

Case No: 75525  
Doc. No: 734100  
Decision No: 84/15/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 18 March 2015

concerning the alleged cross-subsidisation of BRM/ERM courses provided by  
Redningsselskapet and the University of Tromsø

(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(1) 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 (“the Surveillance and Court Agreement”), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 4(2),

Whereas:

### I. FACTS

#### 1 Procedure

- (1) By e-mail dated 26 May 2014 (Doc. No 533908), the Authority received a complaint alleging that Redningsselskapet, through its company RS Sjøredningsskolen AS (“RSS”) uses State aid to undercut market prices when it provides the so-called Bridge Resource Management (“BRM”) and Engine Resource Management (“ERM”) courses (hereafter referred to as “the courses” or “the BRM/ERM courses”). The complainant has requested confidential treatment.
- (2) On 23 June 2014, the Authority sent to the Norwegian authorities a first request for information (Doc. No 710716) on the alleged State aid.
- (3) By mails dated 24 June 2014 (Doc. No 711991) and 26 June 2014 (Doc. No 712367), the complainant sent additional information to the Authority. In short, the complainant alleged that, in addition to RSS, certain county schools (i.e. Tromsø Maritime VGS, Bodin VGS, Vest-Lofoten VGS and Nordkapp Maritime VGS) as well as the University of Tromsø

(also known as the “Artic University of Norway” or “UiT”) were also providing BRM/ERM courses below costs.

- (4) By mail dated 24 June 2014, the Authority asked the Norwegian authorities to provide their comments on the alleged State aid in favour of the above mentioned county schools and the University of Tromsø (Doc. No 712073).
- (5) Following an extended deadline granted by the Authority (Doc. No 718246), on 17 September 2014, the Norwegian authorities replied to the request for information (Doc. No 722597 and Annexes Docs. No 722598 to 722612).
- (6) By mail dated 17 October 2014 (Doc. No 726039), the Authority requested from the Norwegian authorities some clarifications on their submission (Doc. No 725996). The case was also discussed with the Norwegian authorities during the package meeting held in Oslo on 7 November 2014.
- (7) On 1 December 2014, the Norwegian authorities provided clarifications in writing (Doc. No 731527), joining to their reply several annexes (Docs. No 731283, 731267, 731273, 731274, 731276, 731279, 731280, 731281, 731282 and 731283).

## **2 Description of the alleged State aid measures under investigation**

### **2.1 The alleged State aid measures**

- (8) The alleged State aid measures refer to a possible cross-subsidisation between non-economic and economic activities when providing some maritime courses (BRM/ERM courses) for the benefit of different entities, in particular, (i) Redningsselskapet, (ii) the University of Tromsø, and (iii) certain county schools.
- (9) Regarding Redningsselskapet, the complainant alleges the existence of State aid by means of cross-subsidisation between economic and non-economic activities. Because of this transfer of funds, RSS – Redningsselskapet’s subsidiary – has been able to offer BRM/ERM courses at a price 60% below the market price.
- (10) In addition, the complainant alleges that Redningsselskapet also offered accommodation at a public educational institution (the Police Academy – Justissektorens Kurs- og øvingssenter) at prices below the market price. This would only be possible thanks to the cross-subsidisation among activities.
- (11) Concerning the county schools and the University of Tromsø, the alleged State aid measures refer to the fact that these public educational institutions are also cross-subsiding their economic activities with the funds devoted to their non-economic activities. In particular, the complainant argues that they are using publicly funded equipment and facilities as well as publicly employed teachers without compensation to provide the courses, and to offer them below the market price.

### **2.2 The BRM/ERM courses**

- (12) The BRM/ERM courses are courses that have been imposed by an International Convention adopted in Manila (2010)<sup>1</sup> to maritime officers on the bridge and in the engine room on ships. These courses concern the management of crises on the bridge and in the engine room.<sup>2</sup> According to the Manila Convention, all certified maritime officers must complete these courses before 1 January 2017.
- (13) The Norwegian Maritime Authority has published a description of the mandatory courses, including the description of the content of the BRM/ERM courses.<sup>3</sup>
- (14) As a consequence, several public entities and private operators are now offering those courses to maritime officers. Some have included the courses in the academic programme for future students; others are also offering the courses to officers who already have a diploma, but must attend these new courses before 1 January 2017.

### **2.3 The alleged State aid beneficiaries**

#### **Redningsselskapet, Redningsselskapet's Academy and RSS**

- (15) The complaint refers to alleged State aid obtained by Redningsselskapet, through RSS. However, before RSS started to provide the BRM/ERM courses, those courses were provided by Redningsselskapet's Academy, located in Stavern ("the Academy").
- (16) Redningsselskapet was founded in 1891. It is a Norwegian humanitarian, voluntary, membership-based organisation with the following objectives: to save lives, to protect material assets, to safeguard the coastal environment and to pursue information activities concerning safety matters at sea.<sup>4</sup> Its activities are financed by membership fees, gifts, contributions, donations, etc.
- (17) Redningsselskapet receives public funds as a compensation for the rescue operations provided at sea. The annual contribution to Redningsselskapet is granted by the Ministry of Transport and Communications based on the terms and conditions of a Framework Agreement signed with the Ministry in 1996.<sup>5</sup> For 2014, the grant amounts to

<sup>1</sup> Major revisions to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the STCW Convention), and its associated Code were adopted at the Diplomatic Conference in Manila, the Philippines, on 21-25 June 2010. The amendments entered into force on 1 January 2012 with full compliance required by 1 January 2017. The amendments aim at bringing the Convention and Code up to date with recent developments and to enable them to address issues that are anticipated to emerge in the foreseeable future. For further information, see: <http://www.imo.org/MediaCentre/PressBriefings/Pages/STCW-revised-adopted.aspx>

<sup>2</sup> More in particular, the BRM/ERM courses are designed to minimise the risk of incidents and accidents on board by promoting safe and responsible behaviour. The courses are aimed at, among other things, setting and developing a positive attitude by for example, good personal communication, and high-quality leadership in line with operational procedures. The BRM/ERM courses are for both deck and engineering officers and pilots.

<sup>3</sup> A description of this type of courses was provided by the Norwegian authorities in reply to the request for information referred to in paragraph (5) (Doc. No 722598, Annex 1 to Doc. No 722597).

<sup>4</sup> See Redningsselskapet's website: <http://www.redningsselskapet.no>

<sup>5</sup> Framework Agreement between the Ministry of Fisheries, on behalf of the State, and the Norwegian Society for Shipwrecked Rescue (NSSR) regarding the annual operating subsidies ("the Framework Agreement"). The Authority received a copy of this Framework Agreement from the Norwegian authorities (Doc. No 722605). This Agreement was previously assessed in the Authority Decision of 30 April 2013, No 176/13/COL, on alleged State aid to Redningsselskapet for its provision of ambulance transport services by maritime vessel. OJ C 263, 19.9.2013, p. 9 and EEA Supplement to the OJ No 51, 12.9.2013. The text of the decision is available at: <http://www.eftasurv.int/media/decisions/176-13-COL.pdf>

approximately NOK 80 million, which covers 12% of Redningsselskapet's costs related to its rescue operations at sea.<sup>6</sup>

- (18) In its Decision No 176/13/COL,<sup>7</sup> the Authority found that Redningsselskapet does not act as an undertaking when it provides services on behalf of the Norwegian State under the Framework Agreement, i.e. search and rescue operations and accident prevention work. Because the funding which Redningsselskapet receives from the Norwegian authorities can only be used for its non-economic activities, it does not constitute State aid.
- (19) The Academy in Stavørn was established in 2007 as a separate unit within Redningsselskapet. Its purpose was to provide training and course activities for personnel on the vessels of Redningsselskapet, but the courses were eventually also offered to external participants. In 2014, the Academy was acquired by RSS. After the acquisition, the Academy was discontinued and all training and course activities are now operated by RSS in Horten.
- (20) RSS is an independent company, 100% owned by Redningsselskapet. It is entirely separated from Redningsselskapet, with a majority of external and independent board members. The company has its own office, course facilities and headquarters in Horten, 100 km southwest of Oslo. All personnel at the school is either employed by RSS or hired externally by RSS.

#### The University of Tromsø

- (21) The University of Tromsø is a State university, established in 1968, and opened in 1972. It is one of eight universities in Norway. The University of Tromsø is the largest research and educational institution in northern Norway. On 1 January 2009, the University of Tromsø merged with Tromsø University College and on 1 August 2013, it merged with the Finmark University College to form the *Universitetet i Tromsø – Norges arktiske universitet* (The University of Tromsø – The Arctic University of Norway). Further information about the university can be found on its website.<sup>8</sup>

#### County schools

- (22) The complainant also refers to cross-subsidies in favour of certain county schools (i.e. Tromsø Maritime VGS, Bodin VGS, Vest-Lofoten VGS and Nordkapp Maritime VGS).
- (23) In Norway, the State bears the overall responsibility for the primary and secondary education and training. The municipalities are responsible for operating and administering primary and lower secondary schools, whereas the county authorities are responsible for upper secondary education and training.<sup>9</sup> The county schools referred to by the complainant are public schools.<sup>10</sup>

<sup>6</sup> For further information on the company's activities and the Framework Agreement, please see Authority Decision No 176/13/COL. See footnote 5 above.

<sup>7</sup> See footnote 5 above.

<sup>8</sup> For further information regarding the University of Tromsø, see: [http://en.uit.no/om/art?p\\_document\\_id=343547&dim=179040](http://en.uit.no/om/art?p_document_id=343547&dim=179040)

<sup>9</sup> For further information regarding the Norwegian public schools system, see the report "Education from kindergarten to adult education", edited by the Norwegian Ministry of Education and Research. The report is found here: [http://www.udir.no/Upload/Brosjyrer/5/Education\\_in\\_Norway.pdf?epslanguage=no](http://www.udir.no/Upload/Brosjyrer/5/Education_in_Norway.pdf?epslanguage=no)

<sup>10</sup> Further information on these schools may be found on their websites. For information regarding the Tromsø Maritime VGS, see <http://www.tos-mar.vgs.no/>. For information regarding the Bodin VGS, see <http://www.bodin.vgs.no/>. For information regarding the Vest-Lofoten VGS, see <http://www.vest->

### 3 Comments by the Norwegian authorities

- (24) The Norwegian authorities have clarified that the University of Tromsø does not provide BRM/ERM courses to external students. The University argues that these courses are only provided to internal students as part of the Bachelor Degree in Engineering programme. The Norwegian authorities consider that the provision of university courses does not qualify as an economic activity and therefore, the alleged State aid does not exist.
- (25) Concerning the alleged State aid obtained by Redningsselskapet, the Norwegian authorities differentiate between the courses provided by the Academy and RSS.
- (26) The Norwegian authorities explain that the Academy was part of Redningsselskapet and did not constitute a different legal entity. However, it dealt with a separate activity area of Redningsselskapet, even if integrated into the overall financial statements. The Academy had a different accounting code to avoid any cross-subsidisation. The public funds received by Redningsselskapet are devoted to compensate its rescue operations at sea, and not to finance the Academy (or RSS).
- (27) The Norwegian authorities consider that the provision of the courses is not cross-subsidised with State resources and that, consequently, no advantage is provided for the benefit of the Academy's or RSS' commercial activities. Hence, they have not received or will not receive any State aid within the meaning of Article 61(1) of the EEA Agreement.
- (28) The Academy obtained authorisation to provide maritime courses in 2009. It did not need to obtain a new authorisation for the courses. Under these premises, the Academy provided three BRM/ERM courses during the spring of 2014. These courses were offered to external participants (not to the employees of Redningsselskapet), at commercial conditions.
- (29) It has been argued that the three courses were considered a pilot project, and therefore the price was not too high, but sufficient to cover costs (incremental and common costs) and a reasonable profit. The Norwegian authorities describe the methodology used by the Academy to calculate the price. Furthermore, the Norwegian authorities insist that no funds have been transferred from Redningsselskapet to the Academy, since these economic activities have a different accounting code. Therefore, there is no State aid issue, since there is no risk of cross-subsidisation.
- (30) Finally, the Norwegian authorities confirm that the Academy offered its students accommodation at the premises of the police Academy. However, the Academy paid a market price for the rooms, i.e. the same price as the one requested by the police Academy to other clients. In addition, an administrative fee was charged to the students. The Norwegian authorities point out that the price for this type of accommodation cannot be compared to the price of hotels since the services offered are not comparable.

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[lofoten.vgs.no/](http://lofoten.vgs.no/). Finally, for information regarding the Nordkapp Maritime VGS, see <http://www.nordkapp.vgs.no/>.

- (31) Concerning RSS, the Norwegian authorities explain that, even if this company is wholly-owned by Redningsselskapet (100%), it is an independent legal entity, established in 2014. As a consequence, being an independent entity, there is no risk of cross-subsidisation from the parent company; it has its own separate accounts, and therefore no State aid can be identified concerning its activities.
- (32) RSS offers all kind of safety and maritime courses, including the BRM/ERM courses. However, the Norwegian authorities argue that RSS is an entirely self-financed entity and free to establish its pricing policy. The Norwegian authorities have nevertheless provided information on RSS' pricing policy in order to demonstrate that it is generating a profit from these courses.
- (33) Finally, RSS does not offer accommodation to its students.
- (34) Concerning the county schools, the Norwegian authorities accept that the provision of the BRM/ERM courses entails an economic activity subject to the State aid rules. However, they argue that the courses were not provided at a price below market price, and that in none of the cases has there been any cross-subsidisation. Evidence in support of these statements has been provided to the Authority.

## II. ASSESSMENT

### 1 Material scope of the investigation

- (35) Based on the facts described above, the Authority considers it necessary to clarify the material scope of the investigation, as defined in the present Decision.
- (36) The complaint refers to alleged State aid to different groups of potential beneficiaries: (i) Redningsselskapet, by means of the courses provided by its Academy and RSS, (ii) the University of Tromsø, and (iii) certain county schools.
- (37) The Authority believes that if State aid were to be found in favour of the first two potential beneficiaries, this would constitute new aid. On the contrary, the alleged aid provided to the county schools would entail existing aid, because of the reasons set out in the following paragraphs. As a consequence, the alleged State aid provided to the county schools will be assessed under a different case and procedure.
- (38) The Authority has assessed the possible State aid obtained by the county schools while providing courses to external students in its Decision No 267/13/COL, of 26 June 2013, *on the financing of safety training courses by county schools*.<sup>11</sup> The legal issues assessed in that case are the same as the ones discussed in the present Decision, even if the nature of the courses differs (i.e. the previous case related to the financing of safety courses provided by county schools, and the present case relates to the financing of BRM/ERM courses provided by county schools).
- (39) In its Decision No 267/13/COL, the Authority concluded that the financing of county schools can be regarded as an aid scheme within the meaning of Article 1(d) of Part II of

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<sup>11</sup> OJ C 138, 8.5.2014, p. 29 and EEA Supplement to the OJ, No 27, 8.5.2014. The full text is available at: <http://www.eftasurv.int/media/decisions/267-13-COL.pdf>



Protocol 3 to the EEA Agreement.<sup>12</sup> The Authority confirms this finding in the present case.

- (40) This scheme was further defined as an existing aid scheme pursuant to Article 1(b)(i) of Part II of Protocol 3,<sup>13</sup> because the 1998 Education Act,<sup>14</sup> which currently forms the legal basis for the financing of county schools, replaced the Primary Education Act<sup>15</sup> and the Secondary Education Act,<sup>16</sup> both of which were in force at the time when the EEA Agreement entered into effect in Norway; and the adoption of the 1998 Education Act did not substantially change the legal provisions relating to the financing of the schools. These provisions remained materially unaltered, and thus the adoption of the 1998 Education Act cannot be considered to have altered the nature of the existing aid scheme.
- (41) It was the Authority's understanding in its Decision No 267/13/COL that any advantages enjoyed by the county schools have been financed on the basis of those provisions. Furthermore, the schools have been offering different type of courses to students before the entry into force of the EEA Agreement. They have offered courses not only internally but also to external students. As a consequence, the Authority concluded that the financing of the schools by the counties must be regarded as an existing aid scheme.
- (42) The Authority maintains this conclusion. The fact that the targeted group of students or the type of courses being provided have been changed or extended does not impact on the existing aid character of the scheme. In *Namur-Les assurances*,<sup>17</sup> the Court of Justice held that the widening of the scope of activities of a publicly financed insurance body did not amount to new aid as long as "*the aid is provided under earlier statutory provisions which remain unaltered*". Indeed, as mentioned above, the legal provisions regarding the financing of county schools have remained unchanged notwithstanding the adoption of the new 1998 Education Act.
- (43) Consequently, this measure falls outside of the scope the present Decision and will be assessed in a different case, under the existing aid procedure (Case No 73703).

## 2 The presence of State aid

- (44) 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*

<sup>12</sup> Article 1(d) of Part II of Protocol 3 provides that an "aid scheme": "*shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount.*"

<sup>13</sup> Article 1(b)(i) of Part II of Protocol 3 provides that "existing aid": "*shall mean all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement.*"

<sup>14</sup> Act of 17 July 1998 no. 61 relating to Primary and Secondary Education and Training ("the Education Act"). The Act is available at [http://european-agency.org/sites/default/files/Education\\_Act\\_Norway.pdf](http://european-agency.org/sites/default/files/Education_Act_Norway.pdf)

<sup>15</sup> Act concerning primary and lower secondary education from 1969. In Norwegian «Grunnskolelova». The Act is available at <https://lovdata.no/pro/ROL/lov/1969-06-13-24>

<sup>16</sup> Act concerning upper secondary education from 1974. In Norwegian «Lov om videregående opplæring». The Act is available at <https://lovdata.no/pro/ROL/lov/1974-06-21-55>

<sup>17</sup> Judgement in *Namur-Les Assurances du Crédit SA*, Case C-44/93, EU:C:1994:311, paras. 28-29.

*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.”*

- (45) A measure constitutes State aid pursuant to Article 61(1) of the EEA Agreement if it fulfils four cumulative conditions.<sup>18</sup> First, the measure must be funded by the State or through State resources and be imputable to the State. Second, the measure must confer an advantage. Third, the measure must favour selected undertakings or economic activities. Fourth, the measure must be liable to affect trade between Contracting Parties and liable to distort competition in the EEA.
- (46) The alleged State aid in favour of the University of Tromsø and Redningselskapet will be assessed separately in the following paragraphs.

## **2.1 Alleged aid in favour of the University of Tromsø**

- (47) It follows from Article 61(1) of the EEA Agreement that State aid rules only apply to advantages granted to undertakings. Prior to examining whether the conditions for State aid are met in this case, it is necessary first to examine whether the University of Tromsø qualifies as an undertaking.

### *2.1.1 Existence of an economic activity*

- (48) The University of Tromsø offers a regular course called MFA-2003 Navigasjon (10 credits) at the Faculty of Science and Technology, Department of Engineering and Safety. The course is part of the Bachelor Degree in Engineering and covers some of the subjects within the broad term of BRM courses.
- (49) The course is only available for registered students and forms part of the University's regular curriculum study program as an institution of higher education.
- (50) The University of Tromsø is a State university, financed and supervised by the Ministry of education and research.<sup>19</sup> The University is regulated by the Act relating to universities and university colleges of 1 April 2005.<sup>20</sup> Article 7(1) lays down the principle of free studies for students in ordinary studies leading to a degree or a profession. These studies are fully financed by public resources.
- (51) It is settled case-law that the State aid rules only apply to undertakings. All entities that are legally distinct from the State and which engage in economic activities are considered to be “undertakings”, irrespective of whether they are public or private undertakings.<sup>21</sup> Economic activities are those consisting of offering goods or services on a market.<sup>22</sup>

<sup>18</sup> According to settled case-law, classification of a measure as State aid requires that all the conditions set out in Article 61 (1) of the EEA Agreement are met, see judgment in *Belgium v Commission* (“*Tubemeuse*”), Case C-142/87, EU:C:1990:125, para. 25.

<sup>19</sup> In Norway, the Ministry of Education and Research is responsible for the national educational policy.

<sup>20</sup> Act relating to Universities and university colleges of 1 April 2005 No 15. See <https://lovdata.no/dokument/NL/lov/2005-04-01-15>

<sup>21</sup> Judgements in *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen an Flughafen Leipzig-Halle*, Joined Cases T-443/08 and T-455/08, EU:T:2011:117, para. 128 et seq. Judgements in *Höfner and Elser v Macroton*, Case C-41/90, EU:C:1991:161, paras. 21-23; *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, para. 74 and *Private Barnehagers Landsforbund v EFTA Surveillance Authority*, Case E-5/07 [2008] EFTA Ct. Rep. p. 61, para.78.

<sup>22</sup> Judgement in *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA*, Case C-222/04, EU:C:2006:8, para. 108.



Offering goods and services on a market without making a profit can also constitute an economic activity.<sup>23</sup>

- (52) If an entity is engaged in economic activities, it is considered as an undertaking in relation to those specific services alone, without reference to the way in which its other activities should be classified.<sup>24</sup>
- (53) The Norwegian authorities have confirmed that the University of Tromsø only provides the BRM/ERM courses to internal students, enrolled in the programme of the Bachelor Degree in Engineering. They have provided a copy of the programme, and there is no evidence that these courses are also provided to external students.<sup>25</sup>
- (54) The Authority recalls that according to the case-law, public education organised within the national educational system funded and supervised by the State must be considered as a non-economic activity. The Court of Justice has held that the State *“by establishing and maintaining such a system of public education and financed entirely or mainly by public funds and not by pupils or their parents ... does not intend to become involved in activities for remuneration, but carries out its task towards its population in the social, cultural and educational areas”*.<sup>26</sup>
- (55) The Court has also confirmed that the provision of education in universities is a non-economic activity.<sup>27</sup> The Court has stated that: *“[...] courses given in an establishment of higher education which is financed essentially out of public funds do not constitute services within the meaning of Article 60 of the EEC Treaty”*.<sup>28</sup>
- (56) Accordingly the University of Tromsø’s provision of the BRM/ERM courses to internal students, as part of a university degree, does not qualify as the provision of an economic activity. Therefore, the measure falls outside the scope of the State aid rules.

## 2.2 Alleged aid to Redningsselskapet, benefitting the Academy or RSS

<sup>23</sup> Judgements in *Van Landewyck*, Joined Cases 209/78 to 215/78 and 218/78, EU:C:1980:248, paras. 18-21 and in *FFSA and others*, Case C-244/94, EU:C:1995:392, para. 21.

<sup>24</sup> Economic and non-economic activities can co-exist within the same sector and sometimes be provided by the same organisation. In this scenario, the entity is regarded as an undertaking only with regard to its economic activities. See, for example, European Commission Decision of 2 March 2003 in State Aid C22/2003(Italy) *Reform of the training institutions* (OJ L 81, 18.3.2006, p. 25), para. 43.

<sup>25</sup> According to the Norwegian legal framework, the universities can cooperate with private entities and provide economic activities. However, in those cases the universities have to organise those activities as separate projects, with clear agreements and accrued budget and accounts. The income from those economic activities shall cover all the direct costs necessary for the economic activity plus an appropriate contribution of common costs. See section 2.2. litra a) and b) of the Circular on universities (in Norwegian *“Reglement om statlige universiteter og høyskolors forpliktende samarbeid og erverv av aksjer”*). The regulation is available at:

<https://www.regjeringen.no/nb/dokumenter/rundskriv-f-07-13-reglement-om-statlige-/id734714/>

<sup>26</sup> Judgement in *Commission v Germany*, Case C-318/05, EU:C:2007:495, para. 68. See also Commission Decision of 25 April 2001 on State aid N 118/00 Subvention publiques aux clubs sportifs professionnels, OJ C 333 28.11.2001, p.6. See also the Authority Decision No 244/14/COL into *potential aid to the Nasjonal digital læringsarena* (NDLA), not yet published in the OJ, paragraph 74 (available at [http://www.eftasurv.int/media/state-aid/244\\_14.pdf](http://www.eftasurv.int/media/state-aid/244_14.pdf)) and the Guidelines “Application of the State aid rules to compensation granted for the provision of services of general economic interest”, paras. 27-28. OJ L 161, 13.6.2013, p. 77. EEA Supplement to the OJ No 7, 31.1.2013.

<sup>27</sup> Judgement in *Wirth*, Case C-109/92, EU:C:1993:916, paras. 14 to 22.

<sup>28</sup> Judgement in *Wirth*, cited above, para. 19.

### 2.2.1 Advantage financed through State resources

- (57) The complaint refers to a risk of cross-subsidisation between the parent company – Redningsselskapet – and the Academy and RSS, which allows the latter two to provide the BRM/ERM courses below market prices.
- (58) If public authorities, a public undertaking or a company financed by public funds provide goods or services at a price below their actual costs plus a reasonable profit, this may imply a waiver of State resources, as well as the granting of an advantage.
- (59) When a publicly financed entity carries out both commercial and non-commercial activities, accounting procedures should be put in place to ensure that the commercial activities are not subsidised through State resources allocated to the non-commercial activities of that entity.<sup>29</sup> Objective and transparent cost allocation mechanisms should be in place to ensure that the economic activities cover all the costs related to these operations (including all the costs related to that activity plus an appropriate share of the common costs). Without such mechanisms in place, the commercial activities may benefit from the public funds granted to the non-commercial activities.
- (60) This principle is in line with those set out in the Transparency Directive,<sup>30</sup> which requires financial transparency for public undertakings and separate accounts for companies enjoying special or exclusive rights granted by the State or entrusted with a service of general economic interest. The objective of those provisions is precisely to ensure that no advantages are granted to public companies, which are liable to distort free competition by means of State aid.<sup>31</sup> Even if the Transparency Directive applies only to certain undertakings,<sup>32</sup> the same general principles of transparency are imposed on companies providing non-economic services financed by public funds and, at the same time, economic services.
- (61) As a consequence, the Authority must assess whether a sufficient separation of accounts between the economic and non-economic activities of Redningsselskapet exists. It will also assess whether the BRM/ERM courses were, as argued by the complainant, offered at a price not generating a sufficient profit (taking into account all the costs related to that activity plus an appropriate share of the common costs). No State resources are involved

<sup>29</sup> See, for example, the Authority's Decision No 142/03/COL regarding *Reorganisation and Transfer of Public Funds to the Work Research Institute* (OJ C 248 16.10.2003, p. 6); Decision No 343/09/COL on *the property transactions engaged in by the Municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32* (OJ L 123 12.5.2011, p.72), and Decision No 174/13/COL *Concerning the financing of municipal waste collectors* (OJ C 263 12.9.2013, p. 5).

<sup>30</sup> The Transparency Directive is referred to at point 1a of Annex XV to the EEA Agreement, OJ L 266 11.10.2007 p. 15 and EEA Supplement to the OJ No 48 11.10.2007 p. 12, as Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. Consolidated version – OJ L 318, 17.11.2006, p. 17-25. Implemented in Norwegian law by Regulation FOR-2006-09-07-1062, Section 9-1-1.

<sup>31</sup> AG Opinion in *Asemfo*, Case C-295/05, EU:C:2006:619, para. 116.

<sup>32</sup> The Directive applies to public undertakings and to undertakings required to maintain separate accounts, defined as “[a]ny undertaking that enjoys a special or exclusive right granted by a Member State pursuant to Article 86(1) of the Treaty or is entrusted with the operation of a service of general economic interest pursuant to Article 86(2) of the Treaty, that receives public service compensation in any form whatsoever in relation to such service and that carries on other activities” (see Articles 1 and 2).

where a full-cost price policy is adopted, so as to cover the total costs (additional, variable and fixed costs) plus a mark-up to remunerate equity capital.<sup>33</sup>

- (62) The Authority recalls, first, that the financing system of Redningsselskapet was already assessed in the Decision No 176/13/COL, in particular, the risk of cross-subsidisation between its non-economic and economic activities. The Decision assessed the cost allocation mechanism of the company, recalling the principles set down in the Transparency Directive, and made no objection to it.<sup>34</sup> It also recalls that “[t]he Norwegian Ministry of Fisheries and Coastal Affairs requires a separate auditor’s statement confirming that Redningsselskapet uses the funds granted to it under the Framework Agreement according to its terms”.<sup>35</sup> On these premises, the Authority concluded that “[t]he public funds provided for the non-commercial operations of Redningsselskapet do not provide an advantage to its commercial activities. Therefore, the financing of Redningsselskapet does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement”.
- (63) The Authority maintains the assessment made in Decision 176/13/COL, considering that no substantial event has taken place since it adopted its decision. The Authority notes that Redningsselskapet keeps separate accounts for its different activities, that its accounting methodology is in line with commonly accepted accounting principles,<sup>36</sup> and that there is no evidence of cross-subsidisation among its different activities. Furthermore, an external auditor verifies annually that the company uses the funds granted to it for its non-economic services; and, in order to do that, a correct cost allocation methodology has to be in place.<sup>37</sup>
- (64) These findings would be sufficient to disregard the existence of State aid in favour of Redningsselskapet, while providing BRM/ERM courses through the Academy or RSS. However, for the sake of completeness, the Authority has assessed also the manner in which the BRM/ERM courses were/are provided by the Academy and RSS.

#### The BRM/ERM courses provided by the Academy

- (65) The Academy is listed as a separate unit from Redningsselskapet, but was integrated into its overall consolidated financial statements. Ever since the Academy was established, it was held accountable for all of its income and costs and was subject to annual budget requirements. For accounting purposes, the Academy’s activity was identified by a separate department code. Training and educational activities for external and internal (employed staff and volunteers in Redningsselskapet) customers have different accounts.
- (66) The Authority has received a copy of the accounts of Redningsselskapet for the first six months of 2014 (Annex 2 to the reply of 17.9.2014). In the accounts, the figures (costs and revenues) regarding the Academy are identified. These figures are part of the account revised by the external auditor who has to confirm that no cross- subsidisation takes place

<sup>33</sup> Judgment in *Chronopost SA v Commission*, Joined Cases C-83/01 P, C-93/01 P and C-94/01P, EU:C:2003:388, para. 40.

<sup>34</sup> See para. 22 of Decision No 176/13/COL.

<sup>35</sup> See paras. 24-25 of Decision No 176/13/COL.

<sup>36</sup> Reference is made to Decision No 176/13/COL.

<sup>37</sup> The Framework Agreement acknowledged that Redningsselskapet may engage in economic activities in order to obtain some income. However, in such a case, the Agreement foresees that the costs of these other activities must be clearly stated in separate accounts (Art. 4). A copy of the latest letter from the external auditor has been sent to the Authority (Annex 8 to the reply to the request for information (Doc. No 722606)).

between the Academy's activities and the non-economic activities of Redningsselskapet. Thus, the Authority has not identified any evidence of cross-subsidisation.

- (67) The Authority has also analysed the Academy's pricing policy regarding the BRM/ERM courses.
- (68) The Academy obtained in June 2013 the authorisation from the Norwegian Maritime Authority to provide the BRM/ERM courses. In the spring of 2014, the Academy provided three BRM/ERM courses with a total number of 23 external participants.
- (69) The Norwegian authorities have explained that the BRM/ERM courses were a new concept for the Academy and therefore were considered as a pilot project. In order to obtain some experience with these courses, and to ensure a certain number of students, the price was set at a level sufficient to cover all costs plus a small profit. The price was NOK 14 000. The Norwegian authorities have demonstrated that this price covers all the costs (i.e. costs related to the courses and a share of the common costs). Furthermore, the Academy made a profit from the provision of those courses.
- (70) In particular, to calculate the costs, the Academy took into account the cost of external and internal instructors, including the hours devoted to prepare and teach the courses. Different variable costs, other than salary costs, are not relevant because these courses are simulator-based courses only. The courses were held at the simulator of the Academy in Stavern. The cost of the simulator is calculated by dividing the total rent expenses by the number of courses. The depreciation of the simulator is also taken into account. Finally, common costs are added, including all relevant operating and overhead costs, including house rent, electricity, data and telecom, cleaning, supplies, accounting, auditing, inventory and office management, advertising, clothing (uniforms) etc.
- (71) The Authority believes that the methodology of cost allocation – verified by an external auditor – and the evidence provided by the Norwegian authorities are sufficient to establish that the courses provided were self-financed, and that the Academy did not obtain any extra financing from Redningsselskapet.
- (72) Concerning the alleged State aid obtained by the Academy when offering to its students accommodation at the premises of the Police Academy, the Norwegian authorities confirmed that the Academy had an agreement with the Police Academy (Justissektorens Kurs- og øvingssenter (JKØ)).
- (73) The agreed price for room and board was equivalent to the price offered to other customers of JKØ. According to publicly available information,<sup>38</sup> JKØ rents out its premises to other public entities or private clients, and the range of prices shown on its website is in line with the price information provided by the Academy. Furthermore, the Academy charged its customers an additional administration fee on top of the price proposed by JKØ. As a consequence, the Authority has not found any evidence of cross-subsidisation.

#### *The BRM/ERM courses provided by RSS*

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<sup>38</sup> Information on the prices for the accommodation at the Police Academy is available at: <http://www.phs.no/jko>

- (74) As already pointed out, RSS was established in April 2014 and is owned 100% by Redningsselskapet. However, it is a legal entity which is entirely separated from, and independent of Redningsselskapet. RSS has a board of five members. Three of the board members are external, unrelated to Redningsselskapet. RSS's general manager does not, formally nor in reality, have any relation to Redningsselskapet.
- (75) Being a separate and independent legal entity, RSS keeps its own accounts and records, separate from Redningsselskapet. As RSS is a subsidiary, the company's financial statements are included as part of the consolidated financial statements of Redningsselskapet, but there is separation of accounts. RSS does not receive any funds from its parent company. The Authority concludes therefore that there is no risk of cross-subsidisation between the activities of Redningsselskapet and those of RSS.
- (76) Since there is no risk of cross-subsidisation, there is no risk that Redningsselskapet's subsidiary RSS has obtained or will obtain State aid through the courses provided by it. RSS is providing the courses with its own resources and this company is not providing non-economic activities funded with public funds. In these circumstances, RSS's pricing policy falls outside the scope of the State aid rules.
- (77) However, for sake of completeness, the Authority has requested and reviewed information on RSS's pricing policy concerning the BRM/ERM courses .
- (78) RSS holds a permit from the Norwegian Maritime Authority, allowing the company to offer BRM/ERM courses. The first courses of this kind were scheduled for October 2014. The evidence sent to the Authority confirms that the courses are self-financed.
- (79) According to the information provided by RSS regarding the calculation of the price of the BRM/ERM courses, the costs of hiring external instructors and of using the simulator equipment are included. The depreciation cost of the simulator is also taken into account.
- (80) RSS's business plan has established a foreseeable number of courses and students. Taking into account the cost and foreseen revenues, the prices proposed for the 2014 and 2015 courses will cover all costs plus a reasonable profit. On the basis of the foregoing assessment and in view of the information available, the Authority concludes that no advantage financed by public resources has been granted to RSS.
- (81) Since there is no advantage, it is not necessary for the Authority to assess whether the other criteria required under Article 61(1) of the EEA Agreement are met.<sup>39</sup>

HAS ADOPTED THIS DECISION:

### *Article 1*

Redningsselskapet has not cross-subsidised the provision of the BRM/ERM courses by its subsidiaries the Academy or RS Sjøredningsskolen AS with funds devoted to the compensation of its non-economic activities. The financing of those courses does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

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<sup>39</sup> *Belgium v Commission* ("Tubemeuse"), Case C-142/87, EU:C:1990:125, para. 25.

*Article 2*

The University of Tromsø is not involved in economic activities when providing the BRM/ERM courses as part of its university education program. The provision of those courses does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

*Article 3*

This Decision is addressed to the Kingdom of Norway.

*Article 4*

Only the English language version of this decision is authentic.

Decision made in Brussels, on 18 March 2015

*For the EFTA Surveillance Authority*

Oda Helen Sletnes  
*President*

Frank J. Büchel  
*College Member*