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Decision No 013/18/COL

Ministry of Trade, Industry and Fisheries
P.O. Box 8090 Dep
NO-0032 Oslo
Norway

Subject: *Templarheimen II - Aid for the construction and operation of the sports facility Templarheimen*

1 Summary

- (1) The EFTA Surveillance Authority (“the Authority”) informs Norway that, having assessed the notification regarding the sports facility *Templarheimen*, it considers that the measure constitutes state aid, and decides not to raise objections to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to Article 61(3)(c) of the EEA Agreement.¹ The Authority has based its decision on the following considerations.

2 Procedure

- (2) By letter dated 4 December 2017, the Norwegian authorities submitted a notification. By letter dated 8 December 2017, the Authority sent a request for information. By letter dated 14 December 2017, the Norwegian authorities replied.

3 Description of the measure

3.1 Background

- (3) The notified measure concerns an amendment to an investment project the Authority approved in 2015, by Decision No 178/15/COL (“Decision 178/15/COL” or “the previous decision”).² In that decision, the Authority approved state aid totalling NOK 600 million to cover the investment costs for the construction of the sports facility *Templarheimen* (“the sports facility”).

3.2 The notified measure

- (4) The present notification (“the notified measure”) concerns public funding of NOK 179 million in non-repayable grants, and comprises the following cost elements, which were not taken into account in the previous decision:
- a) An unexpected increase of costs for the finalisation of the swimming and bathing part of the sports facility.
 - b) New costs to construct an integrated cafeteria.
 - c) New costs to construct a climbing hall as part of the sports facility.

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

² Available here: <http://www.eftasurv.int/media/decisions/178-15-COL.pdf>

- d) Approximately NOK 2.15 million to Tromsø climbing club to cover its operating costs. The amount is granted by Tromsø municipality which will lease out the climbing hall below market rate to Tromsø climbing club.

3.3 Objective

- (5) The objective of the notified measure is to ensure public access of the general public to an adequate sports facility. The construction of the sports facility is mainly intended to improve the capacity of swimming training, climbing practice, physical education, exercise, health, recreation and wellness.

3.4 The operation and use of the facility

- (6) The facility is owned by Tromsø municipality. The operation of the facility can be divided into three sections: (1) a swimming and bathing section; (2) a cafeteria; and (3) a climbing hall.
- (7) The Norwegian authorities have submitted that the swimming and bathing section will be operated by the municipal company in accordance with the previous decision adopted by the Authority.³

3.5 The climbing hall

- (8) The Norwegian authorities have put forward that Tromsø municipality and Tromsø climbing club intend to conclude a lease agreement, with a duration of 40 years, and acknowledge that the rent does not correspond to market rent, thus most likely entails state aid.

3.6 Tromsø climbing club

- (9) Tromsø climbing club was founded in 1977 and is organised as a non-profit sports association.
- (10) The area around Tromsø is well-suited for outdoor climbing. In order to offer club members indoor training, the club constructed a small indoor climbing centre in 1999 with a climbing wall 10 meters high and a 150 m² surface area, that since then has been operated and supervised by volunteers.
- (11) The availability for indoor climbing has led to a significant membership increase and today the club has 795 registered members. The existing climbing hall does not provide sufficient capacity.
- (12) The revenue of the club has increased over the past years. In particular, this is due to the increase in membership fees, climbing courses and income from the operation of the climbing wall, which account for approximately 2/3 of the club's income.⁴ Today, the club's balance sheet comprises assets totalling approximately NOK 4 million, of which over NOK 3 million are cash reserves, saved up in order to make the climbing club financially able to rent and operate a climbing hall with higher capacity.

³ See Decision 178/15/COL, paragraphs 19 *et seq.*

⁴ The remainder stems from donations, contributions to social activities and fees for the use of a cabin owned by the club.

Table 1: *Tromsø climbing club's annual results*

Year	Income	Annual result
2014	NOK 1 324 426	NOK 536 751
2015	NOK 1 510 363	NOK 539 391
2016	NOK 1 673 931	NOK 521 039

- (13) The Norwegian authorities have explained that Tromsø climbing club provides a large variety of non-economic services to society, which are not reflected in the income statement, because they are offered on a voluntary basis by members. These comprise for example:
- (i) Weekly climbing sessions for:
 - Children and teenagers, including for neglected children or those in difficulties.
 - People with disabilities.
 - Families with young children.
 - (ii) Climbing competitions at local level.
 - (iii) Outdoor climbing sessions in the area.
 - (iv) Maintenance and development of outdoor climbing routes.
 - (v) Seminars and information sessions about (safe) climbing.
- (14) According to the Norwegian authorities, all of the above reflects the objective of Tromsø climbing club to promote climbing with emphasis on safety and protection of the mountain environment. However, the Norwegian authorities also acknowledge that Tromsø climbing club is engaged in certain economic activities, in particular by providing climbing courses/services.

4 Presence of state aid

- (15) 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”

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

4.1 Presence of state resources

- (17) The measure must be granted by the state or through state resources.
- (18) The granting authority is Tromsø municipality.
- (19) In the context of Article 61(1) of the EEA Agreement, both local and regional authorities are considered to be equivalent to the state. Accordingly, Tromsø municipality is equivalent to the state for the purposes of the EEA state aid rules.
- (20) The Authority therefore concludes that the notified measure is granted by the state, within the meaning of the state aid rules.

4.2 Advantage

- (21) The measure must confer an advantage on an undertaking that relieves it of charges that are normally borne from its budget.
- (22) Public financing to construct an infrastructure which will be utilised by undertakings may confer an advantage at several levels, i.e. owner, constructor, operator(s).⁵
- (23) At the construction level, Tromsø municipality has assigned the project management and engineering contracts, after having conducted a public procurement process in accordance with EEA rules on public procurement and national law.⁶ The Authority concludes that the transactions are in line with market conditions, thus not conferring an advantage at the constructor level.⁷
- (24) Tromsø municipality will invest NOK 179 million under the notified measure, in order to finalise the swimming and bathing part of the sports facility and to construct a cafeteria/shop, as well as a climbing hall.
- (25) Based on the expected lack of profitability of the sports facility in light of the overall construction costs, it does not seem likely that a private investor would have made such an investment and the measure consequently is not in line with the market economy investor principle (“MEIP”).⁸ The notified measure of NOK 179 million for the construction of the sports facility thus entails an advantage for the municipal company.
- (26) To rent the facility may confer an advantage on the tenants if they are undertakings, and the rent they pay is below market rate.
- (27) The Norwegian authorities have explained that the cafeteria will be rented out on market terms. The operator will be chosen on the basis of a procurement process in accordance with applicable EEA and national procurement rules. The notified measure therefore does not appear to confer an advantage on the operator of the cafeteria.
- (28) The Municipality of Tromsø intends to enter into a lease agreement with Tromsø climbing club. The Norwegian authorities have confirmed that the lease agreement is below market rates and have estimated the net present value of the advantage conferred through the lease agreement to be at NOK 2.15 million, distributed over 40 years.⁹
- (29) The Authority thus concludes that the notified measure confers an advantage on Tromsø climbing club.

⁵ See judgment of 19.12.2012 in *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11 P, EU:C:2012:821.

⁶ See Decision 178/15/COL, paragraphs 19 *et seq.*

⁷ See the Authority’s Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (“the NoA”), section 89, available at: <http://www.eftasurv.int/media/esa-docs/physical/EFTA-Surveillance-Auhtority-Guidelines-on-the-notion-of-State-aid.pdf>.

⁸ See the NoA, section 74, available at: <http://www.eftasurv.int/media/esa-docs/physical/EFTA-Surveillance-Auhtority-Guidelines-on-the-notion-of-State-aid.pdf>.

⁹ The Norwegian authorities have explained that the NOK 2.15 million is the difference between a rent only intended to cover the municipal company’s costs, and a hypothetical rent which would have sought a market-conform return of the investment.

4.3 The notion of undertaking

- (30) An undertaking encompasses every entity engaged in an economic activity, regardless of its legal status and the way it is financed.¹⁰ Activities consisting in offering services on a given market qualify as economic activities,¹¹ and entities carrying out such activities must be classified as undertakings.
- (31) The municipal company will sell entry tickets to the swimming facility to the general public, as well as rent out parts of the facility to other operators against remuneration. These activities qualify as services offered on a given market and therefore the Authority concludes that the municipal company constitutes an undertaking.
- (32) Tromsø climbing club offers access to its climbing walls to the general public against remuneration and rents out necessary equipment. These activities are comparable to those of commercial gyms that make fitness equipment available to their customers, which are considered by the Authority as offering services on a market. Furthermore, the climbing club offers different types of courses against remuneration to the public.
- (33) The Authority concludes that the aforementioned activities are economic and that Tromsø climbing club constitutes an undertaking when offering those services, within the meaning of Article 61(1) of the EEA Agreement.

4.4 Selectivity

- (34) The measure must be selective in that it favours “certain undertakings or the production of certain goods”.
- (35) In the present case, the notified measure confers an advantage on the municipal company and Tromsø climbing club, which other comparable undertakings do not receive. The notified measure is therefore selective within the meaning of Article 61(1) of the EEA Agreement.¹²

4.5 Effect on trade and distortion of competition

- (36) The measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.
- (37) The mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade is enough to conclude that the measure is likely to affect trade between Contracting Parties and distort competition between undertakings established in other EEA States.
- (38) The Authority refers to its view expressed in the previous decision that it may be questioned whether EEA trade is affected by the construction of the sports facility. However, due to its size and location in Tromsø, which is the largest city in Northern Norway, the Authority could not exclude that the measure might have at least a potential effect on EEA trade.¹³ Given that the scope of the project has expanded, the Authority sees no reasons to depart from that conclusion.

¹⁰ See judgment of 10 January 2006 in *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 107.

¹¹ See the Commission Decision in Case SA. 33618 (Sweden) *Financing of the Uppsala arena* (OJ C 152, 30.5.2012, p. 18), paragraph 19, available here: http://ec.europa.eu/competition/state_aid/cases/244148/244148_1320500_16_2.pdf

¹² See Decision 178/15/COL, paragraphs 35 *et seq.*

¹³ See Decision 178/15/COL, paragraph 46.

- (39) As regards the public support to Tromsø climbing club, the Norwegian authorities have explained that costumers from other EEA States may visit the Tromsø area for outdoor climbing. As regards the indoor climbing they assert that most likely no customers will travel to Tromsø for indoor climbing alone. Nevertheless, Tromsø climbing club offers both outdoor and indoor climbing services, which are promoted in English on its website.
- (40) Having reviewed Tromsø climbing club's activities the Authority cannot completely exclude an effect on competition and trade between the Contracting Parties to the EEA Agreement. It follows that this criterion is fulfilled with respect to the notified measure.

4.6 Conclusion on the presence of state aid

- (41) In conclusion, the public funding of the municipal company and Tromsø climbing club constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.
- (42) Under the notified measure, the municipal company receives NOK 179 million in state aid and Tromsø climbing club receives NOK 2.15 million.

5 Procedural requirements

- (43) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"), "[t]he EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision."
- (44) The Norwegian authorities submitted the present notification on 4 December 2017. The construction of the facility has started in accordance with the previous decision. The additional aid covered by the notified measure will be granted based on the Authority's approval. The Authority therefore concludes that the Norwegian authorities have respected their obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid measure

- (45) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (46) The Authority's assessment is based on the following common assessment principles:
- contribution to a well-defined objective of common interest;
 - need for state intervention;
 - appropriateness of state aid as a policy instrument;
 - existence of an incentive effect;
 - proportionality of the aid amount (aid limited to minimum necessary);
 - avoidance of undue negative effects on competition and trade; and
 - transparency.

6.1 Objective of common interest

- (47) State aid must aim at a well-defined objective of common interest that has been recognised by the Contracting Parties. The promotion of sport is not directly mentioned in the EEA Agreement as a common objective. However, promoting sport, including through the financing of sporting venues, has been recognised by the Authority as an objective of common interest, including in the previous decision.
- (48) Having reviewed the notified measure the Authority finds that it pursues an objective of common interest.¹⁴

6.2 Need for state intervention

- (49) In order to assess whether state aid is effective to achieve the identified objective of common interest, it is necessary first to identify the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure or addressing an equity or cohesion concern.
- (50) The Norwegian authorities submit that there is a need for additional access to sports facilities in Tromsø. Tromsø municipality tried to find private co-investors, but was unsuccessful, which indicates a need for material improvement that the market alone cannot deliver.
- (51) In order to achieve the material improvement, by construction of a sports facility, Tromsø municipality needs to make non-profitable transactions, since the infrastructure cannot be constructed by the municipal company nor operated by Tromsø climbing club under normal market conditions.
- (52) Based on the information submitted concerning Tromsø climbing club's annual results, the Authority has no reasons to question the Norwegian authorities' explanation that the club would not have the financial ability to pay a rent reflecting market rates, whilst at the same time offering its climbing services.
- (53) Against this background, the Authority concludes that there is a need for state intervention.

6.3 Appropriateness of state aid

- (54) State aid must be an appropriate instrument to address the identified objective of common interest. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the common objective is achievable through other less distortive policy instruments or other less distortive types of aid instruments.
- (55) The aid to the municipal company is awarded as non-repayable grants, covering the investment cost to construct a sports facility. The Norwegian authorities have explained that the operation of the facility will not produce sufficient revenue to pay back a loan, which they have demonstrated by submitting a cash-flow analysis, which the Authority considers reliable.
- (56) The aid to Tromsø climbing club is granted through an advantageous lease agreement. Without the aid, the climbing club would not be in a position to lease the climbing hall and ensure the proper utilisation of the facility, also in terms of offering non-economic services, as well as economic services to the general public at affordable prices.

¹⁴ As already explained in Decision 178/15/COL, paragraphs 50 *et seq.*

Furthermore, the Tromsø climbing club will guarantee required safety conditions in the climbing hall.

- (57) Against this background, the Authority concludes that the notified measure is an appropriate instrument to address the identified objective of common interest.

6.4 Incentive effect

- (58) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (59) Regarding aid to the municipal company, the Norwegian authorities have put forward that the construction of the sports facility would not have been completed without the aid. Their argument is supported by an analysis that shows that the net present value without aid is currently negative. Accordingly, they conclude that this explains why no private co-investor could be found after attempting and failing to find one.
- (60) The Authority sees no reasons to question this conclusion and thereby concludes that the condition of an incentive effect is fulfilled.
- (61) As regards Tromsø climbing club, the Norwegian authorities have explained that the club is not able to offer sufficient capacity to both members and non-members at the level of quality, without the aid. Thus, the aid puts them financially in the position to rent the climbing hall, in order to make full use of the climbing facilities.
- (62) The Authority has no reason to question the Norwegian authorities' assessment and therefore considers that the aid triggers an increased and improved level of climbing services that would not have been achieved without the aid. Therefore, the requirement of incentive effect is fulfilled.

6.5 Proportionality

- (63) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest.
- (64) The public funding currently consists of NOK 600 million approved in the previous decision (existing aid) and NOK 179 million constituting new aid.
- (65) The Norwegian authorities have provided updated cost and revenue projections for the operation of the sports facility with a sensitivity analysis performed around the number of annual visitors of the facility. The Norwegian authorities have used discounted cash flows to calculate the investment funding gap, also taking into account estimated net revenues, given the most likely number of visitors. The estimated net present value of the project show that it is unlikely that there will be any overcompensation of investment costs.
- (66) In the previous decision the Authority approved 100 percent public funding of the construction costs. The Authority does not consider that the unforeseen increase of the construction costs and the included construction work are factors that change the Authority's proportionality assessment in the previous decision.¹⁵ Consequently, the Authority's proportionality assessment in the previous decision remains equally relevant for the purpose of the present assessment.

¹⁵ See Decision 178/15/COL, paragraphs 53 *et seq.*

- (67) Furthermore, the swimming and bathing part of the facility will be used for swimming classes, including mandatory training for school pupils, as well as small sport events. The Authority considers those activities as non-economic in nature, since swimming lessons during school hours are a part of the Norwegian educational system and small sports events are considered as promotion of amateur sport.
- (68) Based on the above, the Authority considers that non-economic activities will benefit from the public funding of the eligible construction and therefore concludes that 100 percent public funding is justified in the present case.
- (69) The Norwegian authorities have estimated that Tromsø climbing club will receive NOK 2.15 million in state aid, in the form of an advantageous lease agreement. The Authority considers the aid amount to be proportionate, since the sum of the rent reflects the climbing club's economic ability to meet the agreed financial obligation. Moreover, the climbing club has saved up income, stemming from work performed by volunteers, over several years, in order to afford to rent a climbing facility with sufficient capacity for its active members.
- (70) The Authority concludes that the aid granted to Tromsø climbing club is proportionate.

6.6 Avoidance of undue negative effects on competition and trade

- (71) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (72) The financing of sport infrastructure owned by the public and operated by the public or sports associations serving the public interest is unlikely to adversely affect trading conditions to an extent that would not be outweighed by the positive effects in terms of contribution to the common interest, as there is usually no competition, since most of the sports concerned are not offered on the market by private operators. In this respect, the Authority also refers to its previous decision regarding the swimming and bathing part of the facility.
- (73) Furthermore, the capacity of the climbing hall and the services offered by Tromsø climbing club will be limited, and are therefore expected to have only a limited effect on competition and trade. The impact on competition and trade will also be limited by the fact that the facility will be used mainly by the local public and the climbing club's members.
- (74) For these reasons, the Authority concludes that any distortion of competition and trade caused by the notified measure will be limited, and in any event outweighed by the positive effects in terms of contribution to the objective of common interest.

6.7 Transparency

- (75) According to the general transparency requirement, only aid granted in a transparent manner can be approved on the basis of Article 61(3)(c) of the EEA Agreement. The Norwegian authorities have committed to publish information about the aid granted, in accordance with the general transparency requirement. The Norwegian authorities will make the necessary disclosures on the following central website: <https://data.brreg.no/rofs/>.

7 Conclusion

- (76) On the basis of the foregoing assessment, the Authority considers that the notified measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised as to the compatibility with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), the Authority has no objections to the implementation of the notified measure.

For the EFTA Surveillance Authority, acting under Delegation Decision No 068/17/COL,

Yours faithfully,

Bente Angell-Hansen
President
Responsible College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Carsten Zatschler, Bente Angell-Hansen.