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Decision No 004/22/COL

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

Subject: COVID-19 NOR Trondheim Spektrum damage compensation

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified *ad hoc* aid to Trondheim Spektrum AS¹ (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections² to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 19 January 2022.³

3 Description of the measure

3.1 Background

- (3) Following the COVID-19 outbreak, the Norwegian authorities adopted a series of measures to counter the spread of the virus.
- (4) An overview of the measures imposed on large events in the period from 5 March 2020 to 30 June 2021 is provided in ESA Decision No [166/20/COL](#) of 17 December 2020 and ESA Decision No [041/21/COL](#) of 12 May 2021.

3.2 The beneficiary

- (5) Trondheim Spektrum is a multipurpose facility used for sports events, concerts, trade fairs, congresses and as a training venue for local sports clubs. The facility is located in Norway’s third largest city, Trondheim.
- (6) Trondheim Spektrum AS rents facilities in Trondheim Spektrum from Trondheim Spektrum Eiendom AS and sublets them to event organisers and permanent sub-tenants (“sub-tenants”). To its sub-tenants, Trondheim Spektrum AS provides technical services and other individually agreed support functions and arranges

¹ Organisation number 961 562 767.

² Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

³ Document No 1263432 and No 1263434.

food and drinks services. Trondheim Spektrum AS arranges food and drinks services through Trondheim Catering AS.

- (7) Trondheim Spektrum AS is a subsidiary of Trondheim Spektrum Eiendom AS. Trondheim Spektrum AS was established as a separate company through a business transfer on 1 December 2019. Trondheim Spektrum Eiendom AS is owned by the Municipality of Trondheim.
- (8) According to the Norwegian authorities, Trondheim Spektrum AS has suffered substantial losses in the period from March 2020 to June 2021. All major commercial events that Trondheim Spektrum AS had scheduled to take place in Trondheim Spektrum in this period were cancelled or postponed as a result of COVID-19 and the restrictive measures adopted by the Norwegian authorities. The cancelled events generated little if any revenue for Trondheim Spektrum AS.

3.3 Aid granting authority and national legal basis

- (9) On 3 March 2021, the City Council of the Municipality of Trondheim decided to grant Trondheim Spektrum AS *ad hoc* aid amounting to NOK 5.4 million. The aid is financed through the Municipality of Trondheim's budget ("*disposisjonsfondet*"). According to the granting decision,⁴ the grant is subject to notification and approval by ESA and it will not be disbursed before it has been approved by ESA.

3.4 Objective

- (10) The objective of the measure is to partially compensate Trondheim Spektrum AS for damage suffered as a direct result of the COVID-19 outbreak and the containment measures adopted by the Norwegian authorities to counter the spread of the virus ("the restrictive measures"), in the period 12 March 2020 to 30 June 2021 ("the compensation period").

3.5 Eligible costs

- (11) The eligible costs of the measure equal the deficits of eligible events.
- (12) Eligible events are events that sub-tenants (i) have booked with Trondheim Spektrum AS (ii) to be held in the compensation period, and (iii) that were later cancelled due to the COVID-19 outbreak and the restrictive measures adopted by the Norwegian authorities.
- (13) For all eligible events, the Norwegian authorities have written documentation in which the sub-tenants explicitly refer to COVID-19 and the restrictive measures as the cause for the cancellation.
- (14) The deficit of an eligible event is calculated as follows: revenues *minus* direct costs *minus* a share of indirect costs.⁵ If an event did not generate a deficit, the eligible costs of that event is set to zero.
- (15) Direct costs are costs for goods or services directly and exclusively linked to a specific event, such as costs for cleaning, security and event specific preparation measures. None of the eligible events had any direct costs.

⁴ Document number No 1263483.

⁵ The calculation method is based on the method described in ESA Decision No [166/20/COL](#).

- (16) Indirect costs are personnel costs and operating costs that cannot be attributed to specific events.
- (17) The indirect costs in 2020 are shared between eligible events booked to be held in 2020 and events that took place in 2020. The indirect costs in the first half of 2021 are shared between eligible events booked to be held in the first half of 2021 and events that took place in the first half of 2021. The allocation of indirect costs is linear and based on expected turnover of the eligible events and income from the events that took place.
- (18) The Norwegian authorities have confirmed that to the extent the deficits for one or more eligible events are offset from other sources, for instance insurance, this is subtracted from the eligible costs.
- (19) Based on this methodology, the eligible costs amount to approx. NOK 10.6 million.⁶

3.6 Aid instrument, amount and intensity

- (20) The aid will be awarded in the form of a direct grant. The aid amount is set at NOK 5.4 million.
- (21) The aid intensity of the measure is 51% of the eligible costs/deficits incurred.

3.7 Cumulation

- (22) Trondheim Spektrum AS has, under the scheme first approved by ESA in its Decision No [039/20/COL](#) of 17 April 2020 (“the general compensation scheme”), received NOK 900 000 as state aid to make good damage as a direct result of the COVID-19 outbreak and the restrictive measures adopted by the Norwegian authorities to counter the spread of the virus, in the period March 2020 to June 2021.
- (23) In total, the aid intensity of the Covid-19 state aid to Trondheim Spektrum is then 59% of the deficits incurred.
- (24) The Norwegian authorities confirm that, except from the aid received under the general compensation scheme, the measure will not be cumulated with other COVID-19 state aid measures under Article 61(2)(b) of the EEA Agreement, or with COVID-19 state aid measures under Article 61(3)(b) of the EEA Agreement covering the same eligible costs.

4 Presence of state aid

- (25) 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.”
- (26) 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

⁶ The calculation is set out in Annex 1 to the notification (Document No 1263436).

undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

- (27) For the purpose of Article 61(1) of the EEA Agreement, the State covers all bodies of the State administration, from the central government to the City level or the lowest administrative level, as well as public undertakings and bodies.⁷ The measure is granted by the Municipality of Trondheim and financed through its budget. Therefore, the measure is granted through State resources and is imputable to the State.
- (28) Trondheim Spektrum AS is an undertaking as it is engaged in economic activity, as described in paragraph (6) above. By partially compensating Trondheim Spektrum AS for damage it suffered as a direct result of the COVID-19 outbreak and the restrictive measures adopted by the Norwegian authorities, the measure relieves Trondheim Spektrum AS of charges normally borne from its budget. Accordingly, the measure confers an advantage on an undertaking.
- (29) The measure is selective as it favours only one undertaking, namely Trondheim Spektrum AS.
- (30) Trondheim Spektrum AS operates in sectors which are subject to intra-EEA trade, such as sub-leasing facilities for large international events. The measure is liable to strengthen its position compared to other undertakings operating in the same sectors. Therefore, the measure threatens to distort competition and affects intra-EEA trade.
- (31) In conclusion, the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Individual aid

- (32) ESA notes that the aid is not granted on the basis of a scheme.⁸ The aid therefore constitutes individual aid.

6 Lawfulness of the aid

- (33) 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"): "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."
- (34) The Norwegian authorities have notified the measure and have yet to disburse the grant to Trondheim Spektrum AS. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

⁷ See ESA's Guidelines on the notion of state aid ("NoA"), [OJ L 342, 21.12.2017, p. 35](#), and EEA Supplement No 82, 21.12.2017, p. 1, para. 48.

⁸ 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 ("Protocol 3").

7 Compatibility of the aid

7.1 Introduction

- (35) ESA shall declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b), provided that certain compatibility conditions are fulfilled. This provision reads as follows: “The following shall be compatible with the functioning of this Agreement: aid to make good the damage caused by natural disasters or exceptional occurrences”. ESA has no discretion in assessing the compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.
- (36) For all measures taken under Article 61(2)(b), there must be a direct causal link between the exceptional occurrence for the beneficiary and the damage incurred, and the aid must be limited to what is necessary to make good the damage incurred.

7.2 COVID-19 as an exceptional occurrence

- (37) Neither the EEA Agreement, nor any EEA relevant legislation contains a precise definition of “exceptional occurrence”.⁹ Since Article 61(2)(b) of the EEA Agreement is an exception to the general prohibition of state aid, laid down in Article 61(1) of the EEA Agreement, the notions of ‘natural disaster’ and ‘exceptional occurrence’, referred to in Article 61(2)(b) of EEA Agreement, must be interpreted restrictively. This interpretation of Article 61(2)(b) of EEA Agreement is supported by the case law of the Court of Justice¹⁰ and the case practice of the European Commission.¹¹
- (38) The characterisation of an event as an exceptional occurrence is made by ESA on a case-by-case basis. The event must be: (i) unforeseeable or difficult to foresee,¹² (ii) of significant scale/economic impact¹³ and (iii) extraordinary.
- (39) On 9 March 2020, European Commission’s President Ursula von der Leyen made a statement that companies affected by the COVID-19 outbreak would in principle be eligible for state aid under Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”). On 11 March 2020, the COVID-19 outbreak was classified as a pandemic by the World Health Organisation.¹⁴ On 12 March 2020, the European Commission adopted a decision concluding that the COVID-19 outbreak qualifies as an exceptional occurrence for the purpose of Article 107(2)(b) TFEU,¹⁵ which corresponds to Article 61(2)(b) of the EEA Agreement,

⁹ See also Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraph 24.

¹⁰ Judgments of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37, and 23 February 2006, *Giuseppe Atzeni and others*, C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

¹¹ See Commission Decision in SA.32523 [C\(2012\) 4218 final](#) (Cyprus) *Compensation scheme for air carriers registered in Cyprus for additional costs linked to the impossibility to overfly the Turkish airspace*, paragraph 50. See also Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraph 24.

¹² Commission Decision in SA.32163 [C\(2011\) 5495 final](#) (Slovenia) *Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010*, paragraph 31.

¹³ Commission Decision in SA.33487 [C\(2012\) 2447 final](#) (Hungary) *Agricultural and fisheries aid to compensate for damage due to exceptional occurrence*, paragraph 36.

¹⁴ [WHO Director Generals opening remarks at the media briefing on COVID-19 on 11 March 2020](#).

¹⁵ Which corresponds to Article 61(2)(b) of the EEA Agreement.

as it is an extraordinary, unforeseeable event having a significant economic impact.¹⁶

- (40) The spread of COVID-19 ultimately resulted in far-reaching disruption of various economic sectors. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures had to be adopted. Consequently, governments across the world adopted severe measures aimed at limiting the spread of the coronavirus, such as travel restrictions for non-essential travel, closure of borders, closure of non-essential shops, an obligation for companies to organise working from home for every position where this is possible and various social distancing measures.
- (41) In view of the above, ESA finds that the COVID-19 outbreak and the restrictive measures imposed were not foreseeable and are clearly distinguishable from ordinary events, by their character and their effects on the affected undertakings and the economy in general. These events and their impact therefore cannot be seen as part of the normal functioning of the market.
- (42) Consequently, ESA considers that the COVID-19 pandemic and the corresponding restrictive measures imposed qualify as an exceptional occurrence within the meaning of Article 61(2)(b) of the EEA Agreement.

7.3 Causal link between the exceptional occurrence and the damage

- (43) For all measures taken under Article 61(2)(b), there must be an unbroken causal link between the exceptional occurrence and the damage.¹⁷ The aid must compensate for damage directly caused by the exceptional occurrence, such as damage directly caused by restrictive measures precluding the beneficiary, *de jure* or *de facto*, from operating its economic activity or a specific and severable part of its activity.¹⁸
- (44) Damage resulting from restrictive measures such as specifically capping attendance at large public events can be compensated for under Article 61(2)(b) of the EEA Agreement, when attendance is capped at levels demonstrably and materially below those that would be dictated, in the concrete setting, by generally applicable social distancing rules or rules on capacity in commercial spaces.¹⁹ Specific caps on attendance may amount to a *de facto* restriction that entails the cessation of all or a sufficiently substantial part of the affected activity ordinarily carried on.²⁰
- (45) By Decision No [166/20/COL](#) of 17 December 2020, ESA approved the compensation scheme for cancellation or downscaling of large public events (“the large event scheme”), as compatible with the functioning of the EEA Agreement,

¹⁶ Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraphs 26–30.

¹⁷ Judgment of 17 February 2021 in *Ryanair v Commission*, T-259/20, [EU:T:2021:92](#), paragraphs 24 to 27.

¹⁸ See paragraph 15bis of the 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 five times, (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, and (v) on 28.01.2021, [OJ C 34, 01.02.2021, p 6](#) (“the [Temporary framework](#)”).

¹⁹ See paragraph 15bis of the Temporary Framework.

²⁰ *Ibid.*

pursuant to its Article 61(2)(b). The large event scheme compensates partially for the losses suffered by the organisers and co-organisers of large public events that were cancelled or downscaled, as a result of the COVID-19 outbreak, in the period of 5 March to 31 December 2020.

- (46) By Decision No [041/21/COL](#) of 12 May 2021, ESA approved the introduction of a new compensation period from 1 January 2021 until 30 June 2021 in the large event scheme. In this Decision, it was established that the capping of attendance for events made it impossible to hold large-scale public events in Norway, as the caps were set at levels demonstrably and materially below what was considered to be commercially viable for these types of events. It was therefore not possible, in practice, to organise large events as planned, as a result of the restrictive measures.
- (47) Hence, ESA has already concluded that deficits resulting from the cancellation or downscaling of large public events in Norway in the compensation period, can be compensated for under Article 61(2)(b) of the EEA Agreement.
- (48) The measure only compensates Trondheim Spektrum AS for deficits from events that sub-tenants have cancelled due to the COVID-19 outbreak and the restrictive measures adopted by the Norwegian authorities. The sub-tenants must have stated the cause in writing, see paragraph (12).
- (49) In view of the above, ESA considers this damage suffered by Trondheim Spektrum AS to be directly linked to the COVID-19 outbreak through the restrictive measures imposed on events.

7.4 Proportionality

- (50) In order to be compatible under Article 61(2)(b) of the EEA Agreement, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (51) Under the measure, eligible costs are based on actual revenues and costs related to each eligible event. The principles for calculating the deficit for each eligible event is the same as used in the large event scheme, see paragraph (14) above.
- (52) The measure is limited to NOK 5.4 million (see paragraph (20) above). Trondheim Spektrum AS has previously received NOK 900 000 as partial compensation for damage it suffered as a consequence of the COVID-19 outbreak (see paragraph (22) above). Trondheim Spektrum AS will in total be compensated with 59% of the deficits it suffered as a consequence of the COVID-19 outbreak. The measure will not be cumulated with other aid measures for the same eligible costs (see paragraph (24) above).
- (53) In light of the above, ESA considers that the measure is proportional to the damage Trondheim Spektrum AS suffered due to the COVID-19 outbreak

8 Conclusion

- (54) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this aid is compatible with the functioning of the

EEA Agreement, pursuant to its Article 61(2)(b) of the EEA Agreement, it has no objections to the implementation of the measure.

- (55) The Norwegian authorities have confirmed that the notification itself does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund
President
Responsible College Member

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