Legitimationskarte „D“ (mit blauem Streifen): Mitglieder des Verwaltungs- und technischen Personals der diplomatischen, ständigen oder Spezialmissionen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „D“ (a banda blu): membri del personale amministrativo e tecnico di missioni diplomatiche permanenti o speciali e familiari che beneficiano dello stesso statuto;

— Izkaznica „D“ (z rjavo črto): uradniki iz kategorije poklicnega osebja mednarodnih organizacij in njihovi družinski člani, ki imajo isti status / Carte de légitimation « D » (à bande brune) : fonctionnaires de la catégorie professionnelle des organisations internationales et membres de famille qui jouissent du même statut / Legitimationskarte „D“ (mit braunem Streifen): Beamte der Kategorie Berufspersonal internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „D“ (a banda marrone): funzionari appartenenti alla categoria del personale di carriera di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

([1]) Glej seznam prejšnjih objav na koncu dokumenta.

— Izkaznica „E“ (z vijolično črto): člani pomožnega osebja stalnih in posebnih diplomatskih predstavništev, uradniki v splošnih službah mednarodnih organizacij ter njihovi družinski člani, ki imajo isti status / Carte de légitimation « E » (à bande violette): membres du personnel de service des missions diplomatiques, permanentes et spéciales, fonctionnaires des services généraux des organisations internationales et membres de famille qui jouissent du même statut / Legitimationskarte „E“ (mit violettem Streifen): Mitglieder des Dienstpersonals der diplomatischen, ständigen oder Spezialmissionen, Beamte der allgemeinen Dienste internationaler Organisationen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „E“ (a banda viola): membri del personale di servizio di missioni diplomatiche permanenti e speciali, funzionari dei servizi generali di organizzazioni internazionali e familiari che beneficiano dello stesso statuto;

— Izkaznica „F“ (z rumeno črto): zasebno osebje za pomoč v gospodinjstvu članov stalnih ali posebnih diplomatskih predstavništev in konzularnih predstavništev, ki jih vodijo poklicni konzularni uradniki, ter zasebno osebje za pomoč v gospodinjstvu uradnikov mednarodnih organizacij / Carte de légitimation « F » (à bande jaune) : domestiques privés des membres des missions diplomatiques, permanentes ou spéciales et des postes consulaires de carrière et domestiques privés des fonctionnaires des organisations internationales / Legitimationskarte „F“ (mit gelbem Streifen): private Hausangestellte der Mitglieder der diplomatischen, ständigen oder Spezialmissionen und der von Berufs-Konsularbeamten geleiteten konsularischen Vertretungen sowie private Hausangestellte der Beamten internationaler Organisationen / Carta di legittimazione „F“ (a banda gialla): personale domestico privato di membri di missioni diplomatiche permanenti o speciali e di rappresentanze consolari dirette da funzionari consolari di carriera nonché personale domestico privato di funzionari di organizzazioni internazionali;

— Izkaznica „G“ (s turkizno črto): uradniki mednarodnih organizacij s pogodbo o delu za določen čas in njihovi družinski člani, ki imajo isti status / Carte de légitimation « G » (à bande turquoise) : fonctionnaires des organisations internationales (contrat de travail « court terme ») et membres de famille qui jouissent du même statut / Legitimationskarte „G“ (mit türkisem Streifen): Beamte internationaler Organisationen mit Arbeitsvertrag von begrenzter Dauer und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „G“ (a banda turchese): funzionari di organizzazioni internazionali con contratto di lavoro a durata determinata e familiari che beneficiano dello stesso statuto;

— Izkaznica „H“ (z belo črto): sodelavci stalnih ali posebnih diplomatskih predstavništev, konzulatov in mednarodnih organizacij, ki nimajo statusa uradnikov, ter osebe brez privilegijev in imunitet z dovoljenjem za spremljanje članov stalnih ali posebnih diplomatskih predstavništev, konzulatov in mednarodnih organizacij / Carte de légitimation « H » (à bande blanche) : collaborateurs non-fonctionnaires des missions diplomatiques permanentes ou spéciales, des consulats et des organisations internationales, ainsi que les personnes sans privilèges et immunités autorisées à accompagner les membres des missions diplomatiques, permanentes ou spéciales, des consulats et des organisations internationales. / Legitimationskarte "H" (mit weissem Streifen): Mitarbeiter ohne Beamtenstatus der diplomatischen, ständigen oder Spezialmissionen, der konsularischen Vertretungen und der internationalen Organisationen, sowie Personen ohne Privilegien und Immunitäten, die ermächtigt sind, Mitglieder der diplomatischen, ständigen oder Spezialmissionen, der konsularischen Vertretungen und der internationalen Organisationen zu begleiten. / Carta di legittimazione „H“ (a banda bianca): collaboratori senza statuto di funzionari di missioni diplomatiche permanenti o speciali, di consolati e di organizzazioni internazionali così come persone senza privilegi e immunità autorizzate a accompagnare membri di missioni diplomatiche permanenti o speciali, di consolati e di organizzazioni internazionali;

— Izkaznica „I“ (z olivno črto): nešvicarski člani osebja Mednarodnega odbora Rdečega križa in družinski člani, ki imajo isti status / Carte de légitimation « I » (à bande olive) : membres du personnel non suisse du Comité international de la Croix-Rouge et membres de famille qui jouissent du même statut / Legitimationskarte „I“ (mit olivem Streifen): Personal nicht schweizerischer Staatsangehörigkeit des Internationalen Komitees vom Roten Kreuz und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „I“ (a banda oliva): membri del personale non svizzero del Comitato internazionale della Croce Rossa e familiari che beneficiano dello stesso statuto;

— Izkaznica „K“ (z rdečo črto): poklicni vodje konzularnega urada in poklicni konzularni uradniki ter družinski člani, ki imajo isti status / Carte de légitimation « K » (à bande rose) : chefs de poste consulaire de carrière, fonctionnaires consulaires de carrière et membres de famille qui jouissent du même statut / Legitimationskarte „K“ (mit rosafarbigem Streifen): Berufs-Postenchefs und Berufs-Konsularbeamte der konsularischen Vertretungen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda rosa): capiposto consolari di carriera e funzionari consolari di carriera di rappresentanze consolari e familiari che beneficiano dello stesso statuto;

— Izkaznica „K“ (z modro črto): poklicni konzularni uslužbenci in družinski člani, ki imajo isti status / Carte de légitimation « K » (à bande bleue) : employés consulaires de carrière et membres de famille qui jouissent du même statut / Legitimationskarte „K“ (mit blauem Streifen): Berufs-Konsularangestellte und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda blu): impiegati consolari di carriera e familiari che beneficiano dello stesso statuto;

— Izkaznica „K“ (z vijolično črto): člani pomožnega osebja konzularnih predstavništev s poklicnim statusom in družinski člani, ki imajo isti status / Carte de légitimation « K » (à bande violette) : membres du personnel de service des représentations consulaires de carrière et membres de famille qui jouissent du même statut / Legitimationskarte „K“ (mit violettem Streifen): Mitglieder des dienstlichen Hauspersonals von berufs-konsularischen Vertretungen und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „K“ (a banda viola): membri del personale di servizio di rappresentanze consolari di carriera e familiari che beneficiano dello stesso statuto;

— Izkaznica „K“ (z belo črto): častni vodje konzularnih predstavništev / Carte de légitimation « K » (à bande blanche) : chefs de poste consulaire honoraire / Legitimationskarte „K“ (mit weissem Streifen): Honorar-Postenchefs von konsularischen Vertretungen / Carta di legittimazione „K“ (a banda bianca): capiposto onorari di rappresentanze consolari;

— Izkaznica „L“ (s črto peščene barve): nešvicarski člani osebja Mednarodne federacije Rdečega križa in Rdečega polmeseca ter družinski člani, ki imajo isti status / Carte de légitimation « L » (à bande de couleur sable) : membres du personnel non suisse de la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge et membres de famille qui jouissent du même statut / Legitimationskarte „L“ (mit sandfarbigem Streifen): Personal nicht schweizerischer Staatsangehörigkeit der Internationalen Gemeinschaft der Roten Kreuz- und Roten Halbmond-Gesellschaften und Familienmitglieder, die den gleichen Status besitzen / Carta di legittimazione „L“ (a banda color sabbia): membri del personale non svizzero della Federazione internazionale delle Società della Croce Rossa e della Mezzaluna Rossa e familiari che beneficiano dello stesso statuto;

— Izkaznica „P“ (z modro črto): nešvicarsko znanstveno osebje CERN in družinski člani, ki imajo isti status / Carte de légitimation « P » (à bande bleue) : personnel scientifique non suisse du CERN et membres de famille qui jouissent du même statut / Legitimationskarte « P » (mit blauem Streifen) : wissenschaftliches Personal des CERN nicht schweizerischer Staatsangehörigkeit und Familienmitglieder, die den gleichen Status besitzen / Carta di Legittimazione « P » (à banda blu) : personale scientifico non svizzero del CERN e familiari che beneficiano dello stesso statuto;

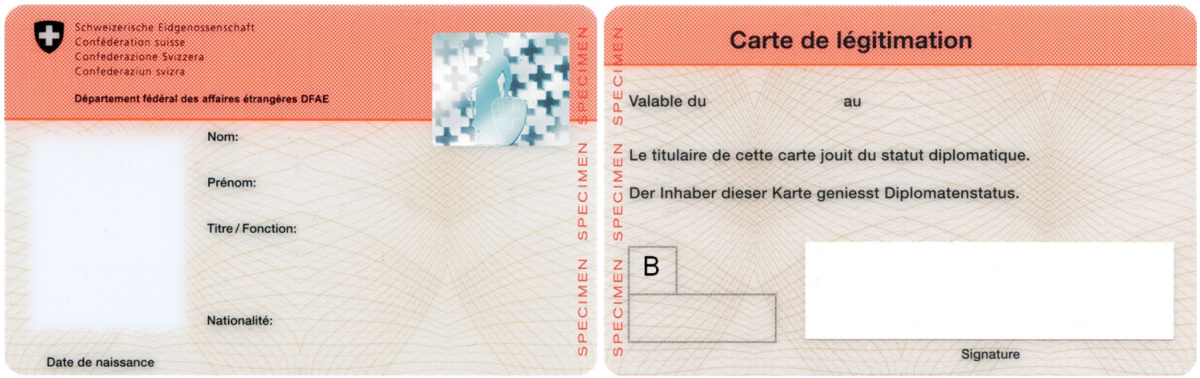
— Izkaznica „R“ (s sivo črto): nešvicarski člani osebja mednarodnih paravladnih organizacij ali drugih mednarodnih organizacij in družinski člani, ki imajo isti status / Carte de légitimation « R » (à bande grise) : membres du personnel non suisse des organisations internationales quasi gouvernementales ou des autres organismes internationaux et membres de famille qui jouissent du même statut / Legitimationskarte « R » (mit grauem Streifen) : Personal nicht schweizerischer Staatsangehörigkeit von quasizwischenstaatlichen Organisation oder anderen internationalen Organen und Familienmitglieder, die den gleichen Status besitzen / Carta di Legittimazione « R » (a banda grigia) : membri del personale non svizzero di organizzazioni internazionali quasi intergovernative o di altri organismi internazionali e familiari che beneficiano dello stesso statuto;

— Izkaznica „S“ (z zeleno črto): člani osebja stalnih in posebnih diplomatskih predstavništev s švicarskim državljanstvom, uradniki mednarodnih organizacij s švicarskim državljanstvom / Carte de légitimation « S » (à bande verte) : membres du personnel de nationalité suisse des missions diplomatiques, permanentes et spéciales, fonctionnaires de nationalité suisse des organisations internationales / Legitimationskarte „S“ (mit grünem Streifen): Mitglieder des Personals schweizerischer Staatsangehörigkeit der diplomatischen, ständigen und der Spezialmissionen, Beamte schweizerischer Staatsangehörigkeit internationaler Organisationen / Carta di legittimazione „S“ (a banda verde): membri del personale di nazionalità svizzera di missioni diplomatiche permanenti e speciali, funzionari di nazionalità svizzera di organizzazioni internazionali;

Izkaznica „B“ Zveznega oddelka za zunanje zadeve

— Veleposlaništva in stalna predstavništva: vodja misije

— Mednarodne organizacije: vodstveni delavec



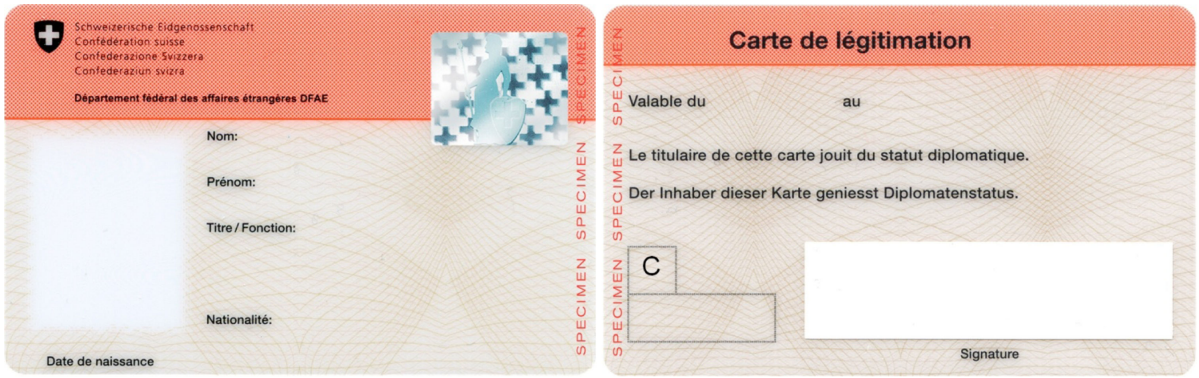
Imetnik te izkaznice ima **diplomatski status**

Der Inhaber dieser Karte geniesst **Diplomatenstatus**

Izkaznica „C“ Zveznega oddelka za zunanje zadeve

— Veleposlaništva in stalna predstavništva: član diplomatskega osebja

— Mednarodne organizacije: visoki uradnik



Imetnik te izkaznice ima **diplomatski status**

Der Inhaber dieser Karte geniesst **Diplomatenstatus**

Izkaznica „D“ Zveznega oddelka za zunanje zadeve

— Veleposlaništva in stalna predstavništva: član administrativnega in tehničnega osebja

Imetnik te izkaznice ima **diplomatski status, z izjemo imunitete pred civilno in upravno jurisdikcijo, ki se uporablja izključno v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Diplomatenstatus, Immunität von der Zivil- und Verwaltungsgerichtsbarkeit hat er jedoch nur für dienstliche Tätigkeiten**

— Mednarodne organizacije: uradnik iz kategorije poklicnega osebja

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

Izkaznica „E“ Zveznega oddelka za zunanje zadeve

— Veleposlaništva in stalna predstavništva: član pomožnega osebja in član lokalno zaposlenega osebja

— Mednarodne organizacije: uradnik v splošnih službah

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

Izkaznica „F“ Zveznega oddelka za zunanje zadeve

— Veleposlaništva, stalna predstavništva in mednarodne organizacije: zasebno osebje za pomoč v gospodinjstvu člana osebja

Imetnik te izkaznice nima **imunitete pred jurisdikcijo**

Der Inhaber dieser Karte hat **keinen Anspruch auf Immunität von der Gerichtsbarkeit**

Izkaznica „G“ Zveznega oddelka za zunanje zadeve

— Mednarodne organizacije: začasni uslužbenec (uradnik s pogodbo o delu za določen čas) in član začasno dodeljenega osebja

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

Izkaznica „H“ Zveznega oddelka za zunanje zadeve

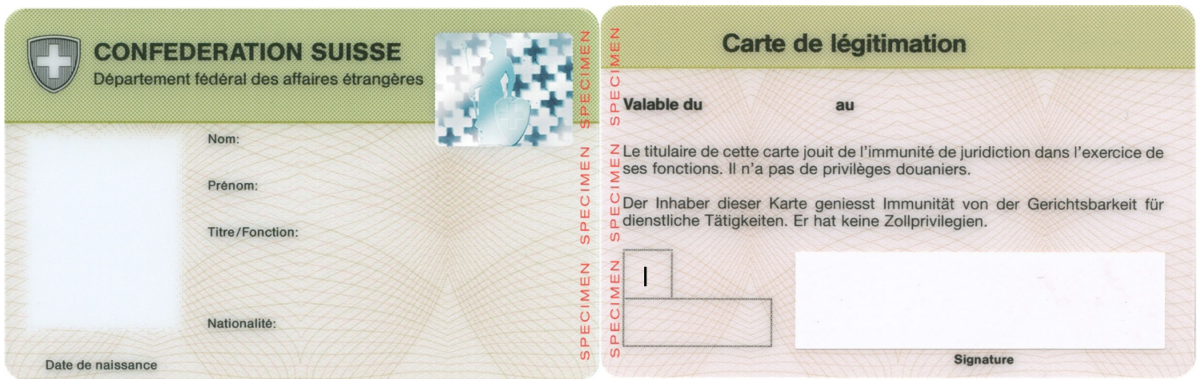
— Veleposlaništva, konzulati, stalna predstavništva in mednarodne organizacije: oseba brez privilegijev in imunitet

Imetnik te izkaznice **nima imunitete pred jurisdikcijo in nima dostopa do švicarskega trga dela**

Der Inhaber dieser Karte hat **keinen Anspruch auf Immunität von der Gerichtsbarkeit und keinen Zugang zum schweizerischen Arbeitsmarkt**

Izkaznica „I“ Zveznega oddelka za zunanje zadeve

— Mednarodni odbor Rdečega križa: sodelavec Mednarodnega odbora Rdečega križa



Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti. Imetnik nima pravice do davčnih ugodnosti.**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten. Er hat keine Zollprivilegien**

Izkaznice „K“ Zveznega oddelka za zunanje zadeve

— Konzulati – rdeča izkaznica K: poklicni vodja konzularnega urada in poklicni konzularni uradnik

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

— Konzulati – modra izkaznica K: poklicni konzularni uslužbenec

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

— Konzulati – vijolična izkaznica K: član pomožnega osebja in član lokalno zaposlenega osebja

Imetnik te izkaznice **nima imunitete pred jurisdikcijo**

Der Inhaber dieser Karte hat **keinen Anspruch auf Immunität von der Gerichtsbarkeit**

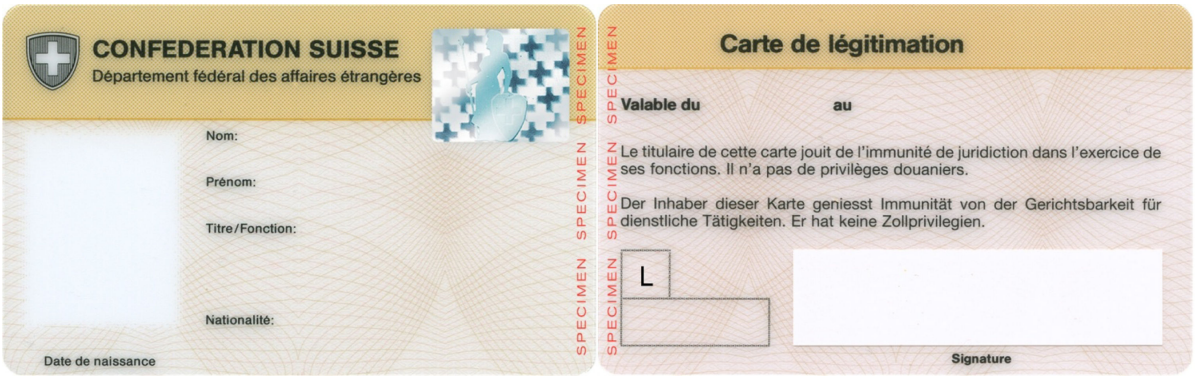
— Konzulati – bela izkaznica K: častni vodja predstavništva

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo izključno v zvezi s konzularnimi nalogami**

Der Inhaber dieser Karte hat **Anspruch auf Immunität von der Gerichtsbarkeit lediglich für konsularische Tätigkeiten**

Izkaznica „L“ Zveznega oddelka za zunanje zadeve

— Mednarodna federacija Rdečega križa in Rdečega polmeseca: sodelavec Mednarodne federacije Rdečega križa in Rdečega polmeseca



Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti. Imetnik nima pravice do davčnih ugodnosti.**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten. Er hat keine Zollprivilegien**

Izkaznica „P“ Zveznega oddelka za zunanje zadeve

— Evropska organizacija za jedrske raziskave: član znanstvenega osebja CERN

Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

Izkaznica „R“ Zveznega oddelka za zunanje zadeve

— Nešvicarski člani osebja mednarodnih paravladnih organizacij ali drugih mednarodnih organizacij in družinski člani, ki imajo isti status.

Imetnik te izkaznice **ne uživa imunitete pred sodnimi postopki.**

Der Inhaber dieser Karte hat **keinen Anspruch auf Immunität von der Gerichtsbarkeit**

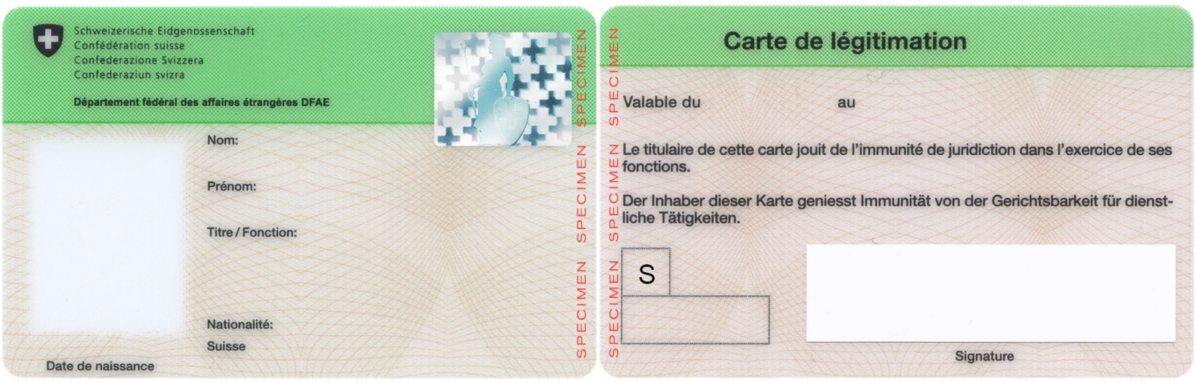
Izkaznica „S“ Zveznega oddelka za zunanje zadeve

Članu osebja s švicarskim državljanstvom, ne glede na njegovo funkcijo v okviru tujega predstavništva ali mednarodne organizacije, se načeloma izda izkaznica „S“. Švicarskim članom osebja, ki so jih veleposlaništva in konzulati zaposlili lokalno, se izkaznica ne izda. Švicarskim začasnim uslužbencem (uradniki s pogodbo o delu za določen čas) mednarodnih organizacij se izkaznica ne izda.

— Veleposlaništva in konzulati: član poklicnega osebja s švicarskim državljanstvom

— Stalna predstavništva: član osebja s švicarskim državljanstvom

— Mednarodne organizacije: uradnik/sodelavec s švicarskim državljanstvom



Imetnik te izkaznice ima **imuniteto pred jurisdikcijo v zvezi z izvajanjem njegovih uradnih dolžnosti**

Der Inhaber dieser Karte geniesst **Immunität von der Gerichtsbarkeit für dienstliche Tätigkeiten**

Seznam prejšnjih objav

UL C 247, 13.10.2006, str. 85

UL C 153, 6.7.2007, str. 15

UL C 64, 19.3.2009, str. 18

UL C 239, 6.10.2009, str. 7

UL C 214, 20.7.2012, str. 4

UL C 238, 8.8.2012, str. 5

UL C 255, 24.8.2012, str. 2

UL C 242, 23.8.2013, str. 13

UL C 304, 10.11.2010, str. 6

UL C 273, 16.09.2011, str. 11

UL C 357, 7.12.2011, str. 3

UL C 88, 24.3.2012, str. 12

UL C 120, 25.4.2012, str. 4

UL C 182, 22.6.2012, str. 10

UL C 38, 8.2.2014, str. 16

UL C 133, 1.5.2014, str. 2

UL C 360, 11.10.2014, str. 5

UL C 397, 12.11.2014, str. 6

UL C 77, 27.2.2016, str. 5

UL C 174, 14.5.2016, str. 12.

INFORMACIJE V ZVEZI Z EVROPSKIM GOSPODARSKIM PROSTOROM

NADZORNI ORGAN EFTE

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 o vprašanjih državne pomoči

(2016/C 236/10)

Z Odločbo št. 489/15/COL, objavljeno v verodostojnem jeziku na straneh, ki sledijo temu povzetku, je Nadzorni organ Efte norveške organe obvestil o svoji odločitvi, da bo začel postopek v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča v zvezi z zgoraj navedenim ukrepom.

Zainteresirane strani lahko predložijo svoje pripombe o zadevnem ukrepu v enem mesecu od datuma objave na naslednji naslov:

EFTA Surveillance Authority
Registry
Rue Belliard 35/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 in navede razloge za to.

POVZETEK

Postopek

Norveški organi so regionalno diferencirane prispevke v okviru sheme za socialno varnost za obdobje 2014–2020 priglasili v skladu s členom 1(3) dela I Protokola 3 z dopisom z dne 13. marca 2014 ([1]). Na podlagi te priglasitve in informacij, poslanih po priglasitvi ([2]), je organ priglašeno shemo pomoči odobril z Odločbo št. 225/14/COL z dne 18. junija 2014.

S sodbo z dne 23. septembra 2015 v zadevi E-23/14, *Kimek Offshore AS proti ESA* ([3]) je Sodišče Efte delno razveljavilo odločbo Nadzornega organa.

Nadzorni organ je z dopisom z dne 15. oktobra 2015 ([4]) od norveških organov zahteval informacije. Norveški organi so na zahtevo po informacijah odgovorili z dopisom z dne 6. novembra 2015 ([5]).

Opis ukrepa

Cilj splošne sheme o diferenciranih prispevkih za socialno varnost je zmanjšati ali preprečiti upadanje števila prebivalcev v najmanj poseljenih regijah na Norveškem s spodbujanjem zaposlovanja. Shema pomoči za tekoče poslovanje izravnava stroške zaposlovanja z zmanjševanjem stopenj prispevkov za socialno varnost v določenih geografskih območjih. Praviloma se intenzivnosti pomoči spreminjajo glede na geografsko območje, v katerem je poslovna enota registrirana. Po norveški zakonodaji morajo podjetja registrirati podenote za vsako ločeno poslovno dejavnost, ki jo opravljajo ([6]). Če podjetje opravlja različne vrste poslovnih dejavnosti, mora registrirati ločene podenote. Poleg tega je treba registrirati ločene enote, če se dejavnosti opravljajo na različnih geografskih lokacijah.

([1]) Dokumenti št. 702438–702440, 702442 in 702443.
([2]) Glej uvodno izjavo 2 Odločbe št. 225/14/COL, ki je na voljo na spletu: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf.
([3]) Še ni objavljeno.
([4]) Dokument št. 776348.
([5]) Dokumenta št. 779603 in 779604.
([6]) Zakon o usklajevalnem registru pravnih oseb (LOV-1994-06-03-15).

Z odstopanjem od glavnega pravila o registraciji se shema uporablja tudi za podjetja, ki so registrirana zunaj upravičenega območja, če najemajo delavce za delo na upravičenem območju in če njihovi uslužbenci opravljajo mobilne dejavnosti na upravičenem območju (za namene te odločbe so te storitve poimenovane „potujoče storitve“). To je pravilo o izvzetju, ki se pregleduje v tej odločbi. Nacionalna pravna podlaga za shemo kot takšno je oddelek 23-2 nacionalnega zakona o zavarovalništvu ([1]). Nacionalna pravna podlaga za izvzetje je navedena v oddelku 1(4) Odločbe norveškega parlamenta št. 1482 z dne 5. decembra 2013 o določanju davčnih stopenj itd. v okviru nacionalnega zakona o zavarovalništvu.

Izvzetje se uporablja le, če delavec polovico ali več svojih delovnih dni dela na upravičenem območju. Poleg tega znižana stopnja velja samo za del opravljenega dela na zadevnem območju.

Ocena ukrepa

Nadzorni organ mora oceniti, ali je pravilo o izvzetju združljivo z delovanjem Sporazuma EGP na podlagi člena 61(3)(c) v skladu s Smernicami Nadzornega organa o regionalni državni pomoči za obdobje 2014–2020 ([2]).

Regionalna pomoč je lahko učinkovita pri spodbujanju gospodarskega razvoja območij z omejenimi možnostmi le, če se dodeli z namenom spodbujanja dodatnih naložb ali gospodarskih dejavnosti na teh območjih ([3]). Regionalna pomoč za tekoče poslovanje lahko spada samo v okvir člena 61(3)(c) Sporazuma EGP, če se dodeli za odpravo posebnih ali trajnih omejitev, s katerimi se srečujejo podjetja v regijah z omejenimi možnostmi ([4]).

Ni dvoma, da je geografski obseg sheme kot take omejen na regije z omejenimi možnostmi. Področje uporabe te odločbe je omejeno na pravilo o izvzetju. Vprašanje je, ali je to pravilo, ki omogoča podjetjem, registriranim zunaj regij z omejenimi možnostmi, ki jih zajema shema, da prejmejo pomoč v okviru sheme, v kolikor izvajajo gospodarske dejavnosti v teh regijah z omejenimi možnostmi, združljivo s pravili o državni pomoči. Z drugimi besedami – ali pravilo o izvzetju odpravlja posebne ali trajne omejitve, s katerimi se srečujejo podjetja v regijah z omejenimi možnostmi?

Norveški organi morajo dokazati, da obstaja tveganje upadanja števila prebivalcev, če pravilo o izvzetju ne bi bilo sprejeto ([5]). Norveški organi so izpostavili koristi, ki jih pravilo o izvzetju prinaša lokalnim podjetjem. Omogoča jim dostop do specializirane delovne sile, ki drugače ne bi bila na voljo, z nižjimi stroški. Poleg tega pravilo o izvzetju omogoča večjo konkurenco med potujočimi storitvami na upravičenih območjih, kar spet koristi lokalnim podjetjem (tistim, ki ne izvajajo potujočih storitev), saj je poslovanje na upravičenem območju zaradi nižjih stroškov potujočih storitev privlačnejše in dobičkonosnejše. Uporaba pomoči v okviru sheme je posredno orodje, ker se uporablja za zmanjšanje stroškov zaposlovanja delavcev kot ukrep za zmanjševanje ali preprečevanje upadanja števila prebivalcev. Norveški organi menijo, da je trg dela najpomembnejši dejavnik, ki vpliva na odločitev o kraju bivanja.

Norveški organi so še trdili, da bodo podjetja, registrirana zunaj upravičenega območja, občasno najemala delavce na upravičenih območjih. Zato bodo podjetja zagotavljala delovna mesta, ki bodo kljub svoji začasni naravi prispevala k večjim dohodkom od plač v upravičenih regijah. To tudi spodbuja gospodarsko dejavnost. Norveški organi nadalje trdijo, da bodo uslužbenci, ki začasno bivajo na upravičenem območju, kupovali lokalno blago in naročali lokalne storitve, s čimer bodo prispevali k lokalnemu gospodarstvu. To velja zlasti za uslužbence, ki se na lokacijo vozijo kratko- ali srednjeročno, saj je verjetno, da bodo bivali v hotelih, jedli v restavracijah itd. Norveški organi ocenjujejo, da bo znesek pomoči, ki izhaja iz pravila o izvzetju, znašal 2 odstotka celotne pomoči za leto 2015, vendar poudarjajo, da je ta ocena negotova. Dva odstotka pomeni približno 19 milijonov EUR ([6]). Nadzorni organ vabi norveške organe, da predložijo natančnejše informacije glede finančnega učinka pravila.

Razen zgornjih splošnih pripomb norveški organi niso predložili nobenih drugih informacij, na podlagi katerih bi dokazali tveganje upadanja števila prebivalcev na zadevnem območju, če pravilo o izvzetju ne bi bilo sprejeto. Nadzorni organ meni, da mora ukrep, da bi izpolnil zahteve Smernic o regionalni državni pomoči, pokazati učinke, ki so večji od zanemarljivega povečanja možnosti začasnega zaposlovanja in porabe na upravičenem območju. Nadzorni organ na tej podlagi norveške organe vabi, da predložijo več informacij, ki dokazujejo tveganje upadanja števila prebivalcev, če pravilo o izvzetju ne bi bilo sprejeto.

([1]) LOV-1997-02-28-19.
([2]) UL L 166, 5.6.2014, str. 44 in Dopolnilo EGP št. 33, 5.6.2014, str. 1.
([3]) Odstavek 6 Smernic o regionalni državni pomoči.
([4]) Odstavek 16 Smernic o regionalni državni pomoči.
([5]) Odstavek 43 Smernic o regionalni državni pomoči.
([6]) Na podlagi priglašenega proračuna za leto 2013, glej uvodno izjavo 49 Odločbe Nadzornega organa št. 225/14/COL.

Kar zadeva vpliv pravila o izvzetju na konkurenco in trgovino, norveški organi trdijo, da pravilo o izvzetju ustvarja enake konkurenčne pogoje za vsa podjetja, dejavna na območjih z omejenimi možnostmi, saj se uporablja enako za vsa podjetja s sedežem v EGP. Posledično odpravlja neupravičene škodljive učinke na konkurenco. Nadzorni organ meni, da je to pozitivna značilnost glede na odstavka 3 in 53 Smernic o regionalni državni pomoči. Vendar imajo lahko podjetja, registrirana na upravičenem območju, na splošno trajnejše težave od podjetij, ki zgolj pošiljajo svoje uslužbence na začasno delo na področje. Norveški organi trdijo, da so lahko podjetja, registrirana zunaj upravičenega območja, v slabšem konkurenčnem položaju v primerjavi z lokalnimi podjetji, med drugim zaradi stroškov prevoza in nastanitve osebja. Norveški organi v podkrepitev te predpostavke niso navedli nobenih podatkov ali dodatne razlage. Nadzorni organ vabi norveške organe, da dodatno pojasnijo, zakaj pravilo o izvzetju nima neupravičenih škodljivih učinkov na konkurenco, ter predložijo dodatne informacije, ki to podkrepljujejo.

Norveški organi so poudarili, da je spodbujevalni učinek pravila o izvzetju očiten. Spodbujevalnega učinka pomoči se ne more zgolj predpostavljati. Čeprav ni treba predložiti posameznih dokazov, da pomoč v okviru sheme vsakemu upravičencu posamezno zagotavlja spodbudo za opravljanje dejavnosti, ki je drugače ne bi opravljal, mora spodbujevalni učinek temeljiti vsaj na trdni ekonomski teoriji. Zgolj sklicevanje na domnevno očitnost ni dovolj. Čeprav je res, da pravilo o izvzetju podjetjem, registriranim zunaj upravičenih območij, zagotavlja manjše stroške dela za potujoče storitve na upravičenih območjih, norveški organi niso predložili dokazov ali argumentov, da je verjetno, da bi se raven gospodarske dejavnosti na območju brez pomoči bistveno zmanjšala zaradi težav, ki jih namerava pomoč odpraviti ([1]).

Norveški organi so pojasnili, da lahko podjetja, ki opravljajo potujoče storitve, v nekaterih primerih registrirajo podenote na upravičenem območju. To tudi morajo storiti, kadar vsaj eden uslužbenec opravlja delo za matično enoto na ločenem območju in je podjetje tam mogoče obiskati.

Norveški organi trdijo, da bi brez pravila o izvzetju za potujoče storitve na upravičenem območju prišlo do neupravičene razlike v obravnavi med podjetji, ki izvajajo storitve, in sicer glede na to, ali imajo svojo podenoto na upravičenem območju ali ne.

Prvič, Nadzornemu organu ni jasna natančna opredelitev zahteve, da mora „vsaj eden uslužbenec opravlja(ti) delo za matično enoto na ločenem območju in je podjetje tam mogoče obiskati“. Nadzorni organ zato norveške organe poziva, naj to pojasnijo.

Drugič, načelo enakega obravnavanja je splošno načelo zakonodaje EGP. Vendar to ne more biti samo po sebi in kot tako podlaga za utemeljitev pravila o izvzetju. Pravilo o izvzetju mora biti samo po sebi združljivo z delovanjem Sporazuma EGP.

Zato Nadzorni organ brez ustreznih informacij, kakor je opisano zgoraj, dvomi o združljivosti pravila o izvzetju z delovanjem Sporazuma EGP.

EFTA SURVEILLANCE AUTHORITY DECISION

No 489/15/COL

of 9 December 2015

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

(Norway)

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

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

Protocol 26 to the EEA Agreement,

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

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

([1]) Odstavek 71 Smernic o regionalni državni pomoči.

Whereas:

I. FACTS

1. Procedure

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

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

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

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

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

3. The scheme

3.1 *Objective*

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

3.2 *National legal basis*

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

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

3.3 *Rules on registration*

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

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

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

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

3.4 *Ambulant services – the measure under scrutiny*

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

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

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

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

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

5. **Comments by the Norwegian authorities**

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

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

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

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

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

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

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

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

II. **ASSESSMENT**

1. **The presence of state aid**

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

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

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

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

2. **Procedural requirements**

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

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

3. **Compatibility of the aid**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **Conclusion**

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

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

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

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

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

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

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 9 December 2015

For the EFTA Surveillance Authority

Sven Erik SVEDMAN
President

Helga JÓNSDÓTTIR
College Member

Poziv k predložitvi pripomb o vprašanjih v zvezi z državno pomočjo glede morebitne pomoči podjetju Hurtigruten ASA v okviru obalnega sporazuma za pomorske storitve Hurtigruten za obdobje 2012–2019 v skladu s členom 1(2) dela I Protokola 3 k Sporazumu med državami Efte o ustanovitvi nadzornega organa in sodišča

(2016/C 236/11)

Z Odločbo št. 490/15/COL z dne 9. decembra 2015 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. Norveški organi so prejeli izvod odločbe.

Nadzorni organ Efte s tem obvestilom poziva države Efte, države članice EU in zainteresirane strani, naj pošljejo svoje pripombe o zadevnem ukrepu v enem mesecu od objave tega poziva 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 in navede razloge za to.

POVZETEK

Ozadje

Podjetje Hurtigruten ASA (v nadaljnjem besedilu: Hurtigruten) izvaja prevozne storitve, ki vključujejo kombinirani prevoz oseb in blaga ob norveški obali od Bergena do Kirkenesa.

Na podlagi postopka oddaje javnega naročila je bil 13. aprila 2011 s podjetjem Hurtigruten podpisan sporazum o izvajanju storitev za obalno pot Bergen–Kirkenes (v nadaljnjem besedilu: sporazum s podjetjem Hurtigruten) za obdobje od 1. januarja 2012 do 31. decembra 2019. V skladu s tem sporazumom podjetje Hurtigruten vse leto opravlja dnevne plovbe s postanki v določenih 32 vmesnih pristaniščih med Bergenom in Kirkenesom. Na relacijah Tromsø–Kirkenes in Kirkenes–Tromsø je zagotovljen tudi tovorni promet. Storitve se izvajajo v skladu z nekaterimi zahtevami glede plovil in njihove zmogljivosti, kakor je določeno v pogodbi. Plovila za plovbo po obalni poti morajo sprejeti najmanj 320 potnikov, v kabinah morajo imeti ležišča za 120 potnikov, v prostoru za tovor z normalno višino pa morajo imeti tovorno zmogljivost za 150 evro palet. Izpolnjevati morajo tudi pravne in tehnične zahteve, kot je opredeljeno v točki 4.4 razpisnih pogojev.

Za storitve, ki so zajete v sporazumu s podjetjem Hurtigruten, norveški organi plačujejo nadomestilo v skupnem znesku 5 120 milijonov NOK za osem let sporazuma.

Ocena državne pomoči za dodeljeno nadomestilo

Edino merilo za pojem državne pomoči, ki je sporno, je, ali je pogodba podjetju Hurtigruten dala selektivno neupravičeno gospodarsko prednost.

Selektivna gospodarska prednost podjetju Hurtigruten

Nadzorni organ je ocenil štiri pogoje iz sodbe *Altmark* [1] in ugotovil, da se v tej fazi noben ni zdel izpolnjen, zato je imelo podjetje Hurtigruten selektivno prednost v smislu člena 61(1) Sporazuma EGP.

V zvezi s prvim pogojem, ki določa jasno opredelitev obveznosti javne službe, nadzorni organ dvomi, ali lahko Norveška zahtevo glede rezervne zmogljivosti iz oddelka 4-2 sporazuma s podjetjem Hurtigruten uvrsti med storitve

[1] Sodba v zadevi Altmark Trans GmbH in Regierungspräsidium Magdeburg proti Nahverkehrsgesellschaft Altmark GmbH (Altmark), C-280/00, EU:C:2003:415, točke 87–93.

splošnega gospodarskega pomena, in poziva norveške organe, naj predložijo objektivno utemeljitev v zvezi s potrebo po obveznosti javne službe, pri čemer je treba upoštevati sezonska nihanja komercialnega prevoza potnikov.

Kar zadeva drugi pogoj in dejstvo, da morajo biti parametri, na podlagi katerih se izračuna nadomestilo, določeni vnaprej na objektiven in pregleden način, nadzorni organ na tej stopnji dvomi, ali je zahteva glede rezervne zmogljivosti povezana z dejanskim številom potnikov v okviru obveznosti javne službe. Za predhodni izračun stroškov na potnika/kilometer namreč ni bilo nobene objektivne in pregledne metodologije. Podjetje Hurtigruten je določilo ločen proračun za vse stroške in prihodke, povezane s potmi v okviru obveznosti javne službe. Namen tega ločenega računovodstva pa ni vnaprej določiti parametrov za nadomestilo, ki so neposredno povezan z dejanskimi izgubami in stroški (stroški, povezani z zmogljivostjo in potniki), ki jih ima podjetje Hurtigruten.

Glede tretjega pogoja nadzorni organ dvomi, ali so norveški organi zagotovili, da nadomestilo ne presega tistega, kar je potrebno za kritje vseh ali dela stroškov, nastalih pri izpolnjevanju obveznosti javne službe, ob upoštevanju zadevnih prejemkov in razumnega dobička za izpolnjevanje teh obveznosti.

Nadzorni organ na tej stopnji ne more izključiti, da je podjetje Hurtigruten prejelo prekomerno nadomestilo za opravljanje javnih storitev. Za sprejetje te predhodne ugotovitve je nadzorni organ ocenil naslednje:

(i) podjetje Hurtigruten ne rezervira svojih zmogljivosti za storitve javnega potniškega prometa, ampak jih prodaja potnikom na križarjenju, pri čemer prejema enako nadomestilo za opravljanje javnih storitev;

(ii) nadomestilo za opravljanje javnih storitev se je znatno povečalo v primerjavi s prejšnjim pogodbenim obdobjem;

(iii) podjetje Hurtigruten še naprej prejema nadomestilo za storitve, ki jih ne opravlja; ter

(iv) podjetje Hurtigruten si prizadeva pridobiti še nižje cene za pristaniške pristojbine, pri čemer ohranja enako nadomestilo za opravljanje javnih storitev.

Nazadnje, kar zadeva četrti pogoj, ki določa, da se izvede postopek javnega naročila ali uspešno podjetje opravi primerjalno analizo, nadzorni organ v zvezi z izvedenim postopkom javnega naročila, v okviru katerega je ponudbo predložilo samo podjetje Hurtigruten, na tej stopnji dvomi, ali postopek javnega naročila, kot je zadevni, lahko zadostuje za zagotovitev „najnižjih stroškov za skupnost“. To še zlasti drži, ker je imelo podjetje Hurtigruten znatno konkurenčno prednost, ki je okrepila njegov položaj v postopku javnega naročila, saj je podjetje že imelo plovila, ki so bila prilagojena glede na zahteve iz razpisnih pogojev.

Poleg tega je bila v skladu z razpisnimi pogoji podelitev izvajanja obveznosti javnih služb objavljena v obliki treh alternativ, kar bi lahko kazalo na obstoj nadaljnjih informacij in/ali meril med temi alternativami. Glede na to, da v razpisni dokumentaciji takih informacij ni bilo, nadzorni organ dvomi, ali je javno naročilo, kot je bilo zasnovano, sploh vsebovalo spodbude za morebitne ponudnike, razen za podjetje Hurtigruten, da bi bili pripravljeni predložiti ponudbo v skladu z zahtevami treh različnih alternativ in za različno alternativo od tiste, ki je bila dejansko izbrana.

Norveški organi niso predložili nobenih informacij glede primerjalne analize z uspešnim podjetjem.

Ocena združljivosti

Skladnost nadomestila za javne storitve v pomorskem prometu se oceni na podlagi člena 59(2) Sporazuma EGP v povezavi z Okvirom Nadzornega organa za državno pomoč v obliki nadomestila za javne storitve ([2]) (v nadaljnjem besedilu: Okvir).

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

Načela iz tega Okvira se uporabljajo za nadomestila za javne storitve, ki pomenijo državno pomoč, za katero se ne uporablja Sklep Komisije 2012/21/EU o uporabi člena 106(2) Pogodbe o delovanju Evropske unije za državno pomoč v obliki nadomestila za javne storitve, dodeljenega nekaterim podjetjem, pooblaščenim za opravljanje storitev splošnega gospodarskega pomena ([3]).

Nadzorni organ ni prejel nobenih informacij norveških organov v zvezi s pomisleki glede združljivosti in na tej stopnji dvomi, ali je sporazum s podjetjem Hurtigruten združljiv z delovanjem Sporazuma EGP.

Zaključek

Glede na zgornje navedbe 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 lahko predložijo svoje pripombe v enem mesecu po objavi tega obvestila v *Uradnem listu Evropske unije*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 490/15/COL

of 9 December 2015

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

(Norway)

[NON-CONFIDENTIAL VERSION]

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

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

Protocol 26 to the EEA Agreement,

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

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

Whereas:

I. **FACTS**

1. **Procedure**

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

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

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

([3]) UL L 7, 11.1.2012, str. 3, vključena v točko 1h Priloge XV k Sporazumu EGP.

2. **Background – the Hurtigruten Agreement**

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

Diagram 1 – The Bergen – Kirkenes coastal route

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

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

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

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

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

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

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

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

Table 1 – Annual Compensation under the HA

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

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

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

(12) Both complainants have requested confidential treatment.

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

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

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

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

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

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

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

([8]) Doc Nos 748323 and 715314.

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

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

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

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

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

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

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

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

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

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

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

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

([10]) Doc Nos 723002 and 742652.

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

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

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

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

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

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

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

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

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

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

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

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

(29) […]

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

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

II. **ASSESSMENT**

1. **The presence of state aid**

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

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

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

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

1.2 ***State resources***

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

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

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

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

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

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

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

(37) It follows from the *Altmark* judgment that where a State measure must be regarded as compensation for services provided by the recipient undertakings in order to discharge public service obligations, such a measure is not caught by Article 61(1) of the EEA Agreement. In the *Altmark* judgment, the Court of Justice held that compensation for public service obligations does not constitute state aid when four cumulative criteria are met:

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

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

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

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

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

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

iii. *Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;*

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

1.4.1 *The first Altmark condition*

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

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

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

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

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

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

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

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

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

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

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

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

1.4.2 *The second Altmark condition*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4.3 *The third Altmark condition*

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

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

'If it is shown that the compensation paid to the undertakings operating the public service does not reflect the costs actually incurred by that undertaking for the purposes of that service, such a system does not satisfy the requirement that compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public services obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations' ([28]).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4.4 *The fourth Altmark condition*

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

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

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

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

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

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

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

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

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

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

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

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

1.4.5 *Conclusion on the Altmark conditions*

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

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

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

3. **Procedural requirements**

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

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

4. **Compatibility of the aid**

4.1 ***The legal framework***

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

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

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

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

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

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

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

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

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

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

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

4.3 ***Applicability of the Framework***

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

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

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

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

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

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

c. Paragraph 20: absence of discrimination;

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

e. Paragraphs 39 to 50: efficiency incentives;

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

g. Paragraph 60: transparency.

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

5. **Conclusion**

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

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

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

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

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

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

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

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, on 9 December 2015.

For the EFTA Surveillance Authority

Sven Svedman
President

Helga Jónsdóttir
College Member

Razpis Norveške v zvezi z Direktivo 94/22/ES Evropskega parlamenta in Sveta o pogojih za izdajo in uporabo dovoljenj za iskanje, raziskovanje in izkoriščanje ogljikovodikov

Razpis za oddajo vlog za izdajo dovoljenj za izkoriščanje nafte v norveškem epikontinentalnem pasu – Izdaja dovoljenj za vnaprej določena območja v letu 2016

(2016/C 236/12)

Norveško ministrstvo za nafto in energijo objavlja razpis za oddajo vlog za izdajo dovoljenj za izkoriščanje nafte v skladu s členom 3(2)(a) Direktive 94/22/ES Evropskega parlamenta in Sveta z dne 30. maja 1994 o pogojih za izdajo in uporabo dovoljenj za iskanje, raziskovanje in izkoriščanje ogljikovodikov ([1]).

Dovoljenja za izkoriščanje se bodo izdala le delniškim družbam, registriranim na Norveškem ali v drugi državi pogodbenici Sporazuma o Evropskem gospodarskem prostoru (Sporazum EGP), ali fizičnim osebam s stalnim prebivališčem v državi pogodbenici Sporazuma EGP.

Družbam, ki nimajo dovoljenja v norveškem epikontinentalnem pasu, se lahko podeli dovoljenje za izkoriščanje, če so se predhodno kvalificirale za prejem dovoljenja za to območje.

Ministrstvo bo posamezne družbe in družbe, ki bodo vloge oddale kot del skupine, obravnavalo pod enakimi pogoji. Vlagatelji, ki bodo oddali posamezno vlogo, ali vlagatelji kot skupina, ki bo oddala skupno vlogo, se bodo šteli kot en vlagatelj vloge za izdajo dovoljenja za izkoriščanje. Ministrstvo lahko na podlagi vlog, ki jih oddajo skupine ali posamezni vlagatelji, določi sestavo skupin imetnikov dovoljenja, ki jim bo izdano novo dovoljenje za izkoriščanje nafte, odstrani vlagatelje iz skupne vloge in doda posamezne vlagatelje ter imenuje izvajalca za take skupine.

Dodelitev deleža v dovoljenju za izkoriščanje bo pogojena s pristopom imetnika dovoljenja k sporazumu o dejavnostih, povezanih z nafto (Agreement for Petroleum Activities), vključno s sporazumom o skupnem izvajanju in sporazumom o obračunavanju. Če se dovoljenje za izkoriščanje stratigrafsko razdeli, bosta morala imetnika dveh stratigrafsko razdeljenih dovoljenj skleniti tudi posebni sporazum o skupnem izvajanju, ki bo v zvezi s tem urejal odnose med njima.

Imetniki dovoljenja bodo ob podpisu navedenih sporazumov ustanovili skupno podjetje, v katerem bo njihova kapitalska udeležba vedno enaka njihovemu deležu v dovoljenju za izkoriščanje.

Dokumenti za dovoljenje bodo v glavnem temeljili na zadevnih dokumentih iz podelitve dovoljenj za vnaprej določena območja 2015. S tem se bo zagotovilo, da bo industrija o pomembnih spremembah okvira obveščena pred oddajo vlog.

Merila za podelitev dovoljenj za izkoriščanje

Za spodbujanje dobrega upravljanja virov ter hitrega in učinkovitega raziskovanja in izkoriščanja nafte v norveškem epikontinentalnem pasu, vključno s sestavo skupin, ki jim bo izdano dovoljenje in bodo to omogočile, veljajo naslednja merila za dodelitev deležev v dovoljenjih za izkoriščanje in za imenovanje izvajalca:

(a) vlagatelj pozna geološko sestavo zadevnega geografskega območja in predlaga, kako nameravajo imetniki dovoljenja učinkovito izkoriščati nafto;

(b) vlagatelj ima ustrezno tehnično znanje in lahko predstavi, kako lahko to strokovno znanje aktivno prispeva k cenovno učinkovitem raziskovanju ter po potrebi izkoriščanju nafte na zadevnem geografskem območju;

(c) vlagatelj ima predhodne izkušnje v norveškem epikontinentalnem pasu ali enakovredne zadevne izkušnje iz drugih območij;

(d) vlagatelj ima zadovoljive finančne zmogljivosti za raziskovanje in po potrebi izkoriščanje nafte na zadevnem geografskem območju;

(e) če je vlagatelj pridobitelj dovoljenja za izkoriščanje ali je to bil, lahko ministrstvo upošteva vse oblike neučinkovitosti ali neodgovornosti vlagatelja kot pridobitelja dovoljenja;

(f) dovoljenja za izkoriščanje se bodo v glavnem izdala skupnemu podjetju, v katerem je najmanj en imetnik dovoljenja kot izvajalec izvrtal najmanj eno vrtino v norveškem epikontinentalnem pasu ali ima enakovredne zadevne izkušnje z izvajanjem zunaj norveškega epikontinentalnega pasu;

([1]) UL L 164, 30.6.1994, str. 3.

(g) dovoljenja za izkoriščanje bodo v glavnem podeljena dvema imetnikoma dovoljenja ali več, kadar ima vsaj eden izkušnje iz točke (f);

(h) imenovani izvajalec, ki mu bo izdano dovoljenje za izkoriščanje v Barentsovem morju, je moral kot izvajalec izvrtati najmanj eno vrtino v norveškem epikontinentalnem pasu ali ima enakovredne zadevne izkušnje z izvajanjem zunaj norveškega epikontinentalnega pasu;

(i) za izdajo dovoljenja za izkoriščanje v globokih vodah sta morala imenovani izvajalec in vsaj še eden od imetnikov dovoljenja kot izvajalca izvrtati najmanj eno vrtino v norveškem epikontinentalnem pasu ali imata enakovredne zadevne izkušnje z izvajanjem zunaj norveškega epikontinentalnega pasu. Eden od imetnikov dovoljenja za izkoriščanje je moral kot izvajalec vrtati v globokih vodah;

(j) za izdajo dovoljenja za izkoriščanje, za katero se zahteva vrtanje vrtin pod visokim pritiskom in/ali visokimi temperaturami (HTHP), sta morala imenovani izvajalec in vsaj še eden od imetnikov dovoljenja kot izvajalca izvrtati najmanj eno vrtino v norveškem epikontinentalnem pasu ali imata enakovredne zadevne izkušnje z izvajanjem zunaj norveškega epikontinentalnega pasu. Eden od imetnikov dovoljenja za izkoriščanje je moral kot izvajalec izvrtati vrtino pod visokim pritiskom in/ali visokimi temperaturami (HTHP).

Bloki, za katere se lahko oddajo vloge

Vloge za deleže v dovoljenjih za izkoriščanje se lahko oddajo za bloke, za katere niso bila izdana dovoljenja v vnaprej določenih območjih, kot je prikazano na zemljevidih, ki jih je objavil norveški direktorat za nafto. Prav tako je možno zaprositi za površino, ki je bila opuščena v vnaprej določenih območjih po razglasitvi v skladu s posodobljenimi interaktivnimi zemljevidi norveškega direktorata za nafto, ki so na voljo na njegovi spletni strani.

Vsako dovoljenje za izkoriščanje lahko zajema enega ali več blokov ali delov blokov. Vlagatelji morajo omejiti predlogo vloge na območja, kjer so vrisali potencialna nahajališča nafte.

Celotno besedilo razpisa, vključno s podrobnimi zemljevidi razpoložljivih območij, je na voljo na spletnem naslovu norveškega direktorata za nafto www.npd.no/apa2016.

Vloge za dovoljenja za izkoriščanje nafte se pošljejo na naslov:

Ministry of Petroleum and Energy
P.O. Box 8148 Dep.
N-0033 OSLO
NORWAY

Dve kopiji je treba predložiti na naslov:

The Norwegian Petroleum Directorate
P.O. Box 600
N-4003 Stavanger
NORWAY

Rok: 6. septembra 2016 ob 12:00 (opoldne).

Dovoljenja za izkoriščanje nafte bodo za vnaprej določena območja 2016 v norveškem epikontinentalnem pasu po načrtih podeljena v prvem četrtletju leta 2017.

V

(Objave)

UPRAVNI POSTOPKI

EVROPSKA KOMISIJA

Razpis za zbiranje predlogov v okviru večletnega delovnega programa za dodeljevanje finančne pomoči na področju vseevropske energetske infrastrukture v okviru instrumenta za povezovanje Evrope za obdobje 2014–2020

(Sklep Komisije (C(2016) 1587))

(2016/C 236/13)

Generalni direktorat Evropske komisije za energetiko objavlja razpis za zbiranje predlogov za dodelitev nepovratnih sredstev v skladu s prednostnimi nalogami in cilji, določenimi v večletnem delovnem programu na področju vseevropske energetske infrastrukture v okviru instrumenta za povezovanje Evrope za obdobje 2014–2020.

Poziva se k oddaji predlogov za naslednji razpis:

CEF-Energy-2016-2.

Okvirni razpoložljivi znesek za izbrane predloge v okviru tega razpisa za zbiranje predlogov je 600 milijonov EUR.

Rok za oddajo predlogov je **8. november 2016**.

Celotno besedilo razpisa za zbiranje predlogov je na voljo na spletni strani:

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

POSTOPKI V ZVEZI Z IZVAJANJEM POLITIKE KONKURENCE

EVROPSKA KOMISIJA

Predhodna priglasitev koncentracije

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

Zadeva, primerna za obravnavo po poenostavljenem postopku

(Besedilo velja za EGP)

(2016/C 236/14)

1. Komisija je 21. junija 2016 prejela priglasitev predlagane koncentracije v skladu s členom 4 Uredbe Sveta (ES) št. 139/2004 ([1]), s katero podjetje BNP Paribas Fortis Private Equity Belgium NV („BNPPF PE“, Belgija), podjetje Sofindev IV NV („Sofindev“, Belgija) in podjetje DHAM NV („Korys/Colruyt Group“, Belgija) z nakupom delnic pridobijo v smislu člena 3(1)(b) Uredbe o združitvah skupni nadzor nad podjetjem Novy International NV („Novy“, Belgija).

2. Poslovne dejavnosti zadevnih podjetij so:

— za BNPPF PE: financiranje zasebnega kapitala in vmesno financiranje. Njegove portfeljne družbe delujejo v sektorjih kot so dobava in proizvodnja kovinskih in plastičnih izdelkov, skladi semenskega kapitala za univerze, pekovski izdelki, industrijske storitve ter nepremičnine;

— za Sofindev: naložbe v zasebni kapital v malih in srednjih podjetjih v Belgiji. Njegove portfeljne družbe so dejavne na področjih distribucije materialov za strešne kritine in fasade ter razvoja programskih rešitev vezanih na kraj;

— za Korys/Colruyt Group: maloprodajni in veleprodajni trgi ter gostinski trgi. Dejavno je tudi na področju programskih rešitev, projektov trajnostne/obnovljive energije ter zdravstvenem trgu in trgu bioznanosti;

— za Novy: oblikovanje, proizvodnja in trženje vrhunskih kuhinjskih naprav, zlasti kuhinjskih nap.

3. Po predhodnem pregledu Komisija ugotavlja, da bi priglašena koncentracija lahko spadala na področje uporabe Uredbe o združitvah. Vendar končna odločitev o tem še ni sprejeta. V skladu z Obvestilom Komisije o poenostavljenem postopku obravnave določenih koncentracij na podlagi Uredbe Sveta (ES) št. 139/2004 ([2]) je treba opozoriti, da je ta zadeva primerna za obravnavo po postopku iz Obvestila.

4. Komisija zainteresirane tretje osebe poziva, naj ji predložijo morebitne pripombe glede predlagane transakcije.

Komisija mora pripombe prejeti najpozneje v 10 dneh po datumu te objave. Pripombe z navedbo sklicne številke M.8094 – BNP Paribas Fortis Private Equity Belgium/Sofindev IV/DHAM/Novy International se lahko Komisiji pošljejo po telefaksu (+32 22964301), po elektronski pošti na naslov COMP-MERGER-REGISTRY@ec.europa.eu ali po pošti na naslov:

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

([1]) UL L 24, 29.1.2004, str. 1 (Uredba o združitvah).
([2]) UL C 366, 14.12.2013, str. 5.

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