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3. Dómstóllinn

EFTA-STOFNANIR

EFTIRLITSSTOFNUN EFTA

Auglýst eftir athugasemdum, í samræmi við 2. mgr. 1. gr. í I. hluta bókar 3 við samninginn um eftirlitsstofnun og dómstól, um fyrirhugaða nýja áætlun stjórnvalda í Noregi um styrkveitingar vegna ólaunaðs vinnuframlags á sviði rannsókna og þróunarstarfs 2006/EES/53/01

Eftirlitsstofnun EFTA hefur, með ákvörðun 59/06/COL frá 8. mars 2006, sem er birt í fullgilti útgáfu á upprunalegu tungumáli næst á eftir þessu ágripi, hafið málsmeðferð samkvæmt 2. mgr. 1. gr. í I. hluta bókar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls (samninginn um eftirlitsstofnun og dómstól). Stjórnvöldum í Noregi hefur verið tilkynnt þetta með afriti af ákvörðuninni.

Eftirlitsstofnun EFTA veitir EFTA-ríkjunum, aðildarríkjum Evrópusambandsins og öðrum, sem eiga hagsmuna að gæta, eins mánaðar frest frá birtingu þessarar auglýsingar að telja til að leggja fram athugasemdir við áformaða ráðstöfun. Athugasemdir skal senda á eftirfarandi pósthfang:

EFTA Surveillance Authority
35, Rue Belliard
B-1040 Brussel/Bruxelles
Bréfasími málaskrár: 00 32 22 86 18 00

Athugasemdunum verður komið á framfæri við stjórnvöld í Noregi. Þeim, sem leggja fram athugasemdir, er heimilt að óska nafnleýndar og skulu slíkar óskir vera skriflegar og rökstuddar.

Ágrip

Eftirlitsstofnunin hefur ákveðið að hefja formlega rannsókn á fyrirhugaðri nýrri áætlun stjórnvalda í Noregi um styrkveitingar vegna ólaunaðs vinnuframlags á sviði rannsókna og þróunarstarfs („áætlun um skattfrádrátt vegna ólaunaðs vinnuframlags“) sem hefur það markmið að stuðla að auknum fjárfestingum smáfyrirtækja í rannsóknum og þróunarstarfi, einkum sprotafyrirtækja og einstaklingsfyrirtækja.

Tillagan um áætlun um skattfrádrátt vegna ólaunaðs vinnuframlags kom fram vegna þess að stjórnvöld í Noregi töldu ókleift að styrkja ólaunað vinnuframlag á sviði rannsókna og þróunarstarfs í gegnum svonefnda „Skattefunn-áætlun“ (en eftirlitsstofnunin samþykkti þá áætlun með ákvörðun 171/02/COL frá 25. september 2002 og ákvörðun 16/03/COL frá 5. febrúar 2003). Aðstoð samkvæmt Skattefunn-áætluninni er veitt sem skattfrádráttur, en stjórnvöld í Noregi töldu það andstætt ákvæðum almennra skattalaga í Noregi að heimila frádrátt frá skattstofni á grundvelli ógreidds launakostnaðar sem ekki hefði stofnast til og ekki hefði komið til greiðslu í raun.

Eftirlitsstofnunin hefur lokið mati á áætluninni um skattfrádrátt vegna ólaunaðs vinnuframlags í samræmi við gildandi leiðbeiningar stofnunarinnar um ríkisaðstoð vegna rannsókna og þróunarstarfs. Bráða-birgðaafstaða stofnunarinnar er að í aðstoð, sem veitt er samkvæmt áætluninni um skattfrádrátt vegna ólaunaðs vinnuframlags, felist ekki augljós hvati til að stunda rannsóknir og þróunarstarf. Í þessu tilliti er það álit eftirlitsstofnunarinnar að hin ólaunaða rannsókn- og þróunarvinna myndi fara fram þótt engin aðstoð kæmi til, enda virðast einstaklingarnir, sem innna hana af hendi, reiðubúnir að sinna henni endurgjaldslaut. Með tilliti til þess markmiðs að viðkomandi rannsóknir og þróunarstarf fari fram virðist aðstoðin því óþörf. Það er jafnframt álit eftirlitsstofnunarinnar að kostnaður við ólaunað vinnuframlag sé ekki kostnaður „sem kemur til greina“ í skilningi leiðbeininga um ríkisaðstoð vegna rannsókna og þróunarstarfs.

Stjórnvöld í Noregi hafa ennfremur gefið þær skýringar að mörg fyrirtæki hafi haft umsjón með verkefnum sem samþykkt höfðu verið á grundvelli Skattefunn-áætlunarinnar en sumum þessara fyrirtækja hafi síðar verið meinað að nýta skattfrádráttinn (eða verið gert að greiða fjárhæð sem svaraði til skattfrádráttar sem þegar hafði verið veittur) af þeim sökum að um ólaunað vinnuframlag var að ræða. Því voru lögð drög að áætlun sem hefur það að markmiði að bæta fyrirtækjum útgjöld sem þau hafa þurft að bera í tengslum við rannsókn- og þróunarverkefni sín árin 2002 til 2004 sökum þess að ekki var unnt að styrkja ólaunað vinnuframlag á grundvelli Skattefunn-áætlunarinnar.

Bætur, sem koma til greiðslu í ofangreindum tilgangi, verða greiddar sem aðstoð á grundvelli frímarks (öðru nafni „minniháttaraðstoð“), og reynist heildargreiðslur af því tagi til einstakra umsækjenda hærri en sem nemur 100 000 evrum á þriggja ára tímabili verða bæturnar lækkaðar. Umsækjendum verður jafnframt gert að skila heildaryfirliti um alla aðstoð á grundvelli frímarks sem þeir hafa fengið greidda fram að 1. janúar 2003. Eftirlitsstofnunin hefur því tekið þá bráðabirgðaafstöðu að bótakerfið samræmist frímarkinu sem sett er í svonefndri „frímarksreglugerð“ (e. *de minimis Regulation*) ⁽¹⁾.

⁽¹⁾ Reglugerð framkvæmdastjórnarinnar (EB) nr. 69/2001 um beitingu 87. og 88. gr. EB-sáttmálans gagnvart lágmarksaðstoð (Stjtið. EB L 10, 13.1.2001, bls. 30), er felld var inn í XV. viðauka við EES-samninginn sem liður 1(e) samkvæmt ákvörðun sameiginlegu EES-nefndarinnar nr. 88/2002 (Stjtið. EB L 266, 3.10.2002, bls. 56, og EES-viðbætur nr. 49, 3.10.2002, bls. 42).

**EFTA SURVEILLANCE AUTHORITY DECISION
No 59/06/COL**

of 8 March 2006

to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to financial support to unpaid labour in research and development activities

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 thereof and Article 1(2) in Part I of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines ⁽³⁾ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 14 thereof on aid for research and development,

Whereas:

I. FACTS

1. Procedure

By letter dated 14 October 2005 from the Norwegian Mission to the European Union, forwarding a letter from the Norwegian Ministry of Trade and Industry, dated 5 October 2005, both received and registered by the Authority on 17 October 2005 (Event No: 346675), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, a proposal for a new scheme for state aid to support unpaid labour in research and development activities. The newly proposed scheme is referred to in the following as the "Unpaid R&D Labour Scheme".

By letter dated 27 October 2005 (Event No: 348209), the Authority acknowledged receipt of the notification.

By letter dated 13 December 2005 the Authority requested additional information according to Article 5(1) in Part II of Protocol 3 to the Surveillance and Court Agreement (Event No: 348961). The Norwegian authorities responded by letter dated 10 January 2006, enclosed in a letter from the Norwegian Mission to the European Union, dated 13 January 2006, both received and registered by the Authority on 16 January 2006 (Event No: 358121).

2. Description of the proposed measures

2.1 The objective, legal basis and function of the Unpaid R&D Labour Scheme

Objective

It appears from legislative preparatory works that the overall objective of the Unpaid R&D Labour Scheme is to stimulate increased investments in research and development activities, particularly by small companies, such as entrepreneur and one-man enterprises ⁽⁴⁾. More specifically, the objective of the new

⁽¹⁾ Hereinafter referred to as the "EEA Agreement".

⁽²⁾ Hereinafter referred to as the "Surveillance and Court Agreement".

⁽³⁾ Procedural and Substantive Rules in the Field of State Aid – Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, EEA Supplement No. 32, 3.9.94, p.1, last amended by the Authority's Decision No. 329/05/COL of 20 December 2005 on financing of airports and start up aid to airlines (hereinafter referred to as the "State Aid Guidelines").

⁽⁴⁾ Section 3.9 of St. prp. nr. 65 (2004–2005).

scheme is to stimulate efforts by individuals in research and development oriented companies which, in the start-up phase, often are dependent on work resources that cannot be paid for. Research and development oriented companies are considered by the Norwegian authorities to be important for purposes of value creation derived from research as well as for innovation.

On a more detailed level, the Norwegian authorities have explained that the introduction of the Unpaid R&D Labour Scheme was motivated by the fact that under the existing "Skattefunn Scheme" ⁽⁵⁾, it is not possible to support unpaid labour in research and development activities undertaken by entrepreneur and one-man enterprises due to the fact that the Skattefunn Scheme is a tax deduction scheme ⁽⁶⁾. In this respect the authorities have explained that under the Skattefunn Scheme aid is granted to research and development activities in the form of a tax deduction (or tax credit) whereby an amount, corresponding to a percentage of the eligible costs, is deducted from the amount due in tax by the company. However, the Norwegian authorities considered that it would not be in compliance with general tax legislation to deduct, in the amount to be paid in tax, an amount which is not based on *actual* eligible costs but rather on unpaid labour "costs" which have not been incurred in reality. On this basis it was considered that unpaid labour costs could not qualify as eligible costs under the Skattefunn Scheme.

It is against this background that the Norwegian authorities proposed the establishment of a new Unpaid R&D Labour Scheme under which financial support is to be awarded to unpaid labour in research and development activities in the form of grants which are exempt from tax. As such the Norwegian authorities consider the Unpaid R&D Labour Scheme as a mere correction or supplement to the existing Skattefunn Scheme.

The Norwegian authorities have further explained that many companies have been in charge of projects that were approved under the Skattefunn Scheme but that some of these companies were subsequently prevented from receiving the tax deduction (or had to pay an amount corresponding to an already received tax deduction) due to the fact that unpaid labour was involved. As a result the profitability of entrepreneurs and one-man enterprises has been affected negatively. It is against this background that the Norwegian authorities adopted a decision to introduce a compensation scheme (the "Compensation Scheme") for purposes of compensating companies for financial losses caused to their research and development projects during the years between 2002–2004 as a result of the fact that unpaid labour could not be covered by the Skattefunn Scheme ⁽⁷⁾. However, the Norwegian authorities consider that the Compensation Scheme does not form part of the notification in the present case as it falls under the *de minimis* threshold in the "*de minimis* Regulation" ⁽⁸⁾.

Legal basis

In a proposition on the fiscal budget from the Norwegian Government to the Norwegian Parliament ⁽⁹⁾, which was followed up by a Recommendation from a Parliamentary Committee to the Parliament ⁽¹⁰⁾, the Government proposed to grant a budget of a total amount of NOK 70 million for the establishment of the Unpaid R&D Labour Scheme as well as the Compensation Scheme. The budget was approved by the Parliament on 17 June 2005.

In parallel, the Government presented a proposal to the Parliament in order to amend the Norwegian Act on Taxation of wealth and income for purposes of introducing provisions on tax treatment and ceilings in respect of the grants to be awarded under the Unpaid R&D Labour Scheme (hereinafter referred to as the "Tax law on the Unpaid R&D Labour Scheme") ⁽¹¹⁾. The proposal was furthered in a Recommendation from the Finance Committee in the Parliament ⁽¹²⁾. On 17 June 2005 the Norwegian Parliament adopted the Tax law on the Unpaid R&D Labour Scheme ⁽¹³⁾.

⁽⁵⁾ The Skattefunn Scheme was approved by the Authority in its Decision No. 171/02/COL of 25 September 2002 and amendments to the Skattefunn Scheme were approved by the Authority in its Decision No. 16/03/COL of 5 February 2003.

⁽⁶⁾ The terms used by the Norwegian authorities for the mentioned company forms are "*gründerselskaper*" and "*enkeltpersonforetak*".

⁽⁷⁾ The Compensation Scheme is described in section 3.9 of St. prp. nr. 65 (2004–2005).

⁽⁸⁾ Commission Regulation (EC) No. 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), incorporated into Annex XV in Section 1(e) to the EEA Agreement by means of Joint Committee Decision No. 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No. 49, 3.10.2002, p. 42).

⁽⁹⁾ Section 3.9 of St. prp. nr. 65 (2004–2005): Chapter 928, item 71 concerns the Unpaid R&D Labour Scheme and Chapter 1500, item 73 concerns the Compensation Scheme.

⁽¹⁰⁾ Innst. S. nr. 240 (2004–2005): Section 10.1.1.2, Chapter 928, item 71 concerns the Unpaid R&D Labour Scheme; and Section 16.2.4, Chapter 1500, item 73 concerns the Compensation Scheme.

⁽¹¹⁾ Section 14.1 of Ot. prp. nr. 92 (2004–2005) which also refers to the original budget proposition in St. prp. nr. 65 (2004–2005).

⁽¹²⁾ Section 15.1 of Innst. O. nr. 125 (2004–2005).

⁽¹³⁾ "Lov 2005-06-17 nr 74: Lov om endringer i lov 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven)."

Aside from the adoption of the budget and the Tax law on the Unpaid R&D Labour Scheme, the measure intended to govern the new scheme in practice consists of draft guidelines on the implementation of the Unpaid R&D Labour Scheme (hereinafter referred to as the “Guidelines on the Unpaid R&D Labour Scheme”).

Finally, as regards the Compensation Scheme, the Norwegian authorities have proposed a Royal Decree on the implementation of the Compensation Scheme as well as the authorities’ plan to prepare and issue draft Guidelines on the functioning of the Compensation Scheme ⁽¹⁴⁾.

Function of the Unpaid R&D Labour Scheme – eligible projects

It appears from the Guidelines on the Unpaid R&D Labour Scheme that eligible projects must involve research and development activities performed by individuals who are not receiving any pay or other compensation for their labour. Individuals who receive payment by means of other public sources are not covered ⁽¹⁵⁾.

As regards the type of the projects covered by the scheme, it appears moreover from the Guidelines on the Unpaid R&D Labour Scheme that eligible projects must be aimed (but also limited to) providing new information, knowledge or experience that is presumed to be of use to the enterprise in connection with the development of new or better products, services or production methods. Moreover, activities where results from industrial research are transferred into a plan, a project or a design for new enhanced products, services or production processes, and the development of a first prototype or pilot project that cannot be commercially exploited are also eligible activities under the Unpaid R&D Labour Scheme ⁽¹⁶⁾. The Norwegian authorities have stated that this definition of eligible research and development projects is identical to the definition of eligible research and development projects under the existing Skattefunn Scheme. In fact, in practice the Norwegian authorities refer to eligible projects under the Unpaid R&D Labour Scheme as projects which meet the “Skattefunn criteria” or have been approved under the Skattefunn Scheme ⁽¹⁷⁾.

The Unpaid R&D Labour Scheme is administered and implemented by “Norges forskningsråd”. The latter body is also the secretariat and the administering body, assessing whether projects are eligible under the Skattefunn scheme ⁽¹⁸⁾. The Norwegian authorities have explained that the fact that the definition of eligible research and development activities are defined in the same manner under both the Skattefunn Scheme and the Unpaid R&D Labour Scheme, and that the administering body, assessing whether the projects qualify as eligible, is the same under both schemes, means that for purposes of implementation the two schemes are also closely coordinated. In this regard applicants applying for support to eligible research and development activities must complete one single application form only in which the applicant has had the option to tick off whether support is sought for paid or unpaid labour in the relevant research and development activities ⁽¹⁹⁾. Moreover, financial support to be granted under the Unpaid R&D Labour Scheme will be taken into account when applicants also request support under the Skattefunn Scheme and is also limited by the maximum limit for support under the latter scheme ⁽²⁰⁾. In fact, according to the Norwegian authorities the only difference between the two schemes is the type of eligible costs (i.e., paid as opposed to unpaid labour) and the form in which support is granted (i.e., a tax deduction as opposed to a grant).

⁽¹⁴⁾ “Forskrift om kompensasjon for ulønnet arbeidsinnsats i Skattefunn-godkjente forsknings- og utviklingsprosjekter for inntektsårene 2002, 2003 og 2004”. The draft Guidelines is intended to be based on “Høringsnotat om utkast til forskrift om kompensasjon for ulønnet arbeidsinnsats i Skattefunn-godkjente forsknings- og utviklingsprosjekt for inntektsårene 2002, 2003 og 2004.” (In the following referred to as “Høringsnotat”).

⁽¹⁵⁾ Section 6 of Part III.6.A in the Standard Notification Form and Section 3 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽¹⁶⁾ Section 6 of Part I in the Standard Notification Form and Section 3 of the Guidelines on the Unpaid R&D Labour Scheme. However, ordinary business oriented product development without having the character of research are not encompassed, such as projects that have a continuing character or include modification of methods without requiring the development of new knowledge or the use of existing knowledge in new ways, are of an organisational character, or consist of inquiries, etc.

⁽¹⁷⁾ Section 3 of the Guidelines on the Unpaid R&D Labour Scheme; and Section IX of the Tax law on the Unpaid R&D Labour Scheme.

⁽¹⁸⁾ Section 3.9 of St. prp. nr. 65 (2004–2005), Section 14.1 of Ot. prp. nr. 92 (2004–2005) and the introduction to the Guidelines on the Unpaid R&D Labour Scheme.

⁽¹⁹⁾ Section 7 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽²⁰⁾ See further Section 2.3 herein below on “Eligible costs and aid intensity”.

2.2 Recipients

The Norwegian authorities have explained that the Unpaid R&D Labour Scheme is open to all tax payers with tax liability in Norway, including all enterprises, irrespective of their size and sector ⁽²¹⁾. Recipients may include undertakings jointly participating in a co-operation project ⁽²²⁾.

The Norwegian authorities have explained that the reason that the Unpaid R&D Labour Scheme includes medium-sized and large companies is to keep it in conformity with the conditions of the Skattefunn Scheme (which is open to all enterprises regardless of size) ⁽²³⁾. However, the Norwegian authorities have also made it clear that, in practice, the Unpaid R&D Labour Scheme is intended to target only entrepreneur firms and one-man enterprises: *“Even if the scheme includes enterprises of all sizes, the very nature of the scheme (support for unpaid labour) implies that the incentive effect will be most significant for entrepreneur-firms and one-man enterprises.”* ⁽²⁴⁾ In the same vein the authorities have stated that the Unpaid R&D Labour Scheme is *“...primarily targeting newly established technology-based companies with no ability to pay salaries to the individuals performing the R&D activity.”* and *“As the Unpaid R&D Labour Scheme shall give support to unpaid labour performed by R&D personnel not receiving salary or other compensation for the labour, the scheme will not be relevant for ordinary medium-sized and large companies.”* ⁽²⁵⁾

On this basis the Norwegian authorities have stated that *“Companies with an annual turnover or an annual balance sheet total corresponding to the ESA definition of medium-sized companies will in practise not receive support for unpaid labour.”* The reason for this is that, according to the Norwegian authorities, *“Larger companies generally use employed and paid R&D personnel to perform the actual R&D activity in a Skattefunn-project.”* and *“The costs of paying these employees will be eligible for tax-refund in the Skattefunn Scheme, and such companies will therefore neither have need nor basis for applying for subsidy from the Unpaid R&D Labour Scheme.”* ⁽²⁶⁾

Finally, the Norwegian authorities point out that the maximum limit for support to an eligible project is the same both in case support is granted exclusively in the form of a tax deduction under the Skattefunn Scheme or by a combination of a tax deduction and a grant under the Unpaid R&D Labour Scheme. There is therefore no incentive for large companies to obtain support from both schemes. By contrast, research and development activities performed by companies which only rely on unpaid labour will not be eligible for support under the Skattefunn Scheme.

2.3 Eligible costs and aid intensity

Eligible costs

Under the Unpaid R&D Labour Scheme, eligible expenditure consists of the unpaid labour costs in an eligible project ⁽²⁷⁾. In terms of identifying the appropriate wage rate(s) for the unpaid labour, the Norwegian authorities have explained that as formal qualifications of an individual are not always reflected in the ability to carry out research and development projects, it was difficult to identify separate wage rates which correspond to relevant education, experience and field of work. It was therefore decided to use one common rate for the calculation of support under the Unpaid R&D Labour Scheme.

The hourly rate is based on 1.6‰ of the nominal annual industrial worker salary which for the year of 2005 results in an hourly rate of NOK 550. However, as a mark-up for social and overhead/administrative costs for purposes of unpaid labour costs was considered exaggerated, it was decided to use one common hourly rate of NOK 500 for unpaid labour performed in 2005 ⁽²⁸⁾. The hourly rate of NOK 500 may be subject to adjustment by the Ministry of Trade and Industry on the basis of general wage developments.

⁽²¹⁾ In this case the cost frame of the project is allocated to the participants in proportion to their share of participation.

⁽²²⁾ The Norwegian authorities have in this context stated that *“This is also why there is no formal discrimination against larger companies in the Unpaid R&D Labour Scheme’s definition of beneficiaries.”* (emphasis added).

⁽²³⁾ Section 8.1 in Part III.6.A of the Standard Notification form.

⁽²⁴⁾ Letter, dated 10 January 2006, from the Norwegian Ministry of Trade and Industry.

⁽²⁵⁾ Letter dated 10 January 2006, from the Norwegian Ministry of Trade and Industry.

⁽²⁶⁾ Section 6 of Part III.6.A of the Standard Notification form.

⁽²⁷⁾ A similar method is applied in the context of the Skattefunn Scheme where the basis for the calculation of support to personnel and indirect costs per hour is 1.6‰ of the nominal salary. However, under the Skattefunn Scheme the nominal salary also includes social and overhead/administrative costs.

⁽²⁸⁾ Section 3 of the draft Guidelines on Unpaid R&D Labour Scheme. It appears from Section 3.9 of St. prp. nr. 65 (2004–2005) that the ceiling is a result of the fact that only up to 50% of the maximum limit for support to projects (carried out by the undertaking itself) under the Skattefunn scheme (of NOK 4 million) may constitute the value of unpaid labour in the project.

As regards a ceiling on the eligible costs, it appears from the Guidelines on the Unpaid R&D Labour Scheme that the unpaid labour costs eligible for financial support is subject to a fixed ceiling of NOK 2 million annually per undertaking ⁽³⁰⁾.

Finally, as regards control measures, the unpaid labour and the rest of the project costs must be certified by an accountant ⁽³¹⁾. The Norwegian authorities have explained that as there is no evidence of reported hours in unpaid labour, companies are required to record the date, tasks, number of hours spent and the name of the relevant individual. In projects with more than one individual, the records must be signed both by the individual having carried out the unpaid labour and the individual responsible for the project. The reported number of hours may be reduced if it is deemed to be out of proportion of what may be considered as “normal” in comparable projects.

Aid intensity

The Guidelines on the Unpaid R&D Labour Scheme provide that grants awarded under the Unpaid R&D Labour Scheme are subject to the thresholds set out in Section 16-40 of the Norwegian Act on Taxation of wealth and income ⁽³²⁾. The latter provision is the basis for the Skattefunn Scheme and provides that eligible projects may be supported with aid intensities of up to 18% or alternatively 20% in the case of small and medium-sized enterprises “SMEs” (that is, the support may amount to 18% or 20% of eligible costs).

The Norwegian authorities first stated that this means that the net aid intensities under the Unpaid R&D Labour Scheme are 18% and 20% (for SMEs) which correspond to gross aid intensities of respectively 25% and 27.8% (for SMEs) ⁽³³⁾. However, the authorities have subsequently explained and confirmed that since the support under the Unpaid R&D Labour Scheme is paid in the form of a grant, 18% and 20% (for SMEs) constitute gross aid intensities ⁽³⁴⁾. The grants are exempt from corporate tax, the rate of which is currently 28%. Finally, the Norwegian authorities have confirmed that in view of the fact that the ceiling for eligible unpaid labour costs is NOK 2 million, and that the aid intensities are 18% and 20% (for SMEs), the aid ceilings in absolute figures are NOK 360,000 and NOK 400,000 (for SMEs) on an annual basis ⁽³⁵⁾.

The grants awarded under the Unpaid R&D Labour Scheme are considered in conjunction with aid received under the Skattefunn Scheme. In this respect it appears from the proposed and adopted Tax law on the Unpaid R&D Labour Scheme ⁽³⁶⁾ that if, in an eligible project, it can be concluded that the total amount of the tax deduction (under the Skattefunn Scheme) and the grant (under the R&D Labour Scheme) exceeds the limits set forth in the Skattefunn scheme, the tax deduction will be diminished. The Norwegian authorities have explained that under the Skattefunn Scheme the total amount of support may not exceed 18% or 20% (for SMEs) of eligible costs, and the eligible costs may not be in excess of NOK 4 million. The Norwegian authorities have also clarified that these limits are, however, without prejudice to the fact that the costs of unpaid labour must still be within the abovementioned ceiling of NOK 2 million. Finally the authorities have explained that in case grants under the Unpaid R&D Labour Scheme and public support from sources, other than the Skattefunn Scheme, are the cause of exceeding the limit for total support, a reduction in the support granted under the Unpaid R&D Labour Scheme will be made.

2.4 De minimis

As stated above, the Norwegian authorities consider that the Compensation Scheme does not form part of the notification as it falls under the *de minimis* threshold under the “*de minimis* Regulation” ⁽³⁷⁾.

⁽³¹⁾ Section 4 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽³²⁾ Section 3 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽³³⁾ Section 7 of Part III.6.A of the Standard Notification form.

⁽³⁴⁾ This should be compared to the situation under the Skattefunn Scheme where the Authority considered in its Decision No. 171/02/ COL of 25 September 2002 (approving the Skattefunn Scheme) that as the aid is granted in the form of a tax deduction, the 18% is a net grant which corresponds to a gross aid intensity of 25% (taking into account a tax rate of 28%).

⁽³⁵⁾ Section 3 of the Guidelines on the Unpaid R&D Labour Scheme and Section 6 of Part I in the Standard Notification form.

⁽³⁶⁾ Section 14.2.1 of Ot. prp. nr. 92 (2004–2005) and Section IX of the Tax law on the Unpaid R&D Labour Scheme.

⁽³⁷⁾ Article 2(1) of the *de minimis* Regulation, see reference in footnote 8 above.

⁽³⁸⁾ Section 7 of the Royal Decree on the Compensation Scheme.

⁽³⁹⁾ It appears from the “*Høringsnotat*” that this statement refers to Article 1 of the *de minimis* Regulation which lists sectors and activities excluded from receiving *de minimis* aid.

Section 6 of the Royal Decree on the Compensation Scheme provides that the compensation will be calculated on the basis of an hourly rate of NOK 500 and that it must constitute 18% or 20% (for SMEs) of the costs for unpaid labour in eligible projects. The total amount of eligible costs may not exceed NOK 4 million in the relevant financial year where research and development is carried out by the undertaking itself or NOK 8 million in case of research and development activities carried out by research institutions ⁽³⁸⁾.

The Norwegian authorities have stated that Article 3(1) of the *de minimis* Regulation has been complied with by virtue of a reference to the *de minimis* character of the compensation in Section 8 of the Royal Decree on the Compensation Scheme. The latter provision provides that compensation will be paid out as *de minimis* aid in accordance with the “*de minimis* Regulation”; and that if the total amount of *de minimis* aid to the applicant exceeds Euro 100,000 during a period of three years, the compensation will be reduced. Applicants who cannot receive *de minimis* aid cannot claim to be entitled to receive compensation under the Royal Decree on the Compensation Scheme ⁽³⁹⁾.

Applicants requesting compensation must submit an overview of the total amount of all tax deductions received under the Skattefunn Scheme during the years for which compensation is sought as well as a complete overview of all *de minimis* aid received by the applicant as of 1 January 2003 ⁽⁴⁰⁾. Applicants must request compensation within six weeks of the publication of the Royal Decree on the Compensation Scheme ⁽⁴¹⁾. The compensation will be paid out in the form of lump sums during 2006.

2.5 Budget and duration

It appears from legislative preparatory works on the fiscal budget that out of a total amount of NOK 70 million, financed by the Ministry of Trade and Industry for 2005, NOK 60 million is the budget for the Unpaid R&D Labour Scheme (of which NOK 5 million is for administration costs) while NOK 10 million is the budget for the Compensation Scheme ⁽⁴²⁾.

The Unpaid R&D Labour Scheme is not limited in time. In this respect the Norwegian authorities have stated that as the objective of the Unpaid R&D Labour Scheme is to stimulate unpaid research and development activities to the same extent as paid research and development activities are stimulated under the Skattefunn Scheme, the time frame for the Unpaid R&D Labour Scheme must be the same as that for the Skattefunn Scheme. In this respect it appears from the Authority’s approval of amendments to the Skattefunn Scheme that the Skattefunn Scheme is not limited in time ⁽⁴³⁾. However, just as under the Skattefunn Scheme, the continuation of the Unpaid R&D Labour Scheme is dependent on the approval of an annual budget each year ⁽⁴⁴⁾.

II. APPRECIATION

1. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, “*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*”.

By means of a letter dated 5 October 2005, the Norwegian authorities have submitted a notification for purposes of introducing the Unpaid R&D Labour Scheme under which financial support may be granted to unpaid labour in research and development activities.

⁽³⁸⁾ Section 7 of the Royal Decree on the Compensation Scheme.

⁽³⁹⁾ It appears from the “*Høringsnotat*” that this statement refers to Article 1 of the *de minimis* Regulation which lists sectors and activities excluded from receiving *de minimis* aid.

⁽⁴⁰⁾ Section 9(h) and (i) of the Royal Decree on the Compensation Scheme.

⁽⁴¹⁾ See Section 3 of the Royal Decree on the Compensation Scheme and the second paragraph in the “*Høringsnotat*”.

⁽⁴²⁾ Section 3.9 of St. prp. nr. 65 (2004–2005) and Section 5 in Part I of the Standard Notification form.

⁽⁴³⁾ Decision No. 16/03/COL adopted by the Authority on 5 February 2003. The Skattefunn Scheme is currently the subject of an evaluation (to be terminated in 2007) for purposes of determining whether the scheme should be continued in its present form, be altered or terminated.

⁽⁴⁴⁾ Section 5 in Part I of the Standard Notification form.

As regards the entry into force of the Unpaid R&D Labour Scheme, it appears from legislative preparatory works (on the budget) that entry into force of the scheme is dependent on what would be determined in the context of adopting the Tax law on the Unpaid R&D Labour Scheme ⁽⁴⁵⁾. The Norwegian authorities therefore consider the Tax law on the Unpaid R&D Labour Scheme as the legal measure determining when the Unpaid R&D Labour Scheme enters into force. It appears from the adopted Tax law on the Unpaid R&D Labour Scheme that the Ministry of Finance decides when the law enters into force. It appears, moreover, from the relevant preparatory legislative works that this provision is based on the prerequisite that the Unpaid R&D Labour Scheme must be notified to, and approved by, the Authority before entering into force ⁽⁴⁶⁾. Subject to approval by the Authority the original objective was to have the scheme enter into force during the autumn of 2005 ⁽⁴⁷⁾.

In these circumstances – where the power of the Ministry of Finance to command the entry into force of the Unpaid R&D Labour Scheme is subject to the condition of obtaining a prior approval by the Authority – the Authority considers that the Norwegian authorities have respected its notification requirement pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2. The presence of State aid

2.1 State aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

To be termed aid, within the meaning of Article 61(1) of the EEA Agreement a measure must meet the following four cumulative criteria: The measure must (i) confer on recipients an economic advantage which is not received in the normal course of business; (ii) the advantage must be granted by the State or through State resources and must (iii) be selective by favouring certain undertakings or the production of certain goods; and (iv) distort competition and affect trade between Contracting Parties. In the following it is examined whether the four cumulative criteria are met in the present case.

2.2 Economic advantage

The measure must confer on recipients an economic advantage which is not received in the normal course of business.

Under the Unpaid R&D Labour Scheme the Norwegian authorities will award financial grants to tax payers, including all enterprises. The recipients of such grants therefore receive an economic advantage, i.e., a grant, which they would not have received in their normal course of business.

Moreover, recipients of grants are exempted from paying corporate tax on the grants. The tax exemption relieves recipients from a charge that is normally borne out of their budgets and they therefore receive one further economic advantage in addition to the grant.

2.3 Presence of State resources

The measure must be granted by the State or through State resources.

The grants awarded under the Unpaid R&D Labour Scheme are financed by the Ministry of Trade and Industry and are therefore financed by the state.

⁽⁴⁵⁾ Section 3.9 of St. prp. nr. 65 (2004–2005).

⁽⁴⁶⁾ Section 14.3 of Ot. prp. nr. 92 (2004–2005) which refers to Section 3.9 of St. prp. nr. 65 (2004–2005).

⁽⁴⁷⁾ See Section 7.2 in Part I of the Standard Notification form.

Moreover, with respect to the exemption of grants from corporate tax, a tax exemption means that the state foregoes tax revenue and a loss of tax revenue is equivalent to consumption of state resources in the form of fiscal expenditure ⁽⁴⁸⁾.

2.4 *Favouring certain undertakings or the production of certain goods*

The measure must be selective in that it favours “*certain undertakings or the production of certain goods*”.

In its decision (16/03/COL) of 5 February 2003 in which the Authority assessed a notified amendment to the Skattefunn Scheme for purposes of extending the scheme to be open to all undertakings, irrespective of their size and sector, the Authority considered that the bodies administering and implementing the Skattefunn Scheme (i.e., “Statens nærings- og distriktsutviklingsfond” and “Norges forskningsråd”), enjoyed discretionary powers for purposes of assessing the research character of the projects and the incentive effect of the support measure.

In view of the above and the fact that the criteria for determining the eligibility of projects under the Skattefunn Scheme and the Unpaid R&D Labour Scheme are the same and are assessed by the same administering body, i.e., Norges forskningsråd, the Authority takes the view that the latter enjoys discretionary powers also for purposes of implementing the Unpaid R&D Labour Scheme. This means that the Unpaid R&D Labour Scheme is, de facto, selective. In this regard the Authority recalls that the European Court of Justice has held that discretionary powers enjoyed by the public authorities, administering a financial support scheme, means that the scheme is, de facto, selective ⁽⁴⁹⁾.

In addition hereto, it is recalled that the Norwegian authorities state that the Unpaid R&D Labour Scheme will, in practice, only favour one-man enterprises and entrepreneur firms. To the extent that this means that Norges forskningsråd will also implement the R&D Labour Scheme in this manner (i.e., by turning down applications for support from medium-sized or large companies), the Authority considers that this is a mere confirmation of the fact that Norges forskningsråd enjoys discretionary powers and that the scheme is, de facto, selective (in favour of one-man enterprises and entrepreneur firms). Indeed the statement of the Norwegian authorities that “...there is no **formal** discrimination against larger companies in the Unpaid R&D Labour Scheme’s definition of beneficiaries.” (emphasis added) could be an indication that the scheme is to be implemented in the above-stated manner.

Finally, the assessment set out above is equally valid for the exemption from corporate tax enjoyed by recipients of grants under the Unpaid R&D Labour Scheme.

2.5 *Distortion of competition and effect on trade between Contracting Parties*

The measure must distort competition and affect trade between the Contracting Parties.

The Unpaid R&D Labour Scheme covers all sectors of the economy established in Norway. In view of the fact that for the year of 2006 exports to the EU will represent about 70% out of total exports from Norway, whereas imports from the EU will represent approximately 68% out of total imports to Norway, there is extensive trade between Norway and the EU ⁽⁵⁰⁾.

In such circumstances, the Authority considers that the grant of support and the connected tax exemption in favour of undertakings under the Unpaid R&D Labour Scheme will strengthen the relative position of recipients compared to other undertakings located in other EEA countries and competing in similar sectors or businesses. Furthermore, in case the administering body of the Unpaid R&D Labour Scheme may indeed preclude larger companies from receiving support, the position of one-man enterprises and entrepreneur companies, receiving support under the scheme will be reinforced compared to any larger companies which would be denied support. The Unpaid R&D Labour Scheme is therefore to be regarded as affecting trade and distorting or threatening to distort competition.

⁽⁴⁸⁾ See point 3 of Chapter 17.B.3 of the State Aid Guidelines.

⁽⁴⁹⁾ See Case 241/94 *France v Commission* [1998] ECR I-7907, paragraphs 23 and 24; Case C-295/97 *Industrie Aeronautiche e Meccaniche Rinaldo Piaggio SpA v International Factors Italia SpA (Ifitalia), Dornier Luftfahrt GmbH and Ministero della Difesa* [1999] ECR I-3735, paragraph 39; Case 200/97 *Ecotrade Srl v Altiforni e Ferriere di Servola SpA (AFS)* [1998] ECR I-7907, paragraph 40.

⁽⁵⁰⁾ The relevant statistics have been issued by “Statistisk Sentralbyrå” and are entitled “Samhandelen med land og landområder. Januar 2005 og 2006.” (Table 3). The statistics are available at: <http://www.ssb.no/emner/09/05/muh/tab-2006-02-15-03.html>.

2.6 Conclusion

In light of the above, the preliminary conclusion of the Authority is that the grant of support, including the tax exemption under the Unpaid R&D Labour Scheme, satisfies the test of Article 61(1) of the EEA Agreement and hence involves state aid.

3. Compatibility of the aid and *de minimis* aid

As the preliminary conclusion of the Authority is that the Unpaid R&D Labour Scheme satisfies the test of Article 61(1) of the EEA Agreement and hence involves state aid, it has to be examined whether the Unpaid R&D Labour Scheme may be considered compatible with the functioning of the EEA Agreement under Article 61(2) or (3) of the EEA Agreement.

3.1 Compatibility with Article 61(2) of the EEA Agreement

It appears that none of the exceptions under Article 61(2) apply in this case as the Unpaid R&D Labour Scheme is not aimed at the objectives listed in those provisions.

3.2 Compatibility with Article 61(3) of the EEA Agreement

A state aid measure is considered compatible with the functioning of the EEA Agreement under Article 61(3)(a) when it is designed to promote the economic development where the standard of living is abnormally low or where there is serious underemployment. However, as no such areas are defined by the Norwegian regional aid map, this provision does not apply ⁽⁵¹⁾.

Moreover, the exception in Article 61(3)(b) of the EEA Agreement does not apply since the state aid granted under the Unpaid R&D Labour Scheme is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Norway.

However, the exception laid down in Article 61(3)(c) of the EEA Agreement which provides that state aid may be considered compatible with the common market where it facilitates the development of certain economic activities or of certain economic areas and does not adversely affect trading conditions to an extent contrary to the common interest, may be applicable.

In the following the Authority considers the compatibility of the Unpaid R&D Labour Scheme with the functioning of the EEA Agreement under Article 61(3)(c) by virtue of Chapter 14 in the State Aid Guidelines on aid for research and development.

Aid for research and development in Chapter 14 of the State Aid Guidelines

(i) Eligible research and development projects and aid intensities

In Chapter 14 of the State Aid Guidelines aid granted to firms for research and development may be regarded as compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement. Chapter 14 sets out indicative definitions of different types of research and development, such as “*fundamental research*”, “*industrial research*” and “*precompetitive development activity*” and the aid intensities which apply.

It appears from paragraph 2 of Chapter 14.2.1 that by “*precompetitive development activity*” is meant “*the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production*”

⁽⁵¹⁾ The Authority's Decision No. 110/98/COL of 28 April 1998 on the map of assisted areas (Norway).

lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements."

The Authority considers that the description of eligible projects under the Unpaid R&D Labour Scheme, set out above in Section 2.1 of Part I hereof, seems to be in line with the description given of "*pre-competitive development activity*" in paragraph 2 of Chapter 14.2.1 of the State Aid Guidelines.

According to paragraph five of Chapter 14.5.1 of the State Aid Guidelines, the permissible gross aid intensity for pre-competitive development activities is fixed at 25% of eligible costs. Moreover, according to paragraph one of Chapter 14.5.3 of the State Aid Guidelines, an extra 10 percentage points may be granted where the aid is given to SMEs (as defined in the Annex to the block exemption on aid to SMEs), bringing the aid intensity up to 35% of eligible costs in the case of pre-competitive activities by SMEs ⁽⁵²⁾.

Since the support granted under the Unpaid R&D Labour Scheme is paid in the form of a grant, 18% and 20% (for SMEs) constitute gross aid intensities. However, the fact that the grant is tax exempt is a further aid element, the value of which corresponds to the current tax rate of 28%. In the present case the total gross aid intensity corresponds, therefore, to the combined maximum value of the grant and the tax exemption which is 23.04% and 25.6% (for SMEs) ⁽⁵³⁾. The Authority therefore considers that the maximum aid intensities of the Unpaid R&D Labour Scheme are currently on an acceptable level by reference to Chapter 14 of the State Aid Guidelines. However, if the corporate tax rate should be increased, the total gross aid intensity may become higher. Therefore, in the absence of any general aid intensity ceilings which ensure that individual aid awards under the Unpaid R&D Labour Scheme do not exceed the aid intensities set out in Chapter 14.5.1 of the State Aid Guidelines, the Authority cannot be reassured that the aid intensities, which may result from the application of the Unpaid R&D Labour Scheme, will be on an acceptable level by reference to Chapter 14 of the State Aid Guidelines also in the future. On this basis the Authority has doubts that the aid intensities resulting from the application of the Unpaid R&D Aid Scheme may be considered as compatible on the basis of Chapter 14 of the State Aid Guidelines.

(ii) Eligible costs and incentive effect

Section 14.6 of the State Aid Guidelines sets out a list of costs which are to be regarded as eligible for purposes of calculating the aid intensity set out in Chapter 14. One of such cost items is personnel costs which cover the costs of researchers, technicians and other supporting staff employed solely for the research activity.

While section 14.6 of the State Aid Guidelines does not elaborate on whether personnel costs may cover costs of unpaid labour, the Authority considers that when the word "costs" has been used without any further explanation it means that the intention was only to cover the situation where costs have actually been incurred and paid. Moreover, for purposes of interpreting Chapter 14 of the State Aid Guidelines, which are based on the research and development guidelines established by the European Commission ⁽⁵⁴⁾, the Authority considers it relevant that under the Community Research Framework Programmes, financial support from the Community for unpaid labour costs cannot be obtained ⁽⁵⁵⁾. In this context the European Commission has adopted the view that if the value of the labour costs cannot be identified and registered in the books of the company it cannot be charged to the Framework Programme either ⁽⁵⁶⁾.

As regards the incentive effect, it appears from section 14.7 of the State Aid Guidelines that aid for research and development should serve as an incentive for firms to undertake research and development activities in addition to their normal day-to-day operations or it may encourage firms not carrying out research and development to undertake such activities. Where the incentive effect is not evident the Authority may consider such aid less favourably than it usually does.

⁽⁵²⁾ Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), as amended by Commission Regulation (EC) No. 364/2004 of 25 February 2004 (OJ L 63, 28.2.2004, p. 22). Both Regulations have been incorporated into Section 1(f) in Annex XV to the EEA Agreement by Joint Committee Decision No. 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Suppl. No. 49, 3.10.2002, p. 42) and Joint Committee Decision No. 131/2004 (OJ L 64, 10.3.2005, p. 67 and EEA Supplement No. 12, 10.3.2005, p. 49).

⁽⁵³⁾ 18% and 5.04% (corresponding to 28% of 18%) is in total 23.04%. For SMEs 20% and 5.6% (corresponding to 28% of 20%) is in total 25.6%.

⁽⁵⁴⁾ Community framework for State aid for research and development (OJ C 45, 17.2.1996, p. 5) as amended.

⁽⁵⁵⁾ The EU's research Framework Programme is the EU's main instrument for research funding in Europe. In Part B.II.22.3 of Annex II to the general model contract used for purposes of granting support under Framework Programme 6, it appears that "*Physical persons may not charge any labour cost in relation to their personal involvement in the project.*" and in Part B.II.19.1(a) it appears that eligible costs "*must be actual, economic and necessary for the implementation for the project.*"

⁽⁵⁶⁾ E.g., the Framework Programme 6.

In the present case the Authority considers that it is doubtful whether the aid awarded under the Unpaid R&D Labour Scheme may be considered as an evident incentive to carry out research and development activities in line with section 14.7 of the State Aid Guidelines. In this respect the Authority takes the preliminary view that unpaid research and development activities would be carried out in any event, i.e., even without the aid, since the individuals carrying out unpaid labour were apparently prepared to undertake the relevant work without pay in any event. In other words, the Authority considers that the aid appears not to be necessary in order to achieve the aim of having the relevant research and development activities carried out.

Moreover, to the extent that the Unpaid R&D Labour Scheme would also apply to larger companies, it is clear that such companies could (over time) (re-)organise their research and development activities into basing themselves on using unpaid labour instead of paid labour due to knowledge of the fact that support for unpaid labour may be obtained. In such circumstances it is certain that the support under the Unpaid R&D Labour Scheme is not the incentive for undertaking the relevant research and development activity. In this context the Authority considers that the fact that the company may – for the same project – obtain a tax deduction under the Skattefunn Scheme (by using paid labour) is irrelevant because the reason for using unpaid labour in these cases would precisely be that it is financially more attractive to obtain support for paying the labour than a tax deduction in respect of already paid labour.

On this basis the Authority takes the preliminary view that it is doubtful whether the unpaid labour costs qualify as eligible costs and whether there is any incentive effect under the Unpaid R&D Labour Scheme. In light of the comments set out above, the Norwegian authorities are invited to submit reasons as to why it may be considered that the Unpaid R&D Labour Scheme does create an incentive to carry out research and development activities and on what basis unpaid labour costs should qualify as eligible costs.

3.3 Conclusions

In view of the fact that the Unpaid R&D Labour Scheme appears not to qualify for any of the exceptions provided for in the EEA Agreement, the Authority doubts that the Unpaid R&D Labour Scheme may be considered compatible with the functioning of the EEA Agreement.

3.4 *De minimis* aid: The Compensation Scheme

The grant of state aid may qualify as *de minimis* under the “*de minimis* Regulation” where the total aid granted to any one enterprise does not exceed Euro 100,000 over any three-year period with the consequence that there is no obligation to notify ⁽⁵⁷⁾. It appears from Article 3(1) of the *de minimis* Regulation that the national authorities can only grant *de minimis* aid after first having verified that the total amount of *de minimis* aid received by the company is not raised beyond the ceiling by virtue of other *de minimis* aid having been received during the previous three years. One way of verifying the *de minimis* threshold is by obtaining full information from the recipient on this matter.

In the present case compensation under the Compensation Scheme will be paid out as *de minimis* aid and if the total amount of *de minimis* aid to an applicant exceeds Euro 100,000 during a period of three years, the compensation will be reduced. Moreover, the Norwegian authorities will obtain from the applicants, via their applications requesting compensation, an overview of the total amount of all tax deductions received by the applicant under the Skattefunn Scheme during the years for which compensation is sought, as well as a complete overview of all *de minimis* aid the applicant has received as of 1 January 2003.

On the basis of the above and on the assumption that the Norwegian authorities will not grant *de minimis* aid under the Compensation Scheme where it is clear that the *de minimis* threshold has been or will, as a result of the new grant, be exceeded, the Authority considers that the Compensation Scheme is in compliance with the *de minimis* Regulation, including the requirement of verifying that the potential recipient has not received other *de minimis* aid in excess of the relevant ceiling.

On the basis of the information available, the Authority therefore takes the preliminary view that the aid granted to undertakings under the Compensation Scheme will qualify as *de minimis* aid.

⁽⁵⁷⁾ Article 2 of the *de minimis* Regulation, see reference in footnote 8.

III. CONCLUSION

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude that the Unpaid R&D Labour Scheme constitutes aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that the Unpaid R&D Labour Scheme can be regarded as complying with Article 61(3)(c) of the EEA Agreement, in combination with the requirements laid down in Chapter 14 of the Authority's State Aid Guidelines. Consequently, the Authority has doubts that the Unpaid R&D Labour Scheme is compatible with the functioning of the EEA Agreement.

Consequently, and in accordance Article 4(4) in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the Unpaid R&D Labour Scheme is compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, requests the Norwegian authorities to submit its comments and to provide all such information which may help to assess the Unpaid R&D Labour Scheme, within **one month** of the date of receipt of this decision.

HAS ADOPTED THIS DECISION:

1. The Authority has decided to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement against Norway with regard to the "Unpaid R&D Labour Scheme".
2. The Norwegian authorities are requested, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this decision and to provide all such information which may help to assess the Unpaid R&D Labour Scheme.
3. Other EFTA States, EC Member States, and interested parties shall be informed by means of publication of this decision in its authentic language version, accompanied by a meaningful summary in languages other than the authentic language version, in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.
4. This decision is authentic in the English language.
5. This decision is addressed to the Kingdom of Norway.

Done at Brussels, 8 March 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland

President

Kurt Jaeger

College Member

Auglýst eftir athugasemdum, í samræmi við 2. mgr. 1. gr. í I. hluta bókar 3 við samninginn um eftirlitsstofnun og dómstól, um ríkisaðstoð sem veitt er á vegum Rannsóknaráðs Noregs (*Norges forskningsråd*) í tengslum við tölvuforritið Turbo-router 2006/EES/53/02

Eftirlitsstofnun EFTA hefur, með ákvörðun nr. 60/06/COL frá 8. mars 2006, sem er birt í fullgilti útgáfu á upprunalegu tungumáli næst á eftir þessu ágripi, hafið málsmeðferð samkvæmt 2. mgr. 1. gr. í I. hluta bókar 3 við samning milli EFTA-rikkanna um stofnun eftirlitsstofnunar og dómstóls (samninginn um eftirlitsstofnun og dómstól). Stjórnvöldum í Noregi hefur verið tilkynnt þetta með afriti af ákvörðuninni.

Eftirlitsstofnun EFTA veitir EFTA-rikkjunum, aðildarríkjum Evrópusambandsins og öðrum, sem eiga hagsmuna að gæta, eins mánaðar frest frá birtingu þessarar auglýsingar að telja til að leggja fram athugasemdir við áformaða ráðstöfun. Athugasemdir skal senda á eftirfarandi pósthöfn:

EFTA Surveillance Authority
Registry
35, rue Belliard
B-1040 Brussel/Bruxelles
Bréfasími: 00 32 22 86 18 00

Athugasemdunum verður komið á framfæri við stjórnvöld í Noregi. Þeim, sem leggja fram athugasemdir, er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

Ágrip

Eftirlitsstofnuninni barst í bréfi dagsettu 5. mars 2002 (skjalnr. 02-1733-A) kvörtun um meinta ríkisaðstoð sem veitt hefði verið í Noregi á vegum Rannsóknaráðs Noregs til ýmissa rannsóknaverkefna sem tengjast þróun tölvuforritsins Turborouter.

Í kjölfar umfangsmikilla bréfaskipta eftirlitsstofnunarinnar við stjórnvöld í Noregi og sendanda kvörtunarinnar ákvað stofnunin hinn 8. mars 2006 að hefja formlega rannsókn á verkefnunum sem vísað er til í kvörtuninni.

Fjögur verkefni sem tengdust þróun tölvuforritsins Turborouter höfðu notið styrkja frá Rannsóknaráði Noregs á grundvelli áætlunar um aðstoð vegna rannsókna og þróunarstarfs í iðnaði. Eftirlitsstofnunin hafði metið þá áætlun, ásamt öðrum gildandi aðstoðaráætlunum, og gefið út í desember 1994 ákvörðun nr. 217/94/COL með tillögum að viðeigandi ráðstöfunum sem beint var til stjórnvalda í Noregi. Stjórnvöld í Noregi samþykktu þessar tillögur að viðeigandi ráðstöfunum. Af því leiddi að veita bar aðstoð samkvæmt þessari áætlun í samræmi við leiðbeiningar eftirlitsstofnunarinnar um aðstoð vegna rannsókna og þróunarstarfs sem gefnar voru út árið 1994.

Á grundvelli fyrirbyggjandi upplýsinga telur eftirlitsstofnunin vafa leika á að styrkir til umræddra rannsóknaverkefna hafi samræmst ákvæðum leiðbeininganna um aðstoð vegna rannsókna og þróunarstarfs. Draga má í efa að verkefni hafi verið flokkuð með réttum hætti. Þetta á einkum við að því er varðar þau þrjú verkefni sem litið er á sem rannsóknaverkefni á forsamkeppnisstigi, en þau kunna að liggja of nærri markaði til að teljast aðstoðarhæf.

Eftirlitsstofnunin telur einnig vafa leika á að rétt hafi verið staðið að fjármögnun verkefnanna. Ekki er ljóst hvort fyrirtækin, sem störfuðu að verkefnunum, lögðu í raun fé til rannsóknarvinnunnar eða hvort litið var á reglulegan rekstrarkostnað sem hluta af rannsóknaverkefnunum. Reynist svo vera ber að endurskoða aðstoðarhlutföllin.

Í þessu tilliti telur eftirlitsstofnunin ekki liggja ljóst fyrir hvort aðstoðarþegarnir hafi misnotað aðstöðina frá Rannsóknaráði Noregs.

Komi í ljós að aðstoð, sem veitt hefur verið til verkefnanna, fellur ekki undir áætlunina um aðstoð vegna rannsókna og þróunarstarfs í iðnaði verður að meta hvert einstakt verkefni á grundvelli þeirra ákvæða í leiðbeiningunum um aðstoð vegna rannsókna og þróunarstarfs sem voru í gildi þegar styrkirnir voru veittir, eða beint á grundvelli reglna EES-samningsins.

EFTA SURVEILLANCE AUTHORITY DECISION
No 60/06/COL
of 8 March 2006

**on R&D aid granted by the Research Council of Norway in connection with the development of
the software programme Turborouter**
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 thereof,

Having regard to Article 1(2) and (3) in Part I and Articles 1, 4, 6, 10, 13, 14, 16 and 20 in Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

Having regard to the Authority's Guidelines ⁽⁵⁾ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 14 thereof, "Aid for Research and Development",

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 ⁽⁶⁾,

Having regard to the Authority's Decision No 217/94/COL of 1 December 1994 to propose appropriate measures to Norway on, amongst others, the aid scheme Industrial R&D Programmes,

Having regard to Norway's acceptance of the proposed appropriate measures by letter dated 19 December 1994,

Whereas:

I. FACTS

1. Procedure

By letter dated 5 March 2002 (Doc. No. 02-1733-A), the Authority received a complaint alleging that state aid had been granted by Norway through the Research Council of Norway (hereinafter: "the RCN") to various research projects in connection with the development of the software programme Turborouter.

The Authority requested information from the Norwegian authorities by letter dated 26 April 2002 (Doc. No. 02-2605-D). The Ministry of Trade and Industry replied by letter dated 3 June 2002 (Doc. No 02-4177-A), which included RCN's comments on the so-called Turborouter project.

In October 2002, a meeting between representatives from the Authority and the Norwegian authorities took place in Oslo in order to clarify some technical aspects.

⁽¹⁾ Hereinafter referred to as "the Authority".

⁽²⁾ Hereinafter referred to as "the EEA Agreement".

⁽³⁾ Hereinafter referred to as "the Surveillance and Court Agreement".

⁽⁴⁾ Hereinafter referred to as "Protocol 3".

⁽⁵⁾ Procedural and Substantive Rules in the Field of State Aid, Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended on 14 December 2005, hereinafter referred to as "the Guidelines".

⁽⁶⁾ Not yet published in the OJ or the EEA Supplement. Available at: <http://www.eftasurv.int/fieldsofwork/fieldstateaid/legaltexts/ms2decision.DOC>. This Decision has been last amended by the Authority's Decision No 329/05/COL of 20.12.2005.

On 28 February 2003, the Authority requested further clarification and documentation on certain aspects raised during the above-mentioned meeting (Doc. No 03-1159-D). The required information was supplied by the Norwegian authorities by letter dated 11 April 2003 (Doc. No 03-2338 A) and completed by letter of 20 June 2003 (Doc. No 03-4083-A).

Representatives of the Authority and the Norwegian authorities discussed the case at a meeting in the framework of the package meeting which took place in Oslo on 23 September 2004. Some of the issues raised during this meeting were later addressed by the Authority in a letter dated 11 November 2004 (Event No. 294194). The Norwegian authorities answered by letter of 31 January 2005 (Event No. 307137).

The Authority lastly requested information in a letter dated 7 July 2005 (Event No. 323594). The Authority furthermore stated that should the response from the Norwegian authorities not dispel the remaining doubts of the Authority, the formal investigation procedure would have to be opened with respect to the granting of R&D aid in connection with the development of the software programme Turborouter.

The Norwegian authorities replied in a letter dated 22 August 2005 (Event No. 331615).

The complainant contacted the Authority on various occasions during the preliminary investigation and submitted additional information.

2. The complaint

In March 2002, the Authority received a complaint alleging that the RCN had granted R&D aid to *“projects in the maritime sector that violate the EEA rules. The projects that have received state aid are commercial software programs that are marketed and sold in the international markets. We refer specifically to the software program called TURBOROUTER”*.

According to the complainant, the Turborouter programme is distorting the competition with other European or international companies which develop software programmes for the maritime industry. The complainant, who has software products in the same sector, has stated to have invested important sums of money in developing mathematical algorithms, which seem to be similar to the ones used in Turborouter.

The complaint concerns not only the projects that led to the development of a commercial software programme called Turborouter but also its development in several sub-projects. Although the complainant identified Project 136171 AlgOpt and Project 144214 Optimisation routines, it explicitly stated that the complaint is not limited to these projects but concerns *“all of these projects that have been targeting the development of a commercial software program called Turborouter”*.

The complainant mainly argued that (1) the projects that received aid were too close to the market to be eligible for R&D aid and had been marketed for sale to third companies in Norway and abroad; (2) the research results had not been disseminated but the research institute Marintek, which developed the software programme Turborouter, had received the property rights to sell the programme; (3) the maximum aid intensities had not been respected due to the fact that the own capital contribution from the concerned companies was in reality lower than stated in the application form. The complainant brought forward the following arguments to support the complaint:

- 1) *“The RCN has given aid to projects which are very close to the market. Turborouter has for more than two years been actively marketed for sale both domestically in Norway and abroad. This marketing has been done partly by the research institute Marintek and partly by Shipnet, a privately owned commercial vendor of software systems for the maritime industry with which, according to the information submitted by the complainant, Marintek has an agreement. The Turborouter projects cannot be classified into “fundamental research” nor “industrial research” according to the definitions laid down by the EEA.”* In view of the complainant, the projects are even far beyond pre-competitive development activity. *“Turborouter projects are aimed at developing software programs that are developed in close co-operation with a limited number*

of users, and in parallel is actively marketed towards any maritime company in need of such program.”

- 2) *“As the Turborouter projects have received public aid and where in the R&D programs it has been stated that reports will be made available for any party interested, it is a breach of the regulations to give Marintek the proprietary rights to sell and market the program.”* In view of the complainant *“this confirms the argument that Turborouter is a commercial product far beyond any R&D stage.”*
- 3) *“In calculating the aid intensities, the RCN has used the pro forma funding assumed in the R&D application to be given by the aid receiving firm.”* The complainant claimed neither to have seen any documentation that the firms actually contributed with their own resources to the alleged funds, nor any audited reports where such contribution is proven. *“For many projects in the maritime sectors the aid receivers are supposed to chip in their own contribution, but quite often there is in actual fact very little man time hours or any other costs that the receivers chip in.”*

3. The four projects related to the software programme Turborouter supported with RCN funds

a) Description of the projects

- 1) Project 40049 – Strategic activities within maritime transport and logistics (The first version of the software programme Turborouter)

Together with the Centre for International Economy and Shipping (SIØS), which is an integral part of the Norwegian School of Economics and Business Administration, Marintek applied to the RCN for support for the project *“Strategic activities within maritime transport and logistics”* under the *“Strategic Institute Programme”* (SIP) in 1995. SIP was a programme for long term research, characterised by a large proportion of fundamental research, but strategic in its orientation to serve future needs of industry. Under SIP, research projects could receive public financing up to 100%.

According to the information provided by the Norwegian authorities, due to limited funds available under this programme, the RCN re-classified the project as a “three-year strategic competence development project” under the sub-programme *“Short Sea Shipping”* (1995-1998) within the Industrial R&D Programme. The whole project was re-classified as industrial research although some activities constituted fundamental research.

Project 40049 *“Strategic activities within maritime transport and logistics”* was broad in concept and covered several sub-projects. The first version of the pilot software Turborouter was developed in the first year of research of one of the sub-projects called *“Methods and analytical tools for design and operation of integrated transport and logistics chains”*.

Nowadays, Turborouter is a tool ⁽⁷⁾ for optimising vessel fleet scheduling, i.e. to decide which vessels to assign different cargoes to. The design philosophy has been to combine the knowledge and experience of the planners with the calculating capabilities of the computer. Optimisation software implemented on a computer can calculate millions of alternatives in only a few seconds but tend to have restricted ability to handle all practical constraints that occur in real life. Turborouter is based on electronic sea charts where scheduling information can be displayed. Other key elements of Turborouter include a database for vessels, ports, cargoes, etc; automatic calculation of port-to-port distances; vessel position reports and automatic update of estimated time of arrival; sophisticated optimisation routines for fleet scheduling; schedule visualisation or schedule calculator for manual planning.

According to the information provided by the Norwegian authorities, out of the total NOK 10.5 million budget for Project 40049, the RCN contributed NOK 4.6 million, the Norwegian Ship-owners’ Association (NSA) NOK 1.4 million and Marintek NOK 4.5 million. The table below recapitulates the costs of the project and its financing of the project in NOK ⁽⁸⁾:

⁽⁷⁾ The following information has been obtained from the brochure TurboRouter Vessel schedule optimizing software, available at the website of Marintek: <http://www.marintek.no>.

⁽⁸⁾ These figures have been obtained from the form submitted to the RCN for the application for a grant.

Costs		Financing	
Personal and indirect costs	8 700 000	Own financing	4 500 000
Purchase of R&D	600 000	RCN	6 000 000
Equipment	450 000	Total	10 500 000
Other operating costs	750 000		
Total	10 500 000		

According to the information provided by the Norwegian authorities, the project costs for the sub-project “*Methods and analytical tools for design and operation of integrated transport and logistics chains*” amounted to NOK 5.1 million. The state support for it amounted to NOK 2.24 million.

Further development of the software programme Turborouter

According to the information provided by the Norwegian authorities, the RCN selected several projects related to the development of the software package Turborouter for R&D support. According to the RCN, even though they had elements of industrial research, these projects were classified as “pre-competitive development activity”. The RCN considered that the results from each of these projects were company specific prototype demonstrators which would need considerable further in-house development to become day-to-day tools in the companies’ operations.

2) Project 138811 – AlgOpt

The aim of this project ⁽⁹⁾ was to develop and carry out practical tests of algorithms to calculate the optimal utilisation of a fleet of ships, given the obligations to load cargoes for several customers, the requirements as to when cargoes must be loaded and discharged in the destination port, the possibility of carrying joint cargoes of a limited number of bulk goods on each voyage as well as limitations that mean that not all the vessels involved are suitable for serving all customers or all ports.

The overarching objective of AlgOpt was that the algorithms should be integrated into a software concept that would offer users full control and the possibility of overriding the suggestions made by the algorithms. The software should help decision-makers to combine their own experience with the ability of the numerical processes to test a number of possibilities rapidly and in a manner that offers the best possible basis for making decisions.

The principal activities of the Project AlgOpt were the definition of user dialogues and criteria for good capacity utilisation; the development of algorithms for working out optimal voyage combinations; the testing of algorithms and the follow-up and documentation of benefits.

According to the information submitted by the Norwegian authorities, the Project AlgOpt was only a pre-study defining the user requirements and investigation of the feasibility of using Turborouter for the contract partner, the company Beltship Management AS. Total costs amounted to NOK 925 000. The project was classified as pre-competitive research. The financing was split between the RCN (NOK 300 000) and private funds from participating companies (NOK 625 000). The table below recapitulates the costs of the project as well as its financing ⁽¹⁰⁾:

Costs		Financing	
Personal and indirect costs	545 000	Own financing	625 000
Purchase of R&D	380 000	RCN	300 000
Other operating costs		Total	925 000
Total	925 000		

⁽⁹⁾ Information obtained from Marintek’s website: <http://www.marintek.no>.

⁽¹⁰⁾ These figures have been obtained from the form submitted to the RCN for the application for a grant.

3) Project 144265 – Shiplog II

The Shiplog project mainly dealt with transport at sea. This project ⁽¹¹⁾ should use the results of a previous project called Shiplog (which did not involve the use of Turborouter) to focus on the requirements for door-to-door delivery of goods, when transport at sea is a key element. The objectives of the project were:

- to support interaction between parties involved in door-to-door transport. This objective was shared by the EU proposal “D2D”, which aimed at demonstrating an integrated management and communication system for door-to-door intermodal freight transport operation,
- to demonstrate the communication of information between software systems by using XML ⁽¹²⁾ messages,
- to demonstrate how Turborouter could be integrated in a door-to-door transport service.

The project should utilise the results obtained in other projects such as Intermodal Portal, Themis, D2D, INTRA, INFRATRANS, TRANSDATA or INFOLOG.

The activities of the project included:

1. Methodology for modelling business processes which concerned the evaluation of business processes required in door-to-door transport.
2. The use of XML messages in system communication, which should specify the requirements for system communication and will implement XML messages supporting the exchange of information.
3. Development of demonstrator of door-to-door transport, which should implement an Internet application demonstrating a door-to-door transport operation.
4. Integrating Transport Chain Management System (TCMS) and Turborouter, which should specify the interface and demonstrate the exchange of information between Turborouter and the TCMS demonstrator.

According to the information provided by the Norwegian authorities, this project failed to achieve its objective because TCMS and Turborouter could not be satisfactorily integrated.

The RCN classified this project as pre-competitive development and awarded it state aid for an amount of NOK 2.15 million out of the NOK 6.2 million of the total project costs. The project received funds from the NSA for an amount of NOK 750 000 which were channelled through the RCN. The remainder was financed by the contract partner of this project, the company United European Car Carriers AS (UECC), and other participating companies. The table below recapitulates both the costs and the financing of the project ⁽¹³⁾:

Costs		Financing	
Personal and indirect costs	800 000	Own financing	800 000
Purchase of R&D	2 150 000	Other private means	3 250 000
Equipment	100 000	RCN	2 150 000
Other operating costs	3 150 000	Total	6 200 000
Total	6 200 000		

⁽¹¹⁾ Information obtained from Marintek's website.

⁽¹²⁾ XML (Extensible Mark-up Language) is a flexible way to create common information formats and share both the format and the data on the World Wide Web, intranets, and elsewhere. XML is a formal recommendation from the World Wide Web Consortium (W3C) similar to the language of today's Web pages, the Hypertext Mark-up Language (HTML).

⁽¹³⁾ These figures have been obtained from the form submitted to the RCN for the application for a grant.

4) Project 144214 – Library of optimisation routines for scheduling in shipping

The pre-competitive research project “Library of optimisation routines for scheduling in shipping” aimed at developing algorithms for advanced optimisation and scheduling of very complex shipping operations. The Norwegian authorities have explained that the library of algorithms is very trade and company specific and must thus be company-owned and not part of the standard Turborouter “tool kit”. Nevertheless, it may give rise to development of additional Turborouter functionalities demanded by the applications development.

The overall project costs amounted to NOK 7 million, of which NOK 1.5 million were covered by the RCN, NOK 805 000 by the NSA and the remaining amount of NOK 4.7 million by private funds. The company Beltship Management AS was the contract partner of this project. The table below recapitulates the costs and the financing of the project ⁽¹⁴⁾:

Costs		Financing	
Personal and indirect costs	4 100 000	Own financing	1 950 000
Purchase of R&D	2 900 000	Other private means	2 750 000
Equipment		RCN	2 300 000
Other operating costs		Total	7 000 000
Total	7 000 000		

b) *The beneficiaries*

The projects addressed in the current Decision have been developed in cooperation between the research institute Marintek and several private companies. Two of the private companies were the contract partners of the concerned projects and are therefore addressed in the following. In this context the other companies involved in the said projects could also be considered as potential beneficiaries for the purposes of this Decision.

1) Marintek

Marintek is a research institution, 56% owned by the SINTEF group, a private research foundation, 26% by the Norwegian Shipowners' Association, 9% by Det Norske Veritas, an independent foundation, and the rest by several shareholders in the maritime community.

Marintek delivers marine technology research and development services. Together with the Department of Marine Technology at the Norwegian University of Science and Technology (NTNU), it constitutes the Marine Technology Centre in Trondheim. The Norwegian Marine Technology Research Institute does research, development and technical consulting in the maritime sector for industry and the public sector. The Institute develops and verifies technological solutions for the shipping and maritime equipment industries and for offshore petroleum production. Marintek's business areas include shipping, shipbuilding, offshore marine industry and marine industry ⁽¹⁵⁾.

According to the information provided by the Norwegian authorities, Marintek has developed several software packages. Most of them are only for “internal use” but others are made available as commercial products through marketing alliances.

⁽¹⁴⁾ These figures have been obtained from the form submitted to the RCN for the application for a grant.

⁽¹⁵⁾ Information issued from Marintek's website: http://www.sintef.no/Content/page2_690.aspx.

2) United European Car Carriers (UECC)

UECC ⁽¹⁶⁾ is a provider of logistics and sea transportation services for the vehicle manufacturing industry in Europe with an extensive route network to transport all sorts of rolling cargo to most destinations in Europe.

According to current figures, UECC is a short sea operator which transports approximately 1.8 million new vehicles a year on behalf of the global automotive industry. As a major logistics provider, UECC is able to offer total management solutions, which encompass the full transport chain, from the manufacturing plant through to the final retail destination. In addition to a fleet of over 20 specially-designed vessels, UECC also operate the own vehicle handling centres and provide full tracking information at unit level using the latest IT-systems.

UECC is owned in equal shares by Nippon Yusen Kabushiki Kaisha (NYK) of Tokyo, one of the world's largest shipping companies, and by Wallenius Lines of Stockholm, a Swedish shipping enterprise.

3) Beltship Management AS

Beltship Management is a company which operates a highly specialised fleet of so-called self-unloading bulk carriers. Beltship Management was established in 1997 as a 50/50 partnership between Jebsens Shipping Company and Heidelberger Zement Group of Germany. The company is located in Bergen, Norway. Beltships has 9 vessels at their disposal, mainly with independently operated belt self-unloaders. Most of the vessels operate in the North Sea basin and in the Mediterranean. Beltship Management has been involved in the development of TurboRouter since 1999, and has used the tool for optimizing fleet scheduling in the North Sea basin since then ⁽¹⁷⁾.

4. **Description of the relationship between the four grants of aid and the Norwegian aid scheme for industrial R&D programmes**

According to the information provided by the Norwegian authorities, the four grants of aid covered by the present Decision received aid within the framework of the aid scheme "Industrial R&D Programmes" (*brukerstyrte forskningsprogrammer*).

a) *The aid scheme Industrial R&D Programmes*

Prior to the entry into force of the EEA Agreement, the Norwegian authorities established an aid scheme called "Industrial R&D Programmes" (*brukerstyrte forskningsprogrammer*) which was administered by the RCN. According to the information provided by the Norwegian authorities, this scheme covered awards of aid in the form of direct grants to research programmes of 3-5 years duration, either thematic or sector-oriented, implemented through a variable number of projects.

In December 1994, the Authority adopted a Decision on several aid schemes for research and development existing in Norway prior to the entry into force of the EEA Agreement, amongst others, the aid scheme Industrial R&D Programme (*brukerstyrte forskningsprogrammer*, case no 93-183). In this Decision, the Authority proposed appropriate measures to bring the scheme in line with the state aid rules of the EEA Agreement ⁽¹⁸⁾. In this Decision, the Authority noted that:

"Clear guidelines or specific provisions of a binding nature have not been developed for the scheme. Awards of aid are granted at the discretion of the responsible authorities within the framework of the Research Council's society rules."

⁽¹⁶⁾ Information issued from UECC's website: www.uecc.com.

⁽¹⁷⁾ Information issued from "TurboRouter, Vessel schedule optimizing software", a publication from Marintek.

⁽¹⁸⁾ Decision of the EFTA Surveillance Authority No 217/94/COL of 1.12.1994. The schemes covered by this decision were: Industrial R&D Contracts (case 93-147) and Public R&D Contracts (case 93-182) granted by the SND and Industrial R&D Projects (case 93-181) and Industrial R&D Programs (case 93-183) granted by the RCN.

In order to bring the scheme in line with the state aid rules, the Authority proposed to Norway, in particular, the introduction of detailed provisions which would ensure that awards of aid were granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines.

The Decision reads as follows:

“1.(i) The Norwegian authorities shall introduce detailed provisions for the schemes listed in Annex I to this decision which ensure that awards of aid are granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines. This means that the provisions must

- distinguish between the different types of R&D activities by providing definitions for basic industrial research as well as for applied research and development in line with the provisions of paragraph 14.1(2) of the State Aid Guidelines,*
- define the aid intensities in such a way that as a general rule aid for basic industrial research does not exceed 50% and that aid for applied research and development does not exceed 25% of the eligible costs. These intensities can, if so desired, be adjusted according to the principles laid down in the State Aid Guidelines and*
- define the eligibility costs for the purpose of calculating the aid intensity in compliance with the definitions in paragraph 14.5(1) of the State Aid Guidelines.”*

Norway accepted the appropriate measures proposed by the Authority by letter dated 19 December 1994. The acceptance of appropriate measures implied that the award of aid under the Industrial R&D Programme would be done in accordance with the provisions of the Authority’s R&D Guidelines as they were drafted in 1994. Following the wording of the Authority’s Decision No 217/94/COL, this is in particular the case when it concerns the definition of the different types of R&D activities, the aid intensities and the eligible costs.

In the framework of the current preliminary investigation, the Norwegian authorities have stated that, as a follow-up of the acceptance of the appropriate measures, the RCN developed provisions to ensure that aid was awarded in compliance with Chapter 14 of the State Aid Guidelines on R&D aid. This set of rules is called DOKSY, *“Aid intensities in accordance with EEA rules”*. According to the information provided by the Norwegian authorities, Doksy is a set of provisions adopted by the RCN which correspond mainly to the R&D Guidelines of the Authority. It serves as the basis guidelines for the granting of R&D aid by the RCN.

It is regrettable that the Norwegian authorities did not provide the amended version of the scheme Industrial R&D Programmes to the Authority for its review ⁽¹⁹⁾. Notwithstanding this, it is the understanding of the Authority that the Norwegian authorities amended the set of rules called Doksy in accordance with the amendments of Chapter 14 of the Authority’s State Aid Guidelines.

b) *The Research Council of Norway*

The aid granted to the undertakings for the four projects was granted by the RCN, which is the responsible body in charge of the aid scheme Industrial R&D Programmes.

According to its own statement ⁽²⁰⁾, the RCN is a national strategic body and funding agency for research and innovation activities. The RCN covers all fields of research and innovation and works together with research institutions as well as the private and public sectors to reach the national financial goals and quality targets set in this area.

⁽¹⁹⁾ According to the Decision, “The Norwegian authorities must inform the EFTA Surveillance Authority on the adoption of such provisions [the appropriate measures], insofar as these involve state aid, before they are put into effect.”

⁽²⁰⁾ Information taken from the website of the RCN at <http://www.forskningsradet.no/english>.

The RCN plays a vital role in developing and implementing the country's national research strategy. It acts as

- a government adviser, *identifying* present and future needs for knowledge and research, and recommending national priorities;
- a funding agency for *research* programmes and independent projects, strategic programmes at research institutions, and Norwegian participation in international research activities. The RCN has an annual budget of some NOK 4,5 billion and utilises specifically-targeted funding schemes to help translate national research policy goals into action;
- a co-ordinator, initiating networks and promoting co-operation between research institutions, ministries, business and industry, public agencies and enterprises, other sources of funding, and users of research.

II. APPRECIATION

1. Introduction: the applicable legal framework

According to the information submitted by the Norwegian authorities, the four projects which are assessed in this Decision were granted R&D aid in the framework of the Industrial R&D Programme (*brukerstyrte forskningsprogrammer*, case no 93-183). As mentioned above, the Industrial R&D Programme was already in place before 1994. Following the entry into force of the EEA Agreement in Norway, the Authority assessed the Industrial R&D Programme together with other existing aid schemes and adopted Decision No 217/94/COL in December 1994. In this Decision, the Authority proposed appropriate measures with respect to the Industrial R&D Programme to mainly require that awards of aid would be granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines.

The Norwegian authorities accepted the proposed appropriate measures. Thus, thereafter, any grant of aid under the Industrial R&D Programme had to be done in accordance with the R&D rules applicable when the Authority adopted Decision No 217/94/COL.

The R&D rules applicable when the Authority adopted Decision No 217/94/COL were Chapter 14 of the State Aid Guidelines as adopted in 1994 (hereinafter referred to as the R&D Guidelines of 1994 ⁽²¹⁾).

Hence, by definition, any aid granted under the scheme Industrial R&D Programmes which does not comply with the provisions of the version of the R&D Guidelines applicable in 1994, when the Authority proposed the appropriate measures which Norway accepted, falls outside the scope of application of the scheme. Accordingly, such a measure would constitute new individual aid and would as such need to be notified to the Authority individually.

In this context it is important to note that the present decision only concerns the application of the scheme Industrial R&D Programmes to the four concrete projects identified as relating to the development of the software programme Turborouter on which a complaint was lodged in 2002.

Should the granting of aid to the four questioned projects not be covered by the scheme Industrial R&D Programmes as explained above, each of the projects would need to be assessed individually. In this assessment, the Authority would have to determine whether state aid was granted in each of the projects and whether this aid could have been considered compatible aid on the basis of the provisions of the R&D Guidelines applicable at the time where the grants were given or directly on the basis of the rules of the EEA Agreement.

As far as Project 40049 "*Strategic activities within maritime transport and logistics*", which led to the development of the first software programme Turborouter, is concerned, the aid was granted by a decision of the RCN of December 1995. The applicable rules governing the granting of R&D aid were Chapter 14 of the Authority's State Aid Guidelines as originally adopted in Decision

⁽²¹⁾ In January 1994, the Authority had taken Decision No 4/94/COL on the adoption and issuing of the Procedural and Substantive Rules in the Field of State Aid (Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3). Chapter 14 thereof deals with Aid for research and development, which mainly corresponded to the Community framework for state aid for research and development. This Decision was published on the Official Journal L 231 of 03.09.1994, pages 1 to 84.

No 4/94/COL. In other words, the provisions of the scheme Industrial R&D Programmes as amended following the appropriate measures of the Authority should correspond to the provisions of the generally applicable R&D Guidelines in 1995, when aid was granted to Project 40049. Thus, should the granting of aid to this project not have been done in compliance with these rules, the aid will have to be considered incompatible aid, unless its compatibility can be established on the basis of the state aid provisions in Article 61(3)(a), (b) or (c) of the EEA Agreement directly.

As far as the other three projects assessed in this Decision are concerned, they received aid on the basis of decisions taken by the RCN in 2000. Prior to that date, the Authority had amended Chapter 14 of the Guidelines with Decision No 53/96/COL adopted on 15.05.1996 to incorporate the amended Community Framework for state aid for research and development ⁽²²⁾. Thus, an individual assessment of the granting of aid to Projects 138811 *“AlgOpt”*, 144265 *“Shiplog II”* and 144214 *“Library of optimisation routines for scheduling in shipping”* as individual aid should be done in accordance with the provisions of the version of Chapter 14 of the Guidelines existing since May 1996 or directly on the basis of the state aid rules in Article 61(3)(a), (b) or (c) of the EEA Agreement.

2. State aid assessment of the projects

Article 61(1) of the EEA Agreement states that:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

Thus, in order for a measure to be considered state aid, it must constitute a selective advantage in favour of certain undertakings, be granted through state resources, distort competition and affect trade between the Contracting Parties to the EEA Agreement.

Firstly, the measure must confer on certain undertakings an advantage that reduces the costs they normally bear in the course of business and relieves them of charges that are normally borne from their budgets. By paying grants to support certain R&D projects, the RCN confers an economic advantage only on the promoters of the selected R&D projects.

Secondly, the advantage must be granted by the State or through state resources. The RCN develops and implements the country’s national research strategy and specially acts as a funding agency for research. In particular, for the development of the Maritime research programme, the RCN managed funds received from the Ministries of Trade and Industry and of Finance. Thus, the public funds channelled through the RCN and which were obtained from the above-mentioned ministries constitute state resources within the meaning of Article 61(1) of the EEA Agreement.

Thirdly, the measure must distort competition. Since there are other Norwegian undertakings which compete with the promoters of the selected R&D projects that may not receive support from the RCN to carry out their R&D projects, the granting of aid has the effect of distorting competition.

Moreover, the beneficiaries of the financing are active in sectors open to competition within the EEA. Therefore, the funds granted by the RCN for the development of R&D projects affect trade between the Contracting Parties to the EEA Agreement.

For these reasons, the grants given by the RCN to the projects related to the development of the software programme Turborouter constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

Whether the four projects fall within the existing aid scheme will be assessed under a).

⁽²²⁾ Published in the OJ No C 45 of 17.02.1996, pages 5 to 16.

Under b), the Authority will assess whether the aid grants, if outside the existing aid scheme, nevertheless are in compliance with the state aid rules.

a) *Assessment of the projects on the basis of the aid scheme Industrial R&D Programmes*

The RCN granted financing to the above-mentioned projects in the framework of the aid scheme Industrial R&D Programmes, which the Authority classified as state aid within the meaning of Article 61(1) of the EEA Agreement in its Decision No 217/94/COL of 1 December 1994.

As mentioned above, the Norwegian authorities accepted the appropriate measures proposed by the Authority to bring the aid scheme Industrial R&D Programmes in line with the rules of the EEA Agreement in a letter dated 19 December 1994. They accordingly committed to amend the aid scheme Industrial R&D Programmes in accordance with the R&D Guidelines of 1994.

In the following, the Authority will assess whether the granting of aid to the four projects in question falls within the provisions of the scheme Industrial R&D Programmes as amended in accordance with R&D Guidelines of 1994.

As a preliminary remark, the Authority would like to point out that, in general terms, according to the information available to the Authority at this stage, the RCN does not seem to control how the own contributions of the beneficiaries are distributed to various activities and whether they are effectively disbursed. This type of control seems crucial in the determination of whether the beneficiaries receive aid in the amount they are entitled to or whether, on the contrary, they are misusing the RCN's research grants.

1) The development of the first version of the software programme Turborouter

On the basis of the information provided by the Norwegian authorities, the RCN classified Project 40049 Strategic activities within maritime transport and logistics as industrial research. According to Point 14.1.(2) of the R&D Guidelines of 1994, basic industrial research is defined as *"original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular enterprise."*

Although, according to the information submitted by the RCN, the project consisted of activities which were classified as fundamental research as well as other activities which were classified as industrial research, the project as a whole was considered as industrial research.

The development of the first software programme Turborouter, a tool useful for companies to optimise vessel fleet scheduling, was developed as the result of one of the sub-projects covered by Project 40049. Further, the project was exclusively carried out by the research institute Marintek.

Although Turborouter has become a software tool which seems to be appreciated on the market, the RCN funds allocated to Project 40049 devoted to the sub-project "Methods and analytical tools for design and operation of integrated transport and logistics chains" only led to the development of the first software programme Turborouter, in the application of industrial research. Obviously since the first software was developed in the first phase of the sub-project back in early 1996, the software has been further improved and also marketed. However, it seems that the granting of aid to project 40049 which resulted, amongst others, in the development of the first software Turborouter, cannot by this fact be considered in relation to market proximity to be beyond the stage of industrial research as it was classified by the RCN.

As industrial research, Project 40049 was granted aid from the RCN for an amount corresponding to 43.8% of the costs of the project. This intensity is below the maximum aid intensity allowed by the Guidelines which read *"the level of aid for basic industrial research should not be more than 50% of the gross costs of the project or programme."*

For the purpose of calculating the intensity of aid from R&D activities, Section 14.5.1 of R&D Guidelines of 1994 foresaw the following eligible costs:

- “– *personnel costs (researchers, technicians, other supporting staff) calculated as a sum of the total amount needed to carry out the project;*
- *other running costs calculated in the same way (costs of materials, supplies, etc.);*
- *instruments and equipment, land and buildings;*
- *consultancy and equivalent services including bought-in research, technical knowledge, patents, etc;*
- *additional overhead costs incurred directly as a result of the R&D project or programme being promoted.”*

It seems that the costs of the projects, as they were taken into account in the determination of the granting of aid, are *a priori* covered by the definition of eligible costs provided in the R&D Guidelines of 1994.

Therefore, it appears that the RCN had classified Project 40049 as basic industrial research in accordance with the provisions of the R&D Guidelines of 1994.

It is the preliminary opinion of the Authority that the granting of aid to Project 40049 falls within the scheme Industrial R&D Programme as amended on the basis of Chapter 14 of the Authority’s R&D Guidelines of 1994. This preliminary opinion is however without prejudice to the Authority’s final conclusion.

The complainant has further claimed that the research results had not been disseminated but the research institute Marintek, which developed the software programme Turborouter, had received the property rights to sell the programme.

The Authority would like to point out that under the R&D Guidelines of 1994, and accordingly under the provisions of the aid scheme Industrial R&D Programmes, there was no written obligation to disseminate the results of research as is the case for fundamental research under the currently applicable R&D Guidelines.

2) The projects relating to the further use of the software programme Turborouter

In 2000, the RCN authorised the granting of R&D aid to three R&D projects which concerned the use and further development of the software programme Turborouter: Project 138811 “*AlgOpt*”, Project 144265 “*Shiplog II*” and Project 144214 “*Library of optimisation routines for scheduling in shipping*”.

The Norwegian authorities have however indicated that there were other projects which involved the use and further development of the software programme Turborouter which did not receive any support from the RCN ⁽²³⁾.

The RCN classified all three projects as pre-competitive research.

The complainant has claimed that these projects were far beyond pre-competitive development activities. In his opinion, the so-called Turborouter projects were aimed at developing software programmes developed in close co-operation with a limited number of users while in parallel being marketed towards other maritime companies in need of such programmes.

What in later versions of the R&D Guidelines has been named pre-competitive research largely corresponds to the definition of applied research and development within the meaning of the R&D Guidelines of 1994.

⁽²³⁾ See chart “Projects involving development of Turborouter” handed over by the RCN during the meeting with representatives of the Authority held in Oslo in September 2004.

Point 14.1.(2) of the R&D Guidelines of 1994 distinguished between three categories of research: fundamental, basic industrial and applied research and development. According to this provision, applied research *“covers investigation or experimental work based on the results of basic industrial research to acquire new knowledge to facilitate the attainment of specific practical objectives such as the creation of new products, production processes or services. It could normally be said to end with the creation of a first prototype.”* Development is considered to cover *“work based on applied research aimed at establishing new or substantially improved products, production processes or services up to but not including industrial application and commercial exploitation.”*

On the basis of the information available to it at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as applied or pre-competitive research as will be shown below. In the following, the Authority will use the term “pre-competitive research” when referring to applied research and pre-competitive research.

The complainant also claimed that the maximum aid intensities had not been respected due to the fact that the own capital contributions from the concerned companies were in reality lower than stated in the application forms.

The Authority will address these allegations below for each of the projects concerned.

a) *Project 138811 – AlgOpt*

– Doubts concerning the classification of the project

The Norwegian authorities explained that the AlgOpt project was a pre-study defining the user requirements and investigation of the feasibility of using Turborouter for Beltship Management, the contract partner of the project. According to the information provided by the Norwegian authorities, this project was considered as a sort of “pre-project” to Project 144214, Library of Optimisation routines for scheduling in shipping, which will be addressed below.

On the basis of the information available at Marintek’s website, the aim of the project was to develop and carry out practical tests of algorithms to calculate the optimal utilisation of a fleet of ships.

It is questionable whether this project goes beyond the stage of applied or pre-competitive research to constitute a commercial product. This application has been developed on the basis of the software programme Turborouter incorporating algorithms to calculate the optimal utilisation of Beltship Management’s fleet. It is not clear to the Authority what would make the difference between the pre-competitive phase of the product and the final commercial product. The Authority has doubts as to what is the borderline between a prototype and a commercial product in the case at hand. It is not clear from the information provided whether the result of the project financed with aid granted by the RCN was developed further before it could be used in the daily operation of the company.

– Doubts concerning the financing of the project and the aid intensities

The Authority would like to point out that there is a slight discrepancy between the figures provided by the Norwegian authorities in the written information submitted to the Authority concerning the financing of the AlgOpt project and the information presented in the application forms for grant to the RCN also forwarded by the Norwegian authorities as follows:

Table 1: Information provided by the Norwegian authorities on their letter of 11.04.2003

Costs		Financing	
Personal and indirect costs	545 000	Own financing	625 000
Purchase of R&D	380 000	Other private means	75 000
Other operating costs	100 000	RCN	325 000
Total	1 025 000	Total	1 025 000

Table 2: Information provided by the Norwegian authorities in the annex to their letter of 11.04.2003

Costs		Financing	
Personal and indirect costs	545 000	Own financing	625 000
Purchase of R&D	380 000	RCN	300 000
Other operating costs	–	Total	925 000
Total	925 000		

The Norwegian authorities are invited to comment on these figures. They are also invited to provide the correct information concerning the amount of money which the Norwegian Shipowners' Association invested in the AlgOpt project which is included in the amount granted through the RCN in the table above. This information is of the essence when it comes to assessing the aid intensity of the project.

Following the arguments of the complainant, there is a doubt as to whether the real research cost of the project corresponded to NOK 380 000 instead of the amount claimed by Beltship Management in its application for a grant from the RCN, *i.e.* NOK 925 000.

This doubt is substantiated by comparing the figures concerning the costs of the project and its financing. Beltship Management contributes with own means amounting to NOK 625 000 to the financing of the project. According to the information contained in the application form to the RCN, this sum is divided as NOK 80 000 in cash and NOK 545 000 as contribution in kind. The latter corresponds exactly to the personnel and indirect costs of the project whereas the cash contribution together with the aid granted by the RCN (NOK 300 000) pays the purchase of R&D which costs NOK 380 000.

It seems that it is Marintek, the research institute that developed the first software programme Turborouter, which had the necessary know-how and technological competence to do the project. Therefore, it appears rational to assume that most of the work would have been carried out by its own staff. This would imply, in principle, that the participation of the staff of Beltship Management, which was the final user of the software, would have most probably been related to the definition of the users needs and/or to some degree of testing.

Although it seems questionable to what extent the staff of the company can carry out activities classified as research activities, the R&D Guidelines of 1994 did not require that staff be employed solely on the research activities for these costs to be eligible for aid.

Notwithstanding this, comparison of the costs of the project shows that the total contribution of Beltship Management's staff to the project which amounted to 545 000 NOK is more important and costly than the development of the R&D which was acquired from Marintek for a total of 380 000 NOK. It seems questionable to what extent the staff of the company has carried out research activities or whether these costs rather concerned normal operational activities of the company. The Authority would appreciate documentary evidence which can substantiate that the hours behind these research costs were actually used in the project.

To the extent that Beltship's contribution in kind may not have corresponded to research costs, the overall costs of the research project would be lower and the aid intensities accordingly higher.

b) Project 144265 – Shiplog II

- Doubts concerning the classification of the project

According to the information provided by the Norwegian authorities, the main objective of Shiplog II was to develop a pilot demonstrator of door-to-door logistics management in the shipping of chemicals and cars.

According to Point 14.1.(2) of the R&D Guidelines of 1994, applied research covers investigation or experimental work based on the results of basic industrial research which could normally be said to end with the creation of a first prototype. The Authority has doubts whether the definition of applied research covers cases such as this where the pilot demonstrator or prototype seems to be very close to what the final product would have been. According to the information submitted by the Norwegian authorities, the integration of the Transport Chain Management System (TCMS) and Turborouter, the main objective of this project, failed.

- Doubts concerning the financing of the project and the aid intensities

A comparison of the figures corresponding to the project costs and its financing shows that the amount granted by the RCN equals the sum necessary to purchase R&D. Further, the contribution of UECC's (own financing), the company in charge of the project, corresponds to the personnel and indirect costs. The rest of the gross costs of the project covers equipment and other operating costs and equals the financing brought by the other companies participating in the project.

The Norwegian authorities have contended in their letter dated 22 August 2005 that *"in order to promote cooperation [between private companies and public R&D institutions] we may in some calls for proposals for industry-driven projects, state that the application will be evaluated favourably if the external purchases of R&D from research institutes (institutes or universities) are at least as high as the support given by the RCN."* ⁽²⁴⁾

The Authority questions whether the figures for the total project costs have been inflated to seemingly obtain more financing. It is questionable whether this approach has led beneficiaries to include part of their normal operating costs in the R&D costs allocated to the research projects financed with support from the RCN.

Should this be the case and should the R&D project in reality only correspond to the purchased R&D, the intensity of the aid granted would have to be revised. It would then be necessary to assess whether the revised aid intensity falls within the parameters of the Industrial R&D Programme.

c) Project 144214 – Library of optimisation routines for scheduling in shipping

- Doubts concerning the classification of the project

According to the information provided by the Norwegian authorities, in this specific project the requirements of Beltship Management and another company, Iver Ships, were used as an example to gain some more experience from this kind of scheduling software in shipping organisations. This could have been of great value to Marintek's further development of Turborouter. Even if the requirements of these two companies would not be the same as for other shipping companies, it would be possible to build on some main principles in the used algorithms.

⁽²⁴⁾ See page 1 in the letter from the Norwegian authorities dated 22.08.2005.

The Authority has difficulties in understanding which are the determining features of this project in classifying it as applied research and not as a commercial project.

During the preliminary investigation, the Norwegian authorities have argued that the result of the activities in any of the projects classified as applied or pre-competitive research cannot be exploited commercially and sold to other users because they are company-specific applications. According to the information provided by the Norwegian authorities, Turborouter will never be an “off-the-shelf” product but will always need, by definition, further adaptations.

The Norwegian authorities acknowledge the difficulty in distinguishing between a commercial and a pre-competitive product where the result of the activity is not a physical product but a new, altered or improved process, service or procedure to be used internally. In their opinion, the activity that has created these results may be classified as a pre-competitive development activity if it is not part of the day-to-day operation of the company and not part of routine or periodic changes or improvements.

The borderline between a pilot project, which could not be used commercially, and a commercial final product seems very diffuse in the case at hand because the software needs to be adapted anew for each new application specific to each final user. The Authority questions to what extent the further development of the software programme Turborouter for use in developing applications which serve concrete needs for the final users can be covered by the definition of applied research. It is not clear to the Authority what would be considered as a commercial product and what would fall under a prototype regarding the concrete application of the software programme Turborouter to the specific needs of a given company.

The Authority doubts whether, due to the specific characteristics of the software programme Turborouter, the development of each new application necessarily goes beyond the stage of pilot project to be a new commercial product or whether, on the contrary, it constitutes applied research.

Furthermore, although the project as such was considered pre-competitive research, the RCN classified certain activities within Project 144214 “Library of optimisation routines for scheduling of shipping” such as map chart status or the writing and publishing of articles as industrial research. The correctness of this classification seems doubtful.

– Doubts concerning the financing of the project and the aid intensities

As was the case of the previously mentioned projects, the comparison of the figures provided for as the cost and financing of the project raises doubts as to whether the project only concerns research activities or whether it covers part of the operational costs of the company, in this case of Beltship Management and Iver Ships.

From the information provided by the Norwegian authorities, it seems that the object of the project was to allow Marintek to use the two companies as an example to gain some more experience from this kind of scheduling software in shipping organisations. In principle, this would imply that the majority of the research work will be done by Marintek itself. It is the understanding of the Authority that this research done by Marintek is covered by the rubric “Purchase of R&D” in the costs of the project and amounts to NOK 2 900 000. It follows logically that the work of the personnel has an auxiliary function, to provide the researchers with the experiences acquired “on the job” while using the software tool Turborouter. In the understanding of the Authority, this information should serve as a basis for the research of Marintek and should be processed into new algorithms for advanced optimisation and scheduling of shipping operations. It does not seem that the aim of the project was the development of a given prototype or pilot demonstrator. In such a situation, it seems unusual that the costs of personnel and indirect costs are higher than the cost of purchasing R&D.

The Authority welcomes any comment regarding this issue.

3) The necessity to open the formal investigation procedure

On the basis of the information available at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as pre-competitive development activities or whether, on the contrary, they were already too close to the market to be eligible for state aid.

Furthermore, the Authority has doubts concerning the financing of the projects, in particular regarding the effective disbursement of the own contributions in kind of the beneficiaries of the projects.

In light of the above, the Authority has doubts both as to whether the above-mentioned projects have received aid in compliance with the R&D Guidelines of 1994 and as to whether the beneficiaries have used the aid in contravention of the accepted appropriate measures on the scheme Industrial R&D Programmes. On the basis of the definition in Article 1(g) in Part II of Protocol 3, aid used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) or Article 7(3) or (4) constitutes misuse of aid. This definition covers, in the Authority's view, individual aid awards within a scheme approved by the Authority by means of appropriate measures.

According to Article 4(4) in Part II of Protocol 3, the Authority shall decide to initiate the formal investigation procedure where, after a preliminary investigation, it finds that doubts are raised as to the compatibility of a measure with the functioning of the EEA Agreement. Furthermore, according to Article 16 in Part II of Protocol 3, the Authority may in cases of misuse of aid open the formal investigation procedure pursuant to Article 4(4) in Part II of Protocol 3.

With regard to the correct classification of the projects and the respective aid intensities, should the Authority find out in the course of this formal investigation that the above-mentioned projects have received aid which was not awarded on the basis of the aid scheme Industrial R&D Programmes, it will consider these projects as individual aid awards which were not notified to the Authority in due time. Any aid which is put into effect in contravention of Article 1(3) in Part I of Protocol 3, *i.e.* that was not notified and authorised by the Authority prior to being put into effect, is considered unlawful aid by virtue of Article 1(f) in Part II of the same Protocol.

Both in the case of misuse of aid and of the granting of unlawful aid which is incompatible with the state aid rules of the EEA Agreement, the aid will have to be recovered from the beneficiaries.

b) *Assessment of the projects as individual aid grants*

1) Introduction

Should the granting of financial support by the RCN to the projects concerning the development of the software programme Turborouter not be covered by the aid scheme Industrial R&D Programmes, as assessed above, these measures will constitute individual aid and should have been notified in accordance with Article 1(3) in Part I of Protocol 3 and will have to be assessed individually.

2) Compatibility

At this stage of the procedure, the Authority is not in the position of determining whether the granting of aid to the projects related to the further development of the software programme Turborouter can be considered compatible on the basis of the provisions of the R&D Guidelines as amended by the Authority with Decision No 53/96/COL ⁽²⁵⁾. For this reason, in the following, the Authority will only recall provisions which may seem relevant for a possible assessment of these grants in light of the R&D Guidelines.

⁽²⁵⁾ Should the granting of R&D aid to Project 40049 fall outside the scheme Industrial R&D Programmes, its compatibility as individual aid can only be established on the basis of the EEA Agreement directly (see page 12 of this Decision).

On the basis of the provisions of Chapter 14 of the State Aid Guidelines "*Aid for research and development*", aid granted to firms for R&D may be regarded as compatible with the functioning of the EEA Agreement by virtue of Article 61(3)(c) of the EEA Agreement which provides a derogation for aid that facilitates the development of certain economic activities as long as it does not adversely affect trading conditions to an extent contrary to the common interest.

State aid for R&D should serve as an incentive for firms to undertake research activities in addition to their normal day-to-day operations ⁽²⁶⁾. In order to verify that the planned aid will induce firms to pursue research which they would not otherwise have pursued, the Authority takes particular account of quantifiable factors such as changes in R&D spending or in the number of people assigned to R&D activities, market failures, other additional costs connected with cross-border cooperation and other relevant factors.

When examining the compatibility of an aid for research and development, under the R&D Guidelines, the Authority pays special attention to the type of research carried out, the beneficiaries, the aid intensity or the accessibility to the results. The closer the aid is to the market, the more significant the distortive effect of the state aid may be.

In order to determine the proximity to the market of the aided R&D, the Authority makes a distinction between fundamental research, industrial research and pre-competitive development activity. By pre-competitive development activity is meant ⁽²⁷⁾ "*the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. It may include conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation*". The permissible gross aid intensity for such activities is fixed at 25 % of the eligible costs.

According to Point 14.5.9 of the R&D Guidelines, in cases of R&D activity spanning industrial research and pre-competitive development activities, the permissible aid intensity will not normally exceed the weighted average of the permissible aid intensities applicable to the two types of research.

However, in the event of failure of the research concerned, the Authority, in line with past practice, may allow a higher level of aid intensity since the project's failure reduces the risk of competition and trade being distorted ⁽²⁸⁾.

Under Annex II to Chapter 14, the R&D Guidelines, the Authority revised the concept of eligible costs for the purpose of calculating the aid intensity to cover:

- personnel costs (researchers, technicians and other supporting staff employed solely on the research activity)
- cost of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity
- cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources
- additional overheads incurred directly as a result of the research activity
- other operating expenses (e.g. cost of materials, supplies and similar products) incurred directly as a result of the research activity.

Should the granting of aid to any of these projects not be considered compatible on the basis of the R&D Guidelines of 1996 or on another state aid provision of the EEA Agreement, any illegally granted aid will have to be recovered from the beneficiaries, pursuant to Article 14 of Protocol 3.

⁽²⁶⁾ See Section 14.7 Incentive effect of R&D aid in Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

⁽²⁷⁾ See Annex I to Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

⁽²⁸⁾ See Section 14.5.6 in Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

3. Conclusion

In light of the above, the Authority has doubts as to whether all or any of the above-mentioned four projects have received aid in compliance with the R&D State Aid Guidelines.

In particular regarding the projects related to the further development of the software programme Turborouter, on the basis of the information available to it at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as pre-competitive development activities or whether, on the contrary, they were already too close to the market to be eligible for state aid.

The Authority has doubts regarding the real research costs of the projects. Should the Authority, in the framework of the current investigation, find out that they were lower than alleged in the application for funding to the RCN, the aid intensities will have to be reviewed.

Furthermore, the Authority also has doubts regarding the effective disbursement of all contributions in kind from the beneficiaries.

The two concerns mentioned above with respect to the pre-competitive research projects may lead to the conclusion that aid could have been granted for an amount exceeding 25% of the real costs of the project. As far as the industrial research project is concerned, this percentage can reach 50%. Any amount exceeding this figure not covered by the state aid rules on R&D aid might need to be recovered.

The Authority also doubts whether the beneficiaries have used the aid in contravention of the accepted appropriate measures on the scheme Industrial R&D Programmes.

Therefore, in accordance with Articles 4(4), 10 and following and 16 in Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3. The decision to open proceedings is without prejudice to the final decision of the Authority.

The Norwegian authorities should inform Marintek, Beltship Management, UECC and any other beneficiary of possible state aid by means of a copy of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure pursuant to Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement regarding the R&D aid granted by the Research Council of Norway in connection with the development of the software programme Turborouter.

Article 2

The Norwegian Government is invited, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement to submit its comments on the opening of the formal investigation procedure within one month from the notification of this decision.

Article 3

Other Contracting Parties to the EEA Agreement and interested parties shall be informed by the publishing of a meaningful summary and the full text of this Decision in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication of this Decision.

Article 4

The Authority requests the Norwegian authorities to forward a copy of this letter to the recipients of the aid immediately.

Article 5

This Decision is addressed to the Kingdom of Norway.

Article 6

This Decision is authentic in the English language.

Done at Brussels, 8 March 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland

President

Kurt Jaeger

College Member

EFTA-DÓMSTÓLLINN

**Kæra Eftirlitsstofnunar EFTA gegn Konungsríkinu Noregi sem lögð var fram
31. júlí 2006**

2006/EES/53/03

(Mál E-2/06)

Hinn 31. júlí 2006 lagði Eftirlitsstofnun EFTA fram fyrir EFTA-dómstólnum kæru gegn Konungsríkinu Noregi; í fyrirsvari er Niels Fenger, umboðsmaður Eftirlitsstofnunar EFTA, Rue Belliard 35, B-1040 Bruxelles/Brussel.

Kröfur sóknaraðila eru sem hér segir:

1. Dómstóllinn lýsi yfir að með því að fella ekki úr gildi ákvæði samkvæmt *lögum nr. 16 frá 14. desember 1917*, en samkvæmt þeim geta norsk einkafyrirtæki og hvers kyns fyrirtæki í öðrum aðildarríkjum EES-samningsins aðeins fengið tímabundið sérleyfi vegna öflunar á eignar- eða nýtingarrétti fossa til orkuvinnslu og er skylt að afhenda norska ríkinu öll mannvirki endurgjaldslaust þegar sérleyfið rennur út, gagnstætt því sem gildir um opinber fyrirtæki í Noregi, sem njóta ótímabundins sérleyfis, hafi norsk stjórnvöld brotið gegn 31. og 40. gr. EES-samningsins.

og

2. Dómstóllinn dæmi Konungsríkið Noreg til greiðslu málskostnaðar.

Lagagrundvöllur, málsvik og lagarök til stuðnings kærinni:

- Málið varðar yfirfærslu eignarréttar á vatnsaflsvirkjunum til norska ríkisins sem á sér stað endurgjaldslaust þegar sérleyfið rennur út. Í norskum lögum er þessi yfirfærsla nefnd „afturhvarf“ („hjemfall“ á norsku) óháð því hvort eignarréttur að fossinum eða vatnsaflsvirkjuninni hefur áður verið í höndum ríkisins.
- Samkvæmt *lögum nr. 16 frá 14. desember 1917* („lögum um sérleyfi til atvinnustarfsemi“) er gefið út ótímabundið sérleyfi vegna nýtingar fossa og vatnsaflsvirkjana til fyrirtækja sem eru í eigu norska ríkisins, héraðsstjórna eða sveitarstjórna að 2/3 að minnsta kosti, en tímabundið sérleyfi til allra annarra fyrirtækja, meðal annars þegar eigendur í öðrum EES-ríkjum ráða meira en 1/3 af hlutfé fyrirtækjanna, einir eða ásamt norskum einkaaðilum.
- Af þessu leiðir að „afturhvarf“ gildir eingöngu í síðarnefnda tilvikinu.
- Að áliti Eftirlitsstofnunar EFTA fela núgildandi reglur um „afturhvarf“ í sér mismunun gagnvart eigendum í öðrum EES-ríkjum, en það er brot á 31. og 40. gr. EES-samningsins.
- Málsrök Eftirlitsstofnunar EFTA eru að þessi mismunandi meðferð byggist ekki á málefnalegum sjónarmiðum og falli ekki undir gildissvið 125. gr. EES-samningsins.

EB-STOFNANIR

FRAMKVÆMDASTJÓRNIN

Tilkynning um fyrirhugaða samfylkingu fyrirtækja (Mál COMP/M.4267 – Deutsche Börse/Euronext)

2006/EES/53/04

1. Framkvæmdastjórninni barst 13. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem þýska fyrirtækið Deutsche Börse AG („DBAG“) öðlast með yfirtökuboðum að fullu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir hollenska fyrirtækinu Euronext NV.
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - DBAG: þjónusta á sviði skráningar og viðskipta á reiðufjármarkaði, þjónusta á sviði viðskipta með afleidd fjármálaskjöl, þjónusta á sviði markaðsupplýsinga og upplýsingatæknilausnir fyrir fjármálamarkaði og markaðsaðila; DBAG sinnir einnig greiðslujöfnun fyrir verðbréf, vörsluþjónustu og uppgjöri vegna verðbréfavíðskipta í gegnum systurfélög sín
 - Euronext: þjónusta á sviði skráningar og viðskipta á reiðufjármörkuðum í Belgíu, Frakklandi, Hollandi og Portúgal, auk þjónustu á sviði viðskipta með afleidd skjöl í Bretlandi; Euronext veitir markaðsaðilum einnig þjónustu á sviði markaðsupplýsinga og upplýsingatækni
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 256, 24. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4267 – Deutsche Börse/Euronext), á eftirfarandi pósthfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja**2006/EES/53/05****(Mál COMP/M.4314 – Johnson & Johnson/Pfizer Consumer Healthcare)**

1. Framkvæmdastjórninni barst 19. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem bandaríska fyrirtækið Johnson & Johnson öðlast með hlutafjár- og eignakaupum að hluta yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir bandaríska fyrirtækinu Pfizer Inc., þ.e. allri starfsemi þess fyrirtækis á sviði heilbrigðisvöru fyrir almenna neytendur, Pfizer Consumer Healthcare.
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - Johnson & Johnson: heilbrigðisvörur fyrir almennan markað, lyf, lækningatæki og greining-arbúnaður
 - Pfizer Consumer Healthcare: almennar heilbrigðisvörur og ólyfseðilsskyld lyf
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 258, 26. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4314 – Johnson & Johnson/Pfizer Consumer Healthcare, á eftirfarandi pósthfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja**2006/EES/53/06****(Mál COMP/M.4393 – Istithmar/Mubadala/DAE/SR Technics)****Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð**

1. Framkvæmdastjórninni barst 13. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem fyrirtækin Istithmar PJSC („Istithmar“), sem tilheyrir samsteypunni Dubai World, Mubadala Development Company PJSC („Mubadala“) og Dubai Aerospace Enterprise (DAE) Limited („DAE“), sem eru öll skráð í Sameinuðu arabísku furstadæmunum, öðlast með hlutafjárkaupum í sameiningu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrirnefndrar reglugerðar yfir svissneska fyrirtækinu SR Technics Holding AG („SR Technics“).
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - Istithmar: fjárfestingafyrirtæki sem fjárfestir aðallega í óskráðum félögum, fasteignum og öðrum eignum utan verðbréfamarkaðar
 - Mubadala: beinar fjárfestingar sem aðalhluthafi í ýmsum grundvallaratvinnugreinum
 - DAE: eignarhaldsfélag fyrir framleiðslu- og þjónustufyrirtæki
 - SR Technics: viðhald, viðgerðir og grannskoðun á loftförum sem notuð eru í almennu flugi
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun. Hafa ber í huga að þetta mál kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna samfylkinga samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ⁽²⁾.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 256, 24. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4393 – Istithmar/Mubadala/DAE/SR Technics, á eftirfarandi pósthfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

⁽²⁾ Stjtið. ESB C 56, 5.3.2005, bls. 32.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja
(Mál COMP/M.4402 – UCB/Schwarz Pharma)

2006/EES/53/07

1. Framkvæmdastjórninni barst 13. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem belgíska fyrirtækið UCB SA („UCB“) og hið þýska dótturfyrirtæki þess UCB SP GmbH, sem er að fullu í eigu UCB, öðlast að fullu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir þýska fyrirtækinu Schwarz Pharma Aktiengesellschaft („Schwarz“) með kaupum á hlutafé í kjölfar yfirtökuboðs.
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - UCB: lyfjarannsóknir og lyfjaþróun og sala á lyfjum og líftæknivörum
 - Schwarz: lyfjarannsóknir og lyfjaþróun, framleiðsla og sala á lyfjum, aðallega samheitalyfjum
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 255, 21. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4402 – UCB/Schwarz Pharma, á eftirfarandi póstfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja**2006/EES/53/08****(Mál COMP/M.4421 – OJSC Novolipetsk Steel/Duferco/JV)****Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð**

1. Framkvæmdastjórninni barst 13. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem rússneska fyrirtækið OJSC Novolipetsk Steel („NLMK“) og fyrirtækið Duferco Participations Holding Ltd („Duferco“), sem er skráð á Guernsey, öðlast með hlutafjárkaupum í sameiningu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir lúxemborgska fyrirtækinu Steel Invest & Finance (Luxembourg) SA, en undir það verða færð ýmis fyrirtæki („sameiginlegu fyrirtækin“) sem eru nú að fullu undir yfirráðum Duferco.
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - NLMK: hálfunnar og fullunnar flatar einingar úr kolstáli, vörur úr rafstáli
 - Duferco: hálfunnar og fullunnar flatar og langar einingar úr kolstáli, vörur úr rafstáli, ryðfritt stál og stálblendi með háu hlutfalli íblöndunarefna
 - Sameiginlegu fyrirtækin: hálfunnar og fullunnar flatar og langar einingar úr kolstáli
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun. Hafa ber í huga að þetta mál kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinnar samfylkinga samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ⁽²⁾.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 256, 24. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4421 – OJSC Novolipetsk Steel/Duferco/JV, á eftirfarandi pósthfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

⁽²⁾ Stjtið. ESB C 56, 5.3.2005, bls. 32.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja
(Mál COMP/M.4429 – AIG/GIP/Stratfield)

2006/EES/53/09

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 17. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem bandarísku fyrirtækin American International Group Inc („AIG“) og Global Infrastructure Partners – A, L.P. („GIP“), sem er undir yfirráðum bandaríska fyrirtækisins General Electric („GE“), svissnesku samsteypunnar Crédit Suisse („CSG“) og bandaríska fyrirtækisins Global Infrastructure Management Participation LLC („GIMP“), öðlast með hlutafjárkaupum í sameiningu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir breska fyrirtækinu Stratfield Limited („Stratfield“).
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - AIG: tryggingar og tryggingatengd starfsemi
 - GIP: fjárfestingar í hlutafé og hlutafjártengdar fjárfestingar í mannvirkjum og mannvirkjatengdum eignum
 - GE: starfsemi á sviði margvíslegrar tækni og þjónustu
 - CSG: fjármálaþjónustufyrirtæki með starfsemi víða um heim
 - GIMP: eignarhaldsfélag
 - Stratfield: eignarhaldsfélag sem ræður félögunum sem eiga og reka flugvöllinn London City Airport
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun. Hafa ber í huga að þetta mál kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna samfylkinga samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ⁽²⁾.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 257, 25. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4429 – AIG/GIP/Stratfield, á eftirfarandi pósthfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

⁽²⁾ Stjtið. ESB C 56, 5.3.2005, bls. 32.

Tilkynning um fyrirhugaða samfylkingu fyrirtækja
(Mál COMP/M.4432 – Oerlikon/Saurer)

2006/EES/53/10

1. Framkvæmdastjórninni barst 16. október 2006 tilkynning samkvæmt 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ⁽¹⁾ um fyrirhugaða samfylkingu þar sem svissneska fyrirtækið OC Oerlikon Corporation AG („Oerlikon“) öðlast með hlutafjárkaupum að fullu yfirráð í skilningi b-liðar 1. mgr. 3. gr. fyrrnefndrar reglugerðar yfir svissneska fyrirtækinu Saurer AG.
2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:
 - Oerlikon: húðunarefni, sjóntækjahlutir, hálfleiðarabúnaður, annar búnaður
 - Saurer: vélar til framleiðslu á vefnaðarvöru, gírkassar í ökutæki
3. Að lokinni frumathugun telur framkvæmdastjórnin að samfylkingin, sem tilkynnt hefur verið, geti fallið undir gildissvið reglugerðar (EB) nr. 139/2004. Fyrirvari er þó um endanlega ákvörðun.
4. Hagsmunaaðilar eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu samfylkingu.

Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtið. ESB (C 256, 24. október 2006). Þær má senda með símbréfi (faxnr. +32 (0) 22 96 43 01 og 22 96 72 44) eða í pósti, með tilvísuninni COMP/M.4432 – Oerlikon/Saurer, á eftirfarandi póstfang:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ Stjtið. ESB L 24, 29.1.2004, bls. 1.

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4322 – Morgan Stanley/IHG/Portfolio Hotels)

2006/EES/53/11

Framkvæmdastjórnin ákvað 1. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4322. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4325 – BC Partners/Buziol/Fashion Box Group)

2006/EES/53/12

Framkvæmdastjórnin ákvað 18. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4325. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4326 – BC Partners/Brenntag)

2006/EES/53/13

Framkvæmdastjórnin ákvað 31. ágúst 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4326. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4331 – Arcelor/Bamesa/Bamesa Otel)

2006/EES/53/14

Framkvæmdastjórnin ákvað 8. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4331. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4338 – Cinven-Warburg Pincus/Casema-Multikabel)

2006/EES/53/15

Framkvæmdastjórnin ákvað 6. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4338. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4339 – SCOR/Revios)

2006/EES/53/16

Framkvæmdastjórnin ákvað 6. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4339. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4340 – FCC/WRG)

2006/EES/53/17

Framkvæmdastjórnin ákvað 15. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4340. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4353 – Permira/All3Media Group)

2006/EES/53/18

Framkvæmdastjórnin ákvað 22. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4353. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4357 – Bridgepoint/Dorna)

2006/EES/53/19

Framkvæmdastjórnin ákvað 6. október 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4357. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4358 – REOF/Borletti/Printemps)

2006/EES/53/20

Framkvæmdastjórnin ákvað 25. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4358. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4361 – KKR/Pages Jaunes)

2006/EES/53/21

Framkvæmdastjórnin ákvað 22. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4361. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4363 – Yum/Pizza Hut)

2006/EES/53/22

Framkvæmdastjórnin ákvað 6. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4363. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4369 – Macquarie/Corona)

2006/EES/53/23

Framkvæmdastjórnin ákvað 12. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4369. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4374 – CVRD/Inco)

2006/EES/53/24

Framkvæmdastjórnin ákvað 5. október 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4374. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4380 – EST/Dalmine)

2006/EES/53/25

Framkvæmdastjórnin ákvað 29. september 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstytt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4380. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4382 – TPG/Aleris)

2006/EES/53/26

Framkvæmdastjórnin ákvað 6. október 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstytt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fáanleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4382. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Ákvörðun um að hreyfa ekki andmælum við tilkynntri samfylkingu fyrirtækja
(Mál COMP/M.4386 – Cinven/Aero Invest)

2006/EES/53/27

Framkvæmdastjórnin ákvað 6. október 2006 að hreyfa ekki andmælum við framangreindri tilkynntri samfylkingu og lýsa yfir að hún samrýmdist sameiginlega markaðnum. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004. Óstýtt útgáfa af ákvörðuninni er eingöngu til á ensku og verður birt eftir að brott hafa verið felld hvers kyns viðskiptaleyndarmál. Hún verður fánleg:

- á samkeppnisvefsetri framkvæmdastjórnarinnar (<http://ec.europa.eu/comm/competition/mergers/cases>). Þar má leita að einstökum ákvörðunum um samfylkingar m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein;
- á rafrænu sniði á vefsetrinu EUR-Lex undir skjalnúmeri 32006M4386. EUR-Lex er vefsetur með beinlínuaðgangi að löggjöf Evrópubandalaganna (<http://ec.europa.eu/eur-lex/lex>).

Orðsending stjórnvalda í Frakklandi með hliðsjón af tilskipun Evrópuþingsins og ráðsins 94/22/EB frá 30. maí 1994 um skilyrði fyrir veitingu og notkun leyfa til að leita að, rannsaka og vinna kolvatnsefni ⁽¹⁾

2006/EES/53/28

Fyrirtækið Essence de Paris, skráð að 26bis, rue des Cornouillers, F-78480, Verneuil-sur-Seine (Frakklandi), hefur með umsókn frá 16. ágúst 2005 farið fram á sérleyfi, sem nefnt er „Montargis-leyfið“, til að leita að fljótandi og loftkenndum kolvatnsefnum á svæði sem er hér um bil 538 km² og liggur í sýslunni Loiret. Í kjölfar upprunalegu umsóknarinnar var birt auglýsing í *Stjórnartíðindum Evrópusambandsins* (C 27, 3.2.2006) þar sem hagsmunaaðilum var boðið að keppa um leyfið.

Fyrirtækið Lundin International, skráð að Maclaunay, 51210 Montmirail (Frakklandi), hefur með umsókn frá 28. febrúar 2006 farið fram á sérleyfi til þriggja ára, sem nefnt er „Ferrières-leyfið“, í samkeppni við „Montargis-leyfið“, til að leita að fljótandi og loftkenndum kolvatnsefnum á svæði sem er hér um bil 403 km² og liggur í sýslunum Loiret og Seine-et-Marne. Svæðið, sem leyfið tekur til, markast af lengdarbaugum og breiddarbaugum sem mætast í hornpunktunum sem skilgreindir eru með hnitum hér fyrir neðan. Talið er frá núlllengdarbaugi sem liggur í gegnum París.

HORNPUNKTAR	LENGD	BREIDD
A	0,3 gráður A	53,5 gráður N
B	0,6 gráður A	53,5 gráður N
C	0,6 gráður A	53,3 gráður N
D	0,3 gráður A	53,3 gráður N

Þessi umsókn varðar að hluta sama svæði og umsóknin um „Montargis-leyfið“, en frestur til að keppa um það leyfi er liðinn, og að hluta annað svæði. Þessi auglýsing varðar eingöngu síðarnefnda svæðið. Svæðið, sem hér ræðir um, markast af lengdarbaugum og breiddarbaugum sem mætast í hornpunktunum sem skilgreindir eru með hnitum hér fyrir neðan. Talið er frá núlllengdarbaugi sem liggur í gegnum París.

HORNPUNKTAR	LENGD	BREIDD
A	0,3 gráður A	53,5 gráður N
B	0,6 gráður A	53,5 gráður N
C	0,6 gráður A	53,4 gráður N
D	0,3 gráður A	53,4 gráður N

Tilhögun umsókna

Upphaflegur umsækjandi og aðrir, sem keppa um leyfið, skulu færa sönnur á að þeir fullnægi kröfum sem gerðar eru til umsækjenda og skýrðar eru í 3., 4. og 5. gr. tilskipunar nr. 95-427 frá 19. apríl 1995 um námaréttindi, með áorðnum breytingum, en gildistími þeirra ákvæða var framlengdur samkvæmt 63. gr. tilskipunar nr. 2006-648 frá 2. júní 2006 um námaréttindi og réttindi til geymslu efna neðanjarðar.

Fyrirtækjum, sem þess kynnu að óska, er heimilt að keppa um leyfið með umsókn sem leggja ber fram áður en 90 dagar eru liðnir frá því að auglýsing þessi birtist í *Stjórnartíðindum Evrópusambandsins* (C 239, 4. október 2006, bls. 14), í samræmi við málsmæðferðina sem lýst er í tilkynningu um úthlutun námaréttinda fyrir kolvatnsefni í Frakklandi, sem birt var í *Stjórnartíðindum Evrópubandalaganna* C 374 hinn 30. desember 1994, bls. 11, og staðfest með ofangreindri tilskipun nr. 95-427.

Umsóknunum skal beint til ráðherra námarekstrar og ber að senda þær á neðangreint póstfang. Ákvarðanir um upphaflegu umsóknina og umsóknir, sem keppa við hana, verða teknar áður en tvö ár eru liðin frá því að upphaflega umsóknin barst stjórnvöldum í Frakklandi, þ.e. eigi síðar en 16. ágúst 2007.

Skilmálar og kröfur að því er varðar rekstur starfseminnar og lok hennar

Umsækjendum er bent á 79. gr. og gr. 79.1 í námalögum og á tilskipun nr. 95-696 frá 9. maí 1995 um upphaf námarekstrar, með áorðnum breytingum, og námareglugerð (sjá *Journal officiel de la République française* (frönsku stjórnartíðindin) frá 11. maí 1995).

Nánari upplýsingar fást í efnahags-, fjármála- og iðnaðarráðuneytinu í Frakklandi: Ministère de l'économie, des finances et de l'industrie (direction générale de l'énergie et des matières premières, direction des ressources énergétiques et minérales, bureau de la législation minière), 61, boulevard Vincent Auriol, Télédéc 133, F-75703 Paris Cedex 13, France (sími +33 (0)1 44 97 23 02, bréfasími +33 (0)1 44 97 05 70).

Unnt er að nálgast lög og reglugerðir, sem að ofan greinir, á slóðinni
<http://www.legifrance.gouv.fr>

(¹) Stjtið. EB L 164, 30.6.1994, bls. 3.

Ákvörðun framkvæmdastjórnarinnar þess efnis að ráðstöfun, sem stjórnvöld í Slóvakíu hafa tilkynnt samkvæmt tímabundnum ákvæðum 3. liðar IV. viðauka við aðildarlögin, hafi ekki verið í gildi eftir að landið öðlaðist aðild að ESB – Ríkisaðstoð

2006/EES/53/29

Dagsetning ákvörðunar: 7.5.2004

Aðildarríki: Slóvakía

Málsnúmer: SK 1/2004

Fyrirsögn: Všeobecná úverová banka, a.s.

Markmið: Aðstoð við fjármálafyrirtæki

Nánari upplýsingar: Ákvörðun framkvæmdastjórnarinnar þess efnis að ráðstafanir í þágu Všeobecná úverová banka, a.s., sem stjórnvöld í Slóvakíu hafa tilkynnt samkvæmt tímabundnum ákvæðum 3. liðar IV. viðauka við aðildarlögin, hafi ekki verið í gildi eftir að landið öðlaðist aðild að ESB

Fullgildan texta ákvörðunarinnar að trúnaðarupplýsingum slepptum er að finna á eftirfarandi slóð:

http://ec.europa.eu/community_law/state_aids/

**Ríkisaðstoð – Ákvarðanir um að leggja til viðeigandi ráðstafanir í samræmi við
1. mgr. 88. gr. EB-sáttmálans er samþykktar hafa verið í aðildarríkjunum**

2006/EES/53/30

Dagsetning ákvörðunar: 20.4.2005

Aðildarríki: Spánn

Málsnúmer: E 8/05

Fyrirsögn: Aðstoð við spænska ríkisútvarpið RTVE

Markmið: Fjármögnun almannaþjónustuútvarps á Spáni

Lagaheimild: Ley 4/1980, de 10 de enero, de Estatuto de la Radio y la Televisión, Ley 11/1977, de 4 de enero, General Presupuestaria, Ley 61/1978, de 27 de diciembre, del Impuesto sobre Sociedades, Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado (LOFAGE), Ley 65/1997, de 30 de diciembre, de Presupuestos Generales del Estado para 1998, y Ley 211/1964, de 24 diciembre, de Regulación de la emisión de obligaciones por sociedades que no hayan adoptado la forma de anónimas, asociaciones u otras personas jurídicas y la constitución del sindicato de obligacionistas

Fjárveiting: Breytileg fjárhæð frá ári til árs

Gildistími: Almannaþjónustuútvarp á vegum RTVE er fjármagnað með varanlegum hætti á grundvelli ofangreindra lagaheimilda

Nánari upplýsingar: Ákvörðun framkvæmdastjórnarinnar þess efnis að aðstoð, sem veitt er RTVE, teljist yfirstandandi ríkisaðstoð í skilningi b-liðar 1. gr. reglugerðar ráðsins (EB) nr. 659/99

Að ósk framkvæmdastjórnarinnar féllust stjórnvöld á Spáni á að fella brott eða breyta tilteknum þáttum fjármögnunarkerfis almannaþjónustuútvarps á Spáni fyrir lok ársins 2005 í því skyni að gera það samrýmanlegt sameiginlega markaðnum

Fullgildan texta ákvörðunarinnar að trúnaðarupplýsingum slepptum er að finna á eftirfarandi slóð:

http://ec.europa.eu/community_law/state_aids/

**Orðsending framkvæmdastjórnarinnar samkvæmt a-lið 1. mgr. 4. gr. reglugerðar
ráðsins (EBE) nr. 2408/92**

2006/EES/53/31

Ný ákvæði um almannaþjónustukvaðir í tengslum við áætlunarflug innan Bretlands

Stjórnvöld í Bretlandi hafa ákveðið að leggja á almannaþjónustukvaðir í tengslum við áætlunarflug milli Cardiff og herstöðvarinnar RAF Valley á Öngulsey, á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins.

Um nánari upplýsingar sjá Stjtið. ESB C 240, 5.10.2006.

Ákvörðun framkvæmdastjórnarinnar þess efnis að ráðstöfun, sem stjórnvöld í Tékklandi hafa tilkynnt samkvæmt tímabundnum ákvæðum 3. liðar IV. viðauka við aðildarlögin, hafi ekki verið í gildi eftir að landið öðlaðist aðild að ESB – Ríkisaðstoð

2006/EES/53/32

Dagsetning ákvörðunar: 3.3.2004

Aðildarríki: Tékkland

Málsnúmer: CZ 53/2003

Fyrirsögn: Banka Haná, a.s.

Markmið: Aðstoð við fjármálafyrirtæki

Nánari upplýsingar: Ákvörðun framkvæmdastjórnarinnar þess efnis að ráðstafanir í þágu Banka Haná, a.s., sem stjórnvöld í Tékklandi hafa tilkynnt samkvæmt tímabundnum ákvæðum 3. liðar IV. viðauka við aðildarlögin, hafi ekki verið í gildi eftir að landið öðlaðist aðild að ESB

Fullgildan texta ákvörðunarinnar að trúnaðarupplýsingum slepptum er að finna á eftirfarandi slóð:

http://ec.europa.eu/community_law/state_aids/

Dagsetning ákvörðunar: 3.3.2004

Aðildarríki: Tékkland

Málsnúmer: CZ 54/03

Fyrirsögn: Foresbank, a.s.

Markmið: Aðstoð við fjármálafyrirtæki

Nánari upplýsingar: Ákvörðun framkvæmdastjórnarinnar þess efnis að ráðstafanir í þágu Foresbank, a.s., sem stjórnvöld í Tékklandi hafa tilkynnt samkvæmt tímabundnum ákvæðum 3. liðar IV. viðauka við aðildarlögin, hafi ekki verið í gildi eftir að landið öðlaðist aðild að ESB

Fullgildan texta ákvörðunarinnar að trúnaðarupplýsingum slepptum er að finna á eftirfarandi slóð:

http://ec.europa.eu/community_law/state_aids/

Ríkisaðstoð – Þýskaland**2006/EES/53/33****Málsnúmer C 24/06 (áður NN 75/2000) – Dýraheilbrigðisþjónusta****Auglýst eftir athugasemdum í samræmi við 2. mgr. 88. gr. EB-sáttmálans**

Framkvæmdastjórnin hefur ákveðið að hefja málsmeðferð í samræmi við 2. mgr. 88. gr. EB-sáttmálans vegna ofangreindrar ríkisaðstoðar, sjá Stjtið. ESB C 244, 11.10.2006.

Framkvæmdastjórnin veitir aðilum EES-samningsins og öðrum, sem hagsmuna eiga að gæta, eins mánaðar frest frá birtingu þessarar auglýsingar í Stjórnartíðindum ESB til að leggja fram athugasemdir við umrædda ráðstöfun og skal senda þær á eftirfarandi pósthfang:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate H
Rue de la Loi/Wetstraat 200
B-1049 Brussel/Bruxelles
Bréfasími: +32 (0) 22 96 21 51

Athugasemdunum verður komið á framfæri við stjórnvöld í Þýskalandi. Þeim, sem leggja fram athugasemdir, er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

**Auglýst eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði E16 á 2006/EES/53/34
hollenska landgrunninu**

Efnahagsráðherra Konungsríkisins Hollands gjörir kunnugt að borist hefur umsókn um leyfi til að leita að kolvatnsefnum á leitarsvæði E16 sem afmarkað er á korti í 3. viðauka við námareglugerð („Mijnbouwregeling“) (sjá *Staatscourant* (hollenska lögbirtingablaðið) nr. 245, 2002).

Með vísan til 2. mgr. 3. gr. tilskipunar Evrópuþingsins og ráðsins 94/22/EB frá 30. maí 1994 um skilyrði fyrir veitingu og notkun leyfa til að leita að, rannsaka og vinna kolvatnsefni, auk birtingarákvæða 15. gr. námalaga („Mijnbouwwet“) (sjá *Staatsblad* (hollensku stjórnartíðindin) nr. 542, 2002), auglýsir efnahagsráðherra eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði E16.

Úthlutun leyfa er í höndum efnahagsráðherra. Viðmið, skilmálar og kröfur, sem um getur í 1. og 2. mgr. 5. gr. og 2. mgr. 6. gr. tilskipunarinnar, koma fram í námalögum („Mijnbouwwet“) (sjá *Staatsblad* nr. 542, 2002).

Tekið verður á móti umsóknum í 13 vikur eftir að auglýsingin birtist í *Stjórnartíðindum Evrópusambandsins* (C 244, 11.10.2006) og ber að senda þær efnahagsráðherra: de Minister van Economische Zaken, ter attentie van de directeur Energiemarkt („persoonlijk in handen“), Prinses Beatrixlaan 5, te Den Haag, Nederland.

Umsóknir sem berast eftir að fresturinn rennur út verða ekki teknar til greina.

Ákvörðun um umsóknirnar verður tekin eigi síðar en tólf mánuðum eftir að fresturinn rennur út.

Nánari upplýsingar fást í síma +31 70 379 72 98.

**Auglýst eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði E13 á 2006/EES/53/35
hollenska landgrunninu**

Efnahagsráðherra Konungsríkisins Hollands gjörir kunnugt að borist hefur umsókn um leyfi til að leita að kolvatnsefnum á leitarsvæði E13 sem afmarkað er á korti í 3. viðauka við námareglugerð („Mijnbouwregeling“) (sjá *Staatscourant* (hollenska lögbirtingablaðið) nr. 245, 2002).

Með vísan til 2. mgr. 3. gr. tilskipunar Evrópuþingsins og ráðsins 94/22/EB frá 30. maí 1994 um skilyrði fyrir veitingu og notkun leyfa til að leita að, rannsaka og vinna kolvatnsefni, auk birtingarákvæða 15. gr. námalaga („Mijnbouwwet“) (sjá *Staatsblad* (hollensku stjórnartíðindin) nr. 542, 2002), auglýsir efnahagsráðherra eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði E13.

Úthlutun leyfa er í höndum efnahagsráðherra. Viðmið, skilmálar og kröfur, sem um getur í 1. og 2. mgr. 5. gr. og 2. mgr. 6. gr. tilskipunarinnar, koma fram í námalögum („Mijnbouwwet“) (sjá *Staatsblad* nr. 542, 2002).

Tekið verður á móti umsóknum í 13 vikur eftir að auglýsingin birtist í *Stjórnartíðindum Evrópusambandsins* (C 244, 11.10.2006) og ber að senda þær efnahagsráðherra: de Minister van Economische Zaken, ter attentie van de directeur Energiemarkt („persoonlijk in handen“), Prinses Beatrixlaan 5, te Den Haag, Nederland.

Umsóknir sem berast eftir að fresturinn rennur út verða ekki teknar til greina.

Ákvörðun um umsóknirnar verður tekin eigi síðar en tólf mánuðum eftir að fresturinn rennur út.

Nánari upplýsingar fást í síma +31 70 379 72 98.

Auglýst eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði P1 á hollenska landgrunninu 2006/EES/53/36

Efnahagsráðherra Konungsríkisins Hollands gjörir kunnugt að borist hefur umsókn um leyfi til að leita að kolvatnsefnum á leitarsvæði P1 sem afmarkað er á korti í 3. viðauka við námareglugerð („Mijnbouwregeling“) (sjá *Staatscourant* (hollenska lögbirtingablaðið) nr. 245, 2002).

Með vísan til 2. mgr. 3. gr. tilskipunar Evrópuþingsins og ráðsins 94/22/EB frá 30. maí 1994 um skilyrði fyrir veitingu og notkun leyfa til að leita að, rannsaka og vinna kolvatnsefni, auk birtingarákvæða 15. gr. námalaga („Mijnbouwwet“) (sjá *Staatsblad* (hollensku stjórnartíðindin) nr. 542, 2002), auglýsir efnahagsráðherra eftir umsóknum um leyfi til að leita að kolvatnsefnum á leitarsvæði P1.

Úthlutun leyfa er í höndum efnahagsráðherra. Viðmið, skilmálar og kröfur, sem um getur í 1. og 2. mgr. 5. gr. og 2. mgr. 6. gr. tilskipunarinnar, koma fram í námalögum („Mijnbouwwet“) (sjá *Staatsblad* nr. 542, 2002).

Tekið verður á móti umsóknum í 13 vikur eftir að auglýsingin birtist í *Stjórnartíðindum Evrópusambandsins* (C 252, 18.10.2006) og ber að senda þær efnahagsráðherra: de Minister van Economische Zaken, ter attentie van de directeur Energiemarkt („persoonlijk in handen“), Bezuidenhoutseweg 30, te Den Haag, Nederland.

Umsóknir sem berast eftir að fresturinn rennur út verða ekki teknar til greina.

Ákvörðun um umsóknirnar verður tekin eigi síðar en tólf mánuðum eftir að fresturinn rennur út.

Nánari upplýsingar fást í síma +31 70 379 72 98.

Breytingar stjórnvalda í Frakklandi á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Amsterdam 2006/EES/53/37

Stjórnvöld í Frakklandi hafa ákveðið breytingar á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Amsterdam og birtar voru í *Stjórnartíðindum Evrópubandalaganna* C 85 hinn 9. apríl 2002 á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Breytingarnar öðlast gildi 25. mars 2007.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Breytingar stjórnvalda í Frakklandi á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Kaupmannahafnar (Kastrup/Hróarskeldu) 2006/EES/53/38

Stjórnvöld í Frakklandi hafa ákveðið breytingar á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Kaupmannahafnar (Kastrup/Hróarskeldu) og birtar voru í *Stjórnartíðindum Evrópubandalaganna* C 348 hinn 5. desember 2000 á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Breytingarnar öðlast gildi 25. mars 2007.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Breytingar stjórnvalda í Frakklandi á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Madridar 2006/EES/53/39

Stjórnvöld í Frakklandi hafa ákveðið breytingar á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Madridar og birtar voru í *Stjórnartíðindum Evrópubandalaganna* C 348 hinn 5. desember 2000 á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Breytingarnar öðlast gildi 25. mars 2007.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Breytingar stjórnvalda í Frakklandi á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Milano (Malpensa) 2006/EES/53/40

Stjórnvöld í Frakklandi hafa ákveðið breytingar á almannaþjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Milano (Malpensa/Linate/Bergamo) og birtar voru í *Stjórnartíðindum Evrópusambandsins* C 257 hinn 25. október 2003 á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Breytingarnar öðlast gildi 25. mars 2007.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Breytingar stjórnvalda í Frakklandi á almannapjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Vínar 2006/EES/53/41

Stjórnvöld í Frakklandi hafa ákveðið breytingar á almannapjónustukvöðum sem lagðar hafa verið á í tengslum við áætlunarflug milli Strassborgar og Vínar og birtar voru í *Stjórnartíðindum Evrópubandalaganna* C 257 hinn 25. október 2003 á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Breytingarnar öðlast gildi 25. mars 2007.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Nýjar almannapjónustukvaðir sem stjórnvöld í Frakklandi hafa ákveðið að leggja á í tengslum við áætlunarflug milli Strassborgar og Varsjár 2006/EES/53/42

Stjórnvöld í Frakklandi hafa ákveðið að leggja á almannapjónustukvaðir í tengslum við áætlunarflug milli Strassborgar og Varsjár á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Nýjar almannapjónustukvaðir sem stjórnvöld í Frakklandi hafa ákveðið að leggja á í tengslum við áætlunarflug milli Strassborgar og Pragar 2006/EES/53/43

Stjórnvöld í Frakklandi hafa ákveðið að leggja á almannapjónustukvaðir í tengslum við áætlunarflug milli Strassborgar og Pragar á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Nýjar almannapjónustukvaðir sem stjórnvöld í Frakklandi hafa ákveðið að leggja á í tengslum við áætlunarflug milli Strassborgar og mið-Englands (Manchester, Liverpool eða Leeds) 2006/EES/53/44

Stjórnvöld í Frakklandi hafa ákveðið að leggja á almannapjónustukvaðir í tengslum við áætlunarflug milli Strassborgar og mið-Englands (Manchester, Liverpool eða Leeds) á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

Nýjar almannapjónustukvaðir sem stjórnvöld í Frakklandi hafa ákveðið að leggja á í tengslum við áætlunarflug milli Strassborgar og Frankfurt 2006/EES/53/45

Stjórnvöld í Frakklandi hafa ákveðið að leggja á almannapjónustukvaðir í tengslum við áætlunarflug milli Strassborgar og Frankfurt á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins.

Um nánari upplýsingar sjá Stjtið. ESB C 246, 13.10.2006.

F-París: Almannaþjónustukvaðir**2006/EES/53/46****Auglýsing stjórnvalda í Frakklandi um útboð samkvæmt d-lið 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 vegna áætlunarflugs frá Strassborg**

Stjórnvöld í Frakklandi hafa lagt á almannaþjónustukvaðir á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins í tengslum við áætlunarflug milli Strassborgar annars vegar og Amsterdams, mið-Englands, Kaupmannahafnar, Frankfurtar, Madridar, Milano, Pragar, Varsjár og Vínar hins vegar, og hafa upplýsingar um þær verið birtar eins og skylt er í *Stjórnartíðindum Evrópusambandsins* (C 246, 13.10.2006).

Flugleiðirnar eru sem hér segir:

- Strassborg–Amsterdam
- Strassborg–Mið-England (Manchester, Liverpool eða Leeds)
- Strassborg–Kaupmannahöfn
- Strassborg–Frankfurt
- Strassborg–Madrid
- Strassborg–Milano (Malpensa/Linate/Bergamo)
- Strassborg–Prag
- Strassborg–Varsjá
- Strassborg–Vín

Hafi enginn flugrekandi hafið eða sé um það bil að hefja áætlunarflug á þessum leiðum hinn 25. febrúar 2007, í samræmi við áhvilandi almannaþjónustukvaðir og án þess að fara fram á fjárstyrk, munu stjórnvöld í Frakklandi takmarka flugrekstur á hverri þessara leiða við einn flugrekanda í samræmi við d-lið 1. mgr. 4. gr. fyrrnefndrar reglugerðar og bjóða út í almennu útboði heimild til að halda úti slíku flugi frá 25. mars 2007 til næsta dags áður en sumaráætlun hefst árið 2010 samkvæmt IATA-viðmiðum, þ.e. 27. mars 2010.

Útboðsgögnin í heild, m.a. sérreglur sem gilda um útboðið og samningur um yfirtöku almannaþjónustu ásamt tæknilegum viðauka (yfirliti um mannfjölda og félagslegar og efnahagslegar aðstæður á þjónustusvæði Strassborgar-flugvallar, greinargerð um aðstæður á flugvöllum, markaðsathugun, greinargerð um Evrópuþingið og endurriti af almannaþjónustukvöðunum eins og þær birtust í *Stjórnartíðindum Evrópusambandsins*) fást endurgjaldslaust hjá:

Ministère des affaires étrangères, direction des affaires budgétaires et financières, sous-direction du budget et des interventions financières, bureau des interventions, 23, rue la Pérouse, F-75775 Paris Cedex 16.

Sími: +33 (0)1 43 17 66 42

Bréfasími: +33 (0)1 43 17 77 69

Netfang: jean-louis.girodet@diplomatie.gouv.fr

Tilboð verða að berast á ofangreint póstfang eigi síðar en kl. 17:00 að staðartíma fimm vikum eftir að útboðsauglýsingin birtist í *Stjórnartíðindum Evrópusambandsins* C 248, 14.10.2006, og skulu send í ábyrgðarpósti með móttökukvittun (póststimpill staðfestir rétta dagsetningu) eða afhent á sama stað gegn kvittun.

Um nánari upplýsingar sjá Stjtið. ESB C 248, 14.10.2006.

UK-Cardiff: Áætlunarflug**2006/EES/53/47****Auglýsing stjórnvalda í Bretlandi um útbod samkvæmt d-lið 1. mgr. 4. gr. reglugerðar ráðsins (EBE) nr. 2408/92 í tengslum við áætlunarflug milli Cardiff og herstöðvarinnar RAF Valley á Öngulsey**

Stjórnvöld í Bretlandi hafa lagt á almannajónustukvaðir í tengslum við áætlunarflug milli Cardiff og herstöðvarinnar RAF Valley á Öngulsey á grundvelli a-liðar 1. mgr. 4. gr. reglugerðar (EBE) nr. 2408/92 frá 23. júlí 1992 um aðgang bandalagsflugfélaga að flugleiðum innan bandalagsins. Upplýsingar um almannajónustukvaðirnar birtust í *Stjórnartíðindum Evrópusambandsins* C 240, 5.10.2006.

Hafi enginn flugrekandi hafið eða sé um það bil að hefja áætlunarflug milli Cardiff og herstöðvarinnar RAF Valley á Öngulsey þegar 1 mánuður er liðinn frá birtingu auglýsingarinnar í *Stjórnartíðindum Evrópusambandsins* (C 248, 14.10.2006), í samræmi við áhvílandi almannajónustukvaðir og án þess að fara fram á fjárstyrk, munu stjórnvöld í Bretlandi takmarka flugrekstur á leiðinni við einn flugrekanda í samræmi við d-lið 1. mgr. 4. gr. fyrirnefndrar reglugerðar og bjóða út í almennu útbóði heimild til að halda úti slíku flugi frá 21. febrúar 2007 hið fyrsta.

Útbodsgögnin í heild, þ.e. tilboðseyðublað, útbodslýsing, samningsskilmálar ásamt viðaukum og endurrit af almannajónustukvöðunum eins og þær birtust í *Stjórnartíðindum Evrópusambandsins* C 240, 5.10.2006, fást endurgjaldslaust hjá velska þjóðþinginu (National Assembly for Wales):

Procurement Branch 6, Roads and Rail Division, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ, United Kingdom.

Sími: +44 29 20 82 62 86. Bréfasími: +44 29 20 82 62 33. (Upplýsingar fást hjá Richard Osborne, Procurement Unit, eða í netfanginu NR6@wales.gsi.gov.uk.)

Frestur til að leggja fram tilboð er einn (1) mánuður frá því að útbodsauglýsingin birtist í *Stjórnartíðindum Evrópusambandsins* (C 248, 14.10.2006).

Tilboð skulu send á neðangreint pósthfang:

Head of Procurement, Procurement Branch 6, RNR Division, Room 2-045, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ, United Kingdom.

Um nánari upplýsingar sjá Stjtið. ESB C 248, 14.10.2006.