

Case handler: Ingeborg Maria Gudem
Tel: (+32)(0)2 286 1892
igu@eftasurv.int

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EFTA SURVEILLANCE
AUTHORITY

Subject: Cross-subsidisation of maritime safety courses by public schools (complaint)

- *Preliminary assessment under paragraph 48 (b) of the Authority's Guidelines on Best Practice for the conduct of state aid control procedures*

1. General

Reference is made to your complaint dated 28 April 2017 to the Competition and State Aid directorate of the EFTA Surveillance Authority ("the Authority") regarding cross-subsidisation of maritime safety courses by public schools in Nordland, Troms and Finnmark counties.

In your complaint, you allege that the public schools Lofoten maritime fagskole and Bodin videregående skole in Norland, Senja videregående skole in Troms and Nordkapp maritime fagskole in Finnmark ("the Schools") have been granted unlawful state aid in the form of cross-subsidies to commercial maritime safety courses arranged by these schools in direct competition with private providers of such courses.

According to your complaint, these schools organise commercial maritime safety courses at the schools' premises, with the schools' equipment and that teachers receive their salaries, including for their work related to commercial maritime safety courses, from the counties. Further, some schools also offer food and lodging at the respective school. You allege that the public schools do not charge their commercial operations market price for these inputs, and that the full cost of these inputs is therefore not reflected in the final price for the maritime safety courses offered by the schools. This alleged cross-subsidisation distorts competition on the market for maritime safety courses.

Following a preliminary examination of the complaint, the Authority is of the view that the Schools have not received aid in breach of the EEA state aid rules.

According to Article 61(1) of the EEA Agreement, a measure constitutes state aid 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 certain undertakings or the production of certain goods; and (iii) is liable to affect trade between Contracting Parties and to distort competition.

2. Undertaking

In order to constitute state aid within the meaning of Article 61 of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.¹ Economic activities are activities consisting of offering goods or services on a market.² Conversely, entities that are not commercially active in the sense that they are not offering goods and services on a given market do not constitute undertakings.

Public education organised within the national educational systems funded and supervised by the State may be considered as a non-economic activity.³ However, courses given by educational establishments essentially financed by private funds constitute services, since the aim of those establishments is to offer a service for remuneration.⁴

In Decision No 267/13/COL,⁵ the Authority held that when offering safety training courses to employees in the oil and maritime industries against remuneration, the county schools act as undertakings carrying out an economic activity.⁶

The Norwegian authorities have provided information showing that Troms County purchases maritime safety courses from private operators in the market. The Norwegian authorities have furthermore explained that Senja videregående skole does not offer maritime safety courses on the market. It is therefore not an undertaking engaging in economic activity on this market, and as such not subject to State aid rules.

3. No Advantage

An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of state intervention.

In Decision No 267/13/COL, the Authority expressed the view that the current financing scheme of county schools did not prevent that state resources, allocated to these schools for the purpose of fulfilling their public education obligation, were being used to subsidise these schools' commercial activities (i.e. the provision of safety training courses on the market).⁷ In the wake of this decision, the Norwegian authorities changed Section 5 of the

¹ Judgements in *Höfner and Elser v Macroton*, Case C-41/90, EU:C:1991:161, paragraphs 21-23, *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, and Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority* [2008] EFTA Ct. Rep. 61, paragraph 78.

² See the Authority's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (Notion of aid), at paragraph 12, available at <http://www.eftasurv.int/media/esa-docs/physical/EFTA-Surveillance-Authority-Guidelines-on-the-notion-of-State-aid--812818--corrected-version-published-onlinen.pdf>, and Judgements in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze*, Case C-222/04, EU:C:2006:8, paragraph 108 and *Cisal*, C-218/00, EU:C:2002:36 paragraph 23.

³ Notion of Aid, paragraph 28.

⁴ Judgement in *Betania*, C-74/16 EU:C:2017:496, paragraph 48 and judgement in *Schwarz*, C-76/05, EU:C:2007:492, paragraph 40.

⁵ Available at <http://www.eftasurv.int/media/decisions/267-13-COL.pdf>

⁶ Paragraph 34.

⁷ Paragraph 38.

Accounting Regulation⁸ so that public schools arranging maritime safety courses were obliged to keep separate accounts, with income and costs related to the various activities allocated according to consistent, objective and justifiable principles in order to ensure that the economic activities of the schools cover all costs related to its operations.

The Authority therefore closed the case.⁹

The Norwegian authorities have presented evidence showing that Lofoten maritime fagskole and Bodin videregående skole in Norland and Nordkapp maritime fagskole in Finnmark keep their accounts in compliance with Section 5 of the Accounting Regulation, in that the revenues and costs of the maritime safety courses offered on the market are kept separate, and they use a clearly defined cost allocation model.

Further, the Norwegian authorities has shown that, to the extent that resources such as teachers from the school have been used in the commercial operations, the commercial departments have been invoiced from the schools or the costs have been allocated to the different department based on appropriate revenue keys. Further, other administrative expenses and capital costs have been allocated to each department.

Since the Schools keep separate accounts, it is the preliminary view of the Authority that no cross-subsidisation has taken place, and therefore no advantage has been conferred on the Schools.

4. Preliminary view

In light of the above and with reference to paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state control procedures,¹⁰ it is the Authority's preliminary view that the Schools has not received any aid in breach of the EEA state aid rules.

If you have any additional information you would like to submit that might change this preliminary view, please submit it to the following email address: registry.user@eftasurv.int by **28 August 2017**. Otherwise the case will be closed without further notice.

Yours sincerely,

Gjermund Mathisen
Director
Competition and State aid

This document has been electronically signed by Gjermund Mathisen.

⁸ FOR-2000-12-15-1424, *Forskrift om årsregnskap og årsberetning (for kommuner og fylkeskommuner)* and FOR-2014-12-16-1852, *Forskrift om endring i forskrift om årsregnskap og årsberetning (for kommuner og fylkeskommuner)*.

⁹ Decision No 55/14/COL, available at <http://www.eftasurv.int/media/decisions/55-14-COL.pdf>

¹⁰ Available at <http://www.eftasurv.int/media/state-aid-guidelines/Part-II---Guidelines-on-Best-Practice-for-the-conduct-of-state-aid-control-procedures-DOC.pdf>.