

Case No: 47924  
Event No: 529054  
Dec. No: 378/09/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 30 September 2009

to close the case concerning the financing of fitness centres operated by the Student Welfare Association of Bergen

(Norway)

THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>

HAVING REGARD TO the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 59(2), 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof,

HAVING REGARD TO Article 1(1) of Part I of Protocol 3 to the Surveillance and Court Agreement<sup>4</sup>,

HAVING REGARD TO the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>5</sup>, and in particular the Chapter on state aid in the form of public service compensation,

WHEREAS:

By letter dated 30 July 2003, received and registered by the Authority on 1 August 2003 (Doc. 03-5228-A), S.A.T.S Norge AS and Elixia Nordic AS filed a complaint alleging that the Student Welfare Association of Bergen (*Studentsamskipnaden i Bergen*, hereinafter referred to as SiB) offered subsidised physical training facilities to the general public, thereby distorting competition with private providers of sporting and fitness facilities.

On 13 November 2003 (Doc. 03-7802-D), the Authority forwarded the complaint to the Norwegian Government for comments and requested further information on the financing of fitness centres of SiB. It thereby initiated the review procedure for existing aid

---

<sup>1</sup> Hereinafter referred to as the Authority.

<sup>2</sup> Hereinafter referred to as the EEA Agreement.

<sup>3</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>4</sup> Hereinafter referred to as Protocol 3.

<sup>5</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

according to Article 1(1) of Part I of Protocol 3 as regards the alleged state support in favour of SiB.

Student welfare associations in Norway are currently regulated by Act No 116 of 14 December 2007 on Student Welfare Associations (*Lov om studentsamskipnader*, hereinafter referred to as the Act), which replaced Act No 54 of 28 June 1996. The Ministry of Education and Research adopted complementary provisions in the form of Regulation No 828 of 22 July 2008 on student welfare associations (*Forskrift om studentsamskipnader*, hereinafter referred to as the Regulation). Both the Act and the Regulation entered into force on 1 August 2008. Certain supplementary provisions were inserted into the Regulation on 10 December 2008 by Regulation No 1314, with entry into force on 1 January 2009. The current regulatory framework on student welfare associations in Norway is a result of a revision process undertaken by the Norwegian authorities *inter alia* in order to bring the financing system into line with the EEA state aid rules. The Act and the Regulation were adopted following nationwide public hearing processes.

The purpose of student welfare associations is to respond to the students' need for welfare at a particular place of study. The Norwegian authorities consider that the offer of the student welfare associations directed towards students fulfils the obligations assigned to the associations in the framework of services of general economic interest.

SiB was established in 1948<sup>6</sup> and is organised as a group of companies with SiB itself as the "parent company". The main activities of SiB include housing, canteen, sports services, day-care centres and counselling services (social and health services for students). According to the Norwegian authorities, SiB is *inter alia* entrusted with the task to offer fitness facilities to students in Bergen. The Norwegian authorities therefore consider that the financing of the costs of running such services constitutes compensation for the provision of services of general economic interest.

The following fitness centres are currently operated by SiB: Fantofthallen, Lehmkuhlhallen, Christiesgate, Vektortorget and Studentsenteret. Studentsenteret, Vektortorget and Christiesgate are owned by the University of Bergen, whereas SiB owns Fantofthallen and Lehmkuhlhallen. Among all five fitness centres, Fantofthallen, Vektortorget and Lehmkuhlhallen are open to both students and the general public, whereas Studentsenteret and Christiesgate are open to students only. However, the Norwegian authorities stressed that only a small percentage of the total number of SiB's membership cards is sold to non-students. In 2007, the participation of non-student members in SiB's fitness centres was capped at 8%. The offer to non-students, who are charged a higher fee than the students, is considered to constitute a commercial service.<sup>7</sup>

The financing measures of fitness centres operated by SiB consist of payments from the semester fee, gaming funds and so-called *fri stasjon* (free-rent facilities). In the course of its investigation, the Authority has concluded that all conditions of Article 61(1) of the EEA Agreement were fulfilled and the measures, thus, constituted state aid. Further, the Authority has considered that the measures constituted existing aid. However, the Authority has also found that the financing system of fitness centres operated by SiB was incompatible with the functioning of the EEA Agreement.

---

<sup>6</sup> Source: <http://www.sib.no/om-sib/historie>

<sup>7</sup> See information attached to the e-mail of 9.5.2008.

The Competition and State Aid Directorate of the Authority (hereinafter referred to as CSA) informed the Norwegian authorities by letter dated 31 May 2007 (Event No 405920), pursuant to Article 17(2) of Part II of Protocol 3 (hereinafter referred to as the Article 17(2) letter), about its preliminary view on the case and gave the Norwegian authorities possibility to comment. The letter also outlined the mechanisms necessary to bring the financing system of SiB's fitness centres in line with the provisions of the EEA Agreement.

The Norwegian authorities responded to CSA's Article 17(2) letter by letter dated 5 July 2007 (Event No 428291) and submitted supplementary information, in particular on the draft legislation relevant for the case in question, by e-mails of 14 March 2008 (Event No 471793), 9 May 2008 (Event No 478350) and 20 June 2008 (Event No 483038), and by letter dated 12 December 2008 (Event No 501743).

In this correspondence, the Norwegian authorities outlined the measures taken in order to meet the Authority's concerns as expressed in the Article 17(2) letter. In particular, new provisions concerning the definition of public service activities of student welfare associations and their entrustment have been added by the way of the Regulation. Moreover, as regards SiB's fitness centres open to both students and the general public, a dual price system has been established, according to which all joint costs (heating, costs of personnel, etc.) are apportioned in the calculation of the admission fee for non-students.<sup>8</sup> Further, in order to avoid spill-over effects, an appropriate percentage of the advantage deriving from the public support, corresponding to the percentage of non-students' participation in the fitness centres, has been added to the price to be paid by non-students. In 2007, SiB has fixed the participation of non-students in its fitness centres at a maximum of 8%. The system of dual pricing and the level of fees for non-students are monitored on a regular basis and reported by SiB's economy department.<sup>9</sup> In addition, sec. 11 of the Regulation obliges student welfare associations to state the market value of the state funding in the form of rent-free premises in the accounts of the associations.

The Authority has carried out a compatibility assessment of the new financing system of SiB's fitness activities on the basis of Article 59(2) of the EEA Agreement in conjunction with the Chapter on state aid in the form of public service compensation of the Authority's State Aid Guidelines. Considering the changes in the regulatory framework for the financing regime of student welfare associations in Norway, adopted *inter alia* in order to change the funding regime for fitness centres operated by SiB, as well as the individual measures undertaken towards the more transparent financing system of SiB, specifically aimed at preventing cross-subsidisation, the Authority concludes that appropriate mechanisms in the form of separation of accounts, repayment of any over-compensation and a dual pricing system are put in place in order to ensure that the financing system of SiB's fitness centers does not go beyond what is necessary to compensate SiB for its provision of a service of general economic interest. There is also an appropriate monitoring system in place. Thus, the Authority considers that the financing of the activities of fitness centres operated by SiB is compatible with the functioning of the EEA Agreement on the basis of Article 59(2) of the EEA Agreement.

By letter dated 17 February 2009 (Event No 501015), CSA informed the complainant of its intention to propose that the case be closed and gave the complainant a time-limit of 15

---

<sup>8</sup> For details of price calculation for the month September 2007, see annex 1 to the letter from SiB of 23.10.2007.

<sup>9</sup> Letter from SiB of 23.10.2007, p. 2. On previous occasions, the Norwegian authorities indicated that the price of membership cards will be evaluated every semester, see letter of 17.3.2005, p. 4.

working days to provide further information. The complainant has not responded to this letter.

Considering the changes introduced by the Norwegian authorities into the financing system of student welfare associations in Norway by way of legislation as well as additional measures undertaken towards the financing of the activities of fitness centres operated by the Student Welfare Association of Bergen, the Authority has concluded that there are no grounds for pursuing the matter and has consequently decided to close the case.

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:

The Authority has decided to close the case concerning the complaint filed by S.A.T.S Norge AS and Elixia Nordic AS with regard to the financing of the activities of fitness centres operated by the Student Welfare Association of Bergen.

Done at Brussels, 30 September 2009

*For the EFTA Surveillance Authority*

Per Sanderud  
*President*

Kristján Andri Stefánsson  
*College Member*