

Case No: 69978
Event No: 666949
Dec. No: 175/13/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 30 April 2013

to close the case concerning state aid granted to finance the fitness centre at Kippermoen
Leisure Centre

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

The Agreement on the European Economic Area (the “EEA Agreement”), in particular to Article 62 and Protocol 26 thereof,

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 thereof,

Article 1(1) of Part I and Article 19(1) of Part II of Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”),

WHEREAS:

- (1) By letter dated 15 July 2011 (Event No 587958), the Authority initiated the procedure provided for in Article 17(2) of Part II of Protocol 3 with respect to the financing of the fitness centre at Kippermoen Leisure Centre (“KLC”), thereby informing the Norwegian authorities of its preliminary view that the financing of the fitness centre involved state aid that was incompatible with the functioning of the EEA Agreement.
- (2) The measures assessed by the Authority were the financing of the fitness centre at KLC, in particular the annual deficit coverage and ticket revenue allocation as well as the absence of a requirement from the municipality for the fitness centre to provide a return on invested capital.
- (3) KLC was established in the 1970s. It is located in the town of Mosjøen with a population of approximately 10 000. Mosjøen is situated in the municipality of Vefsn with a total population of approximately 13 300. Vefsn is located in the county of Nordland. The KLC is owned by the municipality of Vefsn and is not organised as a separate legal entity. Since its establishment in the 1970s, KLC has been financed by its users and the municipal budget.
- (4) The users contribute to the financing by paying for access to the facilities. The municipality controls the prices, the type of tickets on offer and the allocation of the

revenue. Under the current system, 70% of the revenue generated by the sale of all-access season tickets and multi/single entry tickets is allocated to the fitness centre. The remaining 30% is allocated to the swimming pool which additionally gets the revenue stemming from the sale of other types of tickets. The Norwegian authorities have stated that this represents a correct allocation of revenue as an informal examination carried out in 2006 or 2007 indicated that about 70% of the adult visitors mainly use the fitness centre.

- (5) Although the ticket prices have been subject to adjustments throughout the years, the contributions from the users do not cover the full cost of operations of KLC. The deficit is covered over the municipal budget in accordance with the budgetary decisions of the municipal council. Furthermore the municipality has not required the fitness centre to generate a profit.
- (6) KLC has not kept separate accounts for the fitness centre and its other activities. Common costs have not been consistently allocated in accordance with an appropriate allocation key
- (7) The Norwegian authorities responded to the Authority's Article 17(2) letter by letter dated 6 September 2011 (Event No 607896). The Norwegian authorities submitted a written follow-up on 9 February 2012 (Event No 624305). By letter dated 22 February 2012 (Event No 625779), the Authority requested further information which the Norwegian authorities submitted by letter dated 23 March 2012 (Event No 629021). The Authority sent another request for information by letter dated 3 April 2012 (Event No 629663) and received a reply from the Norwegian authorities on 30 May 2012 (Event No 636293). The Authority requested further information by letters dated 6 July 2012 (Event No 638174), 5 September 2012 (Event No 645626) and 3 December 2012 (Event No 654917). The Norwegian authorities submitted the requested information by letters dated 15 October 2012 (Event No 649771) and 11 January 2013 (Event No 658934).
- (8) In this correspondence, the Norwegian authorities expressed their intention to continue supporting the operation of the fitness centre at KLC with public funds in the form of *de minimis* aid for the provision of a service of general economic interest ("SGEI") in line with Commission Regulation (EU) No 360/2012 of 25 April 2012.¹ The Norwegian authorities proposed compensating the fitness centre for providing, as an SGEI, discounted access to: (i) groups perceived to have a low income (youths aged 15-20, students and refugees), (ii) individuals actually living below the poverty line (*i.e.* with an income, after tax, of less than half of the average income in the region), and (iii) patients in need of convalescent treatment, with a so called "FYSAK prescription"². The Norwegian authorities presented the Authority with a detailed cost allocation model under which the KLC has to keep separate accounts for the fitness centre and the other activities at KLC.
- (9) On 27 February 2013, by Decision No 90/13/COL (Event No 659000), the Authority concluded that the current financing of the fitness centre at KLC

¹ OJ L 114 26.4.2012 p. 8. Incorporated into the EEA Agreement by Decision No 225/2012 of the EEA Joint Committee of 8.12.2012 at point 1ha of Annex XV of the EEA Agreement.

² FYSAK is short for *fysisk aktivitet*. In English: physical activity.

constituted existing state aid which was incompatible with the functioning of the EEA Agreement.³

- (10) The Authority stipulated that the Norwegian authorities should take the following appropriate measures to ensure that the financing of the fitness centre at KLC would not entail state aid:
 - *First*, the Norwegian authorities should ensure that there is a proper, consistent and transparent separation of accounts, where the operation of the fitness centre is separated from the other operations at KLC. The fitness centre should therefore cover all costs related to its operations, including an appropriate contribution to fixed costs.
 - *Second*, the municipality of Vefsn should amend the existing system of allocation of user fees in order to ensure that the revenue generated by user fees is distributed correctly between the fitness centre and other parts of KLC.
 - *Third*, the municipality of Vefsn should require a normal return on its investment in the fitness centre at KLC.
 - *Fourth*, the Norwegian authorities shall ensure that the system of subsidies for access to the fitness centre complies with the obligations set out in Regulation No 360/2012.
- (11) By letter dated 22 March 2013 (Event No 667169) the Norwegian authorities accepted the appropriate measures proposed by the Authority. Furthermore, the Norwegian authorities confirmed that the measures would be fully implemented from the reopening of KLC once the current renovations are completed.
- (12) The Authority considers that the adopted changes to the aid scheme for the financing of the activities of the fitness centre at KLC will make it compatible with the functioning of the EEA Agreement on the basis of Article 59(2) of the EEA Agreement and Regulation No 360/2012.
- (13) On the basis of the above, the Authority concludes that there are no grounds for pursuing the matter further and has consequently decided to close the case.
- (14) The present decision is without prejudice to the possibility for the Authority to continuously assess existing aid schemes under Article 1(1) of Part I of Protocol 3 and to propose appropriate measures required by the progressive development or the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority records the Kingdom of Norway's acceptance of the appropriate measures proposed by the Authority in its Decision No 90/13/COL on the financing the fitness centre at the Kippermoen Leisure Centre and further outlined in the present Decision.

³ The EFTA Surveillance Authority Decision No 90/13/COL of 27.2.2013 to propose appropriate measures with regard to state aid granted to finance the fitness centre at Kippermoen Leisure Centre, available on the Authority's website: <http://www.eftasurv.int/media/decisions/90-13-COL.pdf>.

Article 2

There are no longer grounds for pursuing the case concerning the financing of the fitness centre at Kippermoen Leisure Centre. Therefore, the case is closed.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 30 April 2013

For the EFTA Surveillance Authority,

Oda Helen Sletnes
President

Sabine Monauni-Tömördy
College Member