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Ministry of Trade, Industry and Fisheries
PO Box 8090
Dep 0032 Oslo
Norway

Subject: Ad hoc aid to Drøbak Frogn Idrettsarena KF

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the ad hoc aid to Drøbak Frogn Idrettsarena KF (“Drøbak Frogn Idrettsarena”) (“the measures”), it considers that it constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measures, as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measures on 19 September 2025.²

3 Description of the measures

3.1 Background

3.1.1 The COVID-19 pandemic

- (3) The COVID-19 pandemic in Norway, and throughout the rest of the world, posed a serious hazard to life and health. To counteract the negative impact of the pandemic, Norway implemented strong preventative public health measures, both at national and regional/local level, which had a severe impact on the economy.
- (4) The COVID-19 pandemic in Norway (and in other countries) had a particularly severe impact on service sectors, including on fitness centres.³ Fitness centres were subject to restrictions such as ensuring a minimum distance of one metre between customers that do not form part of the same household and setting maximum requirements on the number of customers able to use the fitness centres,

¹ Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document No 1562890.

³ Article of 30 April 2020 from Statistics Norway on sectors affected by the preventative COVID-19 measures taken by the Norwegian authorities, available at [Store tjenestenæringer berørt av myndighetenes smittevernstiltak - SSB](#).

including the requirement of using extra security if necessary.⁴ For limited periods, fitness centres were required to maintain for high-intensity activities a minimum distance of two metres between customers not forming part of the same household and to limit group trainings to 20 people.

- (5) During 2020, 2021 and 2022, the contamination level fluctuated in what was described as waves in the Coronavirus Special Committee Report.⁵ At the end of 2020, containment measures were in place, including a requirement of a minimum distance of one metre between people not forming part of the same household and a national recommendation of a maximum of five guests within the same household.⁶ Towards the end of 2021 and the start of 2022, Norway experienced what was characterised as the sixth wave, with the introduction of the omicron variant.⁷ For example, during the second week of February 2022, 296 patients were admitted to hospital in Norway with COVID-19 as the main cause.⁸
- (6) Although the level of contamination was rising quickly, the Norwegian authorities stated that they would remove most of the infection control measures on 7 February 2022, including the distancing requirement and the requirement of isolation in the event of sickness.⁹ The reasoning was that the omicron variant gave rise to less severe effects, and that a large portion of the population was vaccinated.¹⁰
- (7) As mentioned, the contamination levels were still increasing rapidly. As an example, on 12 February 2022, the day when the restrictive measures were lifted in Norway, 43 people were admitted to hospital in Norway with COVID-19, and in the following week, 84 people died of or with COVID-19.¹¹ At the end of April 2022, the Norwegian Institute of Public Health announced a decline in the spread of the virus, but at the turn of May and June 2022, the contamination level was again rising.¹² The summer of 2022 showed a high contamination level, many patients being admitted to hospitals with COVID-19 and a high number of people dying of or with COVID-19, although without the government reintroducing anti-contamination measures to the general population.¹³

3.1.2 Drøbak Frogn Idrettsarena

- (8) Drøbak Frogn Idrettsarena was a company part of the Norwegian municipality of Frogn, without separate legal personality. It was established as a municipal

⁴ See the Norwegian COVID-19 regulation of [2020-03-27-470](#) § 14a(1), as amended by amendment regulation of [2021-12-08-3425](#).

⁵ The Coronavirus Special Committee Report, delivered to the Norwegian Prime Minister on 2 June 2023. Available here: [NOU 2023:16, Evaluering av pandemihåndteringen, Rapport fra Koronautvalget](#), page 18. English summary to be found [here](#).

⁶ Ibid, page 20. As an exception, it was permitted to have a maximum of ten guests for two days during Christmas.

⁷ Ibid, page 37.

⁸ Weekly report on the COVID-19 pandemic by the Norwegian Institute of Public Health, Week 6 (7-13 February 2022), page 3. Available [here](#).

⁹ The Coronavirus Special Committee Report, delivered to the Norwegian Prime Minister on 2 June 2023. Available here: [NOU 2023:16, Evaluering av pandemihåndteringen, Rapport fra Koronautvalget](#), pages 41-42. English summary to be found [here](#).

¹⁰ Ibid, page 39.

¹¹ Ibid, page 42.

¹² Ibid.

¹³ Ibid.

company in accordance with chapter nine of the Norwegian Municipal Act (“the Municipal Act”).¹⁴ Under Norwegian law, a municipal company is considered part of the municipality, which entails that the municipality is required to ensure that the municipal company’s obligations towards third parties are met.¹⁵

- (9) In June 2019, Drøbak Frogn Idrettsarena opened Bølgen bad. Bølgen bad is a combined swimming pool, café and a health clinic. Drøbak Frogn Idrettsarena also opened at the same time a fitness centre (“the fitness centre”), which was a part of Bølgen bad. Frogn municipality originally announced a tender for the operation of the fitness centre on 28 May 2015, which was won by the Swedish-owned chain Actic.¹⁶ Frogn municipality and Actic signed a letter of intent on 29 June 2015, granting Actic the exclusive right to continue negotiations with the municipality.¹⁷ The parties did not reach an agreement and on 6 Juli 2016, Frogn municipality informed Actic by email that the letter of intent was no longer in effect.¹⁸ The municipality instead decided that the responsibility for operating the fitness centre should fall to Drøbak Frogn Idrettsarena.¹⁹
- (10) According to the Norwegian authorities, the fitness centre is operated on a commercial basis and with separate accounts from Drøbak Frogn Idrettsarena’s other activities.²⁰
- (11) The main income for the fitness centre is the monthly subscription fee.²¹ Drøbak Frogn Idrettsarena offers various types of memberships, including general, youth, student, senior and combined swimming and training memberships. At the time of the first lockdown in Norway on 12 March 2020, the fitness centre had operated for approximately nine months.²² At this point, the fitness centre had acquired approximately 1 100 memberships, according to the Norwegian authorities.²³
- (12) During the COVID-19 pandemic, revenues from memberships severely decreased according to the Norwegian authorities, as the COVID-19 pandemic led to the termination of frozen memberships and prevented membership growth. By December 2020, the number of memberships for the fitness centre had dropped to 875. By December 2021, the number of memberships had increased to 1 078.²⁴

¹⁴ Chapter nine of the Norwegian [Municipal Act of 22 June 2018 No 83](#).

¹⁵ The Municipal Act §§ 9-1(2).

¹⁶ Supreme Court judgment [HR-2024-2041-A](#) of 7 November 2024 and Follo and Nordre Østfold District Court judgment [TFNO-2022-65629](#) of 13 January 2023.

¹⁷ Follo and Nordre Østfold District Court judgment [TFNO-2022-65629](#) of 13 January 2023.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Document No 1562890.

²¹ Document No 1562890.

²² Document No 1562890.

²³ Document No 1562890.

²⁴ Document No 1562890.

Figure 1: Membership numbers for the fitness centre 2020-2025

- (13) As a result, the fitness centre, and thereby Drøbak Frogn Idrettsarena, suffered substantial losses during the COVID-19 pandemic. According to the Norwegian authorities, the fitness centre suffered losses of NOK 5.8 million in 2020 (approximately EUR 491 109), NOK 3.78 million (approximately EUR 320 068) in 2021 and NOK 2.34 million (approximately EUR 198 137) in 2022.²⁵ As stated in paragraph (8), the municipality was under the obligation to cover the costs for the operation of the fitness centre. The municipality recorded the resulting losses as a so-called “negative fund” in the fitness centre’s accounts. According to the Norwegian authorities, the purpose of such a fund is to keep track of the fitness centre’s losses and ensure their coverage through the fitness centre’s future profits. However, no specific contractual terms and conditions apply to the negative fund, considering that neither the fitness centre nor Drøbak Frogn Idrettsarena is a legal entity separate from the municipality.²⁶
- (14) In November 2021, Frogn municipality engaged the external consultancy firm BDO to prepare a report to, among other things, analyse the future profitability of the fitness centre. BDO examined different scenarios of customer growth and concluded in its report of 3 February 2022 (“the 2022 report”) that the fitness centre would achieve long-term profitability based on the report’s base growth scenario.²⁷ The 2022 report also reviewed whether it was feasible for the fitness centre to repay the amount stated in the negative fund to Frogn municipality under the assumption that the fund was to be treated as a loan from Frogn municipality with an interest rate of 1.07%.²⁸ According to the report, the fitness centre would not be able to repay such a loan covering the investments and losses made during the COVID-19 pandemic.²⁹ The report therefore recommended that Frogn municipality award

²⁵ Document No 1562890. The exchange rate is based on the Euro Foreign Exchange Reference Rate on 1 August 2025 for all amounts converted from NOK to EUR in this decision (available online [here](#)).

²⁶ Document No 1562890.

²⁷ Document No 1562900.

²⁸ Document No 1562900.

²⁹ Document No 1562900.

Drøbak Frogn Idrettsarena a direct grant covering the losses of the fitness centre for the period of 2021 and 2022.³⁰

3.2 The measures

- (15) On 16 February 2022, Frogn municipal council adopted on the basis of the 2022 report a decision granting aid to Drøbak Frogn Idrettsarena in the amounts of (i) NOK 5.104 million (approximately EUR 432 176), to cover the fitness centre's recorded losses for 2021, as well as (ii) NOK 5.5 million (approximately EUR 465 707), to cover a large part of the fitness centre's estimated costs for 2022.³¹ The decision included a mechanism entailing that the aid for 2022 would be reduced ex post to only cover actual losses. The amounts of aid actually awarded for 2021 and 2022 turned out to be lower than indicated in Frogn municipal council's decision of 16 February 2022, see paragraph (25) below.
- (16) In June 2024, Drøbak Frogn Idrettsarena was dissolved, and Frogn municipality has since taken over all the operations of the municipal company.³²

3.3 Proceedings before the Norwegian courts

- (17) On 4 May 2022, the fitness centres Fitness Group Nordic AS, Drøbak Yoga Studio Lisbeth Wavik and Family Sports Club AS initiated a lawsuit against Frogn municipality before the Norwegian Follo and Nordre Østfold District Court.³³ The claimants put forward a number of claims, among others asserting that the aid granted to Drøbak Frogn Idrettsarena to cover the fitness centre's recorded losses for 2021 and parts of its budgeted costs for 2022 constituted unlawful State aid.³⁴
- (18) The Follo and Nordre Østfold District Court dismissed all claims against Frogn municipality. On appeal, the Eidsivating Appellate Court found that Frogn municipality had granted unlawful State aid to Drøbak Frogn Idrettsarena and ordered the municipality to pay damages to the three above mentioned fitness centres.³⁵ The judgment was appealed by Frogn municipality to the Norwegian Supreme Court, which annulled on 7 November 2024 the judgment of the Eidsivating Appellate Court on account of a lack of an assessment of whether the measures constituted an advantage and referred the case back to the Eidsivating Appellate Court.³⁶
- (19) On 25 July 2025, the Eidsivating Appellate Court found the measures to constitute an advantage as a private market economy operator would not have continued operating the fitness centre in 2021 and 2022.³⁷ The Eidsivating Appellate Court

³⁰ Document No 1562900.

³¹ Decision by Frogn municipal council of 16 February 2022 (available online [here](#)). The Norwegian authorities have explained that the aid for 2022 covers 80% of the fitness centre's budgeted costs for 2022. In 2020, the fitness centre experienced accumulated losses of approximately NOK 5.8 million (approximately EUR 491 109), according to Document No 1562890. This measure (i.e. the coverage of the losses of the fitness centre relating to 2020) was, however, not notified by the Norwegian authorities to ESA and is not part of the present decision.

³² Document No 1562890.

³³ Follo and Nordre Østfold District Court judgment [TFNO-2022-65629](#) of 13 January 2023.

³⁴ Ibid.

³⁵ Eidsivating Appellate Court judgment [LE-2023-42043](#) of 6 October 2023.

³⁶ Supreme Court judgment [HR-2024-2041-A](#) of 7 November 2024.

³⁷ Eidsivating Appellate Court judgment [LE-2024-175972](#) of 25 July 2025.

therefore concluded that the aid was unlawful and ordered Frogn municipality to pay damages to the three abovementioned fitness centres.

3.4 Objective

- (20) The objective of the measures was to facilitate the continued operation of the fitness centre. The measures are part of a broader set of measures adopted by the Norwegian authorities aimed at remedying the situation of local undertakings that were particularly affected by local or national infection control measures or the economic effects of the COVID-19 pandemic, which in turn helped secure employment and a faster recovery of the economy after the crisis (see paragraph (68)).
- (21) The aid also aimed to increase the level of physical activity amongst the local population and thereby to improve the health and well-being of the population.

3.5 Aid granting authority

- (22) The aid granting authority is Frogn municipality.

3.6 Beneficiary

- (23) The beneficiary is the municipally owned company Drøbak Frogn Idrettsarena, which operated Bølgen bad, including the fitness centre, at the time of granting the aid.

3.7 Aid instrument, intensity, eligible costs, budget, duration

- (24) The aid was granted to Drøbak Frogn Idrettsarena by Frogn municipal council's decision of 16 February 2022 to cover a large part of the fitness centre's losses for 2021 and 2022.³⁸ The aid was given as operating aid.
- (25) In 2021, the losses of the fitness centre were equal to NOK 3.78 million (approximately EUR 320 068).³⁹ In 2022, the losses amounted to NOK 2.34 million (approximately EUR 198 137). The aid provided under the measures covered 100% of the losses incurred by the fitness centre in 2021 and 2022. Therefore, the aid awarded turned out to be lower than the amounts indicated in Frogn municipal council's decision (see paragraph (15) above).

4 Presence of State aid

4.1 Introduction

- (26) 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 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."

³⁸ Decision by Frogn municipal council of 16 February 2022 (available online [here](#)).

³⁹ Document No 1562890. The annual accounts for 2021 were not yet finalised when Frogn municipal council adopted its decision on 16 February 2022. The losses for 2021 were initially set to NOK 5.104 million (approximately EUR 432 176). The aid amount was later reduced due to the discovery of a technical error that had led to so-called combined subscriptions being attributed only to the swimming pool. As ESA considers that the aid for 2021 corresponds to the actual losses incurred, this is not decisive.

- (27) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

4.2 Presence of State resources and imputability

- (28) Imputability of a measure to the State and the granting of an advantage through State resources are two separate and cumulative conditions for the existence of State aid, which are, however, often assessed together as they both relate to the public origin of the measure in question.⁴⁰
- (29) Regarding imputability, the measure is by definition imputable to the State if the advantage is granted by a public authority, even if the latter enjoys legal autonomy from other public authorities.⁴¹ In this case, the aid was granted by Frogn municipality and is therefore imputable to the State.
- (30) As to the requirement that State resources be involved, those include all resources of the public sector, including resources of municipalities.⁴² In this case, the aid was granted through resources of Frogn municipality and therefore through State resources.

4.3 Conferring an advantage on an undertaking

- (31) An advantage within the meaning of Article 61(1) of the EEA Agreement is any economic benefit which an undertaking could not have obtained under normal market conditions.⁴³
- (32) The characterisation of such an advantage as existing is, in principle, carried out by applying the market economy operator principle, unless there is no possibility of comparing the State conduct at issue with that of a private operator because (i) that conduct is inseparably linked with the existence of infrastructure that no private operator would ever have been able to create, or (ii) the State acted in its capacity as public authority. It is the economic nature of the State intervention at issue and not the means put into effect for that purpose that renders the market economy operator principle applicable.⁴⁴
- (33) It follows from the above that in the present case, the applicability of the market economy operator principle depends on Frogn municipality having acted in its capacity as economic operator and not in its capacity as public authority.⁴⁵ ESA considers that the conduct of Frogn municipality, which involved granting continued support to the fitness centre it owned (as part of Drøbak Frogn Idrettsarena), can be usefully compared to that of a private investor. ESA thus takes the view that the municipality acted as an owner and thereby as an economic operator when granting

⁴⁰ ESA's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement ("NoA") ([OJ L 342, 21.12.2017, p. 35](#) and EEA Supplement No 82, 21.12.2017, p. 1), paragraph 38.

⁴¹ NoA, paragraph 39.

⁴² NoA, paragraph 48 and the case law cited.

⁴³ NoA, paragraph 66 and the case law cited.

⁴⁴ See judgment of 17 November 2022, *Volotea v Commission*, Joint Cases C-331/20 P and C-343/20 P, EU:C:2022:886, paragraph 108.

⁴⁵ See judgment of 5 June 2012, *Commission v EDF*, Case C-124/10 P, EU:C:2012:318, paragraphs 79-82 and 87.

the aid. Accordingly, ESA finds the market economy operator principle to be applicable.

- (34) Regarding the application of the market economy operator principle, as the aid was granted by Frogn municipality, which was also the sole owner of Drøbak Frogn Idrettsarena and the associated fitness centre, it is necessary to assess whether a private investor operating in normal conditions of a market economy would have carried out the measures. Applying the market economy operator principle involves ESA showing that Drøbak Frogn Idrettsarena and the associated fitness centre would manifestly not have obtained a comparable advantage from a normally prudent and diligent private operator in a situation that is as alike as possible and acting under normal market conditions.⁴⁶
- (35) In ESA's assessment, through the adoption of the measures, Frogn municipality provided support to the fitness centre in 2021 and 2022, by means of annual operating loss coverage. As such, ESA considers Frogn municipality's decision of 16 February 2022 to cover losses through what the municipality refers to as a grant, instead of recording them in the negative fund (see paragraphs (13)-(14)), merely as an accounting choice. That is because of Frogn municipality's obligation to cover any operating loss of the fitness centre (see paragraphs (8) and (13)), which can only be avoided by terminating its operation, by way of a sale or by closing down operations.
- (36) Based on these considerations, ESA finds that the aid covering the losses incurred in 2021 was granted on a continuous basis throughout 2021, by Frogn municipality's tacit choice to support the operation of the fitness centre during that period (and subsequently confirmed by its decision of 16 February 2022). Furthermore, additional aid was granted on 16 February 2022, by Frogn municipal council's decision to cover the fitness centre's losses for 2022, and hence by the implicit decision of Frogn municipality to continue the operations of the fitness centre for 2022.
- (37) Regarding Frogn municipality's tacit choice to continue operating the fitness centre in 2021 and incur the risk of covering its losses, ESA observes that, according to case law, failure to take action may qualify as an intervention giving rise to an advantage.⁴⁷ That is when a private operator in a situation as close as possible to that of the granting authority, acting under normal market conditions, would have taken action.⁴⁸
- (38) ESA finds that the first option available to Frogn municipality corresponds to the adoption of the measures, that is to continue operating the fitness centre and incurring the risk of covering its losses. The second option available to Frogn

⁴⁶ See judgment of 17 November 2022, *Volotea v Commission*, Joint Cases C-331/20 P and C-343/20 P, EU:C:2022:886, paragraph 113.

⁴⁷ See e.g. judgment of the General Court of 13 September 2010, *Greece and Others v Commission*, Joined Cases T-415/05, T-416/05 and T-423/05, EU:T:2010:386, paragraphs 377 to 393, and judgment of the Court of Justice of 12 October 2000, *Magefesa*, C-480/98, EU:C:2000:559, paragraphs 19 and 20.

⁴⁸ See as an example Commission [Decision No SA.50952](#), *Alleged State aid to DB Cargo*, OJEU L/2025/1167, 30.6.2025, paragraph 374.

municipality was to eliminate or mitigate such risk, by either closing the fitness centre or taking other action to reduce its costs.

- (39) ESA considers that a prudent market operator would not have further supported the fitness centre and covered the actual losses for 2021 and 2022. At the time of granting the aid, the fitness centre had already incurred substantial losses from the COVID-19 pandemic (see paragraphs (12)-(15), (25)-(25) and footnote 31). The pandemic had also severely limited the membership growth of the fitness centre starting only nine months after the opening of the centre (see paragraphs (11)-(12), and figure 1). The contamination level was rising, and there was considerable uncertainty regarding future developments, including whether new mutations would emerge (see paragraphs (5)-(7)). Therefore, ESA finds that at least from January 2021 onwards, a prudent market operator would have either closed down the fitness centre or taken other measures to limit its losses. ESA also notes that, according to the 2022 report, the fitness centre would not be profitable enough to cover the 2021 actual and 2022 expected losses. This indicates that a private operator would not have continued supporting and operating the fitness centre.
- (40) In conclusion, ESA finds that the measures confer an economic advantage on Drøbak Frogn Idrettsarena.

4.4 Selectivity

- (41) To fall within the scope of Article 61(1) of the EEA Agreement, a State measure must favour 'certain undertakings or the production of certain goods'. Hence, not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.⁴⁹
- (42) The advantage granted by the measures is selective, since the aid was awarded only to one specific undertaking, i.e., Drøbak Frogn Idrettsarena.

4.5 Effect on trade and distortion of competition

- (43) In order to constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement. While these are two distinct conditions, they are in practice often treated jointly in the assessment of State aid as they are, as a rule, considered inextricably linked.⁵⁰
- (44) The measures are liable to distort competition, since they strengthen the competitive position of Drøbak Frogn Idrettsarena compared to other undertakings with which it competes.⁵¹
- (45) As regards effect on trade, the EEA Courts have ruled that where State aid strengthens the position of an undertaking as compared with other undertakings in intra-EEA trade, the latter must be regarded as affected by the aid.⁵² A public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have

⁴⁹ NoA, paragraph 117.

⁵⁰ NoA, paragraphs 185-186.

⁵¹ NoA, paragraph 187.

⁵² NoA, paragraph 190.

an effect on trade between EEA States where undertakings from other EEA States could provide such services (also through the right of establishment) and that possibility is not merely hypothetical.⁵³

- (46) The European Commission and ESA have in a number of decisions considered, in view of the specific circumstances of the cases, that a measure had a purely local impact and consequently had no effect on trade between EEA States.⁵⁴ In those cases, the European Commission and ESA ascertained in particular that the beneficiary supplied goods or services to a limited area within an EEA State and was unlikely to attract customers from other EEA States, and that it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment.
- (47) The Norwegian authorities have informed ESA that the fitness centre primarily serves local customers, and is unlikely to attract customers from other EEA States. However, ESA considers the support provided by the municipality to the fitness centre to have more than a marginal effect on the conditions of cross-border investments or establishment. This is due to the attractiveness of the fitness centre to foreign investors, as shown in particular by the fact that the Swedish-owned chain Actic originally won the tender to operate the fitness centre (see paragraph (9)), in addition to at least one fitness centre with owners from other EEA States operating in Drøbak.⁵⁵ Therefore, the measures are liable to distort competition and affect trade between EEA States.

4.6 Conclusion

- (48) In view of the assessment set out in the above paragraphs (28)-(47), ESA finds that the measures fulfil all the conditions in Article 61(1) of the EEA Agreement. They therefore constitute State aid within the meaning of this provision. The Norwegian authorities do not contest that conclusion.

5 Aid scheme or individual aid

- (49) ESA notes that the aid was granted solely for the benefit of Drøbak Frogn Idrettsarena and was not granted on the basis of a scheme.⁵⁶ The aid is therefore individual aid.

6 Lawfulness of the aid

- (50) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3 SCA"): "The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision."
- (51) The Norwegian authorities did not notify the measures to ESA. ESA therefore concludes that the Norwegian authorities have not respected their obligations

⁵³ NoA, paragraph 192.

⁵⁴ NoA, paragraph 196.

⁵⁵ Fitness Group Nordic AS operated a fitness centre in Drøbak, as well as training centres in Germany, Austria and Switzerland, according to Document No 1562890.

⁵⁶ See Article 1(e) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

pursuant to Article 1(3) of Part I of Protocol 3 SCA. The granting of the aid in 2021 (through the support provided on a continuous basis) and on 16 February 2022 (through Frogn municipal council's decision) was therefore unlawful.

7 Compatibility of the aid

7.1 Introduction

- (52) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement. The Norwegian authorities invoke Article 61(3)(b) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measures. According to Article 61(3)(b) of the EEA Agreement, aid may be granted to remedy a serious disturbance in the economy of an EEA State.
- (53) In most cases, the conditions for granting State aid under Article 61(2) and 61(3) of the EEA Agreement are outlined in ESA's State aid guidelines. Where applicable, the compatibility assessment should be based on the guidelines as they stand at the time of granting the aid. The Temporary Framework for State aid measures to support the economy in the COVID-19 outbreak ("the Temporary Framework") provides guidance on aid granted to remedy the effect on the economy from the COVID-19 pandemic and the contamination measures implemented by the national authorities.⁵⁷ However, the Temporary Framework is not applicable in the present case, as the relevant chapters of the Temporary Framework concern aid schemes,⁵⁸ whereas the measures concerned in this decision are considered ad hoc aid (i.e. individual aid not awarded on the basis of an aid scheme).
- (54) In this regard, ESA notes that most private undertakings that were experiencing a loss of turnover during the COVID-19 pandemic were covered by general aid schemes notified by the Norwegian authorities under the Temporary Framework. However, these schemes exclude publicly owned undertakings, and therefore also Drøbak Frogn Idrettsarena (see paragraph (68)). Drøbak Frogn Idrettsarena was municipally owned, and the aid was granted by Frogn municipality. As Drøbak Frogn Idrettsarena was a publicly owned undertaking, it would not have been feasible for the municipality to grant the aid through an already existing aid scheme, such as the umbrella scheme for liquidity support for undertakings in municipalities hit by the pandemic, given that the scope of that scheme was restricted to private undertakings (see paragraph (68)). Nor would the creation by the Norwegian authorities of a new aid scheme with Frogn municipality as aid grantor have been a suitable option, as Frogn municipality did not own other public undertakings in a similar situation as Drøbak Frogn Idrettsarena.

⁵⁷ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, amended several times, in particular (i) on 3.4.2020, OJ C 112, 4.4.2020, p. 1, (ii) on 8.5.2020, OJ C 164, 13.5.2020, p. 3, (iii) on 29.6.2020, OJ C 218, 2.7.2020, p. 3, (iv) on 13.10.2020, OJ C 340, 13.10.2020, p. 1, (v) on 28.01.2021, OJ C 34, 01.02.2021, p. 6. and (vi) on 18.11. 2021, OJ C 473, 24.11.2021, p. 1 ("the Temporary Framework, sixth amendment"). A seventh amendment was adopted on 28.10.2022, OJ C 423, 7.11.2022, p. 9, but the amendments are not relevant for the present decision.

⁵⁸ Temporary Framework, sixth amendment, Sections 3.1 (limited amounts of aid) and 3.12 (aid in the form of support for uncovered fixed costs).

- (55) According to its paragraph 16, the Temporary Framework does not prevent EEA States from notifying alternative approaches to remedy a serious disturbance in their economy.⁵⁹ Additionally, the General Court has recognised that the State may grant aid which helps to remedy a serious disturbance through a number of measures, which might take the form of individual aid or of an aid scheme, each contributing to that end.⁶⁰ ESA finds that there are no existing State aid guidelines applicable to the measures at hand, and ESA will therefore assess the aid to Drøbak Frogn Idrettsarena directly under Article 61(3)(b) of the EEA Agreement.⁶¹
- (56) As for any derogation from the prohibition on State aid enshrined in Article 61(1) of the EEA Agreement, the compatibility exception pursuant to Article 61(3)(b) of the EEA Agreement must be interpreted and applied restrictively. Such a strict application requires that the EEA State is indeed faced with a serious disturbance in its economy and that the aid measures adopted to remedy that disturbance are necessary for that purpose and appropriate and proportionate.⁶²

7.2 The disturbance in the Norwegian economy

- (57) The COVID-19 pandemic posed a serious hazard for life and health. To counteract the negative impact of the outbreak, Norway implemented strong preventative public health measures, such as isolation and quarantine requirements, restrictions on the provision of certain services requiring close contact between the customer and the service provider, and a general recommendation for all people to practice social distancing.⁶³ As noted in paragraph (4) above, these preventative measures also affected fitness centres.
- (58) ESA has recognised the existence of a serious disturbance in the Norwegian economy as a result of the COVID-19 pandemic in multiple cases, including in its decisions on *the COVID-19 renewal and amendments to the aid scheme for undertakings suffering a substantial loss of turnover*⁶⁴ and *the COVID-19 liquidity support grant scheme for undertakings in the tourism sector*.⁶⁵
- (59) Similarly, the European Commission acknowledged that “the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”.⁶⁶ It has further stated that State aid may be justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to ensure that the disruptions caused by the

⁵⁹ Temporary Framework, sixth amendment, paragraph 16.

⁶⁰ Judgment of 14 April 2021, T-388/20, *Ryanair v Commission*, EU:T:2021:196, paragraph 41, confirmed upon appeal.

⁶¹ See, for examples of measures assessed directly under Article 107(3)(b) TFEU, Commission [Decision No SA.56903](#), *COVID-19: State guarantee for the reinsurance cover of domestic trade credit insurance risks*, OJEU C/2020/168, 15.5.2020, paragraph 61, and Commission [Decision No SA.61945](#), *aid scheme for mink farmers and related businesses affected by the COVID-19 outbreak*, OJEU C/2021/195, 21.05.2021, paragraphs 141-142.

⁶² Judgment of 22 June 2022, *Ryanair v Commission*, Case T-657/20, EU:T:2022:390, paragraph 107, upheld upon appeal.

⁶³ Historical archives containing an overview of the national containment measures: [Nasjonale tiltak - Historisk arkiv](#) and [Koronavirus - beslutninger og anbefalinger \(Arkivert\)](#).

⁶⁴ ESA [Decision No 057/21/COL](#), *COVID-19 renewal and amendments to the aid scheme for undertakings suffering a substantial loss of turnover*, paragraph 58.

⁶⁵ ESA [Decision No 084/20/COL](#), *COVID-19 liquidity support grant scheme for undertakings in the tourism sector*, paragraph 38.

⁶⁶ Temporary Framework, sixth amendment, Section 2.

COVID-19 pandemic do not lead to the exit of otherwise viable undertakings from the market.⁶⁷

- (60) Additionally, the General Court has recognised the existence of a serious disturbance in the economy of a Member State as a result of the COVID-19 pandemic.⁶⁸
- (61) Therefore, ESA concludes that the COVID-19 pandemic constituted a serious disturbance in the Norwegian economy.

7.3 Appropriateness

- (62) EEA States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 61(1) of the EEA Agreement can only be justified by the appropriateness of a particular instrument to contribute to its objective of remedying a serious disturbance in the economy.
- (63) ESA normally considers that a measure is an appropriate instrument where the EEA EFTA State can demonstrate that alternative policy options would not be equally suitable to contribute to the development of economic activities or areas and where it can demonstrate that alternative, less distortive, aid instruments would not deliver equally efficient outcomes.
- (64) ESA considers that the municipality's alternative to covering the costs of the fitness centre would have been to close down its operation or to take other action to reduce its costs (see paragraphs (38)-(39)). This alternative would not have been equally suitable to achieve the objective of the measures, i.e. to facilitate the continued operation of the fitness centre (see paragraph (20)). Moreover, there are also no other, less distortive aid instruments which would have achieved this objective in the same manner.
- (65) Based on this, ESA considers that covering Drøbak Frogn Idrettsarena's losses was an appropriate instrument to contribute to the continued operations of the fitness centre, which in turn helped remedy the situation for local undertakings affected by the infection control measures and therefore helped remedying a serious disturbance in the economy.
- (66) In order to be appropriate, the measure must also be well targeted to its objective of remedying a serious disturbance in the economy.⁶⁹
- (67) It follows from case law that an aid measure granted under Article 61(3)(b) of the EEA Agreement may be directed at remedying a serious disturbance in the economy, irrespective of the fact that it does not remedy that disturbance in its entirety.⁷⁰ Therefore, and as noted above, the State may grant aid which helps to

⁶⁷ Ibid.

⁶⁸ See judgment of 17 February 2021, Case T-238/20, *Ryanair v Commission*, EU:T:2021:91, paragraph 33, upheld upon appeal.

⁶⁹ ESA [Decision No 050/20/COL](#), *COVID-19 Spectrum payments deferrals for Ice*, paragraph 108.

⁷⁰ Judgment of 10 May 2023, Case T-102/21, *Bastion Holding v Commission*, EU:T:2023:243, paragraph 57; and judgment of 7 November 2024, Case C-588/22 P, *Ryanair v Commission*, EU:C:2024:935, paragraphs 36-40.

remedy that serious disturbance through a number of measures, which might take the form of individual aid or of an aid scheme, each contributing to that end.⁷¹

- (68) The measure is part of a series of measures adopted by the Norwegian authorities in order to remedy a serious disturbance in their economy. In particular, the Norwegian authorities have implemented multiple aid schemes aimed at compensating undertakings for their loss of turnover due to the COVID-19 pandemic and thereby limiting the damage caused to the economy by the pandemic. The aid scheme for undertakings suffering a substantial loss of turnover enables undertakings, including private undertakings in the fitness sector, that are suffering a substantial loss of turnover to obtain compensation covering a percentage of their losses of turnover.⁷² Further, the municipal umbrella scheme entails that municipalities can create aid schemes for local undertakings affected by the pandemic and its consequences on the economy, including by covering losses due to lost turnover, revenue or income.⁷³ Both of these schemes are however limited to private undertakings, excluding thus a municipal company such as Drøbak Frogn Idrettsarena.
- (69) ESA finds that the granting of aid to Drøbak Frogn Idrettsarena as an undertaking affected by the COVID-19 pandemic and the following restrictive measures helped remedy the economic effects of the pandemic and ensure a faster recovery. In particular, ESA finds that the combined effect of multiple measures (see paragraph (68)) helped ensure a faster recovery of the economy after the COVID-19 pandemic. ESA therefore considers that State aid was the appropriate instrument in this case to remedy a serious disturbance in the economy of an EFTA State.

7.4 Necessity

- (70) In order to meet the compatibility criterion of necessity, the aid measure must be necessary, in its amount and form, to achieve the objective of the aid.⁷⁴
- (71) The objective of the measures was to support the operation of the fitness centre, whose viability was jeopardised due to the economic impact of the COVID-19 pandemic. This was part of a broader set of measures adopted by the Norwegian authorities aimed at remedying the situation of local undertakings that were particularly affected by local or national infection control measures or the economic recession following from the COVID-19 pandemic, which in turn helped secure employment and a faster recovery of the economy after the crisis (see paragraph (68)).
- (72) The fitness centre experienced substantial losses due to the COVID-19 pandemic. In 2020, the fitness centre experienced accumulated losses of approximately NOK 5.8 million (approximately EUR 491 109).⁷⁵ It also experienced losses of NOK 3.78 million (approximately EUR 320 068) in 2021 and expected losses exceeding NOK 5.5 million (approximately EUR 465 707) for 2022, with actual

⁷¹ Judgment of 14 April 2021, Case T-388/20, *Ryanair v Commission*, EU:T:2021:196, paragraph 41, confirmed upon appeal.

⁷² ESA [Decision No 039/20/COL](#), *COVID-19 Grant scheme for undertakings suffering a substantial loss of turnover*, and subsequent amendment decisions.

⁷³ ESA [Decision No 031/21/COL](#), *COVID-19 Umbrella scheme for liquidity support for undertakings in municipalities hit by the pandemic*, and subsequent amendment.

⁷⁴ ESA [Decision No 050/20/COL](#), *COVID-19 Spectrum payments deferrals for Ice*, paragraph 127.

⁷⁵ See paragraph (13) and paragraph (15), footnote 31.

losses for 2022 amounting to NOK 2.34 million (approximately EUR 198 137) (see paragraphs (15) and (25)). According to the Norwegian authorities, the fitness centre would not have been able to cover its operating expenses for 2021 and 2022 without the aid.⁷⁶

- (73) The aid for 2021 (provided throughout that year on a continuous basis, see paragraph (36)) covered the losses recorded during a period with restrictive measures in place through most of the period, and where the uncertainty was generally high (see paragraphs (4)-(5)).
- (74) At the time of granting the aid for 2022 (provided on 16 February 2022 through Frogn municipal council's decision, see paragraph (36)), even though the government had relinquished most of the restrictive measures, there was still considerable uncertainty (see paragraphs (5)-(7)). Since the COVID-19 pandemic at this point had been ongoing for almost two years, there was still considerable uncertainty as to the duration of the pandemic. It was therefore necessary for Drøbak Frogn Idrettsarena to have some certainty regarding the financial situation of the fitness centre going forward. The Norwegian authorities also point to the restrictions still being active in January 2022, meaning that the fitness centre was unable to benefit from what is normally the most important month of the year in terms of acquiring new members.⁷⁷ The contamination level was high both in the first months of 2022, and during the summer of 2022, and the fitness centre did not come close to regaining the membership level from before the pandemic until the end of 2022 (see paragraphs (7) and (12), and figure 1).
- (75) Additionally, the 2022 report assessed whether Drøbak Frogn Idrettsarena would be able to repay the loans that were granted to it to cover the investment and losses during the pandemic (see paragraph (14)). The report concluded that it would not be profitable to continue the operations of the fitness centre without granting the aid. Furthermore, the Norwegian authorities have confirmed that the aid for 2021 and 2022 was necessary in order for the fitness centre to continue its operations. Drøbak Frogn Idrettsarena would thus in all probability have needed to terminate the operations of the fitness centre without the aid.
- (76) Furthermore, ESA observes that, according to the 2022 report, the fitness centre would achieve long-term profitability based on its base scenario, meaning the fitness centre was viewed as profitable under normal circumstances.⁷⁸ As such, ESA considers this an indication that the fitness centre would have become viable if it was not for the COVID-19-related losses.
- (77) The objective of the measures was to facilitate the continued operation of the fitness centre, as part of a wider objective to remedy the situation for local undertakings affected by the COVID-19 pandemic and the related infection control measures. This in turn was meant to help secure employment and a faster recovery after the crisis (see paragraph (20)), also considering the fitness centre's prospects of returning to viability (see paragraph (14)).

⁷⁶ Document No 1562890.

⁷⁷ Document No 1562890.

⁷⁸ Document No 1562900.

- (78) The aid also aimed at increasing the level of physical activity amongst the local population and thereby at improving the health and well-being of the population. It was therefore in the general interest to keep the fitness centre open to the benefit of the local population.
- (79) In light of the foregoing, ESA finds that the aid was necessary to facilitate Drøbak Frogn Idrettsarena's continued operations, which in turn helped remedying the situation of local undertakings affected by the COVID-19 pandemic and ensuring a faster recovery of the economy after the crisis.

7.5 Proportionality

- (80) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.
- (81) For 2021 and 2022, the aid was limited to the fitness centre's recorded losses (see paragraph (25)).⁷⁹ ESA has previously approved aid under Article 61(3)(b) of the EEA Agreement covering up to 100% of the actual losses.⁸⁰ The aid amount is modest, with the total aid being NOK 6.12 million (approximately EUR 518 204). ESA notes that the Temporary Framework, although not directly applicable, can provide guidance to identify the relevant principles to assess the proportionality of the measures. ESA notes in this regard that the aid is well below the ceiling provided in point 22(a) of the Temporary Framework, i.e. EUR 800 000 to EUR 2.3 million per undertaking.⁸¹
- (82) According to the Norwegian authorities, the losses in the annual accounts have been assessed and revised by Frogn municipality, thereby ensuring that the aid was indeed limited to the actual losses.
- (83) ESA also notes that according to the annual accounts of Drøbak Frogn Idrettsarena for 2021 and 2022, the municipal company as a whole experienced losses, meaning that it was not possible for Drøbak Frogn Idrettsarena to use profit from other activities to cover the losses of the fitness centre.⁸²
- (84) Based on this, ESA finds that the aid was limited to the minimum necessary to preserve the operation of the fitness centre. ESA therefore finds that the aid is proportional.

⁷⁹ Regarding 2022, the February 2022 municipal council decision states that the financial support includes a clawback mechanism limiting the aid to actual losses. Moreover, ESA notes that the municipality is liable for the fitness centre's losses, regardless of their amount. Hence, the aid amount corresponds to the actual 2022 losses.

⁸⁰ ESA [Decision No 031/21/COL](#), paragraph 31. The decision concerned a municipal umbrella scheme allowing municipalities to create aid schemes aimed at ensuring access to liquidity due to the impact of the COVID-19 pandemic.

⁸¹ The maximum aid amount under the Temporary Framework was set to EUR 800 000 per undertaking at the beginning of 2021, see Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, as last amended 13.10.2020, p. 1. The amount of maximum aid was subsequently increased two times and was set at EUR 2.3 million per undertaking in the Temporary Framework, sixth amendment.

⁸² Documents No 1562900 and 1562896.

7.6 Compliance with relevant EEA law

- (85) If a State aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measures), or the activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.⁸³
- (86) ESA has no indications that the measures, the conditions attached to them, or the activity they finance entail a violation of relevant EEA law.

7.7 Transparency

- (87) The Norwegian authorities have confirmed that the aid award, as it exceeds EUR 100 000, will be published in the [national transparency register](#).
- (88) Therefore, the measures fulfil the transparency requirements.

8 Conclusion

- (89) On the basis of the foregoing assessment, ESA considers that the ad hoc aid measures to Drøbak Frogn Idrettsarena constitute State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b), it has no objections to the implementation of the measures.
- (90) If this letter contains confidential information which should not be disclosed to third parties, please inform ESA **by 22 October 2025**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult ESA's Guidelines on Professional Secrecy in State Aid Decisions.⁸⁴ If ESA does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on ESA's website: <http://www.eftasurv.int/state-aid/state-aid-register/>.

⁸³ Judgments of 19 September 2000, *Germany v Commission*, Case C-156/98, EU:C:2000:467, paragraph 78; of 22 December 2008, *Régie Networks*, Case C-333/07, EU:C:2008:764, paragraphs 94-116; of 22 September 2020, *Austria v Commission (Hinkley Point C)*, Case C-594/18 P, EU:C:2020:742, paragraph 44; and of 15 April 2008, *Nuova Agricast*, Case C-390/06, EU:C:2008:224, paragraphs 50-51.

⁽⁸⁴⁾ [OJ L 154, 8.6.2006, p. 27](#) and EEA Supplement No 29, 8.6.2006, p. 1.

For the EFTA Surveillance Authority,

Yours faithfully,

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.