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EFTA SURVEILLANCE  
AUTHORITY

Sent by email only to: [REDACTED]

**Subject: Alleged unlawful aid to Sandnes Ulf for the construction of a football stadium in Sandnes**  
*- Preliminary assessment of complaint under paragraph 48(b) of the Authority's Guidelines on Best Practices for the conduct of state aid control procedures*

## 1 General

Reference is made to your complaints to the Competition and State Aid directorate of the EFTA Surveillance Authority ("the Authority") dated 20 June 2017 and 19 October 2017 regarding an alleged state aid granted for the construction of a new football stadium in Sandnes, Rogaland.

In your complaint, you allege that the aid measures granted by Sandnes Municipality ("the Municipality") to Sandnes Ulf were: (i) a lease of land (26 000 m<sup>2</sup>) below market price; (ii) an upfront rental payment by the Municipality of NOK 40 million; and (iii) a guarantee covering the lease of NOK 24 million. These measures were allegedly put in place on 6 February 2017 and 16 October 2017. The complaints also state that Sandnes Ulf will be able to commercially exploit the new stadium, for their own benefit.

Since receiving your complaint, the Authority has gathered information from the Norwegian authorities and conducted a preliminary examination of the alleged measures.

According to Article 61(1) of the EEA Agreement, a measure constitutes state aid if the following conditions are cumulatively fulfilled: the measure (i) is granted by the state or through state resources; (ii) confers a selective economic advantage on the beneficiary; and (iii) is liable to affect trade between Contracting Parties and to distort competition.

Following a preliminary examination of the complaint, the Authority is of the view that Sandnes Ulf has not received aid in breach of the EEA state aid rules as no aid has been granted by the Norwegian Authorities. The Municipality has informed the Authority that no measures have been implemented to date.

## 2 No aid measures have been implemented

The Municipality has informed the Authority that on 16 October 2017 the Municipal Council decided to approve to pursue a lease agreement and a pertaining loan agreement for Sandnes Stadion AS at a total cost of NOK 40 million and a land lease agreement for a plot for Sandnes Stadion AS. The decision states that the mortgage deed cannot exceed

NOK 29.9 million. Furthermore, the decision states that the loan period shall be 20 years. However, no agreement has been signed and the Municipality has informed the Authority that no parts of the decision shall be implemented until all related matters have been clarified, negotiated and signed by the affected parties.

As regards the terms of the agreement, the Municipality has underlined that the agreement will be on market conditions as established through the evaluation of an independent expert. Economic transactions carried out by public bodies do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions.<sup>1</sup> Whether a lease agreement is carried out in line with normal market conditions can be established through benchmarking against similar transactions or through other generally accepted assessment methods such as an independent expert evaluation.<sup>2</sup>

The Municipality has furthermore informed the Authority that on 16 October 2017 the Municipal Council decided to approve an unconditional guarantee for 80% of the loan amount outstanding at all times for the building of a new stadium in Sandnes. The decision states that the guarantee cannot exceed NOK 23.92 million. The duration of the guarantee is limited to 20 years plus up to two years.<sup>3</sup> Again, no agreement has been signed and the Municipality has informed the Authority that no parts of the decision shall be implemented until all matters have been clarified, negotiated and signed by the affected parties.

The Authority considers that the fulfilment of the following conditions is sufficient to rule out the presence of state aid regarding individual state guarantees: (i) the borrower is not in financial difficulty; (ii) the extent of the guarantee can be properly measured when it is granted; (iii) the guarantee does not cover more than 80% of the outstanding loan or other financial obligation; and (iv) a market-oriented price is paid for the guarantee.<sup>4</sup> As regards point (iv), in the same way as any other transaction, guarantees granted by public bodies may entail state aid if they are not in line with market terms. Whether a measure is carried out in line with normal market conditions can be established through benchmarking against similar transactions, which can be complemented with generally accepted assessment methods based on the return on capital.<sup>5</sup>

Furthermore, the Municipality has informed the Authority that it intends to report any potential aid measures to the Authority in accordance with the General Block Exemption Regulation.<sup>6</sup>

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<sup>1</sup> Guidelines on the notion of state aid as referred to in Article 61(1) of the EEA Agreement (the “NoA”) (OJ L 342, 21.12.2017, p. 35), paragraph 74.

<sup>2</sup> NoA, paragraphs 84, 97 and 101.

<sup>3</sup> The terms seem to correspond with the conditions laid out in the the Authority’s State Aid Guidelines on State Guarantees (the “Guidelines on State Guarantees”)(OJ L 105, 21.4.2012, p. 39).

<sup>4</sup> Guidelines on State Guarantees, chapter 3.2.

<sup>5</sup> Notion of aid, paragraphs 108, 111 and 112. An example of an assessment method based on the return on capital is RAROC (Risk Adjusted Return on Capital), which is what lenders and investors require for providing finance of similar benchmark risk and maturity to an undertaking active in the same sector.

<sup>6</sup> Commission Regulation (EU) 651/2014 (OJ L 187, 26.6.2014, p. 1) as amended by Commission Regulation (EU) 2017/1084 (OJ L 156, 20.6.2017, p. 1). Incorporated into Article 1j of Annex XV of the EEA Agreement.

### 3 Preliminary view

On the basis of the fact that the alleged aid measures have not been implemented the Authority finds that no unlawful aid has been granted. In any event, the Authority's preliminary examination has not indicated that the lease agreement will entail any aid, as it appears that it will be concluded on market terms. Additionally, the guarantee does not seem to entail any aid, as it appears to comply with the Authority's Guidelines on State Guarantees. Lastly, the Municipality has committed to complying with the General Block Exemption Regulation if need be.

In light of these circumstances and with reference to paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state control procedures,<sup>7</sup> it is the Authority's preliminary view that Sandnes Ulf or Sandnes Stadion AS has not received any aid in breach of the EEA state aid rules.

If you have any additional information you would like to submit that might change this preliminary view, please do so **by 9 February 2018**. Otherwise the case will be closed without further notice.

Yours faithfully,

Gjermund Mathisen  
Director  
Competition and State aid

*This document has been electronically signed by Gjermund Mathisen.*

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<sup>7</sup> [OJ L 82, 22.3.2012, p. 7.](#)