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Reykjavík December 20, 2013

Reference: FJR13100132/17.4.1

Your reference: 74556

Subject: State aid for professional sport clubs - response to information request

Reference is made to an information request from the EFTA Surveillance Authority (the Authority), dated 31 October 2013, concerning the application of state aid rules to sports clubs carrying out economic activity.

On 12 December the Authority granted an extension of the deadline to submit a response to the request, until 20 December. Please find the response of the Icelandic authorities enclosed with this letter.

On behalf of the Minister

Haraldur Steinþórsson

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Encl.: Response - State aid for professional sport clubs.

State aid for professional sports clubs.

I. Introduction.

Reference is made to a letter from the EFTA Surveillance Authority (the Authority), dated 31 October 2013, concerning the application of state aid rules to sports clubs carrying out economic activity. In the letter, the Authority noted *inter alia* that sport clubs may be active in professional sports, and carry out at the same time the promotion of sporting activities in the community, e.g. in relation to youth and amateur teams.

In its letter the Authority noted that “[a]s long as [youth and amateur teams] are separate from the economic activities of a professional sports club, they [youth and amateur activities] can in principle be supported by the state without falling under the state aid rules.”

In this regard, the Icelandic authorities note that the current draft General block exemption Regulation (GBER)¹ stipulates that “professional sport” means:

“the practice of sport in the nature of gainful employment or remunerated service, irrespective of whether or not a formal labour contract has been established between the professional sportsperson and the relevant sport organisation, where the compensation exceeds the cost of participation and constitutes a significant part of the income for the athlete. Travel and accommodation expenses to participate to the sport event shall not be considered as compensation for the purposes of this Regulation.”

The Icelandic authorities conclude that it is not sufficient in order for sports clubs to be involved in economic activities that their participation in the exercise of sports involves some sort monetary compensation on markets.² The Authority identified in its letter, as an example, the following markets in

¹ Consultation started on 18 December 2013, see:

http://ec.europa.eu/competition/consultations/2013_consolidated_gber/index_en.html. Definitions provided in Annex I to the draft GBER.

² The Icelandic authorities note that during an earlier GBER II [consultation process](#), some Member States referred to the earlier definition of professional sports. The Danish authorities [called in their observations](#) from September 2013 for “clear distinction of professional and amateur sports and what the case is, when these overlap” and [the reply from the Netherlands](#) mentions the need for “a clarification of the concept of ‘multifunctional recreational infrastructures’” as well as “a clear definition of ‘professional sport user’ and ‘professional sport club’”. Similar observations were made [by the Latvian authorities](#).

Reference is also made to the [general comments made by Germany](#) on the draft regulation’s attempt to define “professional sports”. Germany suggested that emphasis should be on whether athletes’ participation can be considered their livelihood. This is in line with the understanding of “professional sports” in Iceland, cf. the Icelandic sports term “atvinnumenska” (professional manner). [Comments by France](#) on the proposed minimum 20% usage requirement of sport infrastructure for “other users” are also of interest.

which a sports club may participate in: *“sporting competitions, sale of tickets and broadcasting rights, agreements on advertisement and merchandising, transfer of players, sponsoring etc.”* As further discussed in Chapter III below, the Icelandic authorities seek to distinguish between professional sports clubs, i.e. those involved in professional sports, on one hand and non-professional sports clubs engaged in other (small scale) economic activities on the other.

The Authority further noted in its letter, on the subject of infrastructure, that:

“the ownership and the running of commercial infrastructure (e.g. a stadium), as well as the investment in such infrastructure, is an economic activity subject to the state aid rules. Unless carried out on a purely commercial basis, state financing for sport infrastructure may confer economic advantages on different levels (i.e. on the owners, operators and users of the infrastructure), which need to be assessed. Furthermore, the construction of commercial infrastructure may have an impact on already existing installations, and may potentially lead to a crowding out of private investment. At the same time, the Authority understands that under certain circumstances, the construction or renovation of sport infrastructure may prove impossible without public support.”

The notion of commercial infrastructure (commercially exploited) vs. general infrastructure (not commercially exploited and built in the interest of the general public) is briefly touched upon in chapters III and IV below.

In the Authority’s letter, the Icelandic authorities are requested to provide information and/or take action as regards the following issues:

1. **“[...] submit an overview of any public financing systems for professional sports, in particular in relation to potential special rules for tax and social security payments.”**
2. **“[...] indicate whether local financing arrangements for professional sport clubs - including the conditions under which access is provided to publicly-owned stadiums - are subject to any controls.”**
3. **“[...] remind all relevant local authorities that any state aid in favour of professional sport clubs has to be notified, unless it falls under the General Block Exemption Regulation or the De-Minimis Regulation.”**

A response to each of these issues is provided below in chapter IV.

II. General comments.

Sports activities are administered under the Sports Act No. 64/1998³, which stipulates that the Minister of Education, Science and Culture is responsible for sports activities, to the extent that the State is involved in such activities. This includes e.g. matters of national stadiums in Iceland (l: málefni

³ Available in English at <http://eng.menntamalaraduneyti.is/Acts/nr/2430>.

þjóðarleikvanga).⁴ However, the vast majority of facilities for sporting activities are operated by local authorities, i.e. municipalities, or by sports clubs on behalf of the municipalities.

Financial relations between municipalities and sports clubs are based on the clubs being members of a regional sports union (Í: héraðssamband/íþróttabandalag) and the National Olympic and Sports Association (Íþrótta- og Ólympíusamband Íslands - ÍSí) or the sport in question being recognised by ÍSí. Therefore, as a prologue to the information provided below, the following references are made to rules and regulations of ÍSí:

- The Statutes of ÍSí (lög Íþrótta- og Ólympíusamband Íslands) of 20 April 2013 provide in Article 5.2(c) that one condition for sports clubs' participation in a regional sports union is that its activities are not for profit:⁵

“Rekstur íþróttafélags sé einskorðaður við hagsmuni þess og þeirrar starfsemi sem tengist iðkun íþrótta og sé ekki í hagnaðarskyni.”

- ÍSí's Handbook (Handbók ÍSí) contains guidelines on sports clubs' management of funds (leiðbeiningar ÍSí um fjárreiður íþróttahreyfingarinnar).⁶ The guidelines stipulate that funds related to youth activities shall be separated from those of older participants:

*“1.1 Aðskilnaður fjárreiðu yngri og eldri iðkenda
Við færslu bókhalds íþróttafélaga ber að aðskilja rekstur yngri flokka frá rekstri eldri flokka þannig að gera megí sérstakan rekstrarreikning fyrir hvorn hóp um sig. Mælt er með að fjárhagur sé algjörlega aðskilinn, þannig að haldið verði utan um peningastreymi hvors hóps um sig með sér bankareikningi. [...]”*

According to information available to the Icelandic authorities, without having conducted a thorough study on the matter, this guidance on account separation is adhered to by sports clubs and usually required by parents and guardians of young people participating in the clubs' youth activities.

In addition, ÍSí has in place a regulation on management of funds, applicable to sports clubs and regional sports unions (reglugerð ÍSí um fjárreiður o.fl.).⁷ Today, many if not all municipalities in Iceland provide sports clubs with finance for or access to sports facilities for their youth activities, in addition to supporting these activities by way of grants allocated to children and young people.⁸

⁴ According to Article 5(2)(11)(a) of presidential decree No 71/2013 (forsetaúrskurður um skiptingu stjórnarmálefna milli ráðuneyta í Stjórnarráði Íslands).

⁵ Available at: http://isi.is/library/Skrar/Efnisveita/Log-og-reglugerdir/Gildandi_log_ISI_2013.pdf.

⁶ Available at: http://isi.is/library/Skrar/Efnisveita/Log-og-reglugerdir/leidbeiningar_um_fjarreidur.pdf.

⁷ Available at: http://isi.is/library/Skrar/Efnisveita/Log-og-reglugerdir/reglugerd_um_fjarreidur.pdf.

⁸ In particular grants in the form of so called leisure cards, issued to the name of children and teenagers (Í: frístundakort, íþrótta- og tómstundakort).

III. The notion of professional sports.

The Authority identified in its letter, as an example, a number of markets in which sports clubs may participate in and thereby be engaged in economic activity: *“sporting competitions, sale of tickets and broadcasting rights, agreements on advertisement and merchandising, transfer of players, sponsoring etc.”* The Icelandic authorities can to a certain degree accept the list of markets identified.

The Authority’s identification is in line with the position of the EU Commission from 2003, in a response to a written question before the European Parliament:⁹

“Professional football clubs that engage in economic activities, like transferring players, concluding advertising and sponsorship contracts and distributing merchandising articles are to be considered undertakings within the meaning of the competition rules of the EC Treaty. Therefore, for the purpose of applying Articles 87 and 88 of the EC Treaty, professional football clubs are in principle treated in the same way as other undertakings.”

The Icelandic authorities suggest that a line should be drawn between *“professional football clubs that engage in economic activities”* on one hand and non-professional football clubs that engage in small scale economic activities on the other. Similar distinction should of course be made with regard to other sports.

In FIFA’s 2007 Regulations on the Status and Transfer of Players¹⁰, professional football players are defined in Article 2, chapter II (Status of players):

“Article 2 Status of players: amateur and professional players

- 1. Players participating in organised football are either amateurs or professionals.*
- 2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.”*

A reference to the FIFA regulations is made in the 2012 UEFA Club Licencing and Financial Fair Play Regulations, e.g. with regard to written contracts (Article 21) and employee status of players (Article 50). Similarly, and for the purpose of contractual obligations and expenses incurred by football players, KSÍ’s rules on transfers, contracts and status of players and clubs (reglugerð KSÍ nr. 12/2013, um félagaskipti, samninga og stöðu leikmanna og félaga) distinguishes between “professional contracts” and “amateur contracts”):

⁹ Reference: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:280E:0065:0066:EN:PDF>.

¹⁰ Available at: http://www.fifa.com/mm/document/affederation/administration/01/06/30/78/statusinhalt_en_122007.pdf.

“14.5 Aðeins félögum í Pepsi-deild karla, 1. deild karla og í Pepsi-deild kvenna er heimilt að gera leikmannssamning. Félag sem gerir leikmannssamning kallast samningsfélag (professional club). [...]”

Regardless, the notion of a professional sports player in Iceland, and it would seem in many other EEA countries, is based on whether competing in sports can be regarded as his (main) profession, i.e. the player is employed by the sports club and is able to make a living by the profession. Similarly, a professional sports team is one in which all or the vast majority of players are professionals. Thus, the notion of a professional sports club should be linked to professional sports teams. As a result, a sports club should only be regarded as a “professional user” of sporting facilities, if (and to the extent that) it has a professional sports team under its auspices.

In the German authorities’ comments on an earlier draft GBER II, the following proposal is provided:¹¹

“The draft regulation attempts to define professional sports as participation in sporting activity for which monetary compensation is paid. It does not seem crucial, from a vocational point of view, whether some sort of monetary compensation, for instance prize money in amateur sporting events – and thereby monetary compensation for exercise of sports or participation in competition – is granted. Rather, account should be taken of whether an athlete’s participation sport is his profession (intensity of training) and whether it can be considered as his livelihood. In contrast to professional athletes, amateur athletes cannot make a living solely on their participation in sports as the income derived from their participation is too low. Indicators of a professional athlete could be fixed wages, bonuses, prize money, endorsements, entrepreneurship, or other benefits (e.g. sports help [I: afreksstyrkir (achievement grants)]). Professional sports would also qualify as high level sport. Furthermore, an “all-encompassing” separation between professional and amateur sports cannot be applied to all sports. Certainly there might be, for example in football, a separation between purely amateur leagues and purely professional leagues. However, in motor racing there are racing series which bring together both professional and amateur participants.”

¹¹ Loose translation by the Icelandic authorities. The comments by Germany are also referred to in footnote 1. Original text:

“Der Verordnungsentwurf versucht eine Abgrenzung des Profi-Sports dadurch, dass für die Teilnahme an der Sportausübung ein geldwerter Ausgleich gezahlt wird. Aus fachlicher Sicht scheint nicht entscheidend, ob überhaupt ein monetärer Ausgleich gewährt wird, da etwa auch bei Amateursportveranstaltungen Siegprämien – und damit ein geldwerter Ausgleich für die Sportausübung bzw. Teilnahme am Wettbewerb – gewährt werden. Vielmehr sollte darauf abgestellt werden, ob der Sportler seinen Sport wie einen Beruf ausübt (Häufigkeit des Trainings) und dadurch seinen Lebensunterhalt bestreiten kann. Im Gegensatz zum Berufssportler dürften bei einem Amateursportler die Einkünfte aus dem Sport für seinen Lebensunterhalt zu niedrig sein. Indizien für einen Profisportler könnten ggf. feste Gehälter, Prämien, Preisgelder, Werbeverträge, Mäzenatentum, Sponsoring oder anderweitige Zuwendungen (z. B. Sporthilfe) sein. Auch wäre Profisport als Hochleistungssport zu qualifizieren. Auch ist ein "sortenreiner" Profi- bzw. Amateursport nicht für jede Sportart abgrenzbar. Zwar mag es z. B. im Fußball eine Trennung in den verschiedenen Ligen nach reiner Amateur- und reiner Profiligen geben. Im Automobilrennsport etwa gibt es hingegen auch Rennserien, an denen sowohl Profi- als auch Amateursportler teilnehmen.”

These views seem to have been taken into account in the draft GBER published on 18 December 2013. Similarly, the Court of First Instance has provided that, while having a social objective, "high-level sport has become, to a great extent, an economic activity [...]".¹² The Norwegian authorities' state aid guidance paper provides that the teams competing in the Norwegian top league could qualify as economic entities:¹³

"Organisasjoner som kun ivaretar sosiale eller kulturelle funksjoner vil som regel ikke anses for å drive økonomisk aktivitet. En idrettsorganisasjon som organiserer barne- og amatøriddrett vil for eksempel normalt ikke anses for å drive økonomisk virksomhet. På den annen side vil idrett på høyt nivå, for eksempel fotball i eliteserien, fort måtte anses som økonomisk aktivitet."

In Iceland, at least some of the teams competing in the top men's football league may possibly qualify as being active in economic activities on the basis of being considered professional sports teams. Even with those, it would need to be determined when a sports team is professional and when not. Should all athletes in a particular sports team be under gainful employment for it to constitute a professional sports team? Aside from some of the teams competing in the top men's football league, professional sports in which monetary compensation is involved and competitive economic markets conditions apply to an extent hardly exist.

Non-professional sports clubs may perhaps to some extent be engaged in economic activity, such as sale of broadcasting rights and transfer of players. Similarly, they may be involved in the operation or ownership of infrastructure, when such infrastructure is commercial to some extent. These activities however have a very limited economic weight. When non-professional sports clubs are engaged in sponsoring, advertisement and merchandising agreements, for instance, it is difficult to conceive how financial arrangements between the State and such clubs could distort competition in these markets. For an example, sponsoring and advertisement agreements are common in youth and amateur sports competition. As clubs competing on those levels are not able to provide financial compensation to their players it is hard to foresee how infrastructure or operating aid from e.g. municipalities would allow them to seek sponsoring agreements on anything less than market terms. Similarly, while amateur or semi-professional clubs may be involved in player transfers, sometimes constitute an economic activity, they are most often not on the receiving end, i.e. involved in purchasing of players. Public contributions or other form of transfer of public resources to such clubs are not liable to affect the terms of such transfers and thereby not liable to distort competition in the player market.¹⁴ Similar arguments could be

¹² Case T-313/02 Mecca Medina v. Commission, paragraph 44. The judgment was set aside and the case dismissed by the Court of Justice in Case [C-519/04 P](#).

¹³ [EØS-avtalens regler om offentlig støtte](#) 2010, section 2.3. See also section 3.2.3.

¹⁴ Reference is made to a judgment by the Court of Justice of 10 January 2006, in [Case C-222/04](#), where the following was held:

"111 In that regard, it must be pointed out that the mere fact of holding shares, even controlling share-holdings, is insufficient to characterise as economic an activity of the entity holding those shares, when it gives rise only to the exercise of the rights attached to the status of shareholder or member, as well as, if appropriate, the receipt of dividends, which are merely the fruits of the ownership of an asset."

made with regard to ticket sales and occasional sales of broadcasting rights by non-professional clubs and teams.

In the Hungarian sports sector support scheme referred to in the Authority's letter, the market of professional sport is said to be "characterized by high level of competition with significant private and commercial investments."¹⁵ The competition by professional clubs referred to is that for "viewers, broadcasting revenues, players and merchandising rights" and it is described as both "high level" and "fierce". For Icelandic sports clubs, even to the extent they might be considered to be engaged in professional sports, there is a very low level of private and commercial investments and a limited EEA market dimension. Competition for viewers, players etc. can hardly be described as "high level" or "fierce".

Admittedly, the fact that the main activities of non-professional sports clubs (namely non-professional sports activities) can be regarded as non-economic activities, does not in and of itself prevent their secondary activities (for example advertisement agreements) to be considered economic.¹⁶ However, it may need to be assessed whether state funding or other transfer of state resources aimed at non-economic activity of non-professional sports clubs (such as youth and amateur sports training and competition) has any potential effect on small scale economic activities pursued by such clubs (such as broadcasting rights, sale of players and advertising and sponsorship contracts) to the extent that the funding could be liable to affect trade in said markets between contracting parties to the EEA Agreement, "even if the other criteria of the State aid definition were met".¹⁷

For instance, and referring to paragraph 31 of a recent Commission state aid decision¹⁸, advertisement and sponsorship agreements concluded by non-professional sports clubs in Iceland can hardly be seen as capable of deviating advertisement revenues from sports clubs in other EEA States. The issue of effect on intra-EEA trade is also discussed in chapter IV below.

The Icelandic authorities are far from convinced, when it comes to *non-professional* sports clubs active in small scale economic activity, that "any aid is likely to confer an advantage that is liable to distort competition and to affect trade under Art. 61(1) of the EEA Agreement" in the markets mentioned, as

112 *On the other hand, an entity which, owning controlling shareholdings in a company, actually exercises that control by involving itself directly or indirectly in the management thereof must be regarded as taking part in the economic activity carried on by the controlled undertaking."*

See also a reference to said judgment by the Commission its decision in case SA.34891 from 20 November 2012:

"25. [...] An economic activity consists in offering goods or services on a given market [ref.]. However, a mere use of its capital is insufficient to characterise as economic an activity of the entity when it gives rise only to the income which is merely the fruits of the ownership of an asset.[ref.]"

¹⁵ Hungarian sport sector support scheme, Commission decision in case SA.31722 from 9 November 2011, paragraph 73. Available at: http://ec.europa.eu/competition/state_aid/cases/240466/240466_1271180_52_3.pdf

¹⁶ See judgment of the Court of First Instance in case [T-347/09](#) (Germany v Commission), paragraph 44.

¹⁷ Decision in case [SA.34891](#) from 20 November 2012 (preservation and revitalisation of the historic site of the "Przemysł Stronghold"), referred to above, paragraph 30. See also a recent Decision in case [SA.36581](#) from 6 November 2013 (construction of Archaeological Museum at Messara, Crete).

¹⁸ Ibid.

referred to in the Authority's letter of 31 October 2013. Likewise, it cannot be presumed that the construction and/or operation of sports infrastructure is indissociable (economically inseparable) with small scale economic activity in such markets, carried out by sports clubs which rely on said infrastructure.

The Icelandic authorities submit that it is of importance to determine the economic or non-economic character of sports clubs' activities, in order to assess whether construction of infrastructure is an economic activity, i.e. whether the infrastructure is commercially exploited/ exploitable (used or meant to be used to provide goods or services on the market). Only if the operation of the infrastructure has an economic character can the infrastructure be regarded as a commercial infrastructure and thus a beneficiary of state aid.¹⁹ Thus, if a sports infrastructure has only non-commercial users, state aid does not need to be considered on the level of owners or operators of the infrastructure. It seems however that if one of the users is a "professional sports club" (for example the professional soccer team operated under the auspices of a local sports club), aid may need to be considered at the level of the infrastructure's owner and/or operator. Such aid could then either be compatible or incompatible with the EEA Agreement.²⁰

The notion of general (non-commercial) infrastructure is further discussed in chapter IV, section 2 below. As for operation and/or ownership of infrastructure owned by or installed with the assistance of municipalities, and part-time renting out of facilities to economic operators (commercial exploitation), sports clubs can be considered to be in the same position as the municipalities themselves, i.e. a proper pricing mechanism needs to be in place with regard to renting out to commercial entities. Related to the issue of publicly owned or co-funded infrastructure and economic activity carried out in connection with such infrastructure, the Icelandic authorities wish to refer to two recent decisions by ICA concerning renting out of sport facilities by municipalities to fitness centres.²¹

IV. Information requested by the Authority.

1. Public financing systems for professional sports, in particular related to potential special tax rules.

No public financial systems or schemes for professional sports exist in Iceland and public financing for sports clubs in general is not systematic. As a general rule, financial relations between public authorities and sports clubs are related to sports clubs' youth and recreation activities, thus connected with sports clubs' contribution to physical and mental abilities, health and fitness as well as educational and cultural objectives.

¹⁹ See, for example, Commission's Decision of 20 March 2103 in case [SA.35135](#) (Multifunktionsarena der Stadt Erfurt), paragraph 9.

²⁰ Furthermore, state aid would have to be considered at the level of the economic user, i.e. whether the rental price corresponds to established market rent.

²¹ Decisions No 3/2012 and 27/2013. Summaries in English available at: <http://en.samkeppni.is/resolution/decisions/nr/1937> and <http://en.samkeppni.is/resolution/decisions/nr/2274>.

Some special tax rules apply to sports activities. These are compiled in guidelines (skattskylda íþróttafélaga) issued by the Internal Revenues Directorate (Ríkisskattstjóri – RSK) in 2004. In April 2013 the guidelines were updated by RSK and sent to ÍSí for distribution amongst its members.²²

The guidelines explain *inter alia* how sporting activities, including entrance fees and the renting out of facilities for sports activities, are exempt from VAT. As for ticket sales in particular, these are exempted under Article 5(3)(2) of the VAT Act No 50/1998 within the logic of the VAT tax system.²³ Sale of goods and services in competition with other enterprises, such as advertising sales, publishing and catering, is not exempted. For the purpose of VAT, a line is drawn between economic and non-economic activities, but for tax purposes this distinction is based on whether operations have the aim of producing profit (unlike the definition of economic activities under the EEA state aid rules).

Similarly, as also explained in the guidelines, sports clubs' exemption from income tax under the Income Tax Act No 90/2003, point 4 of Article 4, is based on the clubs' net income being solely spent for the public good and such work being their sole goal according to their statutes.²⁴

At a regional (municipal) level, derogations are permitted with regard to non-profit sports clubs. Article 5(2) of the Act on Municipalities' Revenue Bases No. 4/1995 provides as follows:²⁵

“A local authority may provide grants for payment of property tax on properties where non-profit activities are carried out, such as cultural, sports, youth and leisure activities and charitable work. A local authority must adopt rules on the application of this provision.”

While the issue is not centrally regulated by the State, there has been a tendency over the past 10-15 years for sports clubs to hold separate accounts for youth activities and adult sports activities and in some cases clubs have established private limited companies around professional (or semi-professional) aspects of their operations.²⁶ According to information received from the Association of Local Authorities in Iceland (Í: Samband íslenskra sveitarfélaga), the general perception is that separate accounts are kept for adult sports and youth activities, in line with the aforementioned provisions of the ÍSí Handbook, ensuring that municipalities' financial contributions are only used for the operations of the latter. Such separation of accounts is controlled by each municipality.

²² The updated guidelines are available at: http://www.rsk.is/media/baeklingar/rsk_1207.is.pdf.

²³ The provision exempts “athletic activity, as well as the hire of athletic facilities, admission charges to swimming pools, ski lifts, **athletic events**, **athletic exhibitions** and health facilities” (emphasis added). The Act is available in English at: <http://www.ministryoffinance.is/media/log-reglur/The Value Added Tax Act with subsequent amendments.pdf>. As to what constitutes athletic activities, reference can be made to the state internal revenue board's ruling No 295/2005, on the renting out of an equestrian center, available at: <http://www.vfirskattanefnd.is/leit/skoda.asp?ID=1416>.

²⁴ The Act is available at: http://www.ministryoffinance.is/media/Act_no_90_2003_01022012.pdf.

²⁵ English translation of the Act available at: <http://www.samband.is/media/enska/Act-no-4-1995-on-Municipalities'-Revenue-Bases.pdf>.

²⁶ As an example, the current champions of the male premium league in football (Í: úrvalsdeild), Knattspyrnufélag Reykjavíkur (KR), has been operated under a private limited company (Í: einkahlutafélag) since 1998.

The separation of accounts between non-economic and economic activities of sports clubs has to some extent been addressed by the Icelandic Competition Authority (ICA) and the issue is considered to fall under the scope of the Icelandic Competition Act No 55/2004. In 2002, a Decision was passed by the (now discontinued) Competition Council (Samkeppnisráð), ordering a local golf club to keep separate accounts for lawn-mowing activities operated in competition on the market.²⁷

2. Financial arrangements for professional sports clubs – including conditions for access to publicly owned facilities.

Reference is made to *Chapter II General comments* above, concerning financial arrangements for sports clubs. The main premise concerning financial arrangements for sports clubs and the interplay between their economic and non-economic activities has been that clubs operated on non-profit basis are considered to be non-economic entities. This premise therefore deviates somewhat from the EEA state aid rules which seem to put emphasis on “*inclusion of monetary compensation for participation in the exercise of sport*”.²⁸ The second premise however revolves around the separation of accounts between youth activities and other activities, more or less in line with the EEA state aid rules’ bidding. Any direct financial contributions by municipalities are directed at these youth activities.

There exist no harmonised rules on access to publicly owned facilities by sports clubs (professional, amateur or a combination of the two). These, along with other controls on financial arrangements, are mainly subject to arrangements in each municipality in Iceland. The Icelandic authorities submit that while facilities should only be considered “general infrastructure” under certain “restrictive conditions”²⁹ these conditions are considered to be fulfilled with regard to most sports facilities operated in Iceland. Reference is made to the fact that very few sports clubs in Iceland are engaged in professional sports (if any). When assessing whether facilities should be classified as “non-commercially used infrastructure”, the Commission has looked into the following factors:³⁰

- purpose of the user’s operations (examples might be promotion of culture, health etc.),
- whether activities are profit driven (limited or no commercial activities),
- local character of activities,
- aim of public financing.

Even if a sports infrastructure is considered to be a commercial infrastructure rather than a general infrastructure, it may be called into question, with regard to potential state aid to its owner and/or operator, whether support of ownership and operations of infrastructure solely used for sports has a

²⁷ Decision No 41/2002, available at:

<http://www.samkeppni.is/media/samkeppnisrad/akvardanir/2002/akv4102.pdf>.

²⁸ The general state aid definition for economic activity being: any entity, regardless of its legal status, is engaged in economic (commercial/competitive) activity and where there is a market in comparable goods or services. There should be offering of goods or services on a given market which could, at least in principle, be carried out by a private operator in order to make profits.

²⁹ Reference is made to the position of the Commission as provided in the written answers to the EU Parliament, cf. footnote 6 above.

³⁰ Decision in Case SA.34891, referred to above, paragraph 26.

potential effect on trade and competition between contracting parties to the EEA Agreement. In a recent decision the Commission assessed whether the renovation and reconstruction of a sport stadium in Germany into a multifunctional arena could potentially have an effect on trade and competition:

“(11) Regarding a possible effect on trade and competition in the internal market, the envisaged commercial exploitation concerns local and regional firms and not international events. The next border, with the Czech Republic, is around 100 km away. It is therefore unlikely that the operation of the Jena stadium will have a strong cross border effect like e.g. arenas which are planned for commercial events (in particular music and sport) of international level. The market for organising sport and other types of public events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. Therefore, the measure at issue has at least a potential an [sic] effect on trade and competition in the internal market.”³¹

In the case of Iceland, the closest border of another EEA country is Scotland in the UK, more than 700 km away (coast to coast). It may therefore be argued that in the market of organising sports, sport infrastructures in Iceland are not just unlikely have a cross border effect, the potential of effect on intra EEA trade and competition is non-existent.

As regards football stadiums in particular, the Icelandic authorities can inform that the vast majority of Icelandic football clubs does not have use of a stadium, but rather boxes or stands. Those stadiums that do exist are very small in a European context. In the past few years football clubs in the top leagues have had to abide by rules set by the Football Association of Iceland (Knattspyrnusamband Íslands – KSÍ) on stands and spectator facilities.³² Fulfilment of these rules is a condition for a club to play in the higher football leagues in Iceland, including the professional/ semi-professional premium league. As an example, Article 21 of the rules provides that, in general, stadiums must be equipped with seating for no less than 1,000 spectators. These rules are derived from UEFA infrastructure regulations.³³ The conditions related to stadiums are set in KSÍ’s club licencing regulation (leyfisreglugerð KSÍ) which *inter alia* provides, in the chapter on infrastructure criteria, Article 24.1.³⁴

³¹ Case SA.35135, referred to above.

³² See KSÍ Regulation No 8/2012 on football stadia (reglugerð KSÍ um knattspyrnuleikvanga), available at: <http://www.ksi.is/media/logogreglugerdir/reglugerdir/Reglugerd-KSI-um-knattspyrnuleikvanga-april-2012-lagfaert.pdf>. Special reference is made to Chapter III on spectator related areas (Kafli III: Áhorfendaaðstaða).

³³ See UEFA Stadium Infrastructure Regulations Edition 2010, available at: http://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/Stadium&Security/01/48/48/85/1484885_DOWNLOAD.pdf. Special reference is made to Section 2 on spectator-related areas.

³⁴ Regulation of 10 October 2013 (version 2.3), available in Icelandic at: <http://www.ksi.is/media/levfiskerfi/levfishandbok/KSILEyfisreglugerd-Ver23.pdf>. The regulation applies to teams competing in the top two leagues in men’s football. A previous version is available in English (version 2.1 of October 2011) at: <http://www.ksi.is/media/logogreglugerdir/reglugerdir/Leyfisreglugerd-KSI-27.-oktober-2011-enska-utgafan.pdf>.

24.1 Based on the level of license, the licence applicant must have a stadium available for the Icelandic Championship for men and for UEFA club competitions, which fulfils all minimum criteria according to the KSÍ Regulations on Football stadia and to the UEFA Stadium Infrastructure Regulations. [...]

Due to the relatively small size of sports clubs and local economies in Iceland, available information suggests that no Icelandic football club is able to fund the construction of such mandatory facilities. Almost all sports clubs are run on a very limited budget with most operations depended on volunteer work.³⁵ Thus, there is a consistent funding gap when it comes to minimum standard infrastructure for football stadia in Iceland, sometimes bridged by the relevant municipality.³⁶

As for sports infrastructure in general, many municipalities provide sports clubs with access to municipality owned infrastructure, on the basis of rent or free of charge, for youth activities and competition. To the extent that economic activities in the form of professional sports may be involved in the operations of sports clubs, this particular sector of the economy (sports economy sector) may be considered to suffer from a market failure, due to the small size of the economy in Iceland and local economies. The Hungarian sport sector support scheme decision provides that “the yearly budget of professional sport clubs [in Hungary] is only a fraction of similar European clubs, and therefore, they cannot finance [infrastructure] investments on their own.”³⁷ As an example the Hungarian authorities provided that “the wealthiest Hungarian football club in 2010 disposed over a yearly budget of 4.4 million euro in comparison with 450 million euro of Real Madrid, 150 million euro for Lyon or by local competitors such as the 15 million euro annual budget of CFR Cluj (Romania).”³⁸ For Iceland, the yearly budget of even the largest clubs is only a small portion of those in Hungary.³⁹

While many sports clubs own and operate their own facilities, built with support from municipalities⁴⁰, in recent years the tendency has been towards ownership being in the hands of the municipalities, facilities

³⁵ As a side point it may be noted that according to Article 17 of the club licencing regulation, football clubs falling under the scope of the regulation must have a development programme for youth, aged 9 and up, approved by KSÍ.

³⁶ In this regard the largest Icelandic football teams may be compared with very small local teams in Europe. As an example reference can be made to the following news article from 2004 on stadia disputes during qualifying matches between a team from an urban area in Wales counting some 13,000 residents and an Icelandic team from Hafnarfjörður where about 26,000 people reside: “Haverfordwest ekki sáttir við Kaplakrika” - <http://www.fotbolti.net/printStory.php?id=17167>. For a more recent example, the runners-up in the top Icelandic football league in 2012, Breiðablik from Kópavogur, were forced to move their UEFA Europa League qualifying home game in August 2013 to the Icelandic national football stadium due to facilities at their own stadium not meeting UEFA standards, see: “Blikar mæta Aktobe á Laugardalsvelli” - http://www.mbl.is/sport/enski/2013/08/02/blikar_maeta_aktobe_a_laugardalsvelli/.

³⁷ Hungarian sport sector support scheme referred to above, paragraph 6.

³⁸ Ibid, footnote 21.

³⁹ Information is not publicly available for all clubs but, for instance, in the [2012 profit and loss statement for the men's football team Stjarnan](#) (3rd place in the premium league in 2012, 5th place 2013) total expenditure is less than EUR 0.5million.

⁴⁰ Limited financial support can also be requested from KSÍ, see: <http://www.ksi.is/mannvirki/2012/05>.

being used for school activities and rented out to sports clubs. In such situations the Commission has held that the renting of the stadium infrastructure may constitute aid for the users,

*“if the users can be considered undertakings and if the rent they pay is below market levels. **Non-professional users do not qualify as undertakings** within the meaning of Article 107 [cf. Article 61 EEA]. Offering them the arena for a low rent does therefore not constitute aid.”⁴¹ (Emphasis added.)*

On the other hand, in order to exclude state aid to a “professional football club”, or ensure that such aid is proportionate to existing market failures, the rent must be “determined on the basis of a comparison with fees comparable clubs are paying elsewhere, [...]”⁴² or “based on benchmarks, and the investments undertaken”⁴³. Such pricing mechanisms can be complicated to work out.

With regard to what might qualify as professional (or semi-professional) sports activity within sports clubs, support related to infrastructure seems to have been estimated on a case-by-case basis, meaning that funding gaps are determined on the basis of the financial abilities of sports clubs, taking into account any other sources of funding the clubs may have access to, including state and private support. Financial standing of municipalities also plays a role.⁴⁴

The possibility of effect on competition and distortion of competition.

Sports competitions (athletic events) serve as a vital part of local recreation in all municipalities, no less than community theatre for example. That comparison is also relevant in relation to the concept of state aid to what might constitute professional sports clubs in Iceland. In that regard the Icelandic authorities draw the attention of the Authority to the Commission’s Decision in case N 257/2007 from 27 June 2007 (subsidies for theatre productions in the Basque country). Paragraphs 18-28 of the decision, which relate to the cumulative criteria of state aid, read as follows:

“18. In the case at hand there are State resources involved since the measure is financed out of the general budget of the Basque country. The direct grants awarded to the beneficiaries constitute payments that they would not receive under normal market conditions. The beneficiaries are legal persons and professional associations which carry out economic activities. Therefore, the measure provides an economic advantage to undertakings. This economic advantage granted is selective in the sense that it will benefit certain undertakings active in a specific sector – theatre production.

19. However, it is questionable whether this measure may distort competition and affect trade between Member States.

⁴¹ Commission’s Decision in case [SA.35135](#), referred to above, paragraph 12.

⁴² Ibid.

⁴³ Hungarian sport sector support scheme referred to above, paragraph 97 (point 1).

⁴⁴ The following news article serves as a case in point:

http://www.mbl.is/sport/efstadeild/2011/11/23/bv_byggir_stuku_a_hasteinsvelli/.

20. In this respect the specific nature of the subsidized activity should be underlined. Contrary to more tradable commodities, subsidised theatre productions have a relatively smaller potential to affect competition and intra-community trade. In order to determine whether the subsidies to be granted under this particular scheme may produce an effect on trade between Member States a number of elements were examined.

21. First of all, the zone of attraction of the subsidised theatre productions was determined. It was found that the potential audience of the plays is limited to a well-determined linguistic and geographical area. The use of the Basque language limits the origin of the audience mainly to the Basque Country and, conceivably, the Basque speaking population in the southern part of the Aquitaine Region in France.

22. Geographically, the zone of attraction of the subsidised theatre productions depends both on the distance to the theatre and on the type of performances offered. In this respect it was found that the shortest distance between a theatre in the Basque Country, where a subsidised play could be performed, and one in the Basque speaking region in France, that might be affected if due to the subsidies the Basque theatre attracted visitors that would otherwise have gone to a theatre in France, is over 50 km. Such a distance should ensure that, also taking into account the type of subsidised performances (see below), any effect on trade can, in practise, be excluded [reference to Commission Decision of 21 December 2000 in Case N258/2000 (Leisure Pool Dorsten)].

23. As regards the type of theatre productions concerned, the measure aims at developing and promoting relatively small-scale productions of local and regional nature. It should thus be distinguished from aid measures directed, for instance, at the development of major theatre productions or festivals, which involve internationally renowned theatre companies and aim at a national, or even an international market. The latter type of measures are typically widely promoted outside the region in which they are located and may thus attract tourists from other Member States and affect trade between Member States. However, such theatre productions are clearly of a different scale and nature than those considered by the scope of the notified measure. This is furthermore evidenced by the fact that the beneficiaries of this scheme are essentially micro- or small enterprises and by the small budget of the measure and of the individual grants to be awarded.

24. It can therefore be concluded that the theatre productions and the beneficiaries concerned are, taking into account the linguistic and geographical limitations, not such that they would attract cross-border tourism.

25. Secondly, it was examined whether an effect on trade could possibly result from the fact that the subsidised theatre productions might be performed abroad, where they could be in competition with other theatre productions. In this case, however, such possibility is already very limited due to the language barrier, which distinguishes theatre productions from other cultural products such as music or dance. Moreover, the Spanish authorities confirmed that, even if the theatre companies concerned organised a tour, such tour would essentially take place on the Spanish territory and performances abroad would thus be unlikely. This is also underscored by the small size of the beneficiaries and the limited amount of the aid.

26. Thirdly, it should be recalled that the total budget of the scheme (€ 800 000) and the individual grants are relatively limited. In the large majority of cases the aid will remain beyond the de minimis ceiling of €200.000, below which Article 87(1) EC Treaty can be considered not to apply.[reference to de minimis regulation] Even in the theoretical example where in the category

of confirmed companies, only one company would benefit from the measure and would receive subsidies for at least three projects, the total maximum amount possible could only be €400.000.

27. Finally, it should be noted that the beneficiaries always have to cover at least 30 % of the costs of the project, and that these beneficiaries (mainly micro or small enterprises) are usually exclusively dedicated to theatre production. Therefore, the possibility of cross subsidies towards an activity, for which an international market exists, or for cultural products that can be easily exported is unlikely to occur.

28. In the light of the above, the Commission considers, on the facts of the present case, that the measure at hand cannot be considered to affect trade and distort competition between Member States and that the conditions laid down in Article 87(1) EC Treaty are therefore not fulfilled.”

Admittedly, with regard to at least some of the top football clubs in Iceland, these do take some part in tournaments that have a European dimension and therefore take part in competition for “viewers, broadcasting revenues, players and merchandising rights”⁴⁵ to some extent. The issue of whether their operations should nevertheless be considered “of local and regional nature” of a “different scale and nature” than the top clubs in most other European countries, would need to be addressed.

Furthermore, financial arrangements and access to publicly owned infrastructure and relations between such infrastructure and potential small scale economic activities by Icelandic sports clubs are based on general economic interest considerations, with reference to the social and educational role of sports clubs. As an example of how these considerations have made their way into statutes of governing bodies in sports, KSÍ rules provide for a *quid pro quo* as regards use of facilities, in the club licencing regulation referred to above, which provides (Article 25.3):

“It must be guaranteed that the training facilities can be used by all the club’s teams during the licence season, taking into account its youth development programme.”

3. Reminder to all relevant local authorities that any state aid in favour of professional sport clubs has to be notified, unless it falls under the GBER or the De-Minimis Regulation.

The Icelandic authorities welcome the suggestion by the Authority to promote the use of EEA State aid rules in relation to professional sports clubs, in order to eliminate doubts regarding compliance with the EEA Agreement. Such measures, which could be undertaken in 2014, would also be liable to promote financial transparency, level the playing fields for professional sports clubs and deliver well-targeted support in compliance with national and regional sports development strategy. As referred to in the Authority’s letter, state aid case law concerning public support to infrastructure and the issue of to what extent the installation and operation of infrastructure is part of an economic activity, has been developing rapidly over the past few years.

Insomuch as Icelandic sports clubs may operate professional sports teams, which in any case would only be a small portion of their activities, it is possible that financial support and other state aid to such

⁴⁵ Hungarian sport sector support scheme referred to above, paragraph 7.

activities could fall below threshold of the EU *de minimis* Regulation⁴⁶ as suggested in the Authority's letter.

Such measures could also benefit from the exemptions under or the General Block Exemption Regulation as also suggested by the Authority.⁴⁷ In particular, the new section on sport infrastructure in the upcoming GBER II seems suited to the situation in Iceland. The following is provided in the introductory provisions (70) of the current (December 2013) draft Regulation (emphasis added):⁴⁸

*"Investment aid measures for sport infrastructures should be block exempted if they fulfil the conditions of this Regulation, to the extent they constitute State aid. In the sport sector a number of measures taken by Member States **may not constitute State aid** because the beneficiary **does not carry out an economic activity** or because there is **no effect on trade** between Member States. This could be, under certain circumstances, the case for aid measures which have a **purely local character** or which are taken in the **field of amateur sport**. [...]."*

Similar guidance is provided by the Commission concerning state aid and infrastructure benefitting "sports undertakings" in its overview on antitrust, state aid and sports:⁴⁹

*"[...] there could be also cases where certain infrastructure does not have state aid relevance because it is strictly local and unlikely to impact trade between the EU Member States – for example a local swimming pool or ski lifts at resorts with few installations or limited accommodation for tourists. However, this might not be true for leisure parks, for example, which can be advertised outside the country in which they are located and specifically target customers from other Member States."*⁵⁰

In addition, the Icelandic authorities may look into the possibility of adopting aid schemes allowing for aid to the sports economy sector, based directly on Article 61(3)(c) EEA, insofar as a sports economy sector (economic sports activity) may exist in Iceland, taking into account the Hungarian sport sector scheme approved by the EU Commission in 2011, also referred to in the Authority's letter.⁵¹ The Icelandic authorities have taken note of the statistics provided in said Decision, for example that 45% of

⁴⁶ The current *de minimis* Regulation No. 1998/2006 ([IS - EN](#)), incorporated into the EEA Agreement, as well as the new and [revised de minimis Regulation](#) (EC) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (publication in the Official Journal foreseen on 24 December 2013, not yet incorporated into the EEA Agreement). According to the *de minimis* regulation, aid of no more than EUR 200 000 granted over a period of three years is not regarded as state aid.

⁴⁷ The current GBER No 800/2008 ([IS - EN](#)), incorporated into the EEA Agreement, and in particular the [upcoming new and expanded GBER II](#) (consolidated GBER) referred to above.

⁴⁸ http://ec.europa.eu/competition/consultations/2013_consolidated_gber/gber_regulation_en.pdf#page=18.

⁴⁹ See: http://ec.europa.eu/competition/sectors/sports/overview_en.html.

⁵⁰ The Icelandic authorities note that facilities such as "local swimming pools" are also referred to in paragraph 40 of the Authority's Guidelines on SGEI Compensation ([IS - EN](#)).

⁵¹ Hungarian sport sector support scheme referred to above.

sport facilities in the country are designated to serve small local settlements (with less than 2500 inhabitants). Other countries seem to be following in the footsteps of Hungary.⁵²

In order to provide the information above, the Ministry of Finance and Economic Affairs has sought advice from the Association of Local Authorities in Iceland and the City of Reykjavík. In gathering information for the purpose of reminding local authorities and provide guidance on the interplay between state aid rules and professional sports, the Ministry intends to also seek cooperation with the Ministry of Education, Science and Culture, ÍSÍ, KSÍ and potentially ICA. Such guidance could be in the form of sports oriented step by step instructions similar to those available *inter alia* on the website of the Scottish authorities.⁵³

A reminder of this sort could differentiate between two types of potential state aid recipients:

State aid to <u>professional</u> sports clubs or professional sports teams operated under the auspices of a sports club.	State aid to <u>commercial</u> sports infrastructure - owners - operators (if separate from owners).
• Aid falling below the <i>de minimis</i> threshold. • Personnel aid and infrastructure aid under the GBER. • A state aid scheme could be put in place as regards measures going beyond <i>de minimis</i> and GBER. • Individual state aid notifications. - Funding gaps determined. - Transparency and account separation.	• Aid falling below the <i>de minimis</i> threshold. • Infrastructure aid under the GBER. • A state aid scheme could be put in place as regards measures going beyond <i>de minimis</i> and GBER. • Individual state aid notifications. - Funding gaps determined. - Pricing conditions for use by prof. sports and other economic activity.

The Icelandic authorities note that in order for such a reminder to have the desired effects on measures undertaken by municipalities, greater clarity would be desirable, in particular with regard to the notion of professional sports.⁵⁴ In the meantime, the Icelandic authorities are at the Authority's disposal for further clarifications and discussions on these matters.

⁵² In November 2013 the EU Commission cleared a Belgian support scheme for football stadiums. See press release: http://europa.eu/rapid/press-release_IP-13-1120_en.htm?locale=en. At the time of this writing the Decision itself has not been published.

⁵³ "[How to assess if State Aid applies](#)". See also (from the UK authorities) "[State Aid – the basics](#)" and (from the Norwegian authorities) "Offentlig støtte til fotballklubber" (chapter 3.2.3 in the Norwegian Veileder - [EØS-avtalens regler om offentlig støtte](#) 2010).

⁵⁴ The new GBER is expected to be adopted in the second quarter of 2014.

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