

Case No: 72678  
Event No: 691175  
Dec. No: 64/15/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 25 February 2015

to close the case concerning the financing of the Analysis Centre Trondheim  
(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 19(1) of Part II of Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”),

WHEREAS:

- (1) By letter dated 19 September 2012,<sup>1</sup> the Authority initiated the procedure provided for in Article 17(2) of Part II of Protocol 3 to the Surveillance and Court Agreement with respect to the financing of the Analysesenteret Trondheim (“the Analysis Centre”), thereby informing the Norwegian authorities of its preliminary view that the financing of the Analysis Centre involved state aid that was incompatible with the functioning of the EEA Agreement.
- (2) The following measures were under assessment by the Authority:
  - a. The provision of direct grants by the Municipality of Trondheim to the Analysis Centre;
  - b. The provision of premises and collective services at preferential terms; and
  - c. The exemption from income tax as the Analysis Centre is a department of the Municipality of Trondheim.

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<sup>1</sup> Document No 634932.

- (3) On 20 March 2013, by Decision No 129/13/COL, the Authority concluded that the current financing of the Analysis Centre through state resources constituted existing state aid which was incompatible with the functioning of the EEA Agreement.<sup>2</sup>
- (4) In particular, the Authority concluded that the Analysis Centre had benefitted from cross-subsidisation because it operated as a department of the Municipality of Trondheim and benefitted in that capacity from grants and an income tax exemption and had access to premises and collective services at preferential terms. Moreover, the Municipality of Trondheim had not separated the non-economic activities of the Analysis Centre from its economic activities.
- (5) The Authority concluded that the Norwegian authorities should take the following appropriate measures in order to abolish the effects of the above-mentioned state aid:
  - a. The Municipality of Trondheim should ensure that the accounts of the Analysis Centre are split between the economic and the non-economic activities of the Centre and that there is no cross-subsidisation between the two parts;
  - b. The Municipality of Trondheim should cease all other direct payments to the part of the Analysis Centre engaging in economic activities;
  - c. The Municipality should also require that the part of the Analysis Centre that performs economic activities pays an appropriate portion of what would constitute the market rent on the buildings it occupies and the market rent should be established by an independent expert;
  - d. The Municipality should ensure that the part of the Analysis Centre that performs economic activities pays an appropriate portion of what would constitute the market price for the collective services it enjoys; and
  - e. The rules of business taxation should be modified to include the taxation of the economic activities of the Analysis Centre, or *alternatively*, in the absence of a suitable modification of the business taxation rules, the Municipality of Trondheim could incorporate the economic activities of the Analysis Centre in a separate legal entity, which would be subject to regular business taxation under the existing rules.
- (6) By letter dated 14 November 2013,<sup>3</sup> the Norwegian authorities accepted the above-mentioned appropriate measures proposed by the Authority and stated their intention to set up a separate legal entity that would manage the economic activities of the Analysis Centre by 1 January 2014. The authorities stated that that municipally owned company, which would be subject to income tax, would have its own statutes and management and would be subject to public procurement rules.
- (7) Despite the above acceptance of the Norwegian authorities, they subsequently engaged in extensive discussions with the Authority regarding the implementation of the appropriate measures and the process of setting up a separate legal entity was

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<sup>2</sup> The EFTA Surveillance Authority Decision No 129/13/COL of 20.3.2013 to propose appropriate measures with regard to state aid granted to the Analysis Centre Trondheim, available on the Authority's website: <http://www.eftasurv.int/media/decisions/129-13-COL.pdf>

<sup>3</sup> Document No 690161.

- delayed. By letter dated 19 December 2013,<sup>4</sup> the Norwegian authorities requested an extension of the deadline until 30 April 2014 to implement the appropriate measures and stated that the Analysis Centre Trondheim would not participate in any new tenders until a separate legal entity would be established, but that existing agreements, however, would be prolonged during that period.
- (8) By letter dated 20 December 2013,<sup>5</sup> the Authority agreed and extended the deadline to implement the appropriate measures, and in particular the setting up of a separate legal entity, from 1 January 2014 until 30 April 2014.
- (9) Subsequently, the external counsel to the Municipality of Trondheim, i.e. Kluge law firm, contacted the Authority through the Norwegian Ministry of Trade, Industry and Fisheries in order to discuss possible models to reorganize the economic activities carried out by the Analysis Centre. The Authority provided informal guidance by telephone on several occasions.
- (10) By letter dated 10 April 2014,<sup>6</sup> the Norwegian authorities requested an additional extension of the deadline to implement the appropriate measures until 30 June 2014.
- (11) By letter dated 28 April 2014,<sup>7</sup> the Authority agreed to the additional extension of the deadline to implement the appropriate measures until 30 June 2014 on the condition that the Analysis Centre would refrain from entering into new agreements, including renegotiating or prolonging those existing agreements that would expire before 30 June 2014.
- (12) By letters dated 8 and 9 July 2014<sup>8</sup> and 29 August 2014,<sup>9</sup> the Norwegian authorities informed the Authority that the City Council of the Municipality of Trondheim had adopted a decision on 22 May 2014 to separate the sales and marketing services of the Analysis Centre into a separate legal entity, called LabTjenester AS, which was incorporated on 25 June 2014. The Norwegian authorities stated that the establishment of LabTjenester AS, which is a limited liability company wholly owned by the Municipality of Trondheim, should adequately address the appropriate measures because LabTjenester AS (1) will not receive direct grants; (2) will pay the full market price to the Municipality for the premises it occupies and the collective services it enjoys; (3) will be subject to income taxation and (4) will procure laboratory services from the Analysis Centre on a full cost basis and sell these on to the market ensuring a reasonable profit, thus preventing any possibility of a profit in the remaining municipal entity of the Analysis Centre.
- (13) By letters and/or email dated 16 July 2014,<sup>10</sup> 21 October 2014,<sup>11</sup> 25 November 2014<sup>12</sup> and 18 December 2014,<sup>13</sup> the Authority requested additional information from the Norwegian authorities in order to ascertain to what extent the measures adopted by the Municipality of Trondheim were sufficient to comply with the

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<sup>4</sup> Document Nos 694188 and 694190.

<sup>5</sup> Document No 694167.

<sup>6</sup> Document No 705484.

<sup>7</sup> Document No 706237.

<sup>8</sup> Document Nos 715555 and 715556.

<sup>9</sup> Document Nos 720478 to 720483.

<sup>10</sup> Document No 715855.

<sup>11</sup> Document No 722236.

<sup>12</sup> Document No 730258.

<sup>13</sup> Document No 733394.

appropriate measures and whether the Norwegian authorities had complied with the condition not to enter into new agreements during the extended deadline.

(14) Upon receipt of additional information provided by the Norwegian authorities by letters and/or email dated 29 August 2014,<sup>14</sup> 14 November 2014,<sup>15</sup> 25 November 2014,<sup>16</sup> 15 December 2014<sup>17</sup> and 5 January 2015,<sup>18</sup> the Authority assessed to what extent the measures adopted by the Norwegian authorities complied with the above-mentioned appropriate measures and concluded that, as of 1 January 2015, the Norwegian authorities have complied with the appropriate measures by adopting the following measures:

- a. The setting up of a separate legal entity called LabTjenester AS, which will take care of the sales and marketing activities of the Analysis Centre, and which will procure laboratory services from the Analysis Centre according to the full cost calculation method, developed and approved by the financial advisor BDO. The Analysis Centre itself will thus no longer receive commercial net income. The application of the full cost calculation method should provide sufficient guarantees that the non-economic activities of the Analysis Centre no longer cross-subsidize the economic activities of the Analysis Centre, taken over by LabTjenester AS.
  - b. The Municipality of Trondheim has ceased all direct payments to LabTjenester AS.
  - c. The full cost calculation method developed and approved by BDO should ensure that LabTjenester AS pays a calculated market based rent to the Municipality for the use of the premises that relate to LabTjenester's activities and share of laboratory services.
  - d. The full cost calculation method developed and approved by BDO should also ensure that LabTjenester AS pays the full costs related to its share of collective services it enjoys.
  - e. LabTjenester AS takes over all commercial activity previously carried out by the Analysis Centre and will set its prices so as to cover its costs relating to the laboratory services procured from the Analysis Centre according to the full cost calculation method and ensure a reasonable profit margin. As a legal entity, its profits will be taxed according to regular business taxation rules and the delivery of laboratory services to the market should thus no longer benefit from the tax exemption for municipal entities.
- (15) The Norwegian authorities confirmed that the Analysis Centre did not enter into new agreements with commercial partners during the extended deadline period but merely prolonged existing agreements already in place before 1 January 2014. In addition, the Norwegian authorities assured the Authority that all new agreements that would be concluded by LabTjenester AS would generate sufficient income to cover LabTjenester's costs and a reasonable profit. LabTjenester AS also requested the commercial partners of the Analysis Centre to agree to the transfer of their

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<sup>14</sup> See above footnote 9.

<sup>15</sup> Document Nos 729929, 729931, 729933, 729935 to 729939.

<sup>16</sup> Document 730899.

<sup>17</sup> Document Nos 732960 to 732969.

<sup>18</sup> Document Nos 733808, 733809, 733811, 733813, 733814 and 733816.

agreements with the Analysis Centre to LabTjenester AS as of 1 August 2014 and provided these commercial partners with new draft agreements for 2015, which are based on adjusted prices covering the full costs relating to the laboratory services procured from the Analysis Centre, an amount to cover LabTjenester AS's administrative costs as well as a reasonable profit.

- (16) The Authority considers that the above-mentioned measures undertaken by the Municipality of Trondheim comply with the appropriate measures proposed by the Authority and are therefore compatible with the functioning of the EEA Agreement.
- (17) 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.
- (18) 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 129/13/COL on the financing of the Analysis Centre Trondheim and further outlined in the present Decision.

*Article 2*

The case concerning the financing of the Analysis Centre Trondheim is hereby closed.

*Article 3*

This Decision is addressed to the Kingdom of Norway.

*Article 4*

Only the English version is authentic.

Done at Brussels, 25 February 2015

*For the EFTA Surveillance Authority,*

Oda Helen Sletnes  
*President*

Frank Büchel  
*College Member*