

Case No: 85218  
Document No: 1175963  
Decision No 160/22/COL

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

**Subject: Sandnes Ulf Arena AS**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the alleged state aid measures benefitting Sandnes Ulf Arena AS (“SUA”), it considers that some of the measures do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.<sup>1</sup> Moreover, ESA declares some of the measures, found to constitute state aid, compliant with Article 55 of the General Block Exemption Regulation (“[GBER](#)”).<sup>2</sup> Finally, ESA decides not to raise objections to one measure found to constitute state aid, as this measure is compatible with the functioning of the EEA Agreement, pursuant to Article 61(3)(c) of the EEA Agreement.<sup>3</sup> ESA has based its decision on the following considerations.

## 2 Procedure

- (2) On 18 May 2020,<sup>4</sup> ESA received a complaint concerning several alleged state aid measures in favour of SUA.
- (3) By letter dated 26 May 2020,<sup>5</sup> ESA forwarded the complaint to the Norwegian authorities. By letter dated 24 June 2020,<sup>6</sup> the Norwegian authorities provided their initial comments on the complaint.
- (4) By letter dated 1 October 2020,<sup>7</sup> ESA, pursuant to paragraph 48(b) of the ESA’s [Guidelines on Best Practices for the conduct of state aid control procedures](#),<sup>8</sup> provided the complainant with its preliminary assessment of the complaint. By email of 27 October 2020,<sup>9</sup> the complainant provided ESA with additional comments.

---

<sup>1</sup> Reference is made to Article 4(2) 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.

<sup>2</sup> Commission Regulation (EU) No 651/2014 of 17.6.2014 (OJ L 187, 26.6.2014, p. 1) as amended by Commission Regulation (EU) 2017/1084 of 4.6.2017 (OJ L 156, 20.6.2017, p. 1, as corrected by OJ L 26, 31.1.2018, p. 53) and Commission Regulation (EU) 2020/972 of 2.7.2020 (OJ L 215, 7.7.2020, p. 3), referred to at point 1j of [Annex XV](#) to the EEA Agreement.

<sup>3</sup> 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.

<sup>4</sup> Document No 1133609.

<sup>5</sup> Document No 1134775.

<sup>6</sup> Document No 1140229.

<sup>7</sup> Document No 1152570.

<sup>8</sup> OJ L 82, 22.3.2012, p. 7.

<sup>9</sup> Document No 1159285.

- (5) On 27 October 2020, ESA sent the complainant's additional comments to the Norwegian authorities.<sup>10</sup> By letter dated 25 November 2020,<sup>11</sup> the Norwegian authorities provided ESA with comments in response to the complainant's comments.
- (6) By letter dated 19 April 2021,<sup>12</sup> ESA requested the Norwegian authorities to provide further clarifications. The Norwegian authorities provided their clarifications in a letter dated 14 June 2021.<sup>13</sup> On 1 July 2021,<sup>14</sup> ESA asked the Norwegian authorities to clarify their answers in the letter of 14 June 2021. The Norwegian authorities provided additional clarifications by emails of 29 June 2021<sup>15</sup> and 2 September 2021.<sup>16</sup> ESA sent an email on 30 September 2021, requesting further clarifications.<sup>17</sup> The Norwegian authorities replied to the request by email of 23 November 2021.<sup>18</sup>
- (7) On 11 February 2022, ESA sent a letter to the Norwegian authorities asking for information.<sup>19</sup> The Norwegian authorities replied to the request by letter dated 14 March 2022.<sup>20</sup> On 8 April 2022, ESA sent an email asking for clarifications.<sup>21</sup> By emails of 16 May 2022 and 7 June 2022, the Norwegian authorities replied.<sup>22</sup>

### 3 Background and comments from the parties

#### 3.1 Background

##### 3.1.1 Sandnes Ulf

- (8) Sandnes Ulf fotballklubb ("the Club") is a football club in Sandnes municipality ("the municipality") established in 1911. The Club's professional team, Sandnes Ulf Toppfotball AS, is currently playing in the OBOS league, which is the second highest division in the Norwegian football league. The team aspires to re-enter the Norwegian premier league ("*Eliteserien*").
- (9) The Club is the centre for children and youth football in the municipality. The Club has 72 different teams with around 1010 members composed of children and youth.
- (10) SUA is a private limited liability company. It was established in 2017. SUA is owned by the Club and Sandnes Ulf Toppfotball AS.
- (11) In 2018, the municipality decided to support SUA for the construction and operation of a football stadium, "Østerhus Arena". The stadium was constructed on the north western part of [Sandnes Idrettspark](#). A part of the area is regulated for a school with focus on sports, while other parts are sectioned for a health centre, food and restaurants services, and offices. The municipality has also

---

<sup>10</sup> Document No 1161199.

<sup>11</sup> Document No 1165216.

<sup>12</sup> Document No 1193410.

<sup>13</sup> Document No 1207433.

<sup>14</sup> Document No 1211741.

<sup>15</sup> Document No 1218932.

<sup>16</sup> Document No 1224379.

<sup>17</sup> Document No 1230962.

<sup>18</sup> Document No 1250868.

<sup>19</sup> Document No 1268972.

<sup>20</sup> Document No 1275543.

<sup>21</sup> Document No 1281502.

<sup>22</sup> Document Nos 1289736 and 1293687.

planned to build a multipurpose sports hall in the same area. The multipurpose sports hall is still in the planning phase and will be wholly owned by the municipality.

- (12) The construction of the Østerhus Arena was finalised on 3 February 2020.

### 3.1.2 The five GBER measures

- (13) On 17 July 2018, the Norwegian authorities submitted a GBER information sheet ([GBER 15/2018/Sports](#)) concerning *ad hoc* aid to SUA for the construction of the Østerhus Arena.
- (14) The overall budget of the support measure was NOK 34 285 245 (approximately EUR 3.4 million).<sup>23</sup> The municipality decided to support the construction and operation of a football stadium through several agreements. The aid to SUA was reported under Article 55 of the GBER. The Norwegian authorities reported the following measures:
- (i). a land lease agreement (Measure 1);
  - (ii). a loan of NOK 40 million (Measure 2);
  - (iii). advance payment of gaming fund grants (Measure 3);
  - (iv). a guarantee for a bank loan (Measure 4); and
  - (v). payment of risk and vulnerability analysis (Measure 5).
- (15) The support of each measure was allocated in the following manner:

Measures implemented by Sandnes Municipality	Amounts in NOK
Measure 1: Land lease agreement	3 808 548
Measure 2: Loan	26 074 845
Measure 3: Advancement of gaming funds	839 450
Measure 4: Guarantee	3 542 402
Measure 5: Payment for risk and vulnerability analysis	20 000
<b>Total amount of aid</b>	<b>NOK 34 285 245</b>

### 3.1.3 Stadium lease agreement (Measure 6)

- (16) In addition to the measures listed above, the municipality also entered into a stadium lease agreement for 40 years with SUA. The stadium lease agreement was not reported under the GBER information sheet, as the Norwegian authorities did not consider the agreement to constitute state aid. See section 4.2.1 for the description of this measure.

## 3.2 The complaint

- (17) The complainant alleges that the five GBER measures and the stadium lease agreement for 40 years constitute unlawful aid.

<sup>23</sup> <https://www.eftasurv.int/state-aid/rates>, based on category 5 and using the [European Commission's currency converter](#).

- (18) With regard to the guarantee for the bank loan (Measure 4), the complainant contends that the municipality has increased its risk as a guarantor, further adding to the unlawful aid allegedly granted.
- (19) In addition, the complainant has identified two other alleged unlawful aid measures:
- a) reimbursement and allocation of costs relating to the municipal technical infrastructure (Measure 7); and
  - b) reduction of ground rent of NOK 150 000 (approx. EUR 15 000) per year and a deferment of payment of interest and loan instalments for two years (2020 and 2021) (Measure 8).

### 3.3 Comments by the Norwegian authorities

- (20) The Norwegian authorities contend that they have not provided any aid to SUA other than the aid already reported under the GBER information sheet or aid that could be considered *de minimis* aid.<sup>24</sup>
- (21) According to the Norwegian authorities, some of the measures reported in the GBER information sheet are also to be considered market conform. However, due to some uncertainties, these were reported in the GBER information sheet as a precautionary measure. The precautionary reporting concerns the land lease agreement (Measure 1) and the loan of NOK 40 million (Measure 2).
- (22) As for Measure 1, the Norwegian authorities contend that the annual lease payment constitutes market price in Sandnes for a sports facility. The precautionary reporting of the potential aid is, according to the Norwegian authorities, overly cautious. The Norwegian authorities therefore argue that the land lease agreement does not constitute state aid.
- (23) With regards to Measure 2, the Norwegian authorities have argued that the loan interest rate is set at market terms and that there is therefore no aid element in the loan agreement. According to the Norwegian authorities, the calculation of the potential aid was made by an overly cautious rating of SUA and the collateral offered. Accordingly, the Norwegian authorities claim that the loan agreement is market conform.

## 4 Description of the measures

### 4.1 The five GBER measures

#### 4.1.1 Measure 1: Land lease agreement

- (24) The municipality owns the land on which the stadium is built. The land lease agreement between SUA and the municipality was concluded on the basis of an independent valuation report. The land lease agreement provides SUA the right to lease the land for a period of 80 years.<sup>25</sup> The lease payment is NOK 215 000 per year.

---

<sup>24</sup> Commission Regulation (EU) No 1407/2013 of 18.12.2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid ([OJ L 352, 24.12.2013](#), p. 1), incorporated into Article 1ea of [Annex XV](#) to the EEA Agreement.

<sup>25</sup> Document No 1275533.

- (25) The Norwegian authorities have explained that the municipality and SUA each ordered valuations of the property from independent appraisers. The independent appraisers estimated the value at NOK 11 500 000 and NOK 10 750 000 respectively. The parties agreed to use the latter, as that valuation took into account the fact that the area was not entirely suitable for commercial exploitation, due to the area being mostly used by the public for different sporting activities.
- (26) Based on a consultation with one of the appraisers, the parties agreed on a lease interest rate of 2% of the property value, resulting in a yearly lease payment of NOK 215 000. According to the Norwegian authorities, the interest rate of 2% was based on Section 15 of the Land Lease Act.<sup>26</sup> Further, the lease payment will be adjusted every 10 years in line with the Land Lease Act, according to [Statistics Norway's](#) "CPI All-item index".
- (27) It follows from Section 15(4) of the Land Lease Act that for homes and holiday homes the annual lease fee can be fixed to a maximum of 2% of the property value, when the lessee exercise the right to prolong the lease. Furthermore, according to Section 15(2) of the Land Lease Act, for lease of land used for other purposes than housing or holiday homes, each of the parties can require the fee to be inflation-adjusted, unless otherwise agreed by the parties.
- (28) The Norwegian authorities have explained that deciding the annual lease of a land lease agreement is a matter of discretion, dependent *inter alia* on the market in general, the specific use of the property, security of payments over time, the general interest level and public regulations.
- (29) Furthermore, according to the Norwegian authorities, the agreed interest rate was supposed to be market conform. The agreed rate was based on advice from one of the appraisers and the Land Lease Act, see paragraph (27) above. However, the Norwegian authorities later found out that the agreed interest rate might have been below market price and that a more accurate rate for the property should have been 4%. According to the Norwegian authorities, this was based on a comparison with the Norwegian airport infrastructure company Avinor, which applied a 4% interest rate in its commercial land lease agreements for property belonging to Stavanger Sola Airport. Based on a 4% interest rate, the difference between the applied 2% rate and 4% was considered to potentially constitute state aid.
- (30) The state aid component of the annual lease payments would therefore amount to NOK 215 000 (the difference between 2% and 4% lease rate on a property value of NOK 10 750 000). The Norwegian authorities have, after having discounted the respective inflation-adjusted lease payments by 7.5% each year, found that the maximum aid for the 80 years lease would amount to NOK 3 808 548 (approx. EUR 370 000). This amount was therefore included in the submitted GBER information sheet.
- (31) The Norwegian authorities have explained that the discount rate was set with reference to the 2018 report on the risk premiums in the Norwegian market issued by the Norwegian Society of Financial Analysts. According to which the risk-free

---

<sup>26</sup> Land Lease Act of 20 December 1996 No 106 ([Lov om tomtefeste](#)).

interest rate was at 1.88%,<sup>27</sup> and the general market risk was considered to be 5% and long-term inflation 2-2.5%.<sup>28</sup>

- (32) The Norwegian authorities argue that the prices at Sola airport should not have been used as a reference, and the 2% annual lease payment should instead constitute market price in Sandnes. The Norwegian authorities have explained that Sola is the regional airport for the Stavanger region and is a very attractive location for commercial operators. The location of the airport is considered to be attractive for companies within logistics and airport services. Further, the Norwegian authorities have explained that it is considered as a prime location and is being leased at premium prices.

#### 4.1.2 Measure 2: Loan of NOK 40 million

- (33) On 19 June 2018, the municipality and SUA entered into a loan agreement amounting to NOK 40 million. The municipality has disbursed the loan to SUA in four instalments in accordance with the agreement. The final payment was made on 20 December 2020.
- (34) The municipality's mortgage is secured second rank after the bank on the stadium. The loan interest rate is set at 3.89%.
- (35) ESA's guidelines on [Reference and Discount Rates](#) outline the reference and discount rates that can be applied as a proxy for the market rate and to measure the grant equivalent of state aid. According to the guidelines, reference and discount rates are calculated by adding appropriate margins to the base rates, which are generally calculated on the basis of one-year money market rates.
- (36) The different margins added to the base rates depend on the rating of the undertaking concerned and the collateral offered. For the calculation of the discount rate, a fixed margin of 100 basis points is, in principle, added to the base rates.
- (37) The Norwegian authorities have, according to the rules on reference and discount margins, considered that SUA would be rated "weak (B)" and could offer "low" collateral. Therefore, the Norwegian authorities added 650 basis points to the base rate rating.
- (38) Based on the Reference and Discount Rates Guidelines, the Norwegian authorities concluded that the market interest rate should have been 7.79%. The difference between 3.89% and 7.79% was therefore found to potentially constitute state aid. Using a discount rate of 5%, the maximum (discounted) aid for the 40 years period amounted to NOK 26 074 845 (approx. EUR 2.5 million).
- (39) The discount rate of 5% was, according to the Norwegian authorities, applied with reference to discussions with financial and legal advisers.
- (40) The amount of NOK 26 074 845 was therefore included in the submitted GBER information sheet.

<sup>27</sup>

<https://www.norges-bank.no/tema/Statistikk/Rentestatistikk/Statsobligasjoner-Rente-Arsgjennomsnitt-av-daglige-noteringer/>

<sup>28</sup>

<https://www.pwc.no/no/publikasjoner/PwC-risikopremie-2018.pdf>

- (41) As mentioned above in paragraph (23), the Norwegian authorities have argued that this reporting was overly cautious, as they found that SUA would have obtained an “A” rating already from 4 May 2018. Based on an “A” rating with “normal” collateralisation,<sup>29</sup> the proxy market interest rate would, according to the Norwegian authorities, have been 1.79%.

*4.1.3 Measure 3: Advance payment of gaming fund grants*

- (42) The gaming funds come from Norsk Tipping's profit and are allocated annually for the construction and renovation of facilities for sports and physical activity. Administratively, the regional allocation of gaming funds is carried out at County level, on behalf of the Ministry of Culture. This scheme is part of the State's efforts to promote sports and physical activity. The funds stemming from Norsk Tipping AS are gaming funds collected, administered and distributed on the basis of the Gaming Act 1992 that entered into force on 1 January 1993, before the entry into force of the EEA Agreement. ESA has in its previous decisions,<sup>30</sup> found that the funds granted from Norsk Tipping AS are an application of an existing aid system. There have not been any amendments to the scheme since that time. ESA will therefore not further assess the aid character of the gaming fund grants in this decision.
- (43) The county council considered three applications from SUA for gaming funds relating to the facility Østerhus Arena:
- (i). Application for gaming funds for an artificial turf pitch (additional elements: floodlight system and under-turf heating system). The facility was granted gaming funds in the amount of NOK 2 357 000 in 2019 and NOK 2 358 000 in 2020.
  - (ii). Application for gaming funds for a sports building (clubhouse and meeting premises, changing rooms and storage). The facility was granted gaming funds in the amount of NOK 2 012 000 in 2020.
  - (iii). Another application was submitted and approved for NOK 2 013 000 in 2021.
- (44) Following an approval decision from the county council, the lottery fund will pay the grants to the relevant municipality, which in turn distributes the amounts to the sport club. The disbursement from the lottery fund can take more than two years, depending on the priority given to each case. According to the Norwegian authorities, it is therefore normal practice for a municipality to advance the grant to sport clubs, against a reimbursement from the lottery fund. In line with this practice, Sandnes municipality decided to advance the gaming funds to SUA, totalling NOK 8 740 000. The advance payment will be repaid directly by the lottery fund.
- (45) Since the municipality will receive the payment directly from the lottery fund, the advance payment to SUA was considered to not carry any credit risk. Therefore, no collateral beyond direct payment from the lottery fund was considered necessary.

---

<sup>29</sup> See footnote 2 of the [Refence and discount rates guidelines](#).

<sup>30</sup> See ESA's Decision [No 537/09/COL](#) of 16 December 2009, section 1.2, ESA's [Decision No 32/19/COL](#) paragraphs 90-91, ESA's [Decision No 225/15/COL](#) of 10 June 2015, paragraph 57.

- (46) The payment was provided interest free for a period of three years. The interest rate advantage of the advance payment was considered to constitute an advantage to SUA.
- (47) With an interest rate at 2.69% and a discount rate at 7.5%, the maximum aid for three years was found to be NOK 839 450 (approx. EUR 82 700). The discount rate of 7.5% was applied with reference to risk free interest, market risk premium and expected long term inflation, as for Measure 1 see paragraph (31).
- (48) The state aid element of the advanced payment of NOK 839 450, was included in the submitted GBER information sheet.

#### *4.1.4 Measure 4: A guarantee for a bank loan*

- (49) The municipality has furnished an unconditional guarantee for 80% of SUA's bank loan for the construction of the stadium. The guarantee is limited to NOK 23.92 million.
- (50) The municipality offered the guarantee to SUA free of charge.
- (51) SUA requested estimates on commission for similar guarantees from different banks but was not able to obtain other than informal replies, indicating an annual commission of between NOK 200 000 – 400 000.
- (52) Based on an annual commission of NOK 400 000, the discounted value of the guarantee through the entire guarantee period, and possible state aid, was found to be NOK 3 542 402 (approx. EUR 350 000).
- (53) The state aid element of NOK 3 542 402 was included in the submitted GBER information sheet.

#### *4.1.5 Measure 5: Payment of risk and vulnerability analysis*

- (54) The municipality performed and financed a Risk- and vulnerability-analysis (in Norwegian: *risiko- og sårbarhetsanalyse* ("ROS-analysis")) on behalf of SUA. The ROS-analysis is normally performed by the property developer. The cost of this measure, based on time and materials, is estimated to be NOK 20 000 (approx. EUR 2 000).
- (55) The Norwegian authorities acknowledge that the payment of the ROS-analysis represents state aid from the municipality to SUA.
- (56) The amount of NOK 20 000 was therefore included in the submitted GBER information sheet.

#### *4.1.6 The total amount of aid under the GBER*

- (57) The total amount of aid provided to SUA under Measures 1 to 5, as submitted in the GBER information sheet on the basis of Article 55 of the GBER, represents NOK 34 285 245.

## **4.2 The three additional measures**

### *4.2.1 Measure 6: Stadium lease agreement*

- (58) On 19 June 2018, the municipality entered into a [stadium lease agreement](#) with SUA for a period of 40 years.

- (59) The agreement provides for 1 400 hours of arena time per year for the municipality at a fixed hourly rate of NOK 990. It covers the lease of the entire football field with locker rooms.
- (60) The annual payment, according to the lease agreement, amounts to NOK 1 386 000 exclusive of VAT. The total rental amount calculated as a onetime payment, at the time of the agreement, was NOK 40 million (adjusted to inflation).
- (61) The municipality has paid the entire rental amount in advance. The payment was done in four instalments; (i) NOK 10 million at start of the concrete works; (ii) NOK 10 million at start of the steel construction; (iii) NOK 15 million at masonry work; and (iv) NOK 5 million when the construction was finalised.
- (62) The municipality's right to use the stadium for the agreed hours is secured with third rank priority on the stadium, after the bank and the municipality. Furthermore, the municipality has the right to prolong the lease agreement for an additional 10 years, under the same terms.
- (63) According to the lease agreement, the municipality is leasing the stadium to make it available for sports clubs, for primary and secondary schoolchildren in Sandnes, for matches, training and other activities.
- (64) The agreement provides for rental hours in the afternoon and the evenings, as well as Saturdays. The Club's professional team, Sandnes Ulf Toppfotball AS, and other events organised by the Club are given priority when it comes to the use of the stadium. However, the municipality has to give its consent to any changes made to the hours provided to the municipality.
- (65) The hourly rate of NOK 990 exclusive of VAT was considered by both parties to be market price. To support this claim, the Norwegian authorities have provided a benchmark document,<sup>31</sup> with comparison of hourly payment for other similar stadiums.
- (66) Furthermore, according to the stadium lease agreement between the Club and SUA, the Club pays an annual fee of NOK 4 000 000 exclusive of VAT.
- (67) The Norwegian authorities consider that the stadium lease agreement is well within the market price, and therefore does not entail state aid within the meaning of Article 61(1) of the EEA Agreement.

*4.2.2 Measure 7: Reimbursement and allocation of costs relating to the municipal technical infrastructure*

- (68) The complainant has argued that the municipality granted aid to SUA by reimbursing costs relating to the technical infrastructure of Østerhus Arena.
- (69) According to the Norwegian authorities, the reimbursement concerned work related to the technical infrastructure of the future multipurpose sports hall and a shared space area. These are obligations set out in the existing zoning plan for the area including procedural orders (in Norwegian: *rekkefølgekrav*). The relevant legislation set out limitations on which costs can be imposed on the developer.<sup>32</sup>

---

<sup>31</sup> Document No 1250871.

<sup>32</sup> [Lov om planlegging og byggesaksbehandling 27 June 2008 no 77](#).Section 17-3.

This is due to the asymmetrical distribution of power regarding the negotiation and conclusion of such agreements.<sup>33</sup>

- (70) In order to accurately calculate the proportion of the cost that needed to be reimbursed, the municipality ordered an independent analysis from [SWECO](#).<sup>34</sup> The total land area was calculated to be 13 500 m<sup>2</sup> BRA<sup>35</sup> (i.e. useable floor area).
- (71) Based on SWECO's calculation and the permitted development potential, the total cost related to the public space, including playground recreational area, parking area, and the municipal infrastructure, was found to be NOK 3 146 000. The municipality's cost equalled to 17% of SUA's total costs.<sup>36</sup>
- (72) The municipality has ensured that costs related to the planned municipal multipurpose sports hall, public space, parking area and the public recreational area, as regulated in the zoning plan and through procedural orders, are compensated in accordance with the Planning and Building Act.<sup>37</sup>
- (73) As for the technical infrastructure work, the municipality entered into a reimbursement agreement with SUA. According to municipality's practice, it was agreed that the reimbursement calculation and the payments were done in accordance with the Planning and Building Act.
- (74) According to the Norwegian authorities, it is common practice for a municipality to enter into a reimbursement agreement with a developer, and to base the calculation of the cost distribution on the rules in the Planning and Building Act. The Norwegian authorities have explained that this is also to ensure an equal treatment on the part of the municipality.
- (75) The reimbursement agreement concerns only work related to the future multipurpose sports hall.<sup>38</sup> The following costs were agreed upon in the reimbursement agreement:
- (i). Compensation for establishing a public waste water pipeline (SP250), in accordance with approved technical plans, the municipality paid NOK 368 127 excl. VAT.
  - (ii). Compensation for making a service line for water, urban runoff and waste water from the public pipeline network to the planned multipurpose sports hall. The municipality paid NOK 121 000 excl. VAT.
  - (iii). Compensation for upgrading the transformer including a room with a low voltage board, for the new stadium and the multipurpose sports hall. The municipality covered the amount of NOK 292 800 excl. VAT, which covered the part related to the multipurpose sports hall, which is 24% of the total costs.
  - (iv). Compensation for trenching and for establishing district heating. For the common supply to the stadium and the multipurpose sports hall, the

---

<sup>33</sup> Judgment of the Oslo District Court - [TOSLO-2018-132587](#), Section 3.3 p. 11.

<sup>34</sup> Sweco is a European engineering consultancy company.

<sup>35</sup> In Norwegian: bruksareal.

<sup>36</sup> See appendix 5 (*Vedlegg 5*) [here](#).

<sup>37</sup> LOV-2008-6-27-77. ([Lov om planlegging og byggesaksbehandling](#)), the Planning and Building Act.

<sup>38</sup> See [here](#).

municipality cover 50% of the costs. For its own part to the multipurpose sports hall, the municipality covers 100% of the costs. The municipality paid in total NOK 137 350 excl. VAT.

- (76) In light of the above, the Norwegian authorities contend that this measure does not entail state aid within the meaning of Article 61(1) of the EEA Agreement.

*4.2.3 Measure 8: Reduction of ground rent of NOK 150 000 per year, and the deferral of interest payments and loan instalments for 2020 and 2021*

- (77) Based on SUA's financial situation due to the COVID-19 outbreak and since SUA was not eligible to receive any compensation from State measures to mitigate the effects of COVID-19, the municipality granted SUA a deferral of interest and instalment payments on the loan reported under GBER (see section 4.1.2) for 2020 and 2021. The Norwegian authorities have confirmed that SUA pays both interest and compound interest on the deferral. According to the Norwegian authorities, the deferral of interest payments and instalment payments amounted to a total of NOK 1 412 853, for 2020 and 2021<sup>39</sup>
- (78) The municipality also reduced the ground rent for two years (2020 and 2021), by NOK 150 000 per year of the total rent amount of NOK 215 000. The reason for this reduction was both SUA's financial situation and municipality's practice, where sport clubs are not required to pay ground rent for the portion of the time that the stadium is only used for recreational sports.
- (79) Both the deferral of payments and reduction in ground rent were granted as *de minimis* aid. The total amount of the aid, when it was awarded, was calculated to be EUR 195 667.<sup>40</sup>
- (80) The Norwegian authorities have explained that they later found out that there was a calculation error when granting the *de minimis* aid, and that the actual aid amount was NOK 1 712 853 (EUR 151 946).<sup>41</sup>

## 5 Presence of state aid

### 5.1 Introduction

- (81) Article 61(1) of the EEA Agreement reads as follows: “[...] 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.”
- (82) 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.

---

<sup>39</sup> Document No 1293782.

<sup>40</sup> See [here](#).

<sup>41</sup> Document No 1293782.

## 5.2 Measures 7 and 8 – no aid

### 5.2.1 Introduction

- (83) ESA has come to the conclusion that Measures 7 and 8 do not constitute state aid, as they do not meet all the cumulative conditions set out in Article 61(1) of the EEA Agreement. The conclusion is outlined in further detail in sections 5.2.2 and 5.2.3.

### 5.2.2 Measure 7 - Reimbursement and allocation of costs relating to the municipal technical infrastructure

- (84) Not only the granting of positive economic advantages is relevant, but relief from economic burdens can also constitute an advantage according to Article 61(1) of the EEA Agreement. The latter comprises any mitigation of charges normally included in the budget of an undertaking. This covers all situations in which economic operators are relieved of the inherent costs of their economic activities.<sup>42</sup>
- (85) The construction of infrastructure used for activities that the State carries out in the exercise of its public powers, and which is not commercially exploited, is in principle excluded from the application of state aid rules, as it constitutes a general measure.<sup>43</sup>
- (86) A selective advantage in respect of infrastructure, such as that assessed in this case, which is financed through State resources and is not commercially exploited could still be found to exist:
- if the rules normally applicable to the project impose on project developers to bear part of the costs, then there can be a selective advantage if the developer pays less than legally required;
  - if the infrastructure is not of general character but serves only one or a limited number of undertakings known in advance, and if it is tailored to their needs in such a way that the undertaking(s) should normally have borne the costs of the infrastructure themselves.<sup>44</sup>
- (87) The Norwegian authorities have explained that the reimbursement concerns costs related to public areas that are mainly used for recreational sports and by the neighbourhood/local community. Furthermore, a part of the reimbursement has been paid to cover costs connected to the planned municipal multipurpose sports hall. That land area and the technical infrastructure connected to the multipurpose sports hall is not used by SUA. The infrastructure in question here is therefore of a general character.
- (88) In addition, as mentioned above, the technical infrastructure measures concerned work the municipality had to carry out in any case for the public space and the multipurpose sports hall. When the work was completed, the reimbursement was disbursed in accordance with the principles laid down in the Planning and Building

---

<sup>42</sup> ESA Guidelines on the notion of State aid as referred to in Article 61(1) of the Agreement on the European Economic Area (NoA), paragraph 68.

<sup>43</sup> See for example Commission Decision of 8.1.2016, SA.36019, paragraph 36, and the Commission's infrastructure analytical grid for roads, bridges, tunnels and inland waterways, available at: [https://ec.europa.eu/competition/state\\_aid/modernisation/grid\\_roads\\_en.pdf](https://ec.europa.eu/competition/state_aid/modernisation/grid_roads_en.pdf).

<sup>44</sup> See ESA [Decision No 083/19/COL](#), paragraph 180, and the cited case-practice.

Act, see paragraph (73) above. The Norwegian authorities have confirmed that SUA was only reimbursed for the actual costs incurred on behalf of the municipality.

- (89) ESA notes that the complainant has not challenged the allocation of the costs nor the conditions of the reimbursement agreement. Furthermore, considering the information provided by the Norwegian authorities,<sup>45</sup> ESA does not have reasons to doubt that the allocation of the costs has not conferred any advantage on SUA. ESA also notes that the overview of the costs, based on the SWECO's analysis,<sup>46</sup> do not indicate that SUA has been overcompensated in any way. From the documentation provided by the Norwegian authorities, ESA finds that the payment to SUA is only a compensation for the municipality's share of the work.
- (90) ESA notes that even if the infrastructure measures were adopted in connection with the zoning plan or procedural orders, it is necessary to assess whether the infrastructure benefits the community as a whole or only the development in question. It is only in the latter case that the infrastructure measures should be funded by the developer for there to be no aid.<sup>47</sup>
- (91) As stated above, it is clear that in this case the reimbursement concerned costs related to the multipurpose sports hall and the work related to the public area, the playground and parking area. The Norwegian authorities have explained that these projects are for the use and benefit of the public in Sandnes and do not particularly benefit SUA. It is therefore work that is not expected to be funded by SUA.
- (92) Having assessed the information provided by the Norwegian authorities, ESA finds that the reimbursement of the infrastructure costs, with regard to the public spaces, and the technical infrastructure of a planned multipurpose hall, has not granted SUA an selective advantage. The reimbursement was done according to the actual cost incurred on behalf of the municipality, and according the Planning and Building Act. Accordingly, the measure is found not to constitute aid within the meaning Article 61(1) of the EEA Agreement. ESA will therefore not further assess this measure in the present decision.

### 5.2.3 Measure 8 - *De minimis aid*

- (93) Aid below a certain amount is considered not to have an appreciable effect on trade and competition between the Contracting Parties. Article 61(1) of the EEA Agreement does not apply in such circumstances and notification is not required for payments of aid as defined in the *de minimis* Regulation.<sup>48</sup>
- (94) The *de minimis* Regulation applies to aid granted to undertakings in all sectors with the exception of sectors outlined in Article 1(a) to (e) of the *de minimis*

---

<sup>45</sup> See [here](#).

<sup>46</sup> See [here](#).

<sup>47</sup> See ESA Decision No 083/19/COL, paragraph 185, and the cases cited there.

<sup>48</sup> Commission Regulation (EU) No 1407/2013 of 18.12.2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid ([OJ L 352, 24.12.2013, p. 5](#)), incorporated into EEA Agreement through the Decision of the EEA Joint Committee No 98/2014 of 16.5.2014 amending Annex XV (State aid) to the EEA Agreement (OJ L 310, 30.10.2014, p. 65-66).

Regulation. The exceptions do not apply in this case, therefore the support to SUA falls within the scope of the *de minimis* Regulation.

- (95) Article 3(2) of the *de minimis* Regulation stipulates that a single undertaking may only receive up to EUR 200 000 over any period of three years. As described above in paragraph (10), SUA is owned by the Club and Sandnes Ulf Toppfotball AS. The Norwegian authorities have confirmed that the Club does not engage in any economic activities and is therefore not considered in the assessment of a single undertaking. Sandnes Ulf Toppfotball AS however, owns 49% of SUA and has two out of four board members in SUA. SUA and Sandnes Ulf Toppfotball AS were therefore considered as a single undertaking by the Norwegian authorities, for the purposes of Article 2(2) of the *de minimis* Regulation.
- (96) The support granted to SUA under Measure 8, in the form of reduced ground rent and deferral of interest payments and loan instalments for 2020 and 2021, is confirmed by the Norwegian authorities to be EUR 151 946. The aid is therefore within the EUR 200 000 threshold. The support therefore complies with the threshold for considering the aid to be *de minimis*.
- (97) Furthermore, Article 3(6) of the *de minimis* Regulation states that aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted. The municipality reduced the ground rent, and deferred interest and instalment payments for both 2020 and 2021. The aid for 2021 must therefore be discounted to its value at the moment it was granted. According to the calculation provided by the Norwegian authorities, the applicable discount rate at the time aid was granted, was 5%.
- (98) Moreover, it follows from Article 3(6) of the *de minimis* Regulation that the aid must be a cash grant, and where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent (before any deduction of tax or other charge) of the aid. According to Article 4(7) of the *de minimis* Regulation, aid comprised in other instruments, is considered to be transparent if it provides for a cap ensuring that the relevant ceiling is not exceeded.
- (99) In this case, the aid is provided in the form of a reduction of ground rent for two years (2020 and 2021) by NOK 150 000 per year, and deferral of interest and instalment payments on the loan for the years 2020 and 2021, amounting to NOK 1 412 853 where SUA pays interest and compound interest on the deferral. The Norwegian authorities have calculated the total amount of the aid to be EUR 151 946, with the discounted value for 2021. The Norwegian authorities set a cap to the aid in the allocation letter, where the amount of the aid was stated. The aid can therefore be considered transparent in line with Article 4(7) of the *de minimis* Regulation.
- (100) According to Article 6(1) of the *de minimis* Regulation, the Norwegian authorities must inform SUA “in writing of the prospective amount of the aid expressed as a gross grant equivalent and of its *de minimis* character, making express reference to this Regulation and citing its title and publication reference in the Official Journal of the European Union”. In the allocation letter dated 31 May 2020,<sup>49</sup> ESA notes that the Norwegian authorities have made an express reference to the *de*

---

<sup>49</sup> Document No 1140229.

*minimis* Regulation citing its title and publication reference in the Official Journal of the European Union and the gross grant equivalent of the aid amount. The allocation letter is therefore in line with Article 6(1) of the *de minimis* Regulation.

(101) Furthermore, the Norwegian authorities obtained a written declaration from SUA, which confirmed that SUA had not received any other *de minimis* aid in the previous two fiscal years nor the current fiscal year, in accordance with Article 6(1), last sentence, of the *de minimis* Regulation.

(102) Based on the above, ESA finds that the support granted to SUA through Measure 8 fulfils the conditions laid down in the *de minimis* Regulation.

(103) Measure 8 is therefore considered to be *de minimis* aid. ESA will therefore not further assess this measure in the present decision.

### **5.3 Assessment of the remaining measures**

#### *5.3.1 Introduction*

(104) In the following, ESA will assess whether the GBER measures (Measures 1 to 5) and Measure 6, the stadium lease agreement, can be considered state aid under Article 61(1) of the EEA Agreement.

#### *5.3.2 Presence of State resources*

##### *5.3.2.1 Introduction*

(105) The measures must be granted by the State or through State resources.

(106) The transfer of State resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies, and benefits in kind. State resources include all resources of the public sector, including municipalities.<sup>50</sup>

##### *5.3.2.2 Measure 1 – Land lease agreement*

(107) The land lease agreement between the municipality and SUA grants access and rights to the land owned by the municipality. The land lease agreement constitutes a transfer of State resources by foregoing State revenues, to the extent that the remuneration is not in line with market rates.<sup>51</sup>

(108) The land lease agreement could therefore entail a transfer of State resources within the meaning of Article 61(1) of the EEA Agreement.

##### *5.3.2.3 Measure 2 – Loan of NOK 40 million*

(109) The loan to finance the construction of the stadium is granted by the municipality to SUA. It is a transfer of State resources within the meaning of Article 61(1) of the EEA Agreement.

##### *5.3.2.4 Measures 3 and 5 - Advance payment of gaming funds and Payment of Risk and vulnerability analysis*

(110) Both advance payment of gaming funds with an interest free period of 3 years and the payment of the ROS-analysis, which is normally borne by the developer, see paragraph (54) and (55), are paid directly by the municipality.

---

<sup>50</sup> Judgment in *Germany v Commission*, C-248/84, EU:C:1987:437, and NoA, paragraph 48.

<sup>51</sup> NoA, paragraph 53.

(111) Measures 3 and 5 are therefore granted by the State and through State resources within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.2.5 Measure 4 – Guarantee for a bank loan

(112) As mentioned above in paragraph (106), transfer of State resources may take many forms, and the creation of a concrete risk of imposing an additional burden on the State in the future, by a guarantee, is sufficient for the purposes of Article 61(1) of the EEA Agreement.<sup>52</sup>

(113) The guarantee from the municipality therefore constitutes a conditional commitment of State resources within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.2.6 Measure 6 – Stadium lease agreement

(114) The municipality advanced NOK 40 million to SUA for the lease of the stadium. The payment was made by the municipality and it consequently constitutes a transfer of State resources within the meaning of Article 61(1) of the EEA Agreement.

### 5.3.3 Confer an advantage on an undertaking

#### 5.3.3.1 Introduction

(115) The qualification of a measure as state aid requires that it confers an advantage on the recipient. 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.

(116) Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.<sup>53</sup> In general, both the construction and operation of an infrastructure constitute an economic activity in itself (and are thus subject to state aid rules) if that infrastructure is, or will be used, to provide goods or services on the market.<sup>54</sup> Public support in favour of a sports club that has no economic activity or the funding of sports infrastructure that is not meant to be commercially exploited (accessible to everyone free-of-charge and fulfilling a general purpose) is however excluded from the application of the state aid rules.

(117) SUA is a private limited liability company. It is commercially active, and the football stadium, Østerhus Arena, will also be used for professional football games. The economic activities will therefore include, the selling of tickets to view events, broadcasting rights or conducting sponsoring or advertising agreements, rental services, and selling merchandise. SUA is therefore to be considered as an undertaking engaged in an economic activity.

(118) Below, ESA will assess whether Measures 1 to 6 confer an advantage on SUA.

---

<sup>52</sup> See judgment of 1.12.1998 in *Ecotrade*, C-200/97, EU:C:1998:579, paragraph 41, judgment of 19.3.2013 in *Bouygues and Bouygues Télécom v Commission and others*, C-399/10 P and C-401/10 P, EU:C:2013:175, paragraphs 137–139.

<sup>53</sup> Judgment of 23.4.1991 in *Höfner and Elser v Macrotron*, C-41/90, EU:C:1991:161, paragraphs 21–23.

<sup>54</sup> Judgment of 19.12. 2012 in *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11 P, EU:C:2012:821, paragraphs 40–43.

### 5.3.3.2 Measure 1 – Land lease agreement

- (119) The Norwegian authorities have in the GBER information sheet reported that the agreed interest rate for the property led to an advantage of NOK 3 808 548 (approx. EUR 370 000) for SUA.
- (120) ESA notes that the Norwegian authorities have argued that the applied interest rate and the subsequent lease payments are in line with market conditions.
- (121) The assessment of whether a measure is compliant with market conditions can be based on the available objective, verifiable and reliable data. This information must be sufficiently detailed and should reflect the economic situation at the time at which the transaction was decided, taking into account the level of risk and future expectations.<sup>55</sup>
- (122) The Norwegian authorities have held that the interest rate was set to 2% of the property value, based on a recommendation from one of the appraisers and Article 15 of the Land Lease Act. ESA notes that for properties like at the case at hand, Article 15(2) of the Land Lease Act opens for contracts with higher interest rate. It is up to the parties to decide on the most reasonable lease payment.
- (123) On this basis, ESA notes that a private investor seeking a reasonable profit for the investment, would normally have undertaken some investigations to agree on the most profitable interest rate. ESA cannot see that such analysis was conducted in this case, other than a comparison with the Stavanger Sola Airport, which had set the interest rate to 4%.
- (124) Against this background, ESA finds that the information made available by the Norwegian authorities do not suggest that a proper market analysis or risk assessment was conducted. Furthermore, in ESA's view, the Norwegian authorities have not provided any reliable data to support the claim that the lease payment is in line with market conditions.
- (125) Based on the above considerations, ESA finds that it is not possible to establish a genuine market price for the lease. ESA can therefore not conclude that the land lease agreement is market conform. Therefore, ESA cannot exclude that the land lease agreement conferred an advantage on SUA within the meaning of Article 61(1) of the EEA Agreement.

### 5.3.3.3 Measure 2 – Loan of NOK 40 million

- (126) The loan to SUA from the municipality bears an interest rate of 3.89%. According to the Norwegian authorities the interest rate should have been 7.79%. The Norwegian authorities therefore concluded that the difference between 3.89% and 7.79% would constitute state aid. After using a discount rate of 5%, the aid amount was reported as NOK 26 074 845 (approx. EUR 2.5 million).
- (127) The Norwegian authorities have not provided any objective, verifiable and reliable data to support the calculation of the interest rate or the discount rate.
- (128) ESA can therefore not conclude that the interest rate and the discount rate were given on market terms.

---

<sup>55</sup> NoA, paragraph 101.

(129) Based on the above, ESA cannot exclude that the loan agreement entails an advantage that SUA would normally not have obtained under normal market conditions, within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.3.4 Measures 3 and 5 – Advance payment of gaming funds and Payment of Risk and vulnerability analysis

(130) The payment of the ROS-analysis is a positive economic advantage for SUA as it relieves it from an economic burden. The payment of the ROS-analysis by the municipality mitigates charges normally included in the budget of SUA.

(131) As for the advance payment of gaming funds, with an interest free period of 3 years, it confers an economic advantage which amounts to NOK 839 450 (see paragraphs (47) and (48) above).

(132) Measures 3 and 5 therefore confer an advantage on SUA within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.3.5 Measure 4 – Guarantee for a bank loan

(133) The [Guidelines on State guarantees](#) (“the Guidelines”) sets out conditions according to which the existence of aid can be ruled out. It follows from the Guidelines that, if an individual guarantee entered into by the State does not bring any advantage to an undertaking, it will not constitute state aid.

(134) The advantage of a State guarantee is that the risk associated with the guarantee is carried by the State. The risk carrying guarantees are normally remunerated by an appropriate premium. However, when the State forgoes such a premium, there is both a benefit for the undertaking and a drain on the resources of the State.<sup>56</sup>

(135) It follows from the Guidelines that, when the borrower does not need to pay a premium, or pays a low premium, it obtains an advantage. Furthermore, compared to a situation without a guarantee, the State guarantee enables the borrower to obtain better financial terms for a loan than what is normally available on the financial market, such as obtain lower rates and/or offer less security.<sup>57</sup>

(136) In the case at hand, the guarantee for the bank loan was provided free of charge. The cumulative conditions for individual guarantees under the Guidelines are therefore not fulfilled.<sup>58</sup> Based on the above considerations, ESA finds that the guarantee from the municipality constitutes an advantage within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.3.6 Measure 6 – Stadium lease agreement

##### 5.3.3.6.1 Background

(137) The Norwegian authorities have argued that the stadium lease agreement is market conform and therefore does not entail an advantage within the meaning of Article 61(1) of the EEA Agreement.

(138) The EEA legal order is neutral with regards to the system of property ownership and does not in any way prejudice the right of EEA States to act as economic operators. However, when public authorities directly or indirectly carry out

<sup>56</sup> See Section 2.1 of the State Aid [Guidelines on state guarantees](#).

<sup>57</sup> See Section 2.2 of the State Aid [Guidelines on state guarantees](#).

<sup>58</sup> See Section 3.2 of the State Aid [Guidelines on state guarantees](#).

economic transactions in any form, they are subject to EEA state aid rules. Economic transactions carried out by public bodies do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions.<sup>59</sup>

- (139) In order to establish whether a transaction conforms to market conditions, the transaction can be assessed in the light of the terms on which comparable transactions are carried out by comparable private operators in comparable situations.<sup>60</sup> In this regard, ESA notes that benchmarking may not always be an appropriate method to establish market prices if the available benchmarks have not been defined with regard to market considerations, or if the existing prices are significantly distorted by public interventions.<sup>61</sup>
- (140) Furthermore, as pointed out by the Norwegian authorities, there are important differences when it comes to comparing rental of football stadiums, for example in relation to the rental time, the amount of hours rented and the quality of the facilities.
- (141) The Norwegian authorities have highlighted that SUA's stadium, Østerhus Arena, is a completely new stadium with an artificial turf. Furthermore, the municipality has the right to use the arena during what is considered as "prime time", which is after 16:00 on weekdays and weekends. These hours are, according to the Norwegian authorities, considered to be the most expensive hours, due to both demand but also due to the electricity used in connection to heating and floodlights.
- (142) According to the Norwegian authorities, the market price for renting the Østerhus Arena is considered to be NOK 1 545 per hour.<sup>62</sup> The price paid by the municipality, NOK 990, is therefore claimed to be below what is considered to be necessary to obtain a reasonable return on the arena investment. The municipality pays NOK 1 386 000 exclusive of VAT yearly.

#### *5.3.3.6.2 Benchmark prices provided by the Norwegian authorities*

- (143) The Norwegian authorities have provided information on other stadiums rented for similar purposes in Norway, to support their argument that the stadium lease agreement, with an hourly charge of NOK 990, is at least market conform.
- (144) According to the Norwegian authorities, arenas located in Norwegian cities of comparable sizes, charge similar or higher rates. The Norwegian authorities compared the price with the following stadiums: (i) Storhall Karmøy charges NOK 2593.33 per hour, (ii) Kongsvingerhallen charges NOK 2200 per hour, (iii) Fredrikstad stadion charges NOK 1665 per hour, (iv) Color Line stadion in Ålesund NOK 1450 per hour, and (v) an anonymised stadium that charges NOK 1000 per hour (it was only possible to rent this stadium outside the season, from January to March).
- (145) Based on the numbers provided from the stadiums above, the Norwegian authorities found that the average hourly rate was NOK 1781.67 in total. The

---

<sup>59</sup> NoA, paragraphs 73 and 74.

<sup>60</sup> NoA, paragraph 98.

<sup>61</sup> NoA, paragraph 99.

<sup>62</sup> See Document No 1250871.

average hourly rate for the use of the indoor artificial turf was at NOK 2 396.67 and for the outdoor stadium NOK 1 371.67.<sup>63</sup>

#### 5.3.3.6.3 The five stadiums

- (146) Storhall Karmøy was opened in 2015 and the majority owner of Storhall Karmøy is SK Vedavåg Karmøy. It offers a variety of sporting activities to children and youth in Karmøy, as well as football, handball and roller skiing. Storhall Karmøy offers among other facilities an indoor football field with artificial grass. The hourly rental price has increased since the Norwegian authorities gathered the information. According to Storhall Karmøy website, the hourly rate including changing rooms, is NOK 3 500.<sup>64</sup> Although the stadium offers facilities for other activities, the rental price of NOK 3 500 is only for the rent of the football pitch.
- (147) Kongsvingerhallen was opened in 1997 and is owned by KB Gruppen Eiendom AS. Kongsvingerhallen has an indoor football pitch with artificial grass since 2018, and facilities for other activities. According to information available online,<sup>65</sup> Kongsvingerhallen offers different pricings for the rent of the pitch. For the rental of 1/2 of the artificial pitch from 08:00 – 14:00 the price per hour is NOK 825, from 14:00 – 21:00 the price per hour is NOK 1 200. For a rental agreement of six months the hourly price is set to NOK 700 and for a year NOK 1 100 (for the hours between 18:00 – 20:00). Furthermore, the [NTG Kongsvinger](#) and [NTG-U](#) (private high school and middle schools) conduct all their lessons and administration at the Kongsvingerhallen. Further, public high schools from the city have their trainings at the Kongsvingerhallen.
- (148) Fredrikstad stadium was opened in 2007 and is now owned by Fredrikstad municipality. According to the information available on Fredrikstad municipality's website, the hourly rate to rent the stadium for training is NOK 415 minimum (for children NOK 185), and for a sporting event NOK 1 150 (for children NOK 250).<sup>66</sup> Fredrikstad stadium is an outdoor pitch with artificial grass, similar to the Østerhus Arena. The stadium also serves as the home turf for the professional team playing in the second highest division in Norway.
- (149) Color Line stadium was opened in 2005, the stadium is owned by Aalesunds FK, the football club of Ålesund city. Color Line stadium is the home turf for the professional team playing in the highest division in Norway. The stadium is also used by other teams of children, youth and adults, as well as high school students from the city.
- (150) Finally, for the anonymised stadium, it is difficult to determine whether a comparison with Østerhus Arena is possible. ESA does not have any information on the ownership of the stadium. However, ESA notes that in the documentation provided by the Norwegian authorities, it is indicated that the stadium is rented out to local clubs. Further, that the Norwegian football federation has used the stadium for international matches. As for the rent of the stadium, for the period (January, February and March) the price was NOK 1 500 per training session (90 min). The price for a year was approximately NOK 500 000. In comparison, the

<sup>63</sup> See Document No 1250871.

<sup>64</sup> <https://storhallkarmoy.no/utleie>

<sup>65</sup> <https://kongsvingerhallen.no/utleie/>

<sup>66</sup> <https://www.fredrikstad.kommune.no/tjenester/kulturogfrididrett-fysisk-aktivitet-og-friluftsliv/Anleggogaktivitet/leiepriser/#heading-h2-6>

annual cost for the municipality, renting Østerhus Arena, according to the lease agreement is NOK 1 386 000 exclusive of VAT.

#### 5.3.3.6.4 ESA's assessment

- (151) The stadiums or sporting halls that the municipality compared Østerhus Arena to, are, to an extent, located in similarly sized cities and have more or less similar capacity. The Østerhus Arena is a newly constructed stadium and, as explained by the Norwegian authorities, the municipality is offered “prime time” slots for the use of the stadium. Considering the time slots offered to the municipality and number of hours a year, the hourly rate paid by the municipality appears to be lower than the average price of similar stadiums mentioned above. Furthermore, the municipality is paying approximately 34% less than the Club yearly, see paragraph (66) above.
- (152) However, as noted above, there are important differences when comparing lease agreements. In the case at hand, the municipality has a stadium lease agreement with a duration of 40 years, where the total amount of NOK 40 million was paid in advance, see paragraph (61) above. It is further clear from the documentation provided, that the lease agreement with the municipality was an important prerequisite for financing the construction of the stadium.
- (153) In ESA's view, it is unlikely that such commitment and conditions could be considered to represent market terms. It is not evident that a private operator would have undertaken similar risk and commitments, even if the commitment is secured with a third lien on the stadium.
- (154) ESA notes as well that the municipality's objective to lease the stadium is to make it available for training and sporting activities, mainly for schools and sport clubs. The purpose of the municipality's lease agreement appears therefore to be driven by public policy reasons. Although it may be rational from a public policy perspective, this can include considerations a market economy operator would normally not consider.<sup>67</sup>
- (155) ESA therefore finds that, although the arrangement between SUA and the municipality minimise the advantage to SUA to the minimum necessary to ensure the completion of the stadium, an advantage to SUA within the market for constructing and operating football stadiums cannot be excluded.<sup>68</sup>
- (156) Based on this, ESA cannot exclude that the stadium lease agreement confers an advantage on SUA within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.4 Selectivity

##### 5.3.4.1 Introduction

- (157) The measure must be selective in that it favours “certain undertakings or the production of certain goods”.
- (158) The measures at issue (Measures 1 to 6) are individual measures addressed only to SUA. They are therefore selective within the meaning of Article 61(1) of the EEA Agreement.

---

<sup>67</sup> NoA, paragraph 77.

<sup>68</sup> See Commission Decision of 2.5.2013, *Uppsala arena*, SA.33618, paragraphs 40-41.

### 5.3.5 Effect on trade and distortion of competition

#### 5.3.5.1 Introduction

(159) The measures must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement. An effect on trade cannot be merely hypothetical or presumed. That said, an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between EEA States is not required.<sup>69</sup> However, it must be established why the measure is liable to have an effect on intra-EEA trade, based on the foreseeable effects of the measure.<sup>70</sup>

(160) The mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, is considered sufficient to conclude that the measure is likely to affect trade between EEA States and distort competition between undertakings established in other EEA States.<sup>71</sup>

#### 5.3.5.2 Measures 1 to 6 (Land lease agreement; Loan of NOK 40 million; Advance payment of gaming fund grants; Guarantee for a bank loan; Payment of risk and vulnerability analysis and Stadium lease agreement).

(161) The Measures 1 to 5 have conferred an advantage on SUA, which strengthens its position compared to other undertakings that it competes with on an EEA wide market. The same applies to any advantage conferred on SUA by the potential aid element inherent in the stadium lease agreement (Measure 6).

(162) ESA must further consider whether the measures are liable to affect trade between EEA States. In this regard, the Court of Justice has ruled that “*where state financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid*”.<sup>72</sup> The effect on trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between EEA States, based on the foreseeable effects of the measure.<sup>73</sup>

(163) Certain activities and measures, in view of their specific circumstances, are regarded to have a purely local impact and consequently no effect on trade between EEA States. In that regard, ESA and the Commission have in a number of cases assessed, (i) whether the beneficiary have provided services to a limited area within an EEA State and was unlikely to attract customers from other EEA States, and (ii) if it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishments.

<sup>69</sup> Judgment of 28.7.2011 in *Mediaset SpA v Commission*, C-403/10 P, EU:C:2011:533, paragraphs 111, 113 and 115.

<sup>70</sup> See, for instance, judgment of 28.11.1996 in *AITEC and others v Commission*, Joined Cases T-447/93, T-448/93 and T-449/93, EU:T:1995:130, paragraph 141.

<sup>71</sup> EFTA Court judgment of 15.12.2016 in *Norway v ESA*, E-6/98, [1999] EFTA Ct. Rep. 76, paragraph 59, and judgment of 17.9.1980 in *Philip Morris v Commission*, T-30/79, EU:C:1980:209, paragraph 11.

<sup>72</sup> Judgment of 14.1.2015 in *Eventech*, C-518/13, EU:C:2015:9, paragraph 66.

<sup>73</sup> See, for instance, judgment of 28.11.1996 in *AITEC and others v Commission*, T-447/93, T-448/93 and T-449/93, EU:T:1995:130, paragraph 141.

- (164) Some of these cases concerned sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other EEA States.<sup>74</sup>
- (165) Østerhus arena is primarily intended for regional and local use within Sandnes, in Norway. It is used by school teams for regional matches, by the local community and for educational use. However, given the fact that the arena can also be used at the highest level for matches which can potentially attract either competitive teams or supporters from abroad, there is the potential for an effect, however small, on trade between the Contracting Parties. 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 countries or belong to international groups.
- (166) ESA therefore finds that the support to SUA for the construction of the arena, is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement within the meaning of Article 61(1) of the EEA Agreement.

#### 5.3.6 Conclusion on the existence of aid

- (167) On the basis of above, ESA cannot exclude that the Land lease agreement (Measure 1); the Loan of NOK 40 million (Measure 2); and the Stadium lease agreement (Measure 6) entail state aid within the meaning of Article 61(1) of the EEA Agreement. Moreover, ESA concludes that the Advance payment of gaming fund grants (Measure 3); the Guarantee for a bank loan (Measure 4); and the Payment of risk and vulnerability analysis (Measure 5) entail state aid within the meaning of Article 61(1) of the EEA Agreement. Finally, ESA finds that the reimbursement and allocation of costs relating to the municipal technical infrastructure (Measure 7) and reduction of ground rent and a deferment of payment of interest and loan instalments for two years (2020 and 2021) (Measure 8), do not entail state aid within the meaning of Article 61(1) of the EEA Agreement.

## 6 Procedural requirements

### 6.1 Introduction

- (168) 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."
- (169) The GBER exempts certain categories of state aid from the requirement of prior notification to ESA as they are deemed compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement. State aid

---

<sup>74</sup> See, for instance, Commission Decisions in cases N 258/2000 Leisure Pool Dorsten (OJ C 172, 16.6.2001, p. 16); 2004/114/EC of 29.10.2003 on measures in favour of non-profit harbours for recreational crafts, the Netherlands (OJ L 34, 6.2.2004, p. 63); SA.37963 – United Kingdom – Alleged State aid to Glenmore Lodge (OJ C 277, 21.8.2015, p. 3); SA.38208 – United Kingdom – Alleged State aid to UK member-owned golf clubs (OJ C 277, 21.8.2015, p. 4); as well as the ESA's [Decision No 459/12/COL](#) of 5.12.2012 on aid to Bømlabadet Bygg AS for the construction of the Bømlabadet aqua park in the Municipality of Bømlø; [Decision No 20/19/COL](#) of 2.4.2019 Leangbukten Båtforenings Andelslag, and Decision No 083/19/COL, paragraph 212.

measures that meet the criteria of the GBER can therefore be implemented directly, without prior approval from ESA.

(170) In the *Kerkosand* judgment, the General Court clarified that if a complainant asks the Commission to verify whether an aid was granted in compliance with the GBER, the Commission is required to start a preliminary assessment, which has to be concluded by a decision.<sup>75</sup> Following this clarification, ESA notes that, when it receives a complaint about a block exempted measure, ESA is required to assess the compliance of the measure with the relevant legal basis, or whether the measure is otherwise compatible with the EEA Agreement on the basis of guidelines or directly on the basis of the legal provisions of the EEA Agreement.

## 6.2 Aid under GBER

### 6.2.1 Article 1 GBER - aid for sport and multifunctional recreational infrastructure

(171) Pursuant to Article 1(1)(k) GBER, the GBER applies to aid for sport and multifunctional recreational infrastructure. As the municipality supported SUA for the construction of a football stadium, it falls under the scope of Article 1(1)(k) GBER.

### 6.2.2 Article 3 GBER

(172) According to Article 3 GBER, *ad hoc* aid shall be compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement, and shall be exempted from the notification requirement of Article 1(3) of Part I of Protocol 3 SCA, provided that such aid fulfils all the conditions laid down in Chapter I of the GBER, as well as the specific conditions for the relevant category of aid laid down in Chapter III of the GBER.

(173) In order to assess whether Measures 1 to 5 are compliant with the conditions under the GBER, it is first necessary to verify their compliance with the general provisions, before assessing the specific conditions under the GBER.

### 6.2.3 Article 5 GBER

(174) Under Chapter I of the GBER, Article 5 ("Transparency of aid") provides that "[t]his Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment". Measures 1 to 5 are in the form of a loan, guarantee, grants and interest rates, and were calculated *ex ante* based on reasonable projections. Furthermore, the municipality has published the aid by posting information about the aid with a link to all documents on the municipality's website. Measures 1 to 5 are therefore in compliance with the transparency requirement in Article 5(2)(a), (b) and (c) GBER.<sup>76</sup>

### 6.2.4 Article 6 GBER

(175) Article 6 GBER ("Incentive effect") provides that "[t]his Regulation shall apply only to aid which has an incentive effect". More precisely, under point 2 of Article 6 GBER it is required that the beneficiary must have submitted a written application for the aid before work on the project or activity starts. The application must

<sup>75</sup> Judgment of 9.9.2020 in *Kerkosand v Commission*, T-745/17, EU:T:2020:400, paragraphs 46 and 47.

<sup>76</sup> See preparatory documents and decision taken by the city council [here](#) and [here](#).

include: "(a) undertaking's name and size; (b) description of the project, including its start and end dates; (c) location of the project; (d) list of project costs; (e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project".

(176) Before the start of works on the stadium in 2018, the municipality had already in mid-2015 entered into discussions and negotiations with the Club regarding the construction of a new arena. Based on the negotiations the municipality decided on 16 October 2017 to support SUA to build a new arena through various measure, as described above in Section 4.1. According to the Norwegian authorities, SUA sent several written applications before the work on the construction had started. All support for the construction of the arena was approved prior to the start of the construction. Furthermore, it is clear from the documentation provided by the Norwegian authorities that SUA could not have constructed the arena without the support from the municipality. ESA therefore finds that the provision on the incentive effect of the aid is fulfilled for Measures 1 to 5.

#### 6.2.5 Article 7 GBER

(177) All the support under the Measures 1 to 5 are defined in absolute terms, where the gross grant equivalent of the aid is clearly defined (see section 3.1.2 above). The gross grant equivalent of the aid is therefore clearly defined within the meaning of Article 7 GBER.

#### 6.2.6 Article 8 GBER

(178) Article 8 ("Cumulation") provides that "*the total amount of State aid for the aided activity or project or undertaking shall be taken into account*", by cumulating all state aid in relation to the same eligible costs, as long as "*such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation*".

(179) ESA also makes reference to the cumulation rules in Article 5 of the *de minimis* Regulation. Pursuant to Article 5(2) of the *de minimis* Regulation, aid can be cumulated with state aid in relation to the same eligible costs, as long as the cumulation does not exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation.

(180) ESA finds that both provisions are fulfilled in this case, as all the aid to SUA under GBER and other measures have been taken into account in this assessment (see sections 4.1 and 4.2 above), and considering the numbers provided by the Norwegian authorities, the aid amount does not exceed the limitations set out in Article 55(10) and (11) GBER, see paragraphs (188) and (189) below.

(181) As mentioned above, the *ad hoc* aid to SUA falls under the scope of Article 1(1)(k) GBER: "*aid for sport and multifunctional recreational infrastructures*". The compliance with specific provisions of the GBER for aid to this type of infrastructure is assessed in the following section.

#### 6.2.7 Compliance with Article 55 GBER

(182) SUA has received support for the construction and operation of a football stadium, the Østerhus Arena. Measures 1 to 5 are reported under Article 55 GBER, aid for sport infrastructures. The GBER does not provide a precise definition of this type

of infrastructure, however, since the new football stadium is constructed for the local population and visitors, as well as for the professional football team, ESA consider that Østerhus Arena qualifies as a sport infrastructure.

- (183) According to Article 55(2) GBER, sport infrastructure (the Arena) cannot be used “exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20% of time capacity.” It follows from the stadium lease agreement between the municipality and SUA, that the municipality has access to 1400 hours of arena times per year for sports clubs and schools, and an additional 100 hours that can be used for other events. The Norwegian authorities have confirmed that the use of the facility by the municipality and others far exceed 20%.
- (184) In Article 55(4) GBER it is stated that the access to the Arena “*shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.*” SUA has financed around 75% of the Arena itself, through capital injection and bank loans. SUA being wholly owned by the Club and Sandes Ulf toppfotball AS, can give Sandnes Ulf toppfotball AS preferential access under more favourable conditions, as long as the conditions are publicly available. The municipality has also been granted access to the Arena, according to the stadium lease agreement, this agreement is publicly available. Furthermore, access to the facilities are open for other teams and event organisers for a fee.
- (185) It follows from Article 55(6) GBER that “[a]ny concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules”. In the case at hand, the construction was done by SUA. As mentioned above, SUA financed 75% of the construction costs itself. The public support therefore constituted less than half of the costs, and according to the Norwegian regulation on public procurement, SUA was not obliged to apply the procurement rules.<sup>77</sup> However, ESA notes the construction of the Arena was assigned to Masiv AS, after a bidding process between three companies, Kruse Smith, Hent and Lothe Bygg, and Masiv AS. ESA therefore finds that the construction of the Østerhus arena was assigned in an open, transparent and non-discriminatory manner, in accordance with Article 55(6) GBER.
- (186) The eligible costs according to Article 55(8) and (9) GBER are: (i) the investment costs in tangible and intangible assets and (ii) the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.
- (187) In ESA’s view, the municipality’s support through direct grants (Measures 3 and 5), loan (Measure 2) and guarantee (Measure 4) for the construction of the Arena is to be considered as investment costs in tangible assets, amounting to NOK 30 476 697 million (approx. EUR 3.2 million). Furthermore, ESA notes that the land

---

<sup>77</sup> Regulation of Public Procurement 12.8.2016 No 974, ([anskaffelsesforskriften](#)), see Articles 1-3.

lease agreement falls under the category of operating cost that amounts to approximately EUR 2.8 million. Measure 1 to 5 therefore takes the form of investment aid and operating aid in accordance with Article 55(8) and (9) GBER.

- (188) Article 55(10) GBER on investment aid for sport and multifunctional recreational infrastructure states that the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. It follows from Article 55(11) GBER that for operating aid for sport infrastructure the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
- (189) The support to SUA was calculated *ex ante* based on reasonable projections and budgeted costs. The municipality has, through the provided documentation, established that the aid amount did not exceed the difference between the eligible costs and the operating profit of the investment, or exceeded the operating losses over the relevant period.<sup>78</sup> The conditions in Article 55(10) and Article 55(11) GBER are therefore fulfilled.
- (190) The total costs (amounting to approx. EUR 3.6 million) are well below the EUR 30 million threshold set out in Article 4(1)(bb) GBER.
- (191) Based on the above, ESA consider that Measures 1 to 5 comply with Article 55 GBER.

## **7 Compatibility of Measure 6 – stadium lease agreement**

### **7.1 Introduction**

- (192) 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.
- (193) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”. Therefore, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.<sup>79</sup>
- (194) Under the first condition, ESA examines how Measure 6, the stadium lease agreement, facilitates the development of certain economic activities or areas. Under the second condition, ESA weighs up the positive effects of the stadium lease agreement for the development of said activities or areas and the negative effects of the aid in terms of distortions of competition and adverse effects on trade.
- (195) For most cases, these conditions are outlined in ESA’s state aid guidelines. However, in this case there are no existing state aid guidelines applicable to the measure at hand, ESA will therefore assess the stadium lease agreement directly under Article 61(3)(c) of the EEA Agreement.

---

<sup>78</sup> Document No 1250869.

<sup>79</sup> Judgment of 22.9.2020 in *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraphs 18–20.

## 7.2 Facilitation of development of certain economic activities or areas

### 7.2.1 Economic activities or areas supported

- (196) Under Article 61(3)(c) of the EEA Agreement, in order to be considered compatible, the stadium lease agreement must contribute to the development of certain economic activities or areas.
- (197) As mentioned above, the municipality's reason for renting the stadium was founded in social policy reasons, to make it available for training and sporting activities mainly for schools and sport clubs. By renting the stadium the municipality supports the promotion of youth sports, education and training.
- (198) In view of the above, ESA considers that the stadium lease agreement constitutes aid to facilitate the development of certain economic activities, by making the stadium available for practice of sports, cultural events, public events and recreational activity in the municipality, as required by Article 61(3)(c) of the EEA Agreement.

### 7.2.2 Incentive effect

- (199) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect and so effectively facilitates the development of certain economic activities/areas. To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertaking concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner.
- (200) ESA notes that in the absence of the stadium lease agreement, the school children and sport clubs would presumably not be able to use the facility to the same extent and under the same conditions.
- (201) Furthermore, based on the information from the Norwegian authorities, the stadium lease agreement appears to have been an important prerequisite for SUA to finance the construction of the stadium. Based on the information provided, ESA finds that in the absence of the support from the municipality through the stadium lease agreement, SUA would not have been able to finalise the construction of Østerhus Arena.
- (202) In view of the above, ESA considers that in the absence of the stadium lease agreement, the construction of the stadium would not have been completed, and consequently the development of the activities would not have been facilitated. Therefore, ESA finds that Measure 6 has an incentive effect.

### 7.2.3 Compliance with relevant EEA law

- (203) ESA has no indications that Measure 6, the conditions attached to it, or the activity it finances entail a violation of relevant EEA law.

## 7.3 Whether the aid adversely affects trading conditions to an extent contrary to the common interest

### 7.3.1 Introduction

- (204) ESA has not only identified positive effects of the planned aid for the development of the abovementioned economic activities and economic areas, but also possible negative effects that it may have in terms of distortions of competition and

adverse effects on trade. These positive and negative effects must then be weighed up.

### 7.3.2 *Markets affected by the aid*

(205) Measure 6 mainly affects the market in Sandnes for organising sport and other types of public events.

### 7.3.3 *Positive effects of the aid*

(206) The aid contributes to the development of local sporting activity and the promotion of sport for children. Promoting sport is to be considered as part of the promotion of education, training and youth, as well as social policy. Closer cooperation in these fields is entailed in the association between the Contracting Parties in the EEA with a view to attaining the EEA's objectives, as set out notably in Articles 1 and 78 of the EEA Agreement. The modalities of this closer cooperation are further defined in Protocol 31 to the EEA Agreement on cooperation in specific fields outside the four freedoms. Article 4 of this Protocol is headed "Education, training, youth and sport", and foresees participation of the Contracting Parties in European programmes in the field of education, training and youth then in force or adopted.

(207) This illustrates the close link between promotion of sport and the aims set out in the EEA Agreement. Promotion of sport, including through the financing of sport infrastructure, has been recognised by ESA as an objective of common interest.<sup>80</sup>

(208) ESA further notes that the Commission has authorised a number of aid measures in support of sports and multipurpose facilities. The Commission has acknowledged that the construction and operation of venues for sports and other public events benefitting the general public can be considered as a responsibility of the State.<sup>81</sup>

(209) The stadium lease agreement ensures the general public's access to and practice of sports, cultural events, public events and recreation in Sandnes. The municipality will therefore be fulfilling its responsibility to the general public by making such a facility available through its stadium lease agreement.

(210) Furthermore, ESA notes that the financing of sport and multifunctional infrastructure could have also benefited from Article 55 GBER if certain conditions of that regulation were fulfilled. This further demonstrates that state aid to such infrastructure can be considered as a benefit to society that outweighs the possible distortions of competition and adverse effects on trade.

---

<sup>80</sup> See ESA's Decision No 083/19/COL Trondheim Spektrum, Decisions No [225/15/COL](#) of 10.6.2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball AS; No [357/15/COL](#) of 23.9.2015 on State aid in favour of Sandefjord Fotball AS; No [178/15/COL](#) of 7.5.2015 on the aid to the Municipality of Tromsø for the construction of a swimming and bathing facility called Templarheimen in the Municipality of Tromsø; and No [13/18/COL](#) of 29.1.2018 on aid for the construction and operation of the sports facility Templarheimen.

<sup>81</sup> See Commission Decision of 2.5.2013, *Uppsala arena*, SA.33618, and Commission Decision of 15.5.2013, *Multiarena in Copenhagen*, SA.33728.

### 7.3.4 Limited negative effects of the aid

#### 7.3.4.1 Introduction

(211) Article 61(3)(c) of the EEA Agreement requires an assessment of any negative effects on competition and on trade. The aid must not adversely affect trading conditions to an extent contrary to the common interest.

#### 7.3.4.2 Necessity of the aid

(212) A state aid measure is necessary if it is targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself.

(213) Østerhus Arena was built in order to address the lack of adequate facilities to accommodate larger sport and cultural events. As well as to provide children and youth in the municipality a training facility. As mentioned above, Østerhus Arena, is used by schools and for children's sporting and recreational activities. It is also used by [WANG Ung Sandnes](#), a sports school, as their teaching location.

(214) The purchase of stadium capacity from SUA by the municipality through the lease agreements and the subsequent distribution of that capacity to schools and youth sports clubs, enables the municipality to offer affordable sporting activities to the public of Sandnes. Without the stadium lease agreement, the clubs would have to finance their activities out of their own means, the financial cost of renting hall capacity would have to be borne by the users, the inhabitants of Sandnes.

(215) ESA notes that absence of the lease agreement could reduce the offer significantly and could potentially lead to the exclusion of citizens from amateur sports with only limited financial means. It is the municipality's intention to provide its inhabitants with access to such an infrastructure which meets the needs of the citizens of Sandnes. Market forces alone were therefore considered to not provide this.

(216) Based on the above, ESA consider that the municipality, through the stadium lease agreement, brings about a material improvement that the market cannot deliver itself.

#### 7.3.4.3 Appropriateness of the aid

(217) EEA EFTA 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 the development of the targeted economic activities or areas.

(218) 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.

(219) Through the lease agreement, the municipality has 1 400 hours of arena time per year, which the municipality can use to grant access to hall capacity for schools and the youth sports clubs in Sandnes. Similarly, the municipality can also provide access for the general public of Sandnes, since the facility is suitable for hosting different kinds of sporting and cultural events. Based on this, ESA finds that the

stadium lease agreement is an appropriate instrument to provide the public access to the sporting facility.

(220) In view of the above, ESA considers that state aid is the appropriate instrument to facilitate the development of the targeted economic activities, i.e. sport and cultural activities in Sandnes municipality..

#### 7.3.4.4 Proportionality of the aid

(221) 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.

(222) As stated above in paragraphs (141) and (142), the Norwegian authorities have indicated that the market price for renting the Østerhus Arena is NOK 1 545 per hour.<sup>82</sup> The municipality has agreed to an hourly rate of NOK 990. According to the Norwegian authorities, a rate of NOK 1 545 per hour, would only cover expenses such as the bank loan and the operational costs, and does not leave a return for SUA. The hourly rate of NOK 990 is considered to be below 2/3 of the full cost.

(223) Moreover, ESA notes that even if the benchmarks submitted by the Norwegian authorities are not suitable for the exclusion of aid in the case, the benchmarks prove that the lease agreement's pricing falls within the range of what is customary in this market in Norway. ESA therefore finds that the risk for over-compensation is negligible in the case at hand.

(224) Finally, ESA takes into account that the lease agreement was an important prerequisite to finance in part the construction of the stadium. It follows from the documentation provided that, in addition to other financing and the aid reported under GBER, the lease agreement constituted a necessary part of SUA's financing plan. The payment for the lease agreement was paid in advance, at different stages of the construction, which indicates that a large part of it was needed to complete the construction, see paragraph (61) above.

(225) In view of the above, ESA finds that the stadium lease agreement is necessary and proportionate, as it address an under-investment in sporting facilities, and at the same time ensures that different users and sectors can benefit from the facility.

(226) Based on the above, ESA finds that the support through the stadium lease agreement is limited to the minimum needed to incentivise the construction of the stadium.

#### 7.3.4.5 Conclusion on limited negative effects

(227) In light of the above arguments, ESA concludes that any negative effects of the aid on competition and on trade are limited.

#### 7.3.4.6 Balancing positive and negative effects of the aid

(228) For the aid to be compatible with the functioning of the EEA Agreement, the limited negative effects of the aid measure in terms of distortion of competition and adverse impact on trade between Contracting Parties must be outweighed by

---

<sup>82</sup> See Document No 1250871.

positive effects, in terms of contribution to the facilitation of the development of economic activities or areas. It must be verified that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

- (229) The municipality entered into the stadium lease agreement with SUA in order to support the construction of a new stadium that could serve as a cornerstone of sports and cultural offers available in Sandnes. Furthermore, to offer the general public, the schools and local youth sport clubs affordable access to sporting facilities. ESA further adds that the municipality's foreseen use of the arena is above 20% of the time. Thus, the arena is open to the general public.
- (230) The arena will both complement existing arenas with additional capacity and increase the types of events, both sports and cultural, which can take place in Sandnes, and considerably benefit amateur sports and the general public in Sandnes. ESA therefore considers the stadium lease agreement to be a well targeted measure.
- (231) In addition, considering the location of the arena and that most of the activities, which are to be carried out in the arena, are of local character, the effect on competition and trade between Contracting Parties is limited, although, as described above in section 5.3.5.2, it cannot be completely excluded. From the above reasons, it has been demonstrated that the municipality's involvement in the arena is both necessary, proportionate and does not cause undue distortion of competition.
- (232) ESA concludes that the positive effects of the measure outweigh possible distortions of competition and adverse impact on trade. Therefore, Measure 6 does not unduly affect trading conditions to an extent contrary to the common interest.

## 8 Conclusion

- (233) On the basis of the foregoing assessment, ESA concludes that Measures 7 and 8 do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.
- (234) ESA furthermore concludes that Measures 1 to 5 constitute state aid within the meaning of Article 61(1) of the EEA Agreement, but that these measures meet all the applicable conditions of the GBER and are, in particular, compliant with Article 55 GBER.
- (235) Finally, ESA cannot exclude that Measure 6, the stadium lease agreement, constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. However, such aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), and consequently ESA raises no objections to its implementation.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund

Stefan Barriga

Árni Páll Árnason

President  
Responsible College Member

College Member

College Member

Mel-po-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Mel-po-Menie Josephides.*

*Placeholder for electronic signature. Please do not delete.*