Amtsblatt der Europäischen Union

C 239

Ausgabe in deutscher Sprache

Mitteilungen und Bekanntmachungen

66. Jahrgang

6. Juli 2023

Inhalt

DE

([1]) Text von Bedeutung für den EWR.

IV

(Informationen)

INFORMATIONEN DER ORGANE, EINRICHTUNGEN UND SONSTIGEN STELLEN DER EUROPÄISCHEN UNION

EUROPÄISCHE KOMMISSION

Euro-Wechselkurs [1]

5. Juli 2023

(2023/C 239/01)

1 Euro =

	Währung	Kurs		Währung	Kurs
USD	US-Dollar	1,0879	CAD	Kanadischer Dollar	1,4447
JPY	Japanischer Yen	157,26	HKD	Hongkong-Dollar	8,5108
DKK	Dänische Krone	7,4482	NZD	Neuseeländischer Dollar	1,7590
GBP	Pfund Sterling	0,85685	SGD	Singapur-Dollar	1,4714
SEK	Schwedische Krone	11,8295	KRW	Südkoreanischer Won	1 415,29
CHF	Schweizer Franken	0,9782	ZAR	Südafrikanischer Rand	20,3894
ISK	Isländische Krone	149,30	CNY	Chinesischer Renminbi Yuan	7,8798
NOK	Norwegische Krone	11,6455	IDR	Indonesische Rupiah	16 380,93
BGN	Bulgarischer Lew	1,9558	MYR	Malaysischer Ringgit	5,0620
CZK	Tschechische Krone	23,775	PHP	Philippinischer Peso	60,328
HUF	Ungarischer Forint	378,40	RUB	Russischer Rubel	
PLN	Polnischer Zloty	4,4558	THB	Thailändischer Baht	37,979
RON	Rumänischer Leu	4,9515	BRL	Brasilianischer Real	5,2933
TRY	Türkische Lira	28,3828	MXN	Mexikanischer Peso	18,5602
AUD	Australischer Dollar	1,6329	INR	Indische Rupie	89,5175

[1] *Quelle*: Von der Europäischen Zentralbank veröffentlichter Referenz-Wechselkurs.

INFORMATIONEN DER MITGLIEDSTAATEN

Mitteilung der Regierung Dänemarks betreffend den Aufruf zur Beantragung einer Genehmigung zur Exploration und Gewinnung von Kohlenwasserstoffen in einem abgegrenzten Gebiet in der Nordsee

(2023/C 239/02)

Mini-Ausschreibung

Gemäß Artikel 3 Absatz 2 Buchstabe b der Richtlinie 94/22/EG des Europäischen Parlaments und des Rates vom 30. Mai 1994 über die Erteilung und Nutzung von Genehmigungen zur Prospektion, Exploration und Gewinnung von Kohlenwasserstoffen wird hiermit mitgeteilt, dass gemäß § 12 Absatz 1 Buchstabe a des Gesetzes über die Nutzung des dänischen Untergrunds (vgl. Konsolidierungsgesetz Nr. 1533 vom 16. Dezember 2019 mit nachfolgenden Änderungen) eine Genehmigung für ein durch folgende Koordinaten (geografische Koordinaten: Europäisches Datum 1950) abgegrenztes Gebiet beantragt werden kann:

Eckpunkt	Breitengrad	Längengrad
1	55° 43’ 7”	4° 25’ 47”
2	55° 43’ 7”	4° 23’ 38”
3	55° 46’ 18”	4° 17’ 32”
4	55° 50’ 49”	4° 17’ 30”
5	55° 50’ 59”	4° 19’ 4”
6	55° 50’ 56”	4° 29’ 55”
7	55° 44’ 42”	4° 29’ 55”
8	55° 44’ 41”	4° 25’ 47”
9	55° 43’ 7”	4° 25’ 47”

Das Gebiet befindet sich im „Centralgraven“ in der Nordsee (siehe Karte unten). Alle Unterlagen im Zusammenhang mit der Ausschreibung – auch zu den Bedingungen und Bewertungskriterien – sind abrufbar unter https://www.ethics.dk/ethics/eo#/5a9f0ce5-ea68-42ee-9618-60ad329c86ff/homepage; außerdem können sie über folgenden Link bezogen werden: www.ens.dk/en/miniround. Anträge sind über das vorgenannte Ausschreibungsportal der dänischen Energieagentur zu stellen.

Die in Artikel 5 Absatz 1 der Richtlinie 94/22/EG genannten Bestimmungen und Kriterien (vgl. auch das Konsolidierungsgesetz Nr. 1533 vom 16. Dezember 2019 über die Nutzung des dänischen Untergrunds mit nachfolgenden Änderungen) werden ebenfalls im Amtsblatt Dänemarks (Statstidende) veröffentlicht.

Antragsfrist ist grundsätzlich der 15. Oktober 2023, 12.00 Uhr.

Beträgt die Zeitspanne zwischen der Veröffentlichung dieser Mitteilung im *Amtsblatt der Europäischen Union* und dem 15. Oktober 2023 weniger als 90 Tage, so können Anträge bis 12.00 Uhr am 90. Tag nach Veröffentlichung dieser Mitteilung im *Amtsblatt der Europäischen Union* oder – wenn der 90. Tag auf ein Wochenende, einen Feiertag, den dänischen Verfassungstag (Grundlovsdag), Heiligabend oder Silvester fällt – bis 12.00 Uhr am nächstfolgenden Werktag gestellt werden.

Die Genehmigung wird voraussichtlich circa drei Monate nach Ablauf der Antragsfrist erteilt. Dies setzt voraus, dass die Erteilung der Genehmigung nicht unter das Investitionsprüfungsgesetz fällt. Kommt dieses Gesetz zur Anwendung, ist ein Verfahren zu durchlaufen, das bis zu 60 Werktage in Anspruch nimmt. Erst danach kann das Ministerium für Klima, Energie und öffentliche Dienste (Klima-, Energi- og Forsyningsministeriet) eine endgültige Exklusivgenehmigung erteilen.

Die vorliegende Mitteilung ersetzt die „Mitteilung der Regierung Dänemarks betreffend den Aufruf zur Beantragung einer Genehmigung zur Exploration und Gewinnung von Kohlenwasserstoffen in einem abgegrenzten Gebiet in der Nordsee“, die am 8. Juni 2023 im *Amtsblatt der Europäischen Union* veröffentlicht wurde (ABl. C 200 vom 8.6.2023, S. 5.).

Energistyrelsen (dänische Energieagentur)
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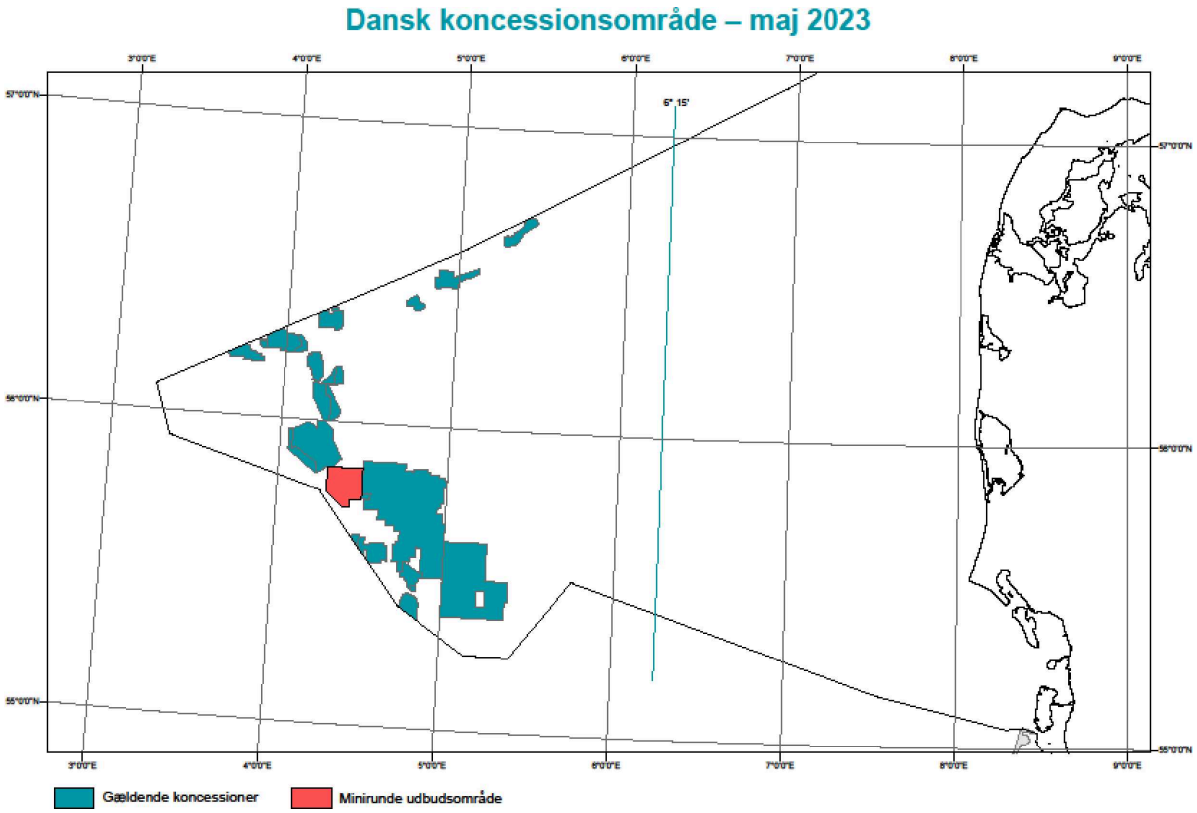

Dänische Konzessionsgebiete, Mai 2023.

Legende: blau: bestehende Konzessionen; orange: Gebiete in der Mini-Ausschreibung

DEN EUROPÄISCHEN WIRTSCHAFTSRAUM BETREFFENDE INFORMATIONEN

EFTA-ÜBERWACHUNGSBEHÖRDE

Entscheidung Nr. 082/23/COL vom 31. Mai 2023 zur Einleitung einer förmlichen Prüfung mutmaßlicher staatlicher Beihilfen zugunsten von Vygruppen AS

Aufforderung zur Stellungnahme zu Beihilfefragen nach Teil I Artikel 1 Absatz 2 des Protokolls 3 zum Abkommen zwischen den EFTA-Staaten zur Errichtung einer Überwachungsbehörde und eines Gerichtshofs

(2023/C 239/03)

Mit der oben genannten Entscheidung, die nachstehend in der verbindlichen Sprachfassung wiedergegeben ist, hat die EFTA-Überwachungsbehörde Norwegen von ihrer Entscheidung in Kenntnis gesetzt, ein Verfahren nach Teil I Artikel 1 Absatz 2 des Protokolls 3 zum Abkommen zwischen den EFTA-Staaten zur Errichtung einer Überwachungsbehörde und eines Gerichtshofs (im Folgenden „Überwachungsbehörde- und Gerichtshofabkommen“) einzuleiten.

Beteiligte können ihre Stellungnahmen innerhalb eines Monats nach der Veröffentlichung an folgende Anschrift richten:

EFTA-Überwachungsbehörde
Registratur
Avenue des Arts/Kunstlaan 19H
1000 Bruxelles/Brussel
BELGIQUE/BELGIË
registry@eftasurv.int

Alle Stellungnahmen werden Norwegen übermittelt. Beteiligte, die eine Stellungnahme abgeben, können unter Angabe von Gründen schriftlich beantragen, dass ihre Identität nicht bekannt gegeben wird.

Zusammenfassung

Verfahren

Am 1. Dezember 2020 ging bei der Überwachungsbehörde eine Beschwerde ein, wonach Norwegen dem Unternehmen Vygruppen AS und seiner Tochtergesellschaft rechtswidrige staatliche Beihilfen in Form einer Überkompensation für bestimmte direkt vergebene Verträge über gemeinwirtschaftliche Verpflichtungen in Bezug auf Schienenpersonenverkehrsdienste in Norwegen gewährt habe.

Am 30. März 2021 erhielt die Überwachungsbehörde eine zweite Beschwerde, in der die gleichen Bedenken betreffend die Verträge über gemeinwirtschaftliche Verpflichtungen in Bezug auf Schienenpersonenverkehrsdienste in Norwegen vorgebracht wurden. Darüber hinaus machte der zweite Beschwerdeführer geltend, dass Norwegen dem Unternehmen Vygruppen AS rechtswidrige staatliche Beihilfe in Form eines Rentenzuschusses gewährt habe.

Am 18. April 2023 erhielt die Überwachungsbehörde eine dritte Beschwerde, die in Bezug auf Umfang, Begründung und Nachweise den beiden zuvor eingereichten Beschwerden entsprach.

Beschreibung der Maßnahmen

Der mutmaßliche Begünstigte ist das Unternehmen Vygruppen AS (im Folgenden „Vy“). Vy ist eine staatliche Gesellschaft mit beschränkter Haftung, die über das Verkehrsministerium zu 100 % im Eigentum des norwegischen Staates steht. Das Unternehmen betreibt Schienenpersonenverkehrsdienste in Norwegen. Auch über seine Tochtergesellschaft Vy Gjøvikbanen ASV erbringt Vy Schienenpersonenverkehrsdienste. In Schweden erbringt Vy über seine Tochtergesellschaft Vy Tåg AB Schienenpersonenverkehrsdienste. Darüber hinaus betreibt Vy Busverkehrsdienste – in Norwegen über seine Tochtergesellschaft Vy Buss AS, in Schweden über Vy AB.

Die Entscheidung betrifft folgende Maßnahmen:

i. an Vy und seine Tochtergesellschaft Vy Gjøvikbanen AS direkt vergebene Verträge über gemeinwirtschaftliche Verpflichtungen in Bezug auf Schienenpersonenverkehrsdienste in Norwegen (im Folgenden „Verträge über gemeinwirtschaftliche Verpflichtungen") vom 28. Februar 2018:

   a. Vertrag von 2018 und Vertrag 2019-2022 für verschiedene Eisenbahnstrecken in Norwegen,

   b. Vertrag von 2018 und Vertrag 2019-2024 für Gjøvikbanen;

ii. einen Zuschuss für Vy zur Deckung von Rentenkosten in Höhe von 490,3 Mio. NOK ab 2019.

Bereits vor dem Inkrafttreten des EWR-Abkommens hat Norwegen Ausgleichszahlungen für unrentable Schienenpersonenverkehrsdienste gewährt, um auf der Grundlage der allgemeinen Verkehrsziele einen bestimmten Verkehrsbedarf zu decken. Die gemeinwirtschaftlichen Verpflichtungen und der entsprechende Ausgleich wurden durch Verträge zwischen den zuständigen staatlichen Stellen und den Betreibern festgelegt. Seit Anfang der 1990er Jahre vergibt Norwegen die Verträge für Schienenpersonenverkehrsdienste direkt. Direkt vergebene Verträge mit Vy (zuvor NSB AS) deckten im Zeitraum 1991-2017 den Großteil der norwegischen Schienenpersonenverkehrsdienste ab.

Würdigung der Maßnahmen

Vorliegen staatlichen Beihilfen

In ihrer Entscheidung gelangt die Überwachungsbehörde zu dem vorläufigen Ergebnis, dass die Maßnahmen die Kriterien des Artikels 61 Absatz 1 des EWR-Abkommens zu erfüllen scheinen und daher staatliche Beihilfen darstellen.

Bestehende Beihilfen gegenüber neuen Beihilfen

Die Überwachungsbehörde zieht in ihrer Entscheidung den vorläufigen Schluss, dass das Ausgleichssystem für gemeinwirtschaftliche Verpflichtungen in Bezug auf Schienenpersonenverkehrsdienste in Norwegen eine Beihilferegelung im Sinne des Teils II Artikel 1 Buchstabe d des Protokolls 3 zum Überwachungs- und Gerichtshofabkommen darstellt.

Norwegen macht geltend, dass die Beihilferegelung vor dem Inkrafttreten des EWR-Abkommens eingeführt worden und weiterhin gelte und dass keine wesentlichen Änderungen an der Regelung vorgenommen worden seien, die dazu führen könnten, dass es sich nicht mehr um eine bestehende, sondern um eine neue Beihilfe handelt.

Die Überwachungsbehörde hat jedoch Zweifel daran, dass es sich um eine bestehende Regelung handelt. Insbesondere hegt sie Zweifel daran, dass es sich bei der Regelung auch nach der Aufnahme eines Ex-post-Mechanismus in die Verträge über gemeinwirtschaftliche Verpflichtungen aus dem Jahr 2018 noch um eine bestehende Regelung handelt, und sie fordert Norwegen in ihrer Entscheidung auf, weitere Angaben dazu zu machen, wie der Ausgleich im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen vor bzw. nach der Einführung des Ex-post-Mechanismus ermittelt wurde.

In Bezug auf den Vy im Jahr 2019 gewährten Zuschuss zur Deckung der Rentenkosten fordert die Überwachungsbehörde Norwegen auf, Angaben zu machen bzw. Nachweise vorzulegen, aus denen hervorgeht, dass durch den 2019 gewährten Zuschuss ausschließlich Rentenkosten abgedeckt wurden, die im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen entstanden waren. Auf der Grundlage dieser Informationen wird die Überwachungsbehörde den von Norwegen im Jahr 2019 gewährten Zuschuss prüfen und feststellen, ob er unter die Beihilferegelung fällt.

Vereinbarkeit der Beihilfen mit dem EWR-Abkommen

Die beihilferechtliche Vereinbarkeit der Regelung zur Gewährung eines Ausgleichs für gemeinwirtschaftliche Verpflichtungen ist auf der Grundlage der Verordnung (EG) Nr. 1370/2007 des Europäischen Parlaments und des Rates vom 23. Oktober 2007 über öffentliche Personenverkehrsdienste auf Schiene und Straße und zur Aufhebung der Verordnungen (EWG) Nr. 1191/69 und (EWG) Nr. 1107/70 (im Folgenden „Verordnung 1370/2007") zu prüfen.

Der im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen zu gewährende Ausgleich muss im Einklang mit den Anforderungen der Verordnung 1370/2007 festgelegt werden. Nach Artikel 4 Absatz 1 der Verordnung 1370/2007 dürfen Ausgleichsleistungen für gemeinwirtschaftliche Verpflichtungen den Betrag nicht übersteigen, der erforderlich ist, um die finanziellen Nettoauswirkungen auf die Kosten und Einnahmen zu decken, die auf die Erfüllung der gemeinwirtschaftlichen Verpflichtungen zurückzuführen sind, wobei die vom Betreiber eines öffentlichen Dienstes erzielten und einbehaltenen Einnahmen und ein angemessener Gewinn zu berücksichtigen sind. Die Methode zur Bestimmung des Ausgleichs im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen muss auch mit den Bestimmungen des Anhangs der Verordnung 1370/2007 im Einklang stehen.

In ihrer Entscheidung äußert die Überwachungsbehörde Zweifel daran, dass die Maßnahmen – falls sie als neue Beihilfen anzusehen sind – mit dem Funktionieren des EWR-Abkommen vereinbar sind.

Diese Zweifel beziehen sich insbesondere auf das Benchmarking, auf das sich Norwegen hinsichtlich des Ausgleichs im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen zur Ermittlung des angemessenen Gewinns gestützt hat. Die Überwachungsbehörde fordert Norwegen daher auf, Angaben zur Auswahl der Betreiber für das Benchmarking, zu den in Bezug auf den vom Benchmarking abgedeckten Zeitraum angestellten Überlegungen und zu den Auswirkungen der Anwendung von IFRS-16 auf das Benchmarking vorzulegen.

Um die beihilferechtliche Vereinbarkeit der Maßnahmen prüfen zu können, fordert die Überwachungsbehörde Norwegen in ihrer Entscheidung auf, weitere Angaben zu machen zu der von Norwegen angewandten Methode zur Bestimmung der gruppeninternen Preise und zur Trennung der Buchführung, zur Zuweisung der Kosten in den Verträgen über gemeinwirtschaftliche Verpflichtungen sowie zu der Art und Weise, wie in Bezug auf die Verträge über gemeinwirtschaftliche Verpflichtungen Ex-post-Kontrollen durchgeführt werden.

Die Überwachungsbehörde bittet ferner um Auskunft darüber, ob Netzeffekte, die sich aus Verbindungen zwischen einer Strecke mit gemeinwirtschaftlichen Verpflichtungen und einer kommerziellen Strecke (Oslo-Halden-Göteborg) ergeben können, bei der für die Zuweisung der Kosten und Einnahmen gewählten Methode angemessen berücksichtigt werden.

Norwegen hat geltend gemacht, dass der Zuschuss, der Vy im Jahr 2019 gewährt wurde, ausschließlich die Rentenkosten im Zusammenhang mit den direkt vergebenen Verträgen über gemeinwirtschaftliche Verpflichtungen abgedeckt und sich auf den Teil der Kosten beschränkt habe, der in der Buchführung von Vy nicht durch Rentenrückstellungen gedeckt war. In ihrer Entscheidung fordert die Überwachungsbehörde Norwegen nunmehr auf, Informationen vorzulegen, die aufzeigen, dass es sich bei den Rentenkosten ausschließlich um Kosten handelte, die im Rahmen der Verträge über gemeinwirtschaftliche Verpflichtungen entstanden waren.

Auf der Grundlage dieser Informationen wird die Überwachungsbehörde den Zuschuss Norwegens aus dem Jahr 2019 an Vy prüfen und untersuchen, ob er Kosten abgedeckt hat, die mit der Erfüllung der in den Verträgen über gemeinwirtschaftliche Verpflichtungen festgelegten Verpflichtungen zusammenhängen, und ob davon auszugehen ist, dass er in den Anwendungsbereich der Beihilferegelung fällt.

PSO contracts for railway passenger services in Norway – Decision to open a formal investigation procedure

1. Summary

(1) The EFTA Surveillance Authority ('ESA') wishes to inform Norway that, having preliminarily assessed the measures covered by complaints relating to Vygruppen AS and its subsidiary, it has doubts as to whether the measures constitute existing aid and, in case the measures were considered new aid, as to whether the measures are compatible with the functioning of the EEA Agreement. ESA has therefore decided to open a formal investigation procedure pursuant to Articles 4(4) and 13 of Part II of Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'). This decision is based on the following considerations.

2. Procedure

2.1. *First complaint*

(2) On 1 December 2020, ([1]) ESA received a complaint alleging that the Norwegian authorities were granting unlawful State aid to Vygruppen AS ([2]) ('Vy') in the form of overcompensation for certain directly awarded public service obligation ('PSO') contracts for railway passenger services in Norway. The complainant requested confidentiality.

(3) By a letter to the complainant dated 22 December 2020, ([3]) ESA informed the complainant that it had previously in 2017, decided not to pursue a similar complaint case further ([4]). In that previous case, ESA came to the preliminary conclusion that aid allegedly granted through directly awarded PSO contracts from the Norwegian authorities to Vy (then NSB), if it should be classified as State aid within the meaning of Article 61(1) of the EEA Agreement, would appear to have been granted on the basis of a system of existing aid. ESA therefore invited the complainant to provide further comments as to why he considered that the alleged aid in question constitutes new aid rather than existing aid.

(4) The complainant provided the requested comments on 29 January 2021 ([5]). On 12 April 2021, the Norwegian authorities submitted comments to the complaint ([6]). On 4 June 2021, the complainant submitted observations to the comments submitted by the Norwegian authorities ([7]). On 6 July 2021, ESA met with the complainant to discuss the complaint. On 16 February 2022, the complainant submitted additional observations ([8]). On 9 March 2022, ESA met with the complainant to discuss the additional observations. On 26 April 2022, the complainant submitted additional observations ([9]). On 23 June 2022, ESA met again with the complainant. On 12 December 2022, the complainant submitted further information and observations to the Norwegian authorities' submission of 16 September 2022 ([10]). On 31 January 2023, ESA met with the complainant. On 20 March 2023, the complainant submitted additional information ([11]).

2.2. *Second complaint*

(5) On 30 March 2021, ([12]) ESA received a complaint alleging that the Norwegian authorities were granting unlawful State aid to Vy and its subsidiary Vy Buss AS ('Vy Buss') in the form of overcompensation for certain directly awarded PSO contracts for railway passenger services in Norway, pension subsidy to Vy and a capital injection from Vy to Vy Buss ([13]). The complainant requested confidentiality.

([1]) Documents No 1166581, 1166617-22, 1166623-24, 1166700-02, 1166706-8, 1166748, 1166752, 1166753.
([2]) NSB AS changed its name to Vygruppen AS with effect from 24 April 2019. ESA refers to both NSB AS and Vygruppen AS in this decision.
([3]) Document No 1168592.
([4]) Letter from ESA dated 13 June 2017.
([5]) Documents No 1178994 and 1177273.
([6]) Documents No 1193747, 1193749, 1193751 and 1193753.
([7]) Documents No 1205521 to 1205523.
([8]) Document No 1270662.
([9]) Documents No 128430 and 1284382.
([10]) Document No 1336652.
([11]) Documents No 1361663 and 1363337.
([12]) Documents No 1192044-48, 1192124, 1192198-1192203, 1192204-1192215, 1192216-18, 1192219-21, 1192223-1192231, 1192232-36, 1192125-1192192.
([13]) The capital injection from Vy to Vy Buss is not subject to this decision.

(6) On 3 June 2021, the Norwegian authorities submitted comments to the complaint ([14]). On 9 April 2022, the complainant submitted supplementary observations to ESA extending the complaint to cover an additional alleged unlawful and incompatible aid measure concerning Vy's financing of the acquisition of Flygbussarna in 2020 ([15]). On 13 July 2022, the complainant submitted supplementary observations to ESA ([16]). On 14 July 2022, ESA met with the complainant. On 1 December 2022, the complainant submitted further information to ESA ([17]). On 26 April 2023, ESA met with the complainant.

2.3. ***Third complaint***

(7) On 18 April 2023, ([18]) ESA received an additional complaint identical in scope, reasoning and evidence to the two complaints previously submitted. On 24 May 2023, ESA forwarded the complaint to the Norwegian authorities ([19]). The complainant requested confidentiality.

2.4. ***Previous procedure***

(8) On 4 July 2016, ESA received a complaint regarding alleged unlawful State aid to Vy (then NSB) ([20]). The complaint concerned compensation granted by the Norwegian authorities to Vy for offering social tariffs and an alleged insufficient control of possible overcompensation to Vy related to Vy's public service obligations for railway passenger services.

(9) Following a preliminary examination of the complaint, ESA's view was that the compensation to Vy, if it should be classified as State aid within the meaning of Article 61(1) of the EEA Agreement, would appear to have been granted on the basis of a system of existing aid ([21]). Furthermore, there was no indication that Vy was overcompensated or that the Norwegian authorities discriminated between transport providers contrary to the rules of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and road and repealing Council Regulations 1191/69 and 1107/70 ([22]) ('Regulation 1370/2007') ([23]).

(10) In light of this assessment, ESA decided to close the case and informed the complainant accordingly ([24]).

2.5. ***Prioritisation of the complaints***

(11) On 3 May 2021, ESA informed the complainants that the complaints had been designated as a priority case. However, ESA further informed the complainants that due to the exceptional circumstances resulting from the pandemic, ESA had an unusually high caseload so that the indicative timeframe of twelve months set out in ESA's Guidelines on Best Practices for the conduct of State aid control procedures ([25]) would possibly not be met.

([14]) Documents No 1204908, 1204910, 1204912, 1204914, 1204916, 1204918, 1204920, 1204922, 1204924, 1204926, 1204928, 1204930, 1204932, 1204934, 1204936, 1204938, 1204940, 1204942, 1204944.
([15]) Documents No 1281554, 1281556 to 1281558. The financing of the acquisition of Flygbussarna is not subject to this decision.
([16]) Documents No 1302572, 1302573, 1302728 to 1302760, 1302715 to 1302718 and 1302762 to 1302769.
([17]) Documents No 1333853 to 1333879.
([18]) Documents No 1367333, 1367335, 1367338 and 1367339.
([19]) Document No 1373793.
([20]) Case No 79322.
([21]) Documents No 830000 and 857101.
([22]) Referred to at point 4a of Annex XIII to the EEA Agreement, Decision of the EEA Joint Committee No 85/2008 of 5 July 2008 amending Annex XIII (Transport) to the EEA Agreement (OJ L 208, 23.10.2008, p. 20 and EEA Supplement No 64, 23.10.2008, p. 13).
([23]) Regulation (EC) No 1370/2007 was amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail, referred to at point 4a of Annex XIII to the EEA Agreement, Decision of the EEA Joint Committee No 248/2021 of 24 September 2021 amending Annex XIII (Transport) to the EEA Agreement.
([24]) Document No 857101.
([25]) ESA's Guidelines on Best Practices for the conduct of State aid procedures (OJ L 82, 22.3.2012, p. 7).

2.6. ***Assessment of the complaints***

(12) As the complaints concern, to a certain extent, the same measures, ESA informed the Norwegian authorities that it would assess the complaints together.

2.7. ***Requests for information***

(13) On 12 March 2021, ESA met with the Norwegian authorities to discuss the first complaint. On 4 November 2021, ESA sent a request to the Norwegian authorities for additional information, according to Article 10(2) of Part II of Protocol 3 to the Surveillance and Court Agreement. On 30 December 2021, the Norwegian authorities provided the requested information ([26]).

(14) On 15 July 2022, ESA forwarded ([27]) supplementary submissions and additional observations ([28]) from the complainants to the Norwegian authorities and invited them to submit comments on the parts of the additional submissions which had not been addressed or where the Norwegian authorities saw a need to provide further information. On 16 September 2022, the Norwegian authorities provided their comments to the additional submissions ([29]).

3. **Description of the measures**

3.1. ***Background***

3.1.1. *Introduction*

(15) This decision concerns the following measures: ([30])

i. Directly awarded public service obligation contracts for railway passenger services in Norway ('the PSO contracts').

ii. A grant to Vy to cover pension costs.

(16) Vygruppen is a State limited liability (*statsaksjeselskap*) company which is wholly owned by the Norwegian State through the Ministry of Transport. Vy operates railway passenger transport services in Norway. Vy also operates railway passenger transport services through its subsidiary Vy Gjøvikbanen AS. Vy further operates railway passenger transport services in Sweden through its subsidiary Vy Tåg AB. Vy operates bus passenger services in Norway through its subsidiary Vy Buss AS and in Sweden through Vy AB.

(17) Vy (NSB trafikkdel at the time) was organised as a public enterprise (*forvaltningsbedrift*) under the Ministry of Transport at the time of the entry into force of the EEA Agreement. From 1 December 1996, NSB Trafikkdel was reorganised as a special statutory corporation (*Særlovselskap*), NSB BA. In 2002, NSB BA was reorganised as a State limited liability company (*statsaksjeselskap*), NSB AS.

(18) NSB AS was renamed Vygruppen AS with effect from 24 April 2019.

3.1.2. *The Norwegian passenger railway system*

(19) Since before the entry into force of the EEA Agreement, the Norwegian authorities have granted compensation for unprofitable passenger railway services to meet defined transport needs based on the overall transport objectives. The PSO and the corresponding compensation have been arranged for by means of contracts between the responsible State authorities and the operators ([31]).

([26]) As the two complaints concerned, to certain extent, the same measures, ESA informed the Norwegian authorities that it would assess the complaints together. The request for additional information therefore concerned both complaints.

([27]) Document No 1302683.

([28]) Documents No 1281673, 1302770, 1270664 and 1302801.

([29]) Documents No 1313411, 1313413, 1313415 1313418, 1313421, 1313428, 1313430, 1313432, 1313440, 1313442, 1313434, 1313444, 1313436, 1313447, 1313438.

([30]) This decision does not include the assessment of the two additional measures subject to the second and third complaint, namely, the capital injection from Vygruppen to Vy Buss and the financing of the acquisition of Flygbussarna. See footnotes 11 and 12.

([31]) Until 2017, the Ministry of Transport was responsible for the contracts on behalf of the State. The Railway Directorate has been the responsible authority since 2017.

(20) The contracts for passenger railway services have been directly awarded by the Norwegian authorities since early 1990s. Directly awarded contracts with Vy/NSB have covered most of Norwegian passenger railway services between 1991 and 2017. However, in 2006 when the frequency of train services between Sweden and Norway, which included stops in Norway, was on the verge of being reduced or even abolished, Sweden and Norway began granting compensation for these railway passenger services to both Vy (then NSB) and SJ AB ('SJ') the Swedish incumbent. As of 2012, Vy (then NSB) was not part of that arrangement, leading to Sweden and Norway providing PSO compensation solely to SJ for these services.

(21) One contract was tendered in 2004 to NSB Gjøvikbanen AS (now 'Vy Gjøvikbanen AS') for the period from 2006 to 2017 for the Gjøvik line.

3.1.3. *The legal framework relevant to the PSO compensation system*

(22) The Railway Act ([32]) from 1993 provides a regulatory framework for the railway sector in Norway, ([33]) based partly on Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ('Directive 91/440/EEC') ([34]). The Railway Act does not provide for specific provisions concerning PSO contracts. Rules on access to the national railway network are set out in Article 8 of the Railway Act ([35]).

(23) Due to the adaptation necessary from the planned membership of the EEA Agreement, Article 8 of the 1993 Railway Act, introduced the right for other operators to provide railway services. However, the *de facto* situation was that only Vy (NSB at the time) had access to provide railway passenger services on the national railway network, including PSO services ([36]).

(24) According to the Norwegian authorities, the legal framework relevant to the award of PSO contracts for railway services in Norway is largely based on developments in EEA law and includes both rules on access to the national railway network and rules regarding PSO contracts for passenger railway services ([37]).

(25) The first set of rules, concerning access to the railway network, have been set out in the form of national regulations. In addition to Article 8 of the Railway Act, the main legal provisions are currently found in the Railway Regulation, ([38]) which regulates access rights of railway undertaking to the railway network for the purpose of providing railway passenger services.

(26) In June 2005, a new chapter II A was introduced into the Railway Act ([39]). The provisions of the new chapter were part of the preparation for competitive tendering of PSO contracts for railway passenger services.

(27) The second set rules relevant for the PSO contracts for passenger railway services, have been set out in the form of regulations. Regulation 1370/2007 was implemented into Norwegian law in 2010 by an implementing regulation ([40]).

([32]) *Lov om anlegg og drift av jernbane, herunder sporvei, tunnelbane og forstadsbane m.m.* LOV-1993-06-11-100.
([33]) Including i.a. for tram and subway.
([34]) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47and certain Annexes to the EEA Agreement (OJ L 160, 28.6.1994, p.1 and EEA Supplement No 17, 28.6.1994, p. 1).
([35]) The original wording of Article 8 of the Railway Act was as follows: *'Kongen kan bestemme at den som har tillatelse til å drive trafikkvirksomhet etter § 6, kan få tilgang til å trafikkere kjørevei som er en del av det nasjonale jernbanenettet. Kongen kan gi nærmere bestemmelser om omfanget, og vilkårene for slik tillatelse.'*
([36]) Submission of the Norwegian authorities of 7 December 2021, Document No 1260039.
([37]) Submission of the Norwegian authorities of 7 December 2021, Document No 1260039.
([38]) *Forskrift om jernbanevirksomhet, serviceanlegg, avgifter og fordeling av infrastrukturkapasitet mv. (jernbaneforskriften)*, FOR-2021-06-30-2315.
([39]) *Lov om endringer i lov 11.juni 1993 nr. 100 om anlegg og drift av jernbane m.m. (jernbaneloven)*, LOV-2005-06-10-55.
([40]) *Forskrift om fordeling av jernbaneinfrastrukturkapasitet og innkreving av avgifter for bruk av det nasjonale jernbanenettet*, FOR-1997-07-10-782.

3.1.4. *The railway reform in Norway*

(28) A reform of the railway sector in Norway was initiated in 2015 ('the Railway Reform') ([41]). The Railway Reform entailed four initiatives:

i. **Structure** with the aim of clear division of labour and governmental responsibilities separated from infrastructure management.

ii. **Business orientation** with new funding structure that increases customer focus and more efficient operations, with current safety and quality requirements.

iii. **Lower barriers to entry** by separating the infrastructure and other production factors into neutral companies.

iv. **Establishing competition** for the market for railway passenger services, maintenance of railway infrastructure and maintenance of rolling stock.

(29) The former parts of the national railway operator, Vy (NSB at the time) were restructured as independent entities to create fair, open and non-discriminatory access to necessary services for ticketing, rolling stock and train maintenance.

(30) A public authority, the Railway Directorate (*Jernbanedirektoratet*), was established, which was responsible for purchasing railway infrastructure and passenger services on behalf of the Norwegian authorities. The management of railway infrastructure was restructured as a State limited company (*Statsforetak*). An entity was created, Entur AS, to provide a central digital infrastructure for all public transport services in Norway, as well as ticketing services for railway operators. Norske tog AS, was created to purchase and own rolling stock on behalf of the Norwegian authorities. Finally, Mantena AS was created for providing train maintenance services to rain operators.

(31) The Railway Reform further brought about the awarding of separate PSO contracts for geographically coherent but distinct parts of the railway network. The process for competitive tendering of passenger railway services was launched in March 2016.

(32) The first competitively tendered contract, which concerned the Southern part of the network (Tender 1 South), was awarded to Go Ahead Norge AS ([42]). The second competitively tendered contract, which concerned the northern part of the network (Tender 2 North), was awarded to SJ Norge AS ([43]). The third competitively tendered contract, which concerned the western part of the network, was awarded to Vy Tog AS ([44]).

(33) During the transition period, where tendering of PSO contracts was introduced, the existing practice of directly awarding PSO contracts was foreseen to continue. This meant that the practice of directly awarding PSO contracts was subject to a gradual narrowing in geographic scope until it would eventually be discontinued. However, due to the cancelling of tenders 4 & 5, as described below in section 3.2.3, the foreseen scope of competitively tendered contracts has changed accordingly.

3.2. ***Measure 1: the PSO contracts***

3.2.1. *The PSO compensation system*

(34) Under the directly awarded PSO contracts, the Norwegian authorities shall compensate the operator for the operation of a PSO on the routes covered by the contract. The operator's compensation shall, together with the receipts from fares and other revenue, cover the cost incurred by performing the PSO pursuant to the contract and allow for a reasonable profit.

([41]) Launched by the White Paper *Meld. St. 27 (2014-2015)*.

([42]) The invitation to tender for Tender 1 South was published in October 2017 and the deadline for the first bid was 1 March 2018. The routes covered by the contract are Sorlandsbanen, Jærbanen and Arendalsbanen.

([43]) The invitation to tender for Tender 2 North was published in March 2018 and the deadline for the first bid was December 2018. The routes covered by the contract are Dovrebanen, Raumabanen, Trønderbanen, Meråkerbanen, Nordlandsbanen and Saltenpendelen.

([44]) The invitation to tender for Tender 2 West was published in December 2018 and the deadline for the first bid was August 2019. The routes covered by the contract are Bergensbanen: fjerntog Oslo S – Bergen, Vossbanen: regiontog Bergen – Voss – Myrdal and Vossebanen: lokaltog Bergen – Arna.

(35) The Norwegian authorities identify the transport needs and the services, which are necessary to create an effective transport system with the desired capacity, according to a transport policy. On the basis of this exercise, the Norwegian authorities define the necessary frequency, tariffs and other conditions for the public service obligation. On this basis, negotiations are held with the railway operator.

(36) The exact amount of the remuneration is decided in the negotiations and reflected in the draft State budget. The contract is signed, subject to the Parliament's approval of the State budget. The compensation is calculated *ex ante* based on the operator's estimated revenues and costs.

(37) Until 2005, the PSO contracts were negotiated annually between the operator and the granting authority. The PSO contracts consisted of two parts: one multi-annual contract containing overarching principle and rules and one annually negotiated contract where the remuneration and the PSO were described in detail. From 2005, the contracting parties introduced a multi-annual PSO contract in which the price and PSO were agreed for a longer term but adjusted annually or when necessary ([45]).

3.2.2. *The PSO contracts subject to this decision*

(38) The following PSO contracts were directly awarded to Vy and its subsidiary Vy Gjøvikbanen AS, dated 28 February 2018:

— The 2018 ([46]) Contract and the 2019-2022 Contract covering various railway routes in Norway ([47]).

— The 2018 ([48]) Contract and the 2019-2024 Contract covering Gjøvikbanen ([49]).

(39) All four contracts ('the PSO contracts') follow the same structure and the contract provisions are to a large extent identical or equivalent ([50]). The same applies for the provisions regarding the *ex post* mechanism as described below in section 3.2.4. The total compensation and the respective profit-sharing thresholds vary with the length and the scope of the contracts ([51]).

(40) The routes covered by the 2019-2022 Contract are organized into so-called traffic packages (*Trafikkpakke*). The 2018 and 2019-2022 Contracts cover the same routes. According to Section 3.2 of the 2019-2022 Contract, the contract is applicable to the railway services covered by the contract until they are made subject to competitive tendering. The 2019-2022 Contract was amended in 2019 extending the duration of certain routes to be operated by Vy ([52]).

3.2.3. *The traffic packages*

(41) The first three traffic packages have been competitively tendered ([53]). The scope of the 2019-2022 Contract was reduced in parallel with the traffic packages being tendered out ([54]).

([45]) Submission of the Norwegian authorities dated 7 December 2021, Document No 1260039.

([46]) *Avtale om utførelse av persontransport med tog som offentlig tjeneste i 2018*. Published on the website of the Railway Directorate ('the 2018 contract').

([47]) *Avtale om utførelse av persontransport med tog som offentlig tjeneste i 2019-2022*. Published on the website of the Railway Directory ('the 2019-2022 contract').

([48]) *Avtale om utførelse av persontransport med tog som offentlig tjeneste i 2018*. Published on the website of the Railway Directorate ('the 2018 contract – Gjøvikbanen').

([49]) *Avtale om utførelse av persontransport med tog som offentlig tjeneste i 2019-2024*. Published on the website of the Railway Directorate ('the 2019-2024 contract').

([50]) The contracts for 2019-2024 and 2019-2022 entail additional provisions to allow for the gradual introduction of competitive tendering of PSO contracts.

([51]) Letter from the Norwegian authorities dated 27 November 2019, Document No 1101679.

([52]) See Notice from the Railway Directorate from April 2019. All changes to the contracts are published on the website of the Railway Directorate.

([53]) Traffic package 1 (south) concerns Stavanger – Oslo S, Stavanger – Egersund and Nelaug – Arendal. Traffic package 2 (north) concerns Trondheim S – Bodø, Oslo S – Trondheim S, Rognan – Bodø, Lundamo/Melhus – Trondheim S – Steinkjer, Dombås – Åndalsnes, Heimdal/Trondheim S – Storlien and Hamar – Røros – Trondheim S. Traffic package 3 (west) concerns Oslo S – Bergen and Bergen – Voss – Myrdal and Bergen – Arna.

([54]) See Section 4.3 of the 2019 -2022 Contract.

(42) On 19 December 2021, the Railway Directorate was requested by the Ministry of Transport to cancel the competitive tendering of passenger railway services. The tender concerning traffic package 4 was to be cancelled ([55]). The foreseen tender for traffic package 5 was not to be initiated ([56]).

(43) The Ministry of Transport further requested that the Railway Directorate started working on the direct award of the passenger railway services so that the services can be awarded within the existing framework and before 25 December 2023 ([57]).

3.2.4. *Ex post mechanism*

(44) From 2018, the Norwegian authorities included an *ex post* mechanism in the directly awarded contracts. According to the Norwegian authorities, this mechanism was intended to further ensure that the compensation for the operator under the PSO compensation system would not exceed the net financial effect of the PSO.

(45) The Norwegian authorities gathered information on railway passenger transport operators that were considered comparable to Vy to determine an appropriate level of reasonable profit as part of the PSO compensation ('the benchmark report') ([58]).

(46) The Norwegian authorities have explained that the benchmark report demonstrated that for four train operating groups, used for the comparison by the Norwegian authorities, the median return on capital employed was 7 % for the years 2012 to 2015. The highest return on employed capital in a single year was 11,7 %. The result of the report was considered by the Norwegian authorities as a valid basis for the calculation of a reasonable profit expressed as return on capital employed.

(47) The mechanism in the four contracts from 2018 covers the entire contract period of the individual contracts and allows for incremental profit sharing between the parties to the contract. The lower threshold for profit sharing is set at an amount reflecting a return on capital employed of 7 %. The maximum reasonable profit is an amount that represents a return on capital employed at approximately 10,6 %. This means that profit up to the lower threshold of 7 % is kept by the operator. All profits exceeding the upper threshold of 10,6 % accrue to the contracting authority.

Table 1

Lower and upper limits of reasonable profit in NOK ([59])

Reasonable profit	2019	2020	2021	2022	Sum 2019 – 2022
Lower limit:	NOK 342 mill.	NOK 273 mill.	NOK 243 mill.	NOK 250 mill.	NOK 1 108 mill.
Upper limit:	NOK 880 mill.	NOK 722 mill.	NOK 652 mill.	NOK 667 mill.	NOK 2 921 mill.

The upper limit of reasonable profit is not adjusted for inflation.

(48) Profits exceeding the lower threshold but not the upper limit of approximately 10,6 % is divided between the parties to the contract in accordance with a profit-sharing scheme as presented in the table below ([60]).

(49) The mechanism for profit sharing is divided into three parts:

1. The operator will keep 75 % of the profits above the lower limit for a reasonable profit and up to the first threshold.

([55]) Traffic package 4 concerns passenger transport on Østfoldbanen, Gjøvikbanen and local trains Spikkestad-Lillestrøm and Stabekk – Ski.

([56]) Traffic package 5 concerns passenger transport on city trains Skien-Eidsvoll and Drammen – Lillehammer, local trains Kongsberg – Eidsvoll, Drammen – Dal and Asker – Kongsvinger and Bratsbergbanen.

([57]) See letter from 19 November 2021 from the Ministry of Transport.

([58]) Report by PWC titled *Jerbanedirektoratet – Historisk tallgrunnlag for avkastning på kapital*, dated 20 June 2017. Annex V to the submission of the Norwegian authorities dated 7 December 2021.

([59]) Letter from the Norwegian authorities dated 27 November 2019, Document No 1101679.

([60]) Presented in Article 9.5 of the 2019-2022 contract and attachment B-7.

2. The operator will keep 50 % of the profits above the first threshold and up to the second threshold.

3. The operator will keep 25 % of the profits above the second threshold and up to the third threshold.

Table 2

Profit sharing thresholds in NOK ([61])

NOK Million	2019	2020	2021	2022	Sum 2019-2022
Lower limit of reasonable profit	342	273	243	250	1 108
The operator's results at the lower limit for reasonable profit	342	273	243	250	1 108
First threshold	521	423	379	389	1 712
The operator's results at the first threshold	476	386	345	354	1 561
Second threshold	700	572	516	528	2 316
The operator's results at the second threshold	566	460	414	424	1 864
Third threshold	880	722	652	667	2 921
The operator's results at the third threshold	611	498	448	458	2 015

Neither the upper limit for a reasonable profit nor the thresholds will be adjusted for inflation.

(50) Whether the operator throughout the duration of the contract has obtained a total result that exceeds the upper limit shall be calculated based on the total duration of the contract. However, there shall be annual calculations as to whether the levels for profit sharing and the upper limit for a reasonable profit has been attained.

(51) If the lower limit for the reasonable profit has been exceeded for one year, the operator shall place the amount that would have accrued to the contracting authority in an escrow account owned by the operator that none of the parties can individually access. If the operator in a later year obtains a profit under the PSO contract that does not amount to the lower limit for a reasonable profit, the difference between the profit and the lower limit for a reasonable profit shall be released to the operator.

(52) If the operator in a year obtains a profit that does not amount to the lower limit for a reasonable profit and there are not sufficient funds in the escrow account, the difference can be offset against the amount that is put in the escrow account in other years.

(53) The assessment of whether the limits of reasonable profit have been attained, shall be based on the operator's auditor-approved public accounts for the PSO within three months after the operator has provided such accounts for the year ([62]).

3.3. ***Measure 2 - Pension cost***

(54) Vy/NSB had a public sector occupational scheme with the Norwegian Public Service Pension Fund ('SPK') dating from the time it was organised as a public enterprise. The SPK is governed by Act No 26 of 28 July 1949 concerning the Norwegian Public Service Pension Fund. The pension scheme under SPK includes: (i) retirement pension, (ii) contractual early retirement pension (*AFP*) in accordance with the collective agreement, (iii) disability pension with payment exemption and (iv) survivor's pension for spouse and children.

([61]) Letter from the Norwegian authorities dated 27 November 2019, Document No 1101679.
([62]) Letter from the Norwegian authorities dated 27 November 2019, Document No 1101679. Article 9.5 in the 2019-2022 contract.

(55) A member will have earned a full pension after at least 30 years of service in a full-time position. If the member retires from the position or leaves the pension scheme in SPK before retirement age on other grounds, the member will have a deferred pension entitlement, if the total qualifying time is at least three years. The member, or the member's surviving dependants, may then be entitled to a future pension from SPK.

(56) The public occupational pension scheme under the SPK implies a statutory obligation to adjust deferred pension entitlements which means that future pension entitlements of employees who are no longer members of SPK and have not yet retired, and pensions under disbursement are adjusted according to the average annual increase in salary and price inflation ('the adjustment obligation') ([63]). This applies irrespective of whether the employing entity continues to be a member of SPK ([64]).

(57) Future wage development and price inflation is not covered and pre-financed by the premium but is covered when the said development is given effect for the accrued pension claim ([65]). The annual premiums paid to SPK only take into account the actual wage and inflation development each year, but do not cover future unknown adjustments ([66]).

(58) According to the Norwegian authorities, although Vy's (NSB at the time) employees no longer held the status of civil servants, following the reorganisation from public enterprise (*forvaltningsbedrift*) to a special statutory corporation (*særlovselskap*) in 1996, it was the will of the legislator to let the employees continue their membership in SPK.

(59) In the preparatory works of the Railway Transport Corporation Act, ([67]) it was stated that '[i]*t is a prerequisite that the employees will continue their membership in the Civil Service Pension Fund, and that a parliamentary decision is adopted on this matter, in accordance with Section 5 of the Act on Civil Service Pension Fund of 28 July 1949 No 26, cf. proposed decision II No 7 in St.prp.nr.2 (1996-1997). A legislative decision on membership in SPK is therefore not necessary.*' ([68])

(60) Section 5(2) of the Act on the Civil Service Pension Fund states that the Ministry '*can decide that employees of an entity not part of the State shall be members of the Civil Service Pension Fund.*' In a Parliamentary proposal, the Ministry of Transport proposed that employee positions of Vy (NSB at the time) should be covered by SPK ([69]). The proposal was adopted as presented by the Parliament on 14 November 1996.

(61) As part of the Railway Reform, the Norwegian Ministry of Transport decided to reorganise Vy's (NSB at the time) pension scheme from the defined benefit plan based on membership in SPK to a private occupation pension scheme. Vy resigned from SPK with effect from 1 January 2019.

([63]) Section 42 of Act of 28 July 1949 No 26 on the Public Service Pension Fund ('The SPK Act').

([64]) Submission of the Norwegian authorities dated 2 June 2021, Document No 1204940 and Annex V to the submission.

([65]) Section 18(1) of the SPK Act, cf. Section 4(2) of the Regulation on employer premiums and Guidelines from the SPK, section 4 A(1).

([66]) The Norwegian authorities have explained that, in comparison, in a private defined contribution pension scheme the employer's obligation is limited to paying regular deposits to a pension provider on behalf of the employees during the period of employment. Pension assets are then supplemented with the achieved return. Defined contribution schemes do not entail any adjustment mechanism. The extent of future pension disbursements depends on the return on the funds invested.

([67]) The Act came into force on 22 November 1996 and was repealed by the Act on the reorganisation of the Railway Transport Corporation and the Postal Corporation to limited liability companies of June 2022.

([68]) In Norwegian: '*Det forutsettes at de tilsatte viderefører medlemskapet i Statens Pensjonskasse, og at det treffes stortingsvedtak om dette i medhold av lov om Statens Pensjonskasse 28. juli 1949 nr 26 § 5 annet ledd, jf forslag til vedtak under romertall II nr 7 i St.prp.nr.2 (1996–1997). Et lovvedtak om medlemskap i Statens Pensjonskasse er derfor ikke nødvendig.*'

([69]) In Norwegian: '*Stillingene i særlovselskapene Postverket og NSB Trafikkdelen innlemmes i Statens pensjonskasse.*'

(62) If an entity withdraws from the SPK, the employer shall normally discharge the adjustment obligation through yearly payments until there are no more entitled retired employees in the scheme ([70]). Alternatively, the Ministry of Labour and Social Inclusion can, in exceptional cases, allow the employer to discharge future adjustment obligations through a one-off payment. This was the case for Vy, which was granted permission for such an arrangement in 2017, which was carried out in 2019. For the calculation of the payment, the entitlements earned in the member company's pension scheme must be converted to an expected present value of the remaining entitlements in the SPK on the effective date of withdrawal.

(63) The new pension scheme for Vy was described in the revised national budget 2017. Vy could receive a grant to meet the adjustment obligation on withdrawal from SPK. This grant would be limited upwards to 464 million NOK for Vy and only include those parts of Vy that had not yet been exposed to competition before the start of the first competitive tender procedure for the PSO contracts.

(64) Transitional arrangements could also be established by Vy for the oldest employees depending on which solution Vy would choose within a framework of 950 million NOK. Such transitional scheme should shield older employees in the event of a business transfer. Vy could, as an alternative, shield the oldest employees by continuing the membership in SPK through a closed pension scheme for this group. If this would be the case, the need for a capital contribution to a transitional scheme would disappear and support for fulfilment of the adjustment obligation should be reduced proportionately. The additional cost for these employees would then be covered through the purchase by the Norwegian authorities of railway passenger transport as compensation for PSO contracts. The grant would be finally determined and paid out after the withdrawal had been completed ([71]).

(65) It was finally decided that older employees should retain their personal membership in SPK (closed membership) in order not to lose any of their existing pension rights ([72]).

(66) The grant to Vy for the adjustment obligation amounted to 490.3 million NOK in 2019. The measure was described in the national budget for 2019 when the adjustment obligation was finally calculated ([73]).

(67) According to the Norwegian authorities, only costs directly related to the awarded PSO contracts between Vy and the Norwegian authorities could be included as basis for the grant. Furthermore, the grant to cover pension costs was limited to the part of the costs which had not been covered by pension provisions in Vy accounts ([74]). The Ministry of Transport carried out an independent quality assurance of the assumptions for the grant in 2019-2020 which confirmed this ([75]).

(68) The three PSO contracts which have been subject to competitive tenders contain provisions which regulate the responsibility for coverage of pension costs between the Norwegian authorities and the relevant operator ([76]). According to the provisions in the tendered PSO contracts, the operator is granted a contribution equivalent to the operator's additional costs resulting from its employee's membership in SPK. If, on the other hand, the costs of the benefit scheme are lower than under the ordinary pension scheme, a corresponding deduction is made in the remuneration. This arrangement is supposed to ensure the equal treatment of all operators under the tendered PSO contracts ([77]).

([70]) Section 6(7) of the Regulation on employer premiums, see also Guidelines from the SPK, section 6 A.
([71]) Submission of the Norwegian authorities dated 2 June 2021, Document No 1204940.
([72]) Employees who had reached the age of 55 by 31 December 2018.
([73]) Prop 1 S (2018-2019) Chapter, 1353 post 70. Available here.
([74]) Description on the revised national budget 2017, Prop. 129 S (2016-2017), Chapter 2.11, page 121 – 123. Available here.
([75]) The report was carried out by KPMG on 14 February 2020.
([76]) Traffic package 1, provision 6.6.1. Traffic package 2, provision 5.6.1. Traffic package 3, provision 5.6.1.
([77]) Submission of the Norwegian authorities dated 15 September 2022, Document No 1313413.

3.4. ***The complaints***

3.4.1. *First complaint*

3.4.1.1. The PSO contracts and the legal framework

(69) The first complainant alleges that the Norwegian authorities have granted unlawful State aid to Vy in the form of overcompensation for the four PSO contracts directly awarded to Vy in 2018 as described above in section 3.2.2. The first complainant estimates that the alleged State aid granted to Vy amounts to, at least, NOK 6 - 7,5 billion in total during the years 2018 to 2022 ([78]).

(70) The estimation of the overcompensation has been performed by comparing the compensation granted to Vy for the traffic packages under the directly awarded PSO contracts with the compensation granted in the subsequently competitively tendered contracts for the corresponding traffic packages ('the comparison') ([79]).

Table 3

State compensation per package per year in Norway for both directly awarded and competitively tendered service (1 000 NOK)

Package\Year	2018	2019	2020	2021	2022
Trafikkpakke 1 Sør	485 939 kr	434 439 kr	254 553 kr	245 458 kr	207 209 kr
Trafikkpakke 2 Nord	585 002 kr	603 387 kr	266 020 kr 105 737 kr	279 892 kr	236 353 kr
Trafikkpakke 3 Vest	201 409 kr	168 775 kr	162 115 kr	41 019 kr	-37 880 kr
Trafikkpakke 4 Öst	1 300 856 kr	1 299 295 kr	1 276 814 kr	1 224 261 kr	1 192 702 kr
Trafikkpakke 5	756 243 kr	815 842 kr	823 066 kr	790 196 kr	756 002 kr
SUM	3 329 449 kr	3 321 738 kr	2 888 305 kr	2 580 826 kr	2 354 386 kr
Compensation granted in directly awarded contracts					
Compensation granted in competitively tendered contracts					

(71) According to the first complainant, it is evident from Table 3 that the compensation drops significantly for traffic packages 1-3, when they are competitively tendered. For package 3, Vy will not receive any compensation for 2022 but pay for the right to operate the tendered services. For packages 4 and 5, which have not been competitively tendered, the differences in compensation are not as pronounced from year to year.

(72) According to the first complainant, the comparison shows that the compensation granted to Vy under the directly awarded contract does not satisfy the conditions set out in Regulation 1370/2007, in particular Articles 4(1), 5(6) and 6(1), as well as the Annex to Regulation 1370/2007. According to the complainant, the compensation clearly exceeds what is necessary to cover the net costs incurred through the discharge of the PSO, taking account of the revenue generated thereby and a reasonable profit ([80]). Vy's bid for the aborted tender for Traffic package 4 is further evidence of its excessive overcompensation.

(73) According to the first complainant, compensation granted following a competitive tender constitutes generally accepted market remuneration and a benchmark found in contracts in the same sector of activity, with similar characteristics as described in section 2.4.3 of the Interpretative Guidelines on Regulation 1370/2007 ('Interpretative Guidelines').

(74) The first complainant further argues that the large discrepancy in the compensation cannot be explained by overall market developments.

([78]) Section 4.2 of the submission dated 1 December 2020, Document No 1166707.

([79]) According to the first complainant, the results obtained from this comparison have been (conservatively) extrapolated to the routes which are part of packages which have not yet been competitively tendered. The services to be performed under both directly awarded PSO contracts and the competitively tendered contracts have been contrasted to ensure that the comparison is sufficiently like for like to yield meaningful estimates of overcompensation.

([80]) Submission of the complainant dated 1 December 2020, Document No 1166707, section 5.1.

(75) The first complainant claims that the definition of reasonable profit in the PSO contracts does not correspond to the definition of reasonable profit set out in the ESA's guidelines on rules on public service compensation State ownership of enterprises and aid to public enterprises ([81]). The cost estimates used to calculate compensation are likely to be excessive ([82]) and the revenue estimates used to calculate the compensation are likely to be too low.

(76) The first complainant claims that the return on capital employed ('ROCE') used by the Norwegian authorities is inadequate and excessive (7 %). Further, that the ROCE is not supported by the benchmarking report referred to by the Norwegian authorities ([83]).

(77) The first complainant particularly emphasises the fact that one of five operators initially included in the benchmarking report, Transdev, which had the lowest ROCE (1,1 %) among the five railway operators subject to the comparison, was subsequently removed from the benchmarking exercise by the Norwegian authorities. Had Transdev been included, the average ROCE of the five operators would be 5,6 % (median 6,4 %) for the four-year period (2012-2015). The chosen ROCE was also not at par with, but higher than the average ROCE of the remaining four operators after excluding Transdev (6,8 %). Further, that the operators subject to the benchmarking exercise are not all comparable to Vy, as some of these operators have substantial operations of different nature, operate across a number of geographic markets and may apply different accounting standards.

(78) Furthermore, the median ROCE calculated in the benchmarking report is based on the early accounts and therefore includes the rate of return on capital on the operator's other operations, which does not necessarily reflect the ROCE achieved on competitively tendered public service contracts for PSO. The first complainant also contends that the risk faced by a monopolist does not justify a level of return which is comparable to return levels generated by operators which are exposed to competition ([84]).

(79) The first complainant further contends that the compensation payments are not limited to compensation in return for the discharge of public service obligations, as required by Article 4(1)(a) of Regulation 1370/2007. The PSO contracts appear to include routes which an operator would be willing and able to operate without any compensation. The parameters for the calculation of the compensation under the PSO contract have not been established in advance as required by Article 4(2)(b) of Regulation 1370/2007 nor do the contracts determine the arrangements for the allocation of costs as required by Article 4(1)(c) of Regulation 1370/2007.

(80) The first complainant further argues that the *ex post* mechanism only sets out the ceiling for Vy's result that determines the profit sharing between Vy and the contracting authority. It does not provide for the necessary monitoring, nor for an obligation of repayment should the monitoring show that there has been overcompensation. Further, such a profit cap does not in itself provide any incentive to reduce costs. Efficiency incentives should focus on reducing cost and/or increasing the quality or level of the service.

(81) The first complainant alleges that Vy's railway passenger services between Oslo and Gothenburg have been, and are being, cross-subsidized by the compensation awarded to Vy for the PSO under the directly awarded contracts for the route from Oslo to Halden. The employed metrics for separation of costs between commercial and PSO routes fail to account for the demand network effects generated by combining the procedure Oslo-Halden service with the Halden-Gothenburg service.

(82) Furthermore, Vy seems to enjoy access to excess train capacity, originally intended for use in services covered by the PSO contracts, which Vy uses for its commercial service on the Oslo-Halden-Gothenburg route. Moreover, the onboard personnel as well as the ticket distribution system employed are the same for the service provided under the PSO contracts as for Vy's commercial service. Hence, Vy's commercial service can utilize these key inputs at excessively favourable terms.

([81]) Available here.
([82]) The first complainant refers to a report from the Railway Authority from 2016.
([83]) Submission of the first complainant dated 4 June 2021, Document No 1205522.
([84]) Submission of the first complainant dated 4 June 2021, Document No 1205522.

(83) The first complainant contends that no *ex post* checks have been established to avoid overcompensation nor have the Norwegian authorities demonstrated appropriate separation of accounts or the method for allocation of direct and common cost between the PSO contracts and between the PSO contracts and Vy's commercial operations.

(84) The first complainant refers to a report from the Office of the Auditor General of Norway ('OAG') from 2003 ('the 2003 OAG report'), ([85]) which states that '[t]*he Ministry of Transport bases its relation to NSB on trust and has so far not conducted any independent controls or evaluations of the relevance and reliability of the reporting* [of NSB under the contracts]. *In a competitive regime in which several train operators compete for the procurement of passenger transport services on a route, this could change*'.

3.4.1.2. Existing *versus* new aid

(85) The first complainant argues that the overcompensation constitutes new unlawful individual aid, which has not been granted on the basis of an existing aid scheme, as defined in Article 1(d) of Part II of Protocol 3 to the Surveillance and Court Agreement. There is no legislative act establishing an aid scheme on the basis of which the PSO contracts concerned have been granted. Nor is there a set of circumstances which, taken as a whole, indicate a *de facto* existence of an aid scheme since the essential elements of such a scheme are not apparent ([86]).

(86) The complainant argues that the administrative procedure, as described by the Norwegian authorities, does not constitute the essential elements of an aid scheme. At most, it constitutes a general description of how the Norwegian authorities normally proceed when they acquire passenger transport services. Moreover, the Norwegian authorities have a discretion in determining the essential elements of the aid and as to whether it is appropriate to grant it.

(87) The complainant underlines that the Norwegian authorities have themselves admitted that since the State only buys services directly from one provider '[t]*his imbalance in access to information between the State as buyer and NSB as supplier gives NSB considerable power with regard to both content and price when the traffic contracts are negotiated* ([87]). Thus, the PSO contracts are individually negotiated, time limited contracts and do not constitute or are part of an aid scheme.

(88) Moreover, the measures existing at the entry into force of the EEA Agreement did not define the beneficiaries in a general and abstract manner as required by Article 1(d) of Part II of Protocol 3 to the Surveillance and Court Agreement, but rather defined Vy as the only beneficiary. The fact that the Norwegian authorities also purchased services from SJ, does not change this fact, but demonstrates that the Norwegian authorities had the power to conclude contracts also with other operators. If anything, it demonstrates that the scheme was altered in that the number of beneficiaries eligible for the aid scheme has increased ([88]).

(89) The first complainant further contends that the requirements for the second definition for an aid scheme, set out in Article 1(d) of Part II of Protocol 3, is not fulfilled either, as the aid is not awarded for an indefinite period of time and/or for an indefinite amount, as the PSO Contracts contain provisions limiting the amount of the aid and all have provisions setting out their duration and the termination of operations.

(90) If it were to be considered that an aid scheme existed before, and is still applicable after, the entry into force of the EEA Agreement, the complainant submits that that aid scheme has been substantially altered and therefore constitutes new aid.

(91) The complainant argues that both the change in the duration of the aid as well as the increase in budget through the years is an alteration to existing aid within the meaning of Article 1(c) of Part II of Protocol 3.

([85]) *Riksrevisjonen, Dokument nr. 3:4 (2003-2004), Riksrevisjonens undersøkelse av statlig kjøp av persontransporttjenester fra NSB*.
([86]) Submission of the first complainant dated 29 January 2021, Document No 1177273.
([87]) *Meld. St. 27 (2014-2015)*, page 13.
([88]) Submission of the first complainant dated 4 June 2021, Document No 1205522.

(92) The complainant also considers the Norwegian Railway reform of 2017, the restructuring of the State actors in the sector and the opening up for competition in the market is capable of influencing the assessment of the compatibility of the aid with the functioning of the EEA Agreement, which results in an alteration to existing aid within the meaning of Article 1(c) of Part II of Protocol 3. The introduction of the *ex post* mechanism also shows that the alleged aid scheme has not remained unaltered.

(93) Furthermore, that the rules adopted in 1998 by the Ministry of Transport which, according to the complainant, established a new system of how the Norwegian authorities concluded agreements with Vy for the provision of passenger railway services, constitutes a change which would have turned existing aid into new aid.

3.4.2. *Second complaint*

3.4.2.1. The PSO contracts and the legal framework

(94) The second complainant alleges that the PSO contracts directly awarded to Vy for the period 2018-2022 ([89]) entail overcompensation which constitutes aid in contravention of Article 61 of the EEA Agreement and is incompatible with the EEA Agreement by virtue of Regulation 1370/2077, as implemented, and read in conjunction with Article 49 of the EEA Agreement.

(95) According to the second complainant, the overcompensation for 2018-2022 amounts to at least NOK 6 billion and likely more than NOK 7 billion. The estimate is based on a comparison of the compensation granted to Vy under the directly awarded contracts with the compensation included in the contracts awarded after the public tenders for the corresponding services. Vy's bid for the aborted tender for Traffic package 4 is further evidence of its excessive overcompensation.

(96) The complainant alleges that the compensation granted to Vy under the directly awarded PSO contracts fails to meet the requirement in point 2 of the Annex to Regulation 1370/2007, because it exceeds what is necessary to cover the net cost incurred thought discharging the public service obligations. The compensation is not restricted to reasonable profit, as defined in point 6 of the Annex.

(97) According to the complainant, the compensation has not been based on actually incurred costs and actually generated revenues, but *ex ante* estimated costs and revenues. The parameters for the compensation were not established in advance in an objective and transparent manner. The combined effect of the *ex ante* method and the *ex post* mechanism in the contracts do not promote the maintenance or development of effective management that can be objectively assessed.

(98) The complainant contends that the benchmarking by the Norwegian authorities to establish the appropriate profit level of the PSO contracts is manifestly deficient and unreliable. The report on which the benchmarking is based was not commissioned for the purposes of determining the appropriate level of reasonable profit for the PSO contracts. The report was not based on objective criteria by an independent expert and was influenced by the Ministry of Transport. The comparison with other identified operators for benchmarking is misleading because it includes other services that were not properly disaggregated from the dataset and concerns a limited time frame concerning limited selection of companies which also includes bus companies.

(99) According to the complainant, the data used in the report is also based on different accounting standards, a difference which has not been taken into consideration in the report. The Norwegian authorities incorrectly identified the capital employed and liabilities for the purposes of the directly awarded contracts. The report also excludes certain companies from the benchmarking without explaining the criteria applied and how these exclusions affected the end result.

(100) The complainant further points to the fact that the Norwegian authorities on their own initiative excluded Transdev from the benchmarking, despite the author of the report not finding a reason to exclude that operator. With Transdev included, the average ROCE would be 5,6 % instead of 6,8 % after removing them. The complainant further states that the Norwegian authorities failed to provide an update of the allowed ROCE during the contract period. A circular estimate was used to calculate ROCE for the 5 to 7 years contract period which assumes that Vy will always be successful and earn 'reasonable profit'. It is neither clear how the Norwegian authorities decided on the base capital employed for the relevant services nor how they decided on the liabilities that would be relevant for the contracts.

([89]) The second complaint concerns the same directly awarded PSO contracts as the first complaint.

(101) Furthermore, the Norwegian authorities failed to adjust ROCE for Vy downwards to account for the lower risk for directly awarded contracts compared to tendered contracts.

(102) The second complainant further claims that the 2016 investigation by the Railway Authority supports that Vy likely has been allowed to inflate its internal costs to extract extra profits ([90]).

(103) The directly awarded contracts fail to include a working refund mechanism, because the PSO contracts merely set out the ceilings for the aid beneficiary's results that determine the profit sharing with the State and significant profit ranges. There are no practical provisions for the necessary monitoring to this end, or even a working refund mechanism.

(104) The complainant alleges that the procedure that the Ministry of Transport appears to have followed indicates that when the parties negotiated their contracts, the proposal for the scope of the public service obligation emanated from Vy/NSB and not the Ministry of Transport ([91]). According to the second complainant, this undermines both the argument of the Norwegian authorities that the PSO compensation constitutes an aid scheme but also the compatibility with Regulation 1370/2007.

3.4.2.2. Pension costs

(105) The second complainant alleges that the grant awarded to Vy in 2017 of up to NOK 1414 million to cover its pension costs and the aid released so far, constitutes new and unlawful State aid in contravention of Article 61 of the EEA Agreement.

(106) All employees of Vy lost their status as civil servants in the reorganisation that became effective on 1 December 1996. Vy was not obliged to use SPK but continued to do so on a voluntary basis. It was therefore for Vy to make provisions for its own pension costs in its accounts from 1 December 1996, based on the earning it retained. Vy verified with SPK that there was no shortfall at the time of the reorganisation in 1996. It was therefore possible for Vy to receive updated balances from the SPK to see whether it had accrued a positive or negative balance.

(107) The second complainant states that the alleged structural disadvantage does not remove the measure from the scope of State aid rules. There is no structural disadvantage in this case, as Vy's employees lost their status as civil servants in 1996 and Vy was under no obligation to continue their membership in SPK.

(108) The second complainant claims the pension subsidy is not compatible with Regulation 1370/2007 as part of the compensation for 'cost of staff' as such costs have already been included in the compensation and cannot be paid twice. The pension subsidy is operating aid outside the remit of Regulation 1370/2007, which is unlawful and incompatible and does not form part of an existing aid scheme which would, in any event, have to be considered substantially altered and therefore constitute new aid.

3.4.2.3. Existing *versus* new aid

(109) The second complainant submits that all of the contested aid constitutes new and unlawful aid that must be recovered from Vy. None of the aid constitutes existing aid under an existing aid scheme.

(110) According to the complainant, there is no legislative act establishing an aid scheme on the basis of which the aid has been granted. The stringent conditions for showing a *de facto* aid scheme have also not been met. The alleged act on which the PSO compensation scheme is based does not have any legal effects. The second complainant contends that the term 'act' connotes by most language versions if not a legislative measure than at least a measure that produces legal effects.

([90]) Letter from the Norwegian Railway Authority dated 2 November 2016 informing Vy (NSB at the time) that the case concerning capital injection to CargoNet would be closed.

([91]) Submission of the second complainant dated 30 November, Document No 1333820, paragraph 203.

(111) The description of the administrative procedure alleged by the Norwegian authorities to establish an aid scheme does not set out the essential elements of an aid scheme but rather sets out a general description of the steps the Government takes when it contracts transport services from Vy. It rather demonstrates that the Government has discretion to determine the essential elements of the compensation and whether it should be granted, which in itself disqualifies the existence of an aid scheme as it constitutes implementing measures.

(112) According to the complainant, the Norwegian authorities have not demonstrated that the alleged administrative practice has been consistent throughout the duration of the alleged scheme and that the compensation under the PSO compensation system has been limited to compensating for net financial effects.

(113) Documentation and internal rules from the time of the initiation and duration of the PSO compensation scheme, as well as internal rules, do not refer to administrative practice underpinning the alleged aid scheme.

(114) Furthermore, the decision to grant compensation, including setting the amount, is taken only after negotiations with the aid beneficiary. The powers of the Government are not limited to technical application of the provisions of the alleged scheme. The beneficiaries of the scheme are not defined in a general and abstract manner as there is only one beneficiary, Vy, which also disqualifies the existence of an aid scheme.

(115) The second complainant further states that the Ministry of Transport in 1998 enacted formal rules exclusively ('the 1998 rules') governing its procurement of passenger railway services from Vy (NSB at the time), which demonstrate that no aid scheme existed as those rules named one beneficiary, Vy (then NSB) and that there is no reference to an administrative practice on which the scheme is based ([92]).

(116) According to the second complainant, the existence of the 1998 rules further demonstrates that SJ could not have been awarded aid under the same scheme, which means that the fact that the Norwegian authorities awarded PSO routes to SJ does not demonstrate that the beneficiaries under the alleged aid scheme were defined in a general and abstract manner. Moreover, if the alleged aid scheme would have been altered to show that operators, like SJ, were included, this would in any event have been a significant alteration rendering the scheme new and not existing aid.

(117) The second complainant alleges that the rules under which the 1998 rules were adopted, which apply to all ministries, set out various administrative and procedural obligations which have not been complied with by the Ministry of Transport.

(118) The second complainant further states that none of the aid measures at issue constitute existing individual aid. Furthermore, the aid is not granted for an indefinite period of time or for an indefinite amount, as the contracts limit the aid granted and have a specific duration.

(119) If an aid scheme were to have existed at the time of the EEA Agreement, it would in any event have to be considered as substantially altered on repeated occasions and therefore constitute new aid.

(120) The second complainant lists examples of what should be considered substantial changes, such as the reform of the compensation for PSO contracts on 1 January 1994. According to the complainant, this reform included a substantial departure from its alleged consistent administrative practice, whereby the State earlier had granted compensation retrospectively to cover the aid beneficiary's total deficit, whereas it now would move towards a system where the State would grant compensation in advance to the operator.

([92]) *Regler for samferdselsdepartementets forvaltning av ordningen med statlig kjøp av persontransporttjenester med jernbane, fastsatt 9 september 1998.*

(121) The reorganisation of Vy with effect from 1 December 1996, the alteration of the 1996 Railway Act in 2005, where a new chapter was included to open up for public tenders for rail passenger services and an increase in the original budget of the alleged aid scheme of more than 20 % and the extended duration constituted a substantial alteration to the alleged scheme. The decision to amend the Railway Act and in 2017 implement the Railway reform to open up the market to competition and concurrently directly award the 2018 and 2019 PSO contracts was also a substantial alteration. Further, the decision in 2018 to retroactively insert a new compensation and *ex post* mechanism in all directly awarded contracts was a substantial alteration.

(122) The second complainant further claims that the decisions in both 2002 and 2017 to grant the pension subsidies and thereby compensate Vy twice for the same cost, was a substantial alteration.

3.4.3. *Third complaint*

(123) The third complaint raises the same points and arguments which have been addressed by the first and second complaints.

3.5. ***Comments by the Norwegian authorities***

3.5.1. *Measure 1: PSO contracts*

(124) According to the Norwegian authorities, the compensation granted under the directly awarded PSO contracts is granted in compliance with Regulation 1370/2007.

(125) The Norwegian authorities point out that the Interpretative Guidelines highlight that the rules of Regulation 1370/2007 do not only aim at preventing overcompensation but also to ensure that the offer of public services is financially sustainable. The public service obligation should therefore be appropriately compensated so that the operator's own funds under a PSO contract are not eroded in the long run.

(126) The Norwegian authorities gathered information on railway passenger service operators comparable to Vy. The *ex post* mechanism and the level of the reasonable profit in the PSO contracts are the result of that benchmarking exercise and relies on return on capital employed ('ROCE').

(127) The benchmarking has been done against operators exposed to competition which is in line with the Guidelines on the application of the State aid rules to compensation granted for SGEI ('the SGEI Guidelines'). Due to the lack of sufficient number of railway operators subject to competitive tendering, the benchmarking report covers a limited number of bus operators which is accepted by the Interpretative Guidelines, provided that the particular characteristics of each sector are taken into account, which the Norwegian authorities state has been done.

(128) The commercial risk rests almost entirely with Vy, underpinning that it was appropriate to set the reasonable profit within the upper half of the range of the benchmarks gathered. Any reduced risk in the PSO contracts is taken into account through the implementation of the *ex post* mechanism.

(129) The PSO contracts transfer a significant risk on the operator as there is no compensation in case of extraordinary losses but extraordinary profits are subject to claw-back. The mechanism employed does not result in overcompensation based on the average tied-up capital over the contract period. The negotiations of the PSO contracts typically centre on the relationship between the level of risk and the likelihood of achieving efficiencies.

(130) The *ex post* mechanism covers the entire contract period of the PSO contracts and allows for incremental profit sharing between the parties and provides an effective efficiency incentive as envisaged by the Interpretative Guidelines as well as ensuring that the compensatory payments are not higher than the actual net cost for the provision of the PSO over the lifetime of the contract ([93]).

([93]) Submission of the Norwegian authorities dated 12 April 2021, Document No 1193749.

(131) According to the Norwegian authorities, there are no provisions neither in Regulation 1370/2007, its Annex, the Interpretative Guidelines nor the SGEI Guidelines supporting the complainants' claim that it would be possible to determine the existence of overcompensation by means of an *ex post* comparison with benchmarks not available at the time of the conclusion of the contract.

(132) The Norwegian authorities point out that there are different mechanisms determining the compensation for tendered and directly awarded contracts and refer to reasons why the compensation requested under the tenders is lower than the compensation under the directly awarded contracts. For example, under the directly awarded contracts Vy was required to invest in railway infrastructure and new trains, introduce a new line which doubled the capacity, decreased travel time and provided new connections. The Norwegian authorities further point to the difference in duration of the two types of contracts. The directly awarded contracts also included higher pension costs.

(133) The Norwegian authorities state that any arguments concerning overcompensation in relation to the Oslo-Halden-Gothenburg route are unsubstantiated. The Norwegian authorities state that it is fully in line with Regulation 1370/2007 to award compensation for a PSO on the domestic part of a cross-border route. Sufficient measures have been taken to ensure that the costs of operation of these trains are not solely allocated to the public service activities but split proportionally between the services. The accounts of the PSO operations and the commercial operations are separated in accordance with point 5 of the Annex.

(134) Furthermore, according to the Norwegian authorities the induced network effects are designed to benefit passengers and the sharing of costs between the routes imply synergies and lead to lower cost for the PSO. Any quantifiable financial benefits from this arrangement have been deducted from the cost for which the compensation is claimed.

(135) The Norwegian authorities have further explained that Vy does not obtain other terms than any other train operator for rolling stock and the ticket distribution system. The articles of associations of the relevant entities state that their services must be provided on competitively neutral terms and are priced based on cost coverage and market conform profit margin.

3.5.2. *Measure 2: Pension costs*

(136) The Norwegian authorities have stated that the grant provided to Vy to cover the adjustment obligation stemming from Vy's withdrawal from SPK has not been awarded in breach of the EEA State aid rules, as the measure is part of an existing aid scheme, the same scheme as under which the Norwegian authorities purchase PSO railway passenger services.

(137) The measure is part of the compensation granted under the directly awarded PSO contracts between the Norwegian authorities and Vy as cost of staff in line with Article 4(1)(c) of Regulation 1370/2007. The payments to Vy for the transition costs are related to pension rights earned under the entire period that each employee has been employed in Vy. It is therefore natural to relate those costs to the compensation for PSO contracts under the existing aid scheme.

(138) The grant to Vy for the adjustment obligation is a result of unforeseen accumulated pension costs which were only known if and at the time of withdrawal from SPK and therefore does not constitute an alteration of the existing aid scheme. In any event, the measure is not subject to notification according to Article 9 of Regulation 1370/2007.

(139) The Norwegian authorities state that it is not correct that the employees were no longer entitled to pension schemes in SPK after the reorganisation in 1996. Decisions were made by the Ministry of Transport and finally the Parliament to include the employee positions of the special statutory company in SPK, leaving the employees in Vy entitled to membership in the SPK also after 1996.

(140) The need to discharge the obligation to adjust deferred future pension disbursements at withdrawal from SPK is not due to a shortfall or underfinancing of a pension fund in SPK and does not result in compensation being paid twice as alleged by the second complainant.

(141) Running premiums during SPK membership cannot, and are not meant to, finance adjustment of deferred pension entitlements and pensions under disbursement for the unforeseeable future. These are meant to be adjusted once a year to take account of that year's salary-and price development, until the last retired employee has deceased.

(142) When the adjustment obligation in a certain extraordinary case is fulfilled as a one-off payment at withdrawal from SPK, the fund estimates such future developments at the time of withdrawal. Hence, the amount of the one-off payment in 2019, could not have been off-set before the withdrawal from the SPK was decided and effectuated.

(143) The adjustment obligation related to the scheme under SPK is expensive and entails a structural disadvantage compared to competitors who are not obliged to cover such historical costs. The Norwegian authorities refer to case-law under which it has been stated that contributions with the aim of neutralizing any structural disadvantages should normally not be considered as aid in the meaning of Article 61(1) of the EEA Agreement.

(144) The Norwegian authorities refer to the judgment of the General Court in case *Deutsche Post* ([94]) which concerned public funding of pension costs for Deutsche Post's employees. The Court stated that a measure of intervention, which does not have the effect of putting the undertakings to which it applies in a more favourable competitive position than the undertakings competing with them, is not caught by Article 61(1) of the EEA Agreement.

(145) According to the Norwegian authorities, the grant for the adjustment obligation did not put Vy in a more favourable competitive position. The actual contribution granted to Vy did not even neutralize the structural disadvantage but rather lowered it as Vy faced a major net expenditure due to the withdrawal of SKP.

3.5.3. *Existing versus new aid*

(146) The Norwegian authorities state that the PSO contracts fall within the existing aid scheme identified by ESA in its preliminary assessment in 2017. No substantial alterations have occurred to the scheme since that assessment.

(147) The act upon which the scheme is based is therefore the consistent administrative practice of awarding PSO contracts for the provision of railway passenger services. No further implementing measures are required for the aid to be awarded. A discretion to not grant the aid does not affect the conclusion as certain degree of discretion is inherent in any aid awarded under most aid schemes. The beneficiaries are defined in a general and abstract manner. The provisions providing for the scheme do not restrict the award of the PSO contracts to Vy but apply to all railway undertakings performing PSO under a contract with the Norwegian authorities ([95]).

(148) The PSO compensation scheme therefore constitutes an aid scheme within the meaning of Article 1(d) of Part II of Protocol 3. For schemes, such as the PSO compensation scheme with no limitation in time and without a clearly defined budget, the second criterion of an aid scheme set out in Article 1(d) of Part II of Protocol 3 is also fulfilled.

(149) The PSO contracts dating from before the entry into force of the EEA Agreement were the result of considerations and practice that have remained unaltered with regard to the essential elements until and including the contracts subject to the complaint.

([94]) Judgment of 14 July 2016, *Germany* v *Commission*, T-143/12, EU:T:2016:406. The Norwegian authorities refer, in particular, to paragraphs 110, 130 and 143 of the judgment.

([95]) Submission of the Norwegian authorities dated 12 April 2021, Document No 1193749.

(150) Since before the entry into force of the EEA Agreement, the Norwegian authorities have awarded PSO contracts for passenger railway services directly to concession holders based on consistent administrative practice, where the compensation would be determined *ex ante*, based on cost-estimates, and negotiations, and subject to approval by the Norwegian Parliament through its decisions on the annual State budget.

(151) In addition, there is a general administrative requirement in Norwegian law providing that the use of public funds is limited to the amount required for procuring services as specified for the intended purpose. This principle has been implemented in the PSO contracts concluded throughout the lifetime of the system. The PSO compensation system has therefore been built on and continuously adhered to the principle of compensating the net financial effect of the PSO ([96]).

(152) There may have been minor refinements of the method of calculating the net financial effect (i.e. modifications of purely formal or administrative in nature) but the essential elements of the scheme have remained unaltered.

(153) The Norwegian authorities contend that all events argued to be alterations to the existing aid do not affect the essential elements of the aid scheme and therefore cannot constitute a change capable of turning the existing aid into new aid within the meaning of Article 1(c) of Part II of Protocol 3.

4. **Presence of State aid**

4.1. ***Introduction***

(154) 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.'

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

4.2. ***Presence of State resources***

4.2.1. *Measure 1: the PSO contracts*

(156) The compensation to Vy under the PSO contracts is paid by the State from the State's budget and is granted on the basis of a parliamentary approval and a decision by the Ministry of Transport to conclude the PSO contracts. The compensation paid to Vy for discharging the PSO is therefore granted by the State through State resources.

4.2.2. *Measure 2 – Pension cost*

(157) The grant to Vy to cover the adjustment obligation resulting from the withdrawal of Vy from SPK is paid by the State and from the State's budget. The grant is therefore made by the State through State resources.

4.3. ***Conferring an advantage on an undertaking***

4.3.1. *Introduction*

(158) The measures must confer on Vy an advantage that relieve it of charges that are normally borne from its budget.

([96]) Submission of the Norwegian authorities dated 12 April 2021, Document No 1193749.

4.3.2. *Measure 1 – the PSO contracts*

(159) It follows from the judgment of the Court of Justice in *Altmark* that, with respect to compensation granted to undertakings entrusted with a service of general economic interest ('SGEI'), the presence of an advantage within the meaning of Article 61(1) of the EEA Agreement, can be excluded where the following four cumulative conditions are fulfilled: ([97])

I. First, the recipient undertaking must actually have public service obligations to discharge and such obligations must be clearly defined.

II. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.

III. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

IV. Fourth, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(160) ESA has published guidelines on the application of the State aid rules to compensation granted for SGEI ([98]). The *Altmark* conditions are addressed in Section 3 of those guidelines.

(161) The Norwegian authorities have not provided information demonstrating that the *Altmark* conditions are fulfilled in relation to the PSO contracts. As the compensation provided under the PSO contracts was not granted following a public procurement procedure and the fact that the Norwegian authorities have not provided evidence demonstrating that the compensation is the result of a benchmarking exercise with a typical undertaking, well run and adequately provided with the necessary means, ESA notes that the fourth *Altmark* condition does not appear to be fulfilled.

(162) Due to the cumulative nature of the *Altmark* conditions, if any of the conditions are not fulfilled, the compensation will be deemed to constitute an advantage within the meaning of Article 61(1) of the EEA Agreement. ESA therefore finds that the compensation under the PSO contracts appears to confer an advantage on Vy.

4.3.3. *Measure 2 – Pension cost*

(163) The Norwegian authorities claim that the measure is a compensation for a structural disadvantage and does therefore not constitute State aid as there has been no advantage granted.

(164) To assess whether the measure to cover Vy's pension costs, which materialised due to its withdrawal from SPK, granted an advantage to Vy, it needs to be determined whether such costs may be considered as normally included in the budget of an undertaking.

([97]) Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415.

([98]) Application of the State aid rules to compensation granted for the provision of services of general economic interest (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1).

(165) The notion of advantage covers all situations in which economic operators are relieved of the inherent costs of their economic activities ([99]). The notion of an advantage is based on an analysis of the financial situation of an undertaking in its own legal and factual context with and without the measure in question ([100]).

(166) Financial obligations related to pension rights form part of an undertaking's labour costs and therefore constitute normal costs of the undertaking regardless of whether the obligations are imposed on the undertaking by law, collective agreement or undertaken voluntary ([101]).

(167) As a member of SPK, Vy was legally responsible for payments of the adjustment obligation which forms part of the earned pension rights under the scheme for Vy employees. ESA therefore considers these costs as normally included in the budget of the undertaking.

(168) The Norwegian authorities have referred to case-law in which the General Court has found that a measure which is intended to relieve a structural disadvantage stemming from privileged and costly status of public officials by comparison with that of employees of that undertakings' private competitors does not, in principle, constitute a measure lightening the charges which are normally included in the budget of an undertaking and therefore does not constitute aid ([102]).

(169) However, the General Court and the Court of Justice have repeatedly found that the existence of an alleged structural disadvantage is not relevant for excluding the existence of an advantage and thus of State aid ([103]).

(170) The Court of Justice stated that '[…] *to date, the only situation recognised by the Court's case-law in which the finding that an economic advantage has been granted does not lead to the measure at issue being categorised as State aid within the meaning of Article 107(1) TFEU is that in which a State measure represents the compensation for the services provided by undertakings entrusted with performing a service in the general public interest in order to discharge public service obligations, in accordance with the criteria established in the judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, EU:C:2003:415).*' ([104])

(171) In light of the above, ESA takes the view that the measure appears to entail an advantage to Vy.

4.4. ***Selectivity***

(172) The measure must be selective in that it favours 'certain undertakings or the production of certain goods'. The measures subject to this decision relate exclusively to Vy and are therefore selective.

4.5. ***Effect on trade and distortion of competition***

(173) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

([99]) ESA's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement ('NoA') (OJ L 342, 21.12.2017, p. 35), paragraph 68.

([100]) NoA, paragraph 72.

([101]) NoA, paragraph 68.

([102]) Judgment of 14 July 2016, *Germany* v *Commission*, T-143/12, EU:T:2016:406; Judgment of 16 March 2004, *Combus*, T-157/01, EU:T:2004:76.

([103]) Judgment of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, EU:C:2011:368; Order of the President of 10 June 2014, *Stahlwerk Bous* v *Commission*, T-172/14 R, EU:T:2014:558, paragraphs 59 and 60; Judgment of 16 September 2013, *British Telecommunications and BT Pension Scheme Trustees* v *Commission*, T-226/09 and T-230/09, EU:T:2013:466, paragraph 71; Judgment of 26 October 2016, *Orange* v *Commission*, C-211/15 P, EU:C:2016:798; Judgment of 13 December 2017, *Greece* v *Commission*, T-314/15, EU:T:2017:903.

([104]) Judgment of the Court of Justice of 26 October 2016, *Orange* v *Commission*, C-211/15 P, EU:C:2016:798, paragraph 44.

(174) According to case-law of the Court of Justice of the European Union and the EFTA Court, it is not necessary to establish that the aid has a real effect on trade between the Contracting Parties to the EEA Agreement and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition ([105]). Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade.

(175) The measures grant an advantage to an undertaking which operates both in the Norwegian passenger railway market, which has been liberalised, and in other EEA States. Furthermore, operators from other EEA States are active on the Norwegian passenger railway market. Account should also be taken of competition between the different modes of transport, for example bus passenger transport.

(176) Therefore, ESA finds that the measures are liable to distort competition and affect trade between Contracting Parties to the EEA Agreement.

4.6. *Conclusion on the existence of aid*

(177) Based on the information provided by the Norwegian authorities and the three complainants, ESA takes the preliminary view that the two measures subject to this decision, appear to fulfil all the criteria in Article 61(1) of the EEA Agreement and therefore constitute State aid.

5. Existing *versus* new aid

5.1. *Legal framework*

(178) According to Article 62(1) of the EEA Agreement and Article 1(1) of Part I of Protocol 3, ESA shall, in co-operation with the EFTA States, keep under constant review all systems of existing aid in those States and propose to the latter any appropriate measures required by the progressive development of or by the functioning of the EEA Agreement.

(179) Article 1(b)(i) of Part II of Protocol 3 defines 'existing aid' as all 'aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA State, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement.' Alterations to such aid represent new aid according to Article 1(c) of Part II of Protocol 3.

(180) Article 4(1) of ESA's Decision No 195/04/COL on the implementing provision referred to under Article 27 of Part II of Protocol 3 ('Decision No 195/04/COL') defines alteration of existing aid as '*any change, other than modification of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market*' ([106]).

(181) Article 1(d) of Part II of Protocol 3 provides that an 'aid scheme' is: (i) 'any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner' or (ii) 'any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'.

5.2. *Aid scheme*

5.2.1. *First definition of an aid scheme*

(182) The first definition of an 'aid scheme' in Article 1(d) of Part II of Protocol 3 entails the following three criteria:

i. any act on basis of which the aid can be awarded;

([105]) Judgment of 20 May 1999, *Norway* v *ESA*, Case E-6/98 [1999] EFTA Ct. Rep. 76; Judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 66; Judgment of 8 May 2013, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77.

([106]) Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3, available at: http://www.eftasurv.int/media/uncategorized/2017-Consolidated-version-of-Dec-195-054-COL–002-.pdf.

ii. which does not require any further implementing measures; and

iii. which defines the potential aid beneficiaries in a general and abstract manner.

5.2.1.1. Act on the basis of which aid can be awarded

(183) The term 'act' in Article 1(d) of Part II of Protocol 3 refers to the measures constituting an aid scheme from which it is possible to identify the essential characteristics necessary for that act to be classified as a State aid measure, for the purposes of Article 61(1) of the EEA Agreement ([107]).

(184) The practical effectiveness of State aid control speaks in favour of a broad interpretation. While Article 1(e) of Part II of Protocol 3 concerns aid in individual cases, point (d) of Article 1 covers aid in a large number of similar cases. The effectiveness of the surveillance work would be jeopardised if States were able to prevent an abstract aid scheme from being reviewed by moving from the statutory to the administrative level. ESA would then have to deal with all decisions individually, even if they are similar ([108]).

(185) While the term traditionally may refer to the measures which form the legal basis of an aid scheme, it may, in certain circumstances, also refer to a consistent administrative practice by the authorities of EEA States, where that practice reveals a 'systematic approach', the characteristics of which satisfy the requirements laid down in Article 1(d) of Part II of Protocol 3 ([109]).

(186) This interpretation has been confirmed by the Court of Justice ('CJEU'), which has stated that a set of circumstances which, taken as a whole, can indicate the *de facto* existence of an aid scheme ([110]). An 'act' can therefore be found to exist based on a legal act and administrative practice by the authorities when that practice reveals 'a systematic approach', even if the practice extends beyond the wording of the legal provisions forming part of the act.

(187) An administrative practice is a practice that is, to some degree, of a consistent and general nature ([111]). Such a practice is consistent if it has been developed in such a way as to give the impression that cases in a certain category are always treated in this way ([112]).

(188) The second complainant refers to the judgment of the CJEU in *Pleuger Worthington* where the CJEU stated that '[t]*he Commission has merely confined itself to showing that all aids were granted under the same procedure*' ([113]). In this case, the aid measures in question were merely granted under the same budget heading and the same administrative body made decisions on the grant of the measures. However, the CJEU considered that the common nature of the measures or a common objective had not been demonstrated in this particular case.

([107]) Judgment in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741, paragraph 78.

([108]) Opinion of Advocate General Kokott in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraphs 64 and 65.

([109]) Judgment in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741, paragraph 79. Existing 'aid schemes' have been held to encompass non-statutory customary law ESA Decision No 405/08/COL closing the formal investigation procedure with regard to the Iceland Housing Financing Fund (OJ L 79, 25.3.2010, p. 40 and EEA Supplement No 14, 25.3.2010, p.20), and administrative practice related to the application of statutory and non-statutory law. See Commission Decision No E-45/2000 Fiscal exemption in favour of Schiphol Group (OJ C 37, 11.2.2004, p. 13). Decision No 75/16/COL to propose appropriate measures regarding the use of publicly owned land and natural resources by electricity producers in Iceland as well as a combination of an unwritten old legal principle combined with widespread practice across the State.

([110]) Judgment in *Germany and Pleuger Worthington* v *Commission*, C-324/90, EU:C:1994:129, paragraphs 14 and 15.

([111]) Judgments in *Commission* v *Germany*, C-387/99, EU:C:2004:235, paragraph 42; and Judgment in *Commission* v *Ireland*, C-494/01, EU:C:2005:250, paragraph 28.

([112]) Opinion of Advocate General Kokott in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraph 74.

([113]) Judgment in *Germany and Pleuger Worthington* v *Commission*, C-324/90, EU:C:1994:129, paragraph 23.

(189) It is an established approach by the CJEU that a consistent administrative practice can constitute an 'act'. This is indeed confirmed in the same judgment where the CJEU also stated that '[c]*ertainly, the Commission may not in principle be barred from relying on a set of circumstances which taken as a whole indicate the de facto existence of an aid programme*. […]' ([114]).

(190) The second complainant has stated that accepting the PSO compensation system as an administrative practice constituting an 'act' would remove the distinction between an 'individual aid award' in Article 1(e) and an 'aid scheme' in Article 1(d) of Part II of Protocol 3, and that the system described by the Norwegian authorities is nothing more than a description of how they enter into PSO contracts.

(191) As described above, a consistent administrative practice, in certain circumstances, can constitute an act on which an aid scheme is based. This means that if State authorities have followed a consistent approach regarding how certain PSO contracts are entered into and has developed the method of treating a certain category of measures in the same way, that practice can constitute an 'act' within the meaning of Article 1(d) of Part II of Protocol 3.

(192) This does not mean that any practice of State authorities when entering into PSO contracts or other type of contracts will constitute an act. Whether it does, depends on how the approach by the State authorities has been practiced. It needs to be assessed whether the PSO compensation system in question, fulfils the requirements of an 'aid scheme' as set out in Article 1(d) of Part II of Protocol 3.

(193) The second complainant claimed that an administrative practice has to have legal effects to constitute an 'act'. An 'aid scheme' shall mean any act on the basis of which, without further implementing measure being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner.

(194) ESA considers that the legal effects of an act are inherent in an act which fulfils the requirement for an aid scheme to exist. That is, no further implementing measures are required and individual aid awards can be awarded based on the act in question. An administrative practice can establish legal consequences and thereby constitute an 'act' ([115]).

(195) The Norwegian authorities have directly awarded PSO contracts for railway passenger service since before entry into force of the EEA Agreement. The Norwegian authorities identify the transport needs and identify which passenger transport services are necessary to create an effective transport system with the desired capacity according to the transport policy. On this basis, the Norwegian authorities define the necessary train frequency and tariffs set out in the PSO contracts ([116]).

(196) The structure of this compensation system for the PSO contracts for railway passenger services was set up and, continues to be, operated to compensate the net financial effect of the PSO contracts ([117]). The compensation for the services is determined *ex ante*, based on estimation of the cost, and followed by negotiations between the Norwegian authorities and the operator. The outcome is subject to an approval by the Norwegian Parliament through its decisions on the annual State budget.

(197) The compensation system is based on administrative practice applying a systemic approach of concluding PSO contracts to secure the operation of certain passenger railway services in Norway in line with the principle of compensating the net financial effects of the obligations set out in the contracts.

([114]) Judgment in *Germany and Pleuger Worthington* v *Commission*, C-324/90, EU:C:1994:129, paragraph 15.
([115]) Opinion of Advocate General Kokott in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraph 64.
([116]) Submission of the Norwegian authorities dated 3 June 2021, Document No 1204940, page 5.
([117]) There is a general administrative requirement in Norwegian law providing that the use of public funds is limited to the amount required for procuring the service.

(198) The Norwegian authorities have explained that without broad political support, it would not be practically feasible to make any significant changes to the practice of the PSO compensation system ([118]). In support of this, the Norwegian authorities have noted that the railway reform described above in section 3.1.4, was subject to broad discussions in the Norwegian Parliament ([119]).

(199) The second complainant argues that the PSO compensation system is not based on a systematic approach which can constitute an administrative practice constituting an 'act' within the meaning of Article 1(d) of Part II of Protocol 3. The second complainant claims, *inter alia*, that the Norwegian authorities have not provided evidence from the long period of the operation of the alleged system ([120]).

(200) The Norwegian authorities have provided an example of a PSO agreement pre-dating the entry into force of the EEA Agreement ([121]) and compared the contract to the later contracts entered into within the PSO compensation system. The Norwegian authorities have explained that although the contract pre-dating the entry into force of the EEA Agreement is succinct compared to later agreements, it contains the same essential elements for all PSO contracts which the Norwegian authorities concluded consecutively. The PSO contracts clearly defined the public service obligations (routes and frequencies) and fixed the predetermined compensation, entailing that the commercial risk rests with the operator, and defined the Norwegian authorities as the purchaser of the public services ([122]).

(201) ESA considers that this assessment is not directly comparable to the assessment made in *Magnetrol* ([123]) referred to by the second complainant. In that case the Commission needed to assess a *contra legem* application of the law, which needed a further assessment to verify the consistent application of the disputed application. This is not the case here. The Norwegian authorities have provided information concerning the practice of entering into PSO contrasts and provided examples of such contracts and explained their different forms throughout the duration of the PSO compensation system.

(202) The Norwegian authorities referred to a White Paper from 1992 for a description of the PSO system before the entry into force of the EEA Agreement ([124]). According to the Norwegian authorities, the key principles underpinning the PSO compensation system were well established at the time. According to the White Paper, the Norwegian Government intended to maintain the provision of passenger transport services on commercially unviable routes and that it would be the State (and not the counties or municipalities) that would continue to purchase these services ([125]).

(203) The White Paper describes that the introduction of a system according to which the State would purchase services for a pre-determined price, rather than provide unspecified loss-covering operating aid, had brought about efficiencies and more commercially managed operators, and would therefore be continued. Negotiations concerning the amount of the compensation awarded would continue to be based on documented costs and that the compensation would remain fixed, entailing that the commercial risk would be borne by the operator ([126]).

(204) A similar account of the PSO system is given in the White Paper for the period 1996-1997, which also demonstrated that the results of the negotiations would lead to an almost automatic approval of the amount of the compensation by the Norwegian Parliament which is '*informed of the results*' and thereafter '*approves the amount for the public purchase in the course of the annual budget adoption*' ([127]).

([118]) Submission of the Norwegian authorities dated 3 June 2021, Document No 1204940.
([119]) White Paper *Meld. St. 27(2014 – 2015)*.
([120]) Submission of the second complainant, dated 30 November 2022, Document No 1333820, paragraph 170.
([121]) Submission of the Norwegian authorities, dated 3 June 2021, Annex I.
([122]) Submission of the Norwegian authorities dated 3 June 2021, Document No 1204940, page 6. Contract between Vy (then NSB) and the Ministry of Transport from 1991.
([123]) Judgment in *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741.
([124]) White Paper *St. meld. nr. 35 (1992-93). Innst. S. nr. 212. (1992-1992). Innstilling fra samferdselskomiteen om Norsk jernbaneplan 1994 – 97*.
([125]) *Ibid*, section 3.7.
([126]) *Ibid*, section 3.7.
([127]) White Paper *St. meld. nr. 39 (1996-97)*, section 4.5.

(205) The second complainant claimed that the 1998 rules did not include a reference to an administrative procedure upon which the PSO compensation system is based. ESA notes that the lack of such a reference does not demonstrate that such an administrative practice does not exist and that the 1998 rules rather seem to describe the procedure and the applicable rules in relation to the PSO system.

(206) The complainant claims that the compensation under the alleged aid scheme has not been limited to net financial effect and that the Norwegian authorities have failed to control for overcompensation verifying the *ex ante* estimates on which the PSO contracts are based ([128]). In this regard the complainant has referred to the 2003 OAG report, ([129]) which states that information provided and follow up from the PSO contracts was insufficient, but also the 2016 report from the Railway Authority which raised concerns over internal pricing ([130]).

(207) According to the Norwegian authorities, the principle of compensating the net financial effect has been applied to all contracts entered into under the PSO compensation system. Although the forms of the contracts have been amended during the lifetime of the system, the principles underpinning the calculation of the compensation have remained the same.

(208) In this respect ESA notes that allegations alluding to a lack of evaluation or follow up does not prejudice the conclusion that a systemic approach has been followed when compensating the net financial effect of the operator.

(209) Based on the information provided by the Norwegian authorities, ESA takes the preliminary view that the consistent administrative practice of the Norwegian authorities of concluding the PSO contracts, which compensate the net financial effects of the PSO, reveals a systematic approach which constitutes the act on which basis the PSO contracts are awarded.

(210) To determine whether an aid scheme exists however, it needs to be demonstrated that this act on which compensation system is based, satisfies all the requirements laid down in Article 1(d) of Part II of Protocol 3.

5.2.1.2. No further implementing measures required

(211) The existence of further implementing measure entails a degree of discretion on the part of the authority adopting the measure in question, allowing it to influence the amount of the aid, its characteristics or the conditions under which that aid is granted through subsequent acts ([131]).

(212) By contrast, the mere technical application of the act providing for the grant of the aid in question does not constitute a 'further implementing measure' within the meaning of Article 1(d) of Part II of Protocol 3 ([132]).

(213) The CJEU has stated in relation to the question of whether further implementing measures are necessary for the grant of individual aid under an aid scheme is intrinsically linked to the issue of determining the 'act' '[…] *on which that scheme is based. It is in the light of that act that it must be determined whether the grant of individual aid is conditional on the adoption of such measures or whether, on the contrary, that grant may be made on the basis of that act alone.*' ([133])

([128]) Submission of the second complainant, dated 30 November 2022, Document No 1333820, paragraph 170.

([129]) *Riksrevisjonen, Dokument nr. 3:4 (2003-2004), Riksrevisjonens undersøkelse av statlig kjøp av persontransporttjenester fra NSB*.

([130]) Letter from the Norwegian Railway Authority dated 2 November 2016 informing Vy (NSB at the time) that the case concerning capital injection to CargoNet would be closed.

([131]) For example, where a public body is empowered to use different instruments to promote the local economy and grants several aid measures in pursuit thereof, that implies the use of considerable discretion as to the amount, characteristics or conditions and purpose for which the aid is granted and is therefore not to be regarded as an aid scheme. See Commission Decision of 13 July 2011 in case SA.21654 *Public Commercial Property Aland Industrihus* (OJ L 125, 12.5.2012. p. 33), paragraph 110.

([132]) Judgment of 16 September 2021, *Commission* v *Belgium and Magnetrol International*, C-337/19, EU:C:2021:741, paragraph 105.

([133]) Judgment of 16 September 2021, *Commission* v *Belgium and Magnetrol International*, C-337/19, EU:C:2021:741, paragraph 106.

(214) Advocate General Kokott explained in her opinion in *Magnetrol* ([134]) that:

'If the aid scheme is based on a law, its application by the administration traditionally constitutes a possible further implementing measure. However, such further implementing measures do not exist if individual aid is granted solely on the basis of the law without the administration having any individual decision-making power.

The General Court is in principle correct to assume, in paragraph 87 of the judgment under appeal, that the national authorities cannot have any "margin of discretion". Rather, their power must be limited to technical application. It is only in this way that the existence of further implementing measures is precluded. The decisive question is therefore whether the authorities have real decision-making leeway or only bound decision-making competence. […].

If, however, as is the case here, a consistent administrative practice constitutes the act, there are generally no further implementing measures, since the consistent administrative practice already consists of a set of measures for granting individual aid.

In the case of a consistent administrative practice, a further implementing measure could simply amount to the individual administrator being granted, within the framework of that practice, a decision-making power enabling him or her to deviate from the treatment actually practiced.'

(215) As described above in section 5.2.1.1, the consistent administrative practice of concluding the PSO contracts reveals a systematic approach of the compensation system which constitutes the act on which basis the PSO contracts are awarded.

(216) It needs to be assessed whether the act under which the PSO contracts are awarded, sets out the essential elements necessary to award individual aid awards without the adoption of further implementing measures.

(217) When assessing implementing measures, it is necessary to distinguish between decision making competence that can influence the essential elements of the scheme and the discretion afforded to the granting authority which is limited or bound by the rules set out in the scheme.

(218) The Norwegian authorities have described a consistent approach to concluding the directly awarded PSO contracts which, according to the information provided by the Norwegian authorities, encompassed the same essential elements of the scheme and remained in line with the same principles throughout the duration of the PSO compensations system.

(219) ESA considers, based on the information provided, that the granting authority is bound by the principles underpinning the administrative practice of awarding PSO contracts and cannot deviate from the defined method of determining the compensation for the PSO contracts which cannot exceed the net financial effect of the PSO. The granting authority does therefore not have competence to grant aid beyond the limits set out in the act and cannot deviate from the treatment of the PSO contracts practiced throughout the operation of the scheme.

(220) The exercise of a certain degree of discretion, including whether to grant aid or not, is inherent in awarding aid in many situations under different aid schemes and cannot, in ESA's preliminary view, be considered to constitute an 'implementing measure'. ESA considers that 'implementing measures' should be understood to entail such a degree of discretion that would influence, to a significant degree the amount, characteristics or conditions under which the aid is granted ([135]).

([134]) Opinion of Advocate General Kokott of 3 December 2020, *Commission* v *Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraphs 101 to 106.

([135]) ESA's Decision No 60/13/COL of 6 February 2013 opening a formal investigation into potential aid to public bus transport providers in Aust-Agder County, paragraph 128, Decision No 519/12/COL of 19 December 2012 closing the formal investigation procedure into potential aid to AS Oslo Sporveier and AS Sporveisbussene, paragraph 183.

(221) The second complainant argued that the individual PSO contracts confirm that the agreements are time-limited or lapsed if negotiations broke down and that the annual agreements, in any case, dependent on the discretionary approval of the Parliament.

(222) It is common, in European legal traditions, that a government cannot indefinitely commit State resources, thereby committing future State spending in an open-ended manner. Typically, public spending is subject to parliamentary approval, after having been the subject of various preparatory procedures, such as negotiations with relevant parties. The final say of the Parliament ensures political control over the State coffers. This goes for the size of the budget of an aid scheme as well as whether it should be allowed to continue.

(223) The administration of any aid scheme requires a certain decision-making process that allows for individual awards of aid. An aid scheme can be both in the form of a tax exemption where aid is granted automatically to all those qualifying for the exemption as well as a in the form of a system of grants where the granting authority will have to apply limited discretion to assess the aid applications and prioritise those who contribute to the objective of the aid in line with the pre-defined conditions of the system.

(224) The fact that a granting authority enjoys a limited margin of discretion to negotiate the amount of compensation awarded does not affect this conclusion. The granting authority is bound by the act which consists of the administrative practice of concluding PSO agreements ([136]).

(225) The second complainant points to the stated purpose of the PSO contracts as well as the 1998 rules which confirm that the Ministry of Transport had significant discretionary powers. According to Article 1 of the 1998 rules, their purpose is to *'seek to combine society's need for a satisfactory transport offering with NSB BA's need for profitable and efficient operation*' ([137]). According to the second complainant, this from the outset is not a description of a system that required 'mere technical application'.

(226) ESA reiterates that the administration of many aid schemes requires a certain decision-making process that allows for individual awards of aid. The act on which the scheme is based limits the discretion of the granting authority when negotiating with the operator and prevents any deviation from the rules of the scheme which only allow for the compensation of net financial effects and cost directly related to the provision of railway passenger services covered by the PSO.

(227) The balancing of private and public interest, when awarding PSO contracts, is foreseen in the relevant EEA legal framework and considered necessary to reach the objectives of the measures falling within its scope. The Interpretative Guidelines state that: ([138])

'This means that not only do the rules of Regulation (EU) No 1370/2007 aim to prevent any possible overcompensation for public service obligations, but also that they aim to ensure that the offer of public services defined in the public service contract is financially sustainable to reach and maintain a high level of service quality. The public service obligation should therefore be appropriately compensated so that the operator's own funds under a public service contract are not eroded in the long run, preventing the efficient fulfilment of its obligations under the contract and the maintenance of the provision of passenger transport services of a high Standard as referred to in point 7 of the Annex to Regulation (EC) No 1370/207.'

([136]) This assessment is in line with ESA's previous case practice, see as an example, ESA Decision of 20 April 2016 No 075/16/COL to propose appropriate measure regarding the use of publicly owned land and natural resources by electricity producers in Iceland, Decision of 20 November 2013 No 460/13/COL to propose appropriate measure with regard to state aid granted to publicly owned hospital pharmacies in Norway.

([137]) *Regler for samferdselsdepartementets forvaltning av ordningen med statlig kjøp av persontransporttjenester med jernbane. From 9 September 1998.* In Norwegian: '[...] *Formålet er å søke å kombinere samfunnets behov for å sikre et tilfredsstillende transporttilbud med NSB Bas behov for lønnsom og effektiv drift*'.

([138]) Section 2.4.8. of the Interpretative Guidelines.

(228) The negotiations aim at reaching the appropriate level of compensation based on an estimation of cost and revenues with the final results having to comply with the calculation formula predefined within the PSO compensation system.

(229) The second complainant further contends that the Ministry of Transport had vast discretion also to decide the characteristics of the aid granted in conjunction with the contested PSO. The complainant takes examples of previous measures taken by the Norwegian authorities, such as capital injections and dept write-offs, as well as the pension subsidies.

(230) ESA refers to its findings below in Section 5.4 regarding the 2019 pension subsidy, where it preliminarily concludes that the adjustment obligation – to the extent that it corresponds to costs that arose exclusively in relation to Vy's operation under the PSO contracts - does not change the nature or characteristics of the cost covered.

(231) The Norwegian authorities have explained that the coverage of the shortfall in the pension fund in 2002 occurred because the premiums calculated by SPK had been set too low. The payment therefore covered costs which had not been covered by the compensation under the PSO contracts.

(232) In ESA's preliminary view, the relevant assessment of the two measures concerns whether the measures can be considered to fall within the scope of the scheme in which case the cost would have been covered in line with the provisions of the scheme ([139]). As described above, ESA preliminarily finds that the granting authority's discretion is bound by the method of determining the compensation for the PSO contracts which cannot exceed the net financial effects of the PSO. The choice of the form of a payment of costs which would fall within the provision of the scheme does not demonstrate any further discretion on behalf of the granting authority capable of affecting the characteristics of the aid granted.

(233) Regarding the remaining measures mentioned by the second complainant, ESA notes that these measures have not been claimed to be granted under the PSO compensation system and the complainant has not provided explanations of how these measures correspond to costs in relation to the provision of PSO under directly awarded contracts.

(234) Finally, the individual PSO contracts cannot be considered to constitute 'implementing measures'. The individual PSO contracts are simply individual aid awards granted under the act. The essential elements of the PSO contracts derive from the act under which they are awarded. The PSO contracts can then set out the rules governing State purchase of PSO railway passenger services as derived from the act on which the scheme is based.

(235) In light of the above, ESA preliminarily finds that PSO contracts are concluded without further implementing measures being required within the meaning of Article 1(d) of Part II of Protocol 3.

5.2.1.3. The scheme defines the potential aid beneficiaries in a general and abstract manner

(236) According to the definition of an 'aid scheme' in Article 1(d) of Part II of Protocol 3, the potential aid beneficiaries have to be defined in a general and abstract manner.

(237) According to the information provided by the Norwegian authorities, the act on which the compensation system is based does not restrict the award of PSO contracts to Vy but applies to all railway operators awarded a PSO contract under the compensation system. The fact that it has mainly been Vy operating PSO railway passenger services under the compensation system does not change this fact.

([139]) See section 5.4.

(238) The complainants emphasised that documentation from the time of the initiation of the scheme and during its lifetime have often referred to only Vy as the operator of the PSO routes and as the contracting party under the PSO compensation system which would mean that the scheme does not define aid beneficiaries in a general and abstract manner.

(239) The second complainant referred to the 1998 rules enacted by the Ministry of Transport which concern the purchase of PSO services between the State and Vy (NSB at the time). The complainant contends that as these rules name only one beneficiary, the PSO compensation system cannot constitute an aid scheme. The second complainant further refers to the 2003 OAG report which also refers only to Vy (NSB at the time) when describing the scheme ([140]).

(240) It is a fact that Vy (NSB at the time) was the sole operator of PSO routes in Norway at the time of the establishment of the PSO compensation system. It is therefore not surprising that documentation from that time refers to the only operator active within that system. The Norwegian authorities have explained that it is a prerequisite for eligibility under the PSO compensation system to have been granted a concession providing the right to use the railway network in Norway. Therefore, the act under which the scheme is based does not restrict the award of the PSO contracts to Vy/NSB.

(241) This is further demonstrated by the fact that SJ, a Swedish railway operator, received compensation under the compensation system from 2006 in relation to certain railway passenger services between Sweden and Norway ([141]). The award of PSO contracts to SJ did not follow from an amendment to the compensation system but followed the same consistent administrative practice as was followed when awarding PSO contracts to Vy.

(242) ESA therefore preliminarily concludes that the compensation system defines the beneficiaries in a general and abstract manner. In light of the above, ESA's preliminary view, based on the information submitted so far, is that the measure fulfils the conditions of the first definition of an 'aid scheme' in Article 1(d) of Part II of Protocol 3.

5.2.2. *Second definition of an aid scheme*

(243) According to the second definition set out in Article 1(d) of Part II of Protocol 3, an 'aid scheme' is 'any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'. The definition therefore entails the following three criteria:

i. any act on the basis of which aid which is not linked to a specific project;

ii. may be awarded to one or several undertakings; and

iii. for an indefinite period of time and/or for an indefinite amount.

(244) As described above in section 5.2.1.1, the consistent administrative practice of the Norwegian authorities of concluding PSO contracts, which compensate the net financial effects of the PSO, reveals a systematic approach of the PSO compensation system which constitutes the act on which the PSO contracts are awarded.

(245) The aid awarded under the compensation system is not linked to a specific project but is awarded based on the transport needs and the necessary transport services at each time to create an effective transport system in Norway. Aid under the act may be awarded to one or several undertakings as described above in section 5.2.1.3.

([140]) See submission of the second complainant dated 13 July 2002, Document No 1302573.

([141]) The Norwegian authorities have explained that when the frequency of passenger train services between Sweden and Norway, which included stops within Norway, was on the verge of being reduced or even abolished, Sweden and Norway began to purchase railway passenger services from both Vy (then NSB) and SJ, the Swedish incumbent, in 2006. As of 2012, Vy (then NSB) was not a part of that arrangement any longer, leading to Sweden and Norway awarding the PSO compensation solely to SJ. The majority of the compensation was paid by Norway, in particular to ensure that SJ trains would stop in Kongsvinger, Norway.

(246) The second complainant has alleged that the Ministry of Transport as the granting authority for the alleged aid scheme, did not have any power to grant aid 'for an indefinite period of time and/or for an indefinite amount'. This can also be seen from each contested contract that the granting authority negotiated with Vy/NSB which neither were indefinite in time nor for an indefinite amount.

(247) The act on which the aid scheme is based does not limit the duration within which it is possible to award individual aid to operators. Under the PSO compensation system, the granting authority has awarded aid in the form of contracts which have taken different forms. Although the individual aid awards have a determined duration, the PSO compensation system under which they are granted, does not. Aid can be awarded in line with a consistent administrative practice for an indefinite period of time and/or for an indefinite amount.

(248) In light of the above, ESA's preliminary view is that the compensation system also fulfils the criteria of the second definition set out in Article 1(d) of Part II of Protocol 3 and therefore constitutes an 'aid scheme'.

5.2.3. *Conclusion*

(249) ESA preliminarily finds that the PSO compensation system for railway passenger services in Norway constitutes and 'aid scheme' within the meaning of Article 1(d) of Part II of Protocol 3.

5.3. ***Existing aid***

5.3.1. *Introduction*

(250) An aid scheme which was put into effect before the entry into force of the EEA Agreement and is still applicable constitutes an existing aid scheme within the meaning of Article 1(i) of Part II of Protocol 3, unless alterations have been made to the scheme which are considered to be substantial alterations which change the existing nature of the aid scheme so that it is turned into new aid.

(251) ESA will therefore assess whether any changes have been made to the scheme that were capable of changing the existing aid scheme into new aid following the entry into force of the EEA Agreement.

5.3.2. *The new main agreement from 1994*

(252) The second complainant submitted that the decision of the Norwegian authorities to reform how it compensated for PSO for railway passenger services on 1 January 1994 was a substantial alteration of the alleged aid scheme which took place after the entry into force of the EEA Agreement. According to the second complainant, the Norwegian authorities had before the change granted compensation retrospectively to cover the operator's total deficits, but after this change, they moved towards a system where compensation was granted in advance to the operator.

(253) The Norwegian authorities have explained that from 1 January 1994 a new main agreement (*Hovedavtale*) took effect, which replaced the former agreement of 3 July 1991. That agreement was signed on 5 November 1993. Together with annual agreements, the contract formed the contractual relationship between the Ministry and Vy (NSB at the time) as the operator.

(254) According to the Norwegian authorities, the main principles for the PSO compensation for railway passenger services remained unchanged before and after the introduction of the new contract form.

(255) ESA finds that regardless of whether the contract signed on 5 November 1993 brought about changes to the practice of awarding PSO contracts for railway passenger services, such a new practice was established at the time of the signature of the new agreement on 5 November 1993 which was before the entry into force of the EEA Agreement on 1 January 1994 ([142]).

([142]) Judgment of 14 April 2021, *Verband Deutscher Alten und Behindertenhilfe and CarePool hannover* v *Commission*, T-69/18, EU:T:2021:189, paragraph 174.

(256) ESA therefore preliminarily finds that the alleged change in the administrative practice of the scheme does not constitute a change capable of turning existing aid into new aid.

5.3.3. *Reform of the railway system and competitive tendering*

(257) According to the complainants, the reorganisation of the railway passenger market, as that carried out through the Railway Reform initiated in 2015 and the introduction of competitive tendering in the market, is capable of influencing the assessment of the compatibility of the aid with the functioning of the EEA Agreement. The complainants claim that this is therefore an alteration to the existing aid scheme within the meaning of Article 1(c) of Part II of Protocol 3.

(258) As described above in section 3.1.4, the Railway Reform entailed both organisational changes in the railway sector as well as the introduction of competitive tendering for PSO contracts.

(259) Alterations which have no bearing on the advantage that is conferred on the beneficiaries of the aid, do not turn existing aid into new aid ([143]). Alteration to existing aid is defined as '*any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market*' ([144]).

(260) Modifications are substantial if the main elements of the system have been changed, such as the nature of the advantage, the purpose pursued with the measure, the legal basis, the beneficiaries or the source of financing ([145]).

(261) The Railway Reform entailed organisational changes to the structure of the railway system in Norway. The former parts of the national railway operator Vy (NSB at the time) were restructured as independent undertakings and a public authority, the Railway Directorate (*Jernbanedirektoratet*) was established, which was responsible for purchasing railway infrastructure and passenger services on behalf of the Norwegian authorities.

(262) Administrative reorganisation of entities and responsibility between public authorities, which do not have effect on the substance of the scheme do not constitute alterations, which turn existing aid into new aid within the meaning of Article 1(c) of Part II of Protocol 3.

(263) ESA preliminarily finds that these changes of administrative nature have not affected the essential elements of the aid scheme. The Railway Reform did not lead to any changes to the administrative practice of compensating operators for the provision of railway passenger services.

(264) Further, the introduction of competitive tendering for railway passenger services was meant to lead to a gradual phasing out of the scheme and its geographic coverage. The aid scheme therefore remains the same, but with decreasing coverage, until the aid scheme is discontinued. Furthermore, the method of determining the compensation of directly awarded PSO contracts is not the same for PSO contracts which are competitively tendered. The contracts entered into based on competitive tendering therefore appear not to be able to fall within the aid scheme.

([143]) Judgment of 9 August 1994, *Namur-Les assurances du crédit*, C-44/93, EU:C:1994:311, paragraph 29.

([144]) Article 4(1) of Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1).

([145]) Opinion of Advocate-General of 4 December 1974, *Van der Hulst* v *Produktschap voor Siergeqassen*, C-51/74, EU:C:1974:134.

(265) In the light of the above, ESA preliminarily finds that the Railway Reform, including the introduction of competitive tendering cannot be considered as an alteration to the existing aid scheme within the meaning of Article 1(c) of Part II of Protocol 3.

5.3.4. *Reorganisation of Vy and changes to employees' status as civil servants*

(266) The second complainant further stated that changes from 1 December 1996, where Vy was reorganised with a separate legal personality from the State, meant that it would no longer be subject to the same financial governance system as it had in the past, when it was subject to the budget rules and procedures as an integral part of the State. Therefore, the administrative procedure was substantially altered.

(267) Furthermore, the employees of Vy lost their status as civil servants and their permanent rights to entitlements as civil servants, which, according to the second complainant, also constitutes a substantial alteration of the previous system. The combined effect of these alterations would also disqualify the existence of an existing aid scheme.

(268) ESA finds that these changes are of administrative nature and concern the circumstances in which Vy operates and do not affect the administrative practice of the Norwegian authorities of awarding PSO contracts for railway passenger services nor the method of calculating the compensation under the PSO contracts. ESA therefore preliminarily finds that these changes did not affect the essential elements of the aid scheme and were not capable of turning an existing aid scheme into new aid within the meaning of Article 1(c) of Part II of Protocol 3 ([146]).

5.3.5. *Increase in the expenditure under the scheme*

(269) The complainants claim that an increase in the annual budget of the scheme has increased by over 20 % on several occasions throughout the lifetime of the scheme which constitutes notifiable changes.

(270) According to the complainants, the budget of the scheme has increased by close to 340 % (approximately 174 % if adjusted to account for inflation) between 1994 and 2017. Between 2001 and 2002 the budget increased by 31,5 % in a single year.

(271) The budget of a scheme can be a factor in the proportionality assessment under the State aid rules and can therefore, in principle, affect compatibility of a measure. Article 4(1) of Decision No 195/04/COL and case-law concerning approved aid schemes with defined budgets, demonstrate that an increase in the initial budget of an existing aid scheme exceeding 20 % can, in certain circumstances, constitute an alteration turning existing aid into new aid ([147]).

(272) However, this does not seem fully applicable to the assessment of the aid scheme in question, as it does not have a defined budget. The definition of an 'aid scheme', as set out in Article 1(d) of Part II of Protocol 3, does not require a pre-determined budget. The second definition of an aid scheme even foresees that the aid is awarded for an indefinite amount.

(273) A parliamentary approval is required for the annual expenditure under the scheme. This scheme has not been approved by ESA and its compatibility with the functioning of the EEA Agreement has therefore not been assessed.

(274) However, should such an assessment be carried out, the scheme would be assessed under the relevant legislative framework, namely Regulation 1370/2007. Regulation 1370/2007 sets out the method of calculating the compensation paid to operators of public passenger transport services to exclude the possibility of overcompensation. There is no assessment of the expenditure on a scheme level. ESA therefore finds that an increase in expenditure under the scheme would be unlikely to affect the compatibility assessment of the scheme.

([146]) Judgment of 24 January 2023, *G Modiano Limited & Standard Wool (UK) Limited* v *EFTA Surveillance Authority*, Case E-1/22, not yet reported, paragraph 78.

([147]) Judgment of 20 September 2018, *Carrefour Hypermarchés and Others*, C-510/16, EU:C:2018:751, paragraph 41.

(275) The enlargement of the field of activity of a service operator cannot, where it does not affect the system of aid established by the act in question be regarded as constituting the granting or alteration of aid within the meaning of Article 1(c) of Part II of Protocol 3 ([148]).

(276) The EFTA Court has further stated that *'the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amount in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered.* [...] *whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it.'* ([149])

(277) ESA considers that the increase in expenditure to passenger transport services through the years, cannot be considered as a substantial alteration. The essential elements of the scheme are not affected by the increase of expenditure. The method of calculating the compensation to the beneficiary remains the same, the objective pursued by the scheme, the eligible beneficiaries have not changed and the public service task assigned to the beneficiary was not altered ([150]).

(278) In light of the above, ESA preliminarily finds the increase in expenditure in relation to the scheme throughout its lifetime not to be an alteration to the existing aid scheme within the meaning of Article 1(c) of Part II of Protocol 3.

5.3.6. *Extension of the duration of the scheme*

(279) The complainants have argued that the duration of the aid scheme has been extended which entails the granting of new aid.

(280) The duration of a scheme can be a factor in the proportionality assessment under the State aid rules and can therefore, in principle, affect the compatibility of a measure. Article 4(2) of Decision No 195/04/COL and case-law demonstrate that an extension of an approved aid scheme with defined duration can, in certain circumstances, constitute an alteration turning existing aid into new aid ([151]).

(281) However, this does not seem fully applicable to the assessment of the aid scheme in question, as it does not have a defined duration. Each PSO contract concluded constitutes an individual aid award under the aid scheme and does not amount to an extension of the aid scheme. The individual contracts do not determine the duration of the aid scheme under which they are granted.

(282) The definition of an 'aid scheme', as set out in Article 1(d) of Part II of Protocol 3, does not require a pre-determined duration. The second definition of an aid scheme even foresees that the aid is awarded for an indefinite period of time.

(283) A parliamentary approval is required for the annual expenditure under the scheme. This scheme has not been approved by ESA and its compatibility with the functioning of the EEA Agreement has therefore not been assessed.

(284) However, should such an assessment be carried out, the scheme would be assessed under Regulation 1370/2007, which sets out the method of calculating the compensation paid to operators of public passenger transport services to exclude the possibility of overcompensation. There is no assessment of the duration of the scheme as such. ESA therefore finds that the continued operation of the scheme would be unlikely to affect the compatibility assessment of the scheme.

([148]) Judgment of 9 August 1994, *Namur-Les assurances du crédit*, C-44/93, EU:C:1994:311, paragraph 35.
([149]) Judgment of 22 August 2011, *Konkurrenten.no*, Case E-14/10 [2011] EFTA Ct. Rep. 266, paragraph 72.
([150]) Judgment of 13 December 2018, *Rittinger and Others*, C-492/17, EU:C:2018:1019.
([151]) Judgment of 4 December 2013, *Commission* v *Council*, C-121/10, EU:C:2013:784, paragraph 58; Judgment of 6 March 2002, *Diputación Foral de Álava and Others* v *Commission*, T-127/99, T-129/99 and T-148/99, EU:T:2002:59, paragraph 175.

(285) The essential elements of the scheme are not affected by the continued operation of the scheme. The method of calculating the compensation to the beneficiary remains the same, the objective pursued by the scheme, the eligible beneficiaries have not changed and the public service task assigned to the beneficiary was not altered ([152]).

(286) In light of the above, ESA preliminarily finds the continued operation of the scheme not to be an alteration to existing aid within the meaning of Article 1(c) of Part II of Protocol 3.

5.3.7. *Payments relating to pension costs in 2002 and 2017*

(287) As described above in section 3.3, Vy received a grant in 2019 ([153]) for the payment of so-called adjustment obligations resulting from Vy's exit from SPK. Vy had received another payment in 2002 for covering a shortfall in the pension fund ([154]).

(288) As regards the grant from 2019, the adjustment obligation derived from the obligation to adjust deferred pension entitlements, which means that future pension entitlements of employees who are no longer members of SPK and have not yet retired and pensions under disbursement are adjusted according to the average annual increase in salary and price inflation, as described in section 3.3.

(289) This adjustment is not covered and pre-financed by the premium but is covered when the said development is given effect for the accrued pension claim. The annual premiums paid to SPK only take into account the actual wage and inflation development each year, but do not cover future unknown adjustments. The exit from SPK meant that the adjustment amount would fall due as one-off payment at an earlier stage than what would otherwise have been the case.

(290) According to the Norwegian authorities, the grant from 2002 was paid because the premiums calculated by SPK had been set too low which resulted in a shortfall in the pension fund. The Norwegian authorities have explained that the payment did therefore not compensate for costs already covered by compensation payments under PSO contracts.

(291) ESA considers that the fact that these payments were paid as one-off payments do not affect the scheme as such which remains based on the principle of compensating operators for the net financial effects of the PSO. ESA therefore preliminarily finds that the fact that the pension costs relating to those two measures was paid in a one-off payment does not constitute a change capable of changing an existing aid scheme into new aid.

(292) The assessment of the two measures rather concerns whether the measures can be considered to fall within the scope of the scheme ([155]). As the payment from 2002 is not subject to this decision, ESA will not carry out further assessment of the measure. For the assessment of the 2019 payment, ESA refers to its assessment in section 5.4.

(293) ESA therefore preliminarily finds that the two transactions were not capable of turning an existing aid scheme into new aid within the meaning of Article 1(c) of Part II of Protocol 3.

5.3.8. *The adoption of the 1998 rules*

(294) The complainants have referred to rules concerning the PSO scheme adopted by the Ministry of Transport from 1998 as capable of substantially affecting the scheme. These rules appear to describe the internal procedure for awarding PSO contracts and the procedure to be followed during the lifetime of the contracts. The complainants have further claimed that these rules are likely to have been changed during the duration of the PSO compensation scheme.

([152]) Judgment of 13 December 2018, *Rittinger and Others*, C-492/17, EU:C:2018:1019.

([153]) The actual payment took place in 2019 although the Parliamentary proposal dates from 2017.

([154]) The measure from 2002 is not subject to this decision beyond being part of the assessment of whether the aid scheme subject to this decision is to be considered an existing aid scheme. The nature of the 2019 transaction and whether it forms part of the aid scheme is assessed in section 5.4.

([155]) See section 5.4.

(295) The Norwegian authorities have not provided any information concerning these 1998 rules. ESA requests that the Norwegian authorities provide information regarding the nature and content of the rules and whether any changes have been made to the rules from 1998 and if so, what was the nature of such changes.

5.3.9. *Introduction of ex post mechanism*

(296) In 2018, the Norwegian authorities introduced an *ex post* mechanism into the scheme, which is described above in section 3.2.4. According to the Norwegian authorities, the *ex post* mechanism was incorporated into the aid scheme to enhance the safeguards against overcompensation to further secure compliance with Regulation 1370/2007.

(297) After the introduction of the *ex post* mechanism, compensation under the scheme continued to be granted on the basis of the estimated net cost of providing the public service under the PSO contracts. According to the Norwegian authorities, the mechanism merely served the purpose of calibrating the costs of the PSO more precisely. The *ex post* mechanism provided for better and more robust mechanism for granting compensation under the scheme.

(298) The method of calculating the compensation under the PSO contracts is set out in Regulation 1370/2007. Substantial changes to the calculation formula of the compensation could therefore potentially affect the compatibility assessment under Regulation 1370/2007.

(299) Based on the information available, ESA cannot exclude that the introduction of the *ex post* mechanism was capable of turning an existing aid scheme into new aid within the meaning of Article 1(c) of Part II of Protocol 3. ESA therefore invites the Norwegian authorities to submit further information regarding the determination of the compensation under the PSO contracts before and after the introduction of the *ex post* mechanism.

5.3.10. *Conclusion*

(300) In light of the above, ESA has doubts concerning the existing nature of the scheme. ESA invites the Norwegian authorities to submit further information on the comparison of the compensation models in the PSO contracts before and after the introduction of the *ex post* mechanism as well as information concerning the rules from 1998.

5.4. ***Pension costs***

(301) Regulation 1370/2007 sets out the method of calculating the compensation for PSO contracts for railway passenger services. Article 4(1)(c) sets out that costs connected with the provision of PSOs include 'cost of staff'. Pension costs are costs related to the operation of a PSO, in the same way as wages or social security contributions and therefore constitute 'cost of staff'.

(302) It needs to be assessed whether the pension costs, which arose in the form of the adjustment obligation constitute costs which are related to the operation of the obligations set out in the PSO contracts and can be considered to fall within the scope of the aid scheme.

(303) The EFTA Court held that '[...] *if the relevant aid scheme does not have any particular provisions on how the aid is to be provided, a divergence from the usual procedure cannot, in itself, lead to the finding that the aid was not granted on the basis of the aid scheme. In the same way, it cannot matter whether a single aid payment relates to the upcoming year, to the past year or to another period of time, as long as the aid is covered by the legal basis providing for it.*' ([156])

([156]) Judgment of 22 August 2011, *Konkurrenten.no AS* v *EFTA Surveillance* Authority, Case E-14/10 [2011] EFTA Ct. Rep. 266, paragraph 87.

(304) The second complainant has alleged that the grant to cover the pension costs paid in 2019 amounts to compensating the same costs twice. The Norwegian authorities have explained that the grant related to the adjustment obligation which arose upon Vy's exit from SPK. These costs are different from the ordinary pension costs that had already been compensated under the PSO contracts as these are costs that would normally fall due long into the future.

(305) The adjustment obligation results from statutory obligation to adjust deferred pension entitlements. Future pension entitlements of employees who are no longer members of SPK and have not yet retired and pension under disbursement are adjusted according to the average annual increase in salary and price inflation. The annual premiums paid to SPK only take into account the actual wage and inflation development each year but do not cover future, unknown adjustments to the pension rights earned by employees.

(306) The Norwegian authorities have stated that the grant provided to Vy covered exclusively pension costs related to the directly awarded PSO contracts and was limited to the part of the costs which had not been covered by pension provisions in Vy's accounts. However, ESA requests that the Norwegian authorities provide information or evidence which demonstrate that the pension cost was limited to costs which arose exclusively under the PSO contracts.

(307) Based on this information, ESA will assess the grant from the Norwegian authorities to cover 490,3 million NOK in 2019 to cover the adjustment obligation arising at Vy's exit from SPK

6. **Procedural requirements**

(308) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Protocol 3'): 'The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. … The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.'

(309) The Norwegian authorities did not notify the measures to ESA. ESA therefore reaches the preliminary conclusion that, provided the measures constitute new aid or alterations to an existing aid scheme subject to prior notification and insofar as these measures were not exempted from notification under Regulation 1370/2007, the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

7. **Compatibility of the aid**

7.1. ***Compatibility assessment under Regulation 1370/2007***

7.1.1. *Public service contracts and their content*

(310) According to Article 3 of Regulation 1370/2007, where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public service obligations, it shall do so within the framework of a public service contract.

(311) 'Public service contract' is defined as '*one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations* […].' ([157])

(312) According to Article 4(1)(a) of Regulation 1370/2007, public service contracts must clearly define the public service obligation applying to the operator and the geographical areas concerned.

([157]) Article 2(i) of Regulation 1370/2007.

(313) The PSO contracts set out each route covered by the PSO contract and their required frequency ([158]). The PSO contracts further set out requirements such as in relation to punctuality, regularity, customer satisfaction, safety measures onboard and measures in cases of operational deviations ([159]). The PSO contracts therefore clearly define the public service obligations which the public service operator has to comply with and the geographical areas concerned.

(314) Article 4(1)(b)(i) of Regulation 1370/2007 requires that the parameters on the basis of which the compensation is to be calculated are established in advance in an objective and transparent manner.

(315) The compensation under the PSO contracts is calculated *ex ante* based on Vy's expected revenue and costs. The compensation shall, together with the ticket revenue and other income, cover the costs for discharging the public service obligations in line with the requirements set out in the PSO contracts and a reasonable profit. The amount of the complete compensation, including the estimated costs for carrying out the public service obligations, is set out in annexes to the PSO contracts ([160]).

(316) Furthermore, the effect of the *ex post* mechanism, as described above in section 3.2.4, on the compensation for the operation of the public service obligation, is set out in the PSO contracts ([161]). The parameters on the basis of which the compensation payment is calculated is therefore set out in the PSO contracts in an objective and transparent manner.

(317) The first complainant has alleged that the parameters for the calculation of the compensation under the PSO contracts have not been established in advance as the PSO contracts apply from 1 January 2018, but the parameters for the calculation were not established until the conclusion of the PSO contracts on 28 February 2018.

(318) ESA requests that the Norwegian authorities provide information regarding the application of the parameters from 1 January 2018 for the PSO contracts for which the parameters had retroactive effect.

(319) Article 4(1)(b)(ii) of Regulation 1370/2007 requires that the PSO contracts should establish in advance in an objective and transparent manner the nature and extent of any exclusive rights granted. Annexes to the PSO contracts set out which routes and production the operator has exclusive rights to operate and where other operators are competing for the same passengers in line with this requirement ([162]).

(320) According to Article 4(1)(c) of Regulation 1370/2007, a public service contract should determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services, fixed costs and a suitable return on capital.

(321) The first complainant stated that the PSO contracts do not appear to determine the arrangements for the allocation of costs. Further, that it is unclear whether Vy's operative accounts have been separated in accordance with point 5 of the Annex to Regulation 1370/2007 and whether the methods for allocating direct and common costs are appropriate.

(322) The Norwegian authorities have stated that the accounts of Vy's PSO and commercial services are separated in accordance with point 5 of the Annex to Regulation 1370/2007. However, ESA invites the Norwegian authorities to provide further information regarding the separation of accounts and how the allocation of costs is determined in the PSO contracts subject to this decision as well as information about the application of the parameters of the PSO contract from 1 January 2018 ([163]).

([158]) The content of the four contracts subject to this decision are in most aspects the same. ESA refers to 'Avtale om utførelse av persontransport med tog som offentlig tjeneste i 2019 – 2022' ('the 2019-2022 contract'). Attachment A to the 2019-2022 contract sets out the routes that the operator undertakes to operate.

([159]) Article 8 of the 2019-2022 contract.

([160]) Articles 9.1 and 9.2 of the 2019-2022 contract. The estimated costs under the contracts are set out in attachment B1 and B2.

([161]) Article 9.5 of the 2019-2022 contract.

([162]) Article 9.4 of the 2019-2022 contract.

([163]) Submission of the Norwegian authorities dated 15 September 2022, Document No 1313413.

(323) In the following section, ESA addresses the determination of the public service obligations as referred to in Article 3 of Regulation 1370/2007. ESA addresses the calculation of the compensation under the PSO contracts below in section 7.1.5.

7.1.2. *Determination of the public service obligation*

(324) The second complainant contends that the procedure that the Ministry of Transport appears to have followed indicates that when the parties negotiated their contracts, the proposal for the scope of the public service obligation emanated from Vy/NSB and not the Ministry of Transport ([164]).

(325) According to Article 2(e) of Regulation 1370/2007, 'public service obligation' means '[...] *a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward*.'

(326) The second complainant further alleges that it is not credible that none of the services in the PSO contracts would be provided without public compensation. If the PSO contracts have not been based on market testing, then the granting authority would be arbitrarily deciding the scope of the PSO and not be 'watertight' under Regulation 1370/2007. The first complainant raises the same concerns, namely, that the PSO contracts appear to include routes which an operator such as Vy would be willing and able to operate without any compensation at all ([165]).

(327) In the absence of specific EEA rules defining the scope for the existence of an SGEI, EEA EFTA States have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider. ESA's competence in this respect is limited to checking whether the EEA EFTA State has made a manifest error when defining the service as an SGEI and to assessing any State aid involved in the compensation. Where specific EEA rules exist, the EEA EFTA State's discretion is further bound by those rules, without prejudice to ESA's duty to carry out an assessment of whether the SGEI has been correctly defined for the purpose of State aid control ([166]).

(328) EEA EFTA States are therefore entitled to take the view that certain services are in the general interest and must be operated by means of public service obligations to ensure that the public interest is protected when market forces do not suffice to guarantee that they are provided at the level or conditions required.

(329) Services to be classified as public services must be addressed to citizens or be in the interest of society as a whole. States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity, and access to the services, consistent with public interest, as defined by the State, by undertakings operating under normal market conditions ([167]).

(330) ESA invites the Norwegian authorities to provide their comments and supporting information in relation to these allegations of the complainants.

7.1.3. *Award and duration of the PSO contracts*

(331) Article 5(6) of Regulation 1370/2007 states that '[u]*nless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies*.'

([164]) Submission of the second complainant dated 30 November 2022, Document No 1333820, paragraph 203 and onwards.

([165]) Submission of the first complainant dated 2 December 2022, Document No 1336650.

([166]) ESA's Guidelines on the application of the State aid rules to compensation granted for the provision of services of general economic interest (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1), paragraph 46. Judgment of 18 January 2017, *Andersen* v *Commission*, T-92/11, EU:T:2017:14, paragraph 56 and case-law cited therein. Interpretative Guidelines, section 2.2.5.

([167]) ESA's Framework for State aid in the form of public service compensation (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1), paragraph 13.

(332) The Norwegian authorities have directly awarded the PSO contracts in line with Article 5(6) of Regulation 1370/2007. The duration of the contracts does not exceed the limits set out in Article 4(3), read in in conjunction with Article 5(6) of Regulation 1370/2007, which sets a maximum duration of 10 years ([168]).

7.1.4. *Mechanism and checks to detect overcompensation*

(333) The complainants alleged that the Norwegian authorities have not established *ex post* checks to ensure that compensation under the PSO contracts is not higher than the actual net cost of providing the services in line with the Annex to Regulation 1370/2007 and as provided for by the Interpretative Guidelines.

(334) The complainants have referred to the OAG report from 2003 which stated that the Ministry of transport had not conducted any independent controls or evaluations of the relevance of the reliability of the reporting.

(335) ESA considers that the OAG report from 2003 is not relevant in this context, as it concerns a time period long before the Norwegian authorities awarded to Vy the PSO contracts subject to this decision.

(336) The Annex to Regulation 1370/2007 establishes an *ex post* check to ensure that the compensatory payments are not higher than the actual net cost for the provision of the public service over the lifetime of the contract. According to the Interpretative Guidelines, regular checks are in principle needed during the lifetime of the contract to detect and avoid at an early-stage clear overcompensation situations from developing ([169]).

(337) An adequate mechanism needs to be in place to ensure that, in the event revenues from the provision of public services are higher than expected over the lifetime of the public service contract, the operator is not allowed to keep any excessive compensation beyond the actual net costs, a reasonable profit margin and any rewards for efficiency gains stipulated in the contract ([170]).

(338) According to the Norwegian authorities, such regular checks are performed within the context of the *ex post* mechanism as well as in the form of separate accounts for the PSO contracts each year, submitted to the granting authority which can be compared to the *ex ante* estimations on which the PSO contracts are based ([171]). The Norwegian authorities have explained that the auditor approved yearly accounts of Vy are assessed in the context of the *ex post* mechanism and any excess profit is either reimbursed to the Norwegian authorities or transferred to an escrow account ([172]).

(339) It therefore appears that the granting authority has access to the information needed to perform regular checks to detect overcompensation resulting from the PSO contracts. However, ESA requests the Norwegian authorities to provide further information regarding how the *ex post* checks are carried out by the granting authority in line with Regulation 1370/2007 and the Interpretative Guidelines. This includes what type of information is submitted by Vy to the granting authority and the method applied to verifying the information.

7.1.5. *Compensation under the PSO contracts*

(340) According to Articles 4(1) and 6 of Regulation 1370/2007, compensation for public service obligations cannot exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit. The method of determining the compensation shall also comply with the provisions laid down in the Annex to Regulation 1370/2007.

([168]) According to Article 4(3) of Regulation 1370/2007, the duration of public service contracts shall be limited and shall not exceed 15 years for passenger transport services by rail.
([169]) Sections 2.4.2 and 2.4.7 of the Interpretative Guidelines.
([170]) Section 2.4.6 of the Interpretative Guidelines.
([171]) Submission of the Norwegian authorities dated 15 September, Document No 1313413, section 4.3.1.
([172]) Submission of the Norwegian authorities dated 3 June 2021, Document No 1204940.

(341) The Annex sets out that '[t]*he compensation may not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligations on the costs and revenue of the public service operator. The effects shall be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met. In order to calculate the net financial effect, the competent authority shall be guided by the following scheme:*

costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule.

minus any positive financial effects generated within the network operated under the public service obligations(s) in question,

minus receipts from tariff or any other revenue generated while fulfilling the public service obligations(s) in question,

plus a reasonable profit,

equals net financial effect.' ([173])

(342) ESA assesses in the following sections the calculation of the compensation granted under the PSO contracts.

7.1.6. *Reasonable profit*

7.1.6.1. Benchmarking

Introduction

(343) According to point 6 of the Annex, '*reasonable profit must be taken to mean a rate of return on capital that is normal for the sector in a given Member State and that takes account of the risk, or absence of risk, incurred by the public service operator by virtue of public authority intervention.*'

(344) The Interpretative Guidelines refer to the SGEI Communication which, ([174]) despite not being applicable to PSO for land transport, provides some guidance on the determination of the level of reasonable profit ([175]). The SGEI Communication explains that '*where generally accepted market remuneration exists for a given service, that market remuneration provides the best benchmark for the compensation in the absence of a tender.*' ([176])

(345) Such benchmarks would ideally be found in contracts in the same sector of activity, with similar characteristics and in the same Member State. The reasonable profit must therefore be in line with normal market conditions and should not exceed what is necessary to reflect the level of risk of the service provided ([177]).

(346) Accounting measures such as the return on equity ('ROE'), the return on capital employed ('ROCE') or other generally accepted economic indicators for the return on capital may be used in addition to the standard way to consider the internal rate of return ('IRR') ([178]). The reasonable profit in the PSO contracts is calculated based on a benchmark of ROCE.

The benchmark ROCE rate

(347) To find the appropriate level of reasonable profit, the Norwegian authorities gathered information on railway passenger transport operators considered comparable to Vy. The final compensation mechanism and the level of reasonable profit in the PSO contracts is the result of that benchmarking report.

([173]) Point 2 of the Annex.
([174]) Application of the State aid rules to compensation granted for the provision of services of general economic interest (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1).
([175]) *Ibid*, point 62.
([176]) *Ibid*, point 69.
([177]) Section 2.4.3 of the Interpretative Guidelines.
([178]) Interpretative Guidelines, section 2.4.3.

(348) The four passenger railway operators in Norway at the time of the conclusion of the contracts were State owned operators which mostly operated under directly awarded PSO contracts and were therefore not suitable benchmarks ([179]). The benchmarking exercise was therefore based on European passenger railway undertakings which also operate competitively tendered contracts ([180]).

(349) In the benchmarking report, PwC reviewed and analysed the financial results for different corporations which render public passenger transport services awarded under tender procedures: DB Arriva, First Group plc, Groupe Keolis, SJ AB, Transdev, Go-Ahead Group plc and Stagecoach Group plc. Due to a very low equity share and a high interest-free debt, Go-Ahead Group plc. and Stagecoach Group plc. were omitted by PwC when calculating the average ROCE and ROE. Flytoget AS was not evaluated due to the undertaking's special position as an operator of a high-quality ground transport service to Oslo airport and the fact that the relevant agreement has been directly awarded.

(350) The report shows a median rate of ROCE of 6,4 % during the period 2012-2015 for the five railway companies. The benchmarking report shows that among the five companies included, the highest ROCE in a single year was 11,7 % (SJ AB, 2015) ([181]).

(351) According to the Norwegian authorities, due to the extensive restructuring of Transdev in the relevant period, it was considered reasonable and well-founded to exclude Transdev when calculating the average rate of return, in order to get the most meaningful picture of the market at that time. The median ROCE increases from 6,4 % to 7 % when Transdev is omitted. The average ROCE in the same period was 5,6 % with Transdev included and 6,8 % without Transdev.

(352) Based on the findings in the benchmarking report, the Norwegian authorities found that there were solid grounds to conclude that a profit for an operator of railway passenger services was reasonable, as long as it corresponded with a 7 % ROCE.

(353) The Norwegian authorities have explained that it was decided to set the maximum reasonable profit lower than the highest rate of return observed to avoid any risk of overcompensation. The maximum reasonable profit was set at an amount reflecting a 10,6 % ROCE. In the opinion of the Norwegian authorities, it did not appear unreasonable that a company rendering passenger transport services by rail could make a profit at the same level as the most efficient or profitable company.

(354) ESA recognises that choosing a good sample of comparable operators for passenger railway companies is a complex task. The suitable group of operators must be selected in terms of business activities and risk. To get the most meaningful picture of the market at each time, it can be necessary to exclude undertakings which can be considered outliers compared to other operators in the market and therefore do not reflect forward looking trends.

(355) The exclusion of Go-Ahead Group plc and Stagecoach Group plc was considered by PwC to constitute such outliers due to the reasons described above. However, PwC did not consider it necessary to exclude Transdev from the benchmarking exercise although noting that the negative results of the operator was due to substantial restructuring. As a result, the exclusion of Transdev from the benchmarking exercise appears to have been decided by the Norwegian authorities based on their own interpretation of the benchmarking report.

(356) The exclusion of Transdev from the benchmarking exercise seems to have led to a higher median ROCE. In the light of the above, ESA requests that the Norwegian authorities provide further explanations regarding the reasons and considerations behind the exclusion of Transdev from the benchmarking exercise.

([179]) Flytoget AS, SJ AB, Vy Gjøvikbanen AS and Vygruppen AS.
([180]) The benchmarking exercise was carried out by PwC.
([181]) Submission by the Norwegian authorities dated 7 December 2021, Document No 1260039.

(357) The group of undertakings included in the benchmarking report is, in addition to railway operators, bus operators. The Norwegian authorities have explained that due to the lack of sufficient number of train operators subject to competitive tendering, the PwC report covers a limited number of bus operators.

(358) The Interpretative Guidelines refer to the SGEI Communications, ([182]) which set out that in sectors where there is no comparable undertaking to benchmark against, a comparison can be made to undertakings situated in another EEA State or other sectors ([183]). The Interpretative Guidelines state that '[t]*he differences in the economic models of railways, tramways, metro and bus transport should also be taken into account. For example, while railway transport is generally very capital intensive, bus transport tends to be more dependent on personnel costs*'.

(359) The Norwegian authorities have explained that railway services and bus services are comparable in terms of capital intensity as Vy does not own the rolling stock that it employs in its services and at the relevant time the leasing costs associated with rolling stock were not capitalised. ESA notes that the benchmarking report takes account of the different economic models with regard to capital structure and excludes certain operators based on that assessment. ESA therefore considers that the appropriate considerations were made in line with Regulation 1370/2007 and the Interpretative Guidelines.

(360) The benchmarking report covers the years 2012-2015. ESA notes that it appears that the report was finalised in June 2017 and applied to contracts from 2018-2024. ESA therefore requests that the Norwegian authorities provide information on the considerations made concerning the timespan covered by the benchmarking.

(361) The complainants have criticised the use of the underlying data for calculating the ROCE for the benchmarking exercise. The complainants have, *i.a.* claimed that figures for different services have not been disaggregated in the dataset, the ROCE should have been updated during the lifetime of the PSO contracts and that the ROCE does not account for different levels of risk.

(362) ESA recognises that performance indicators based on accounting information have inherent weaknesses due to differences in accounting practices and the level of aggregation of the benchmarked operators. The granting authorities have a certain level of discretion when choosing appropriate benchmarking metrics. However, the granting authorities should ensure on a case-by-case basis that the metric chosen is the most appropriate given the specific circumstances and available information.

(363) Regulation 1370/2007, as interpreted by the Interpretative Guidelines, specifically foresee the use of ROCE metric. Despite its limitations, this metric is considered to provide a sufficient foundation for establishing a reasonable level of return in the relevant sector. In light of the above, ESA takes the preliminary view that the choice of benchmarking metric by the Norwegian authorities is in line with Regulation 1370/2007, as interpreted by the Interpretative Guidelines.

(364) ESA further notes that the number of comparators included in the benchmark does not appear to invalidate the result, as the consultant report seems to have done a thorough search for available and relevant comparators. The complainants do not provide any arguments demonstrating how factors such as the number of comparators and the time period relied on, would lead to a different outcome.

Vy's capital employed

(365) The Norwegian Railway Directorate used the benchmarked ROCE to calculate the expected ROCE amounts based on Vy's book value of capital employed in 2018. In this regard, the book value of Vy's subsidiaries, affiliated companies and joint ventures were subtracted from Vy's equity as well as the share of equity that arose from Vy's commercial railway passenger services.

([182]) Interpretative Guidelines, section 2.3.4.

([183]) Application of the State aid rules to compensation granted for the provision of services of general economic interest (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1), point 60.

(366) Furthermore, due to the railway reform and the reduction of Vy's pension obligations, Vy did not have net interest bearing debt to take into consideration when calculating the ROCE amount in 2018. Since Vy planned to adopt the accounting standard IFRS16 from 2018, the Norwegian authorities also took into account the liabilities arising from the leasing of rolling stock in the capital employed.

(367) Vy Gjøvikbanen AS does not have any subsidiaries but had net interest bearing debt in addition to the expected net present value of the rolling stock leases.

(368) Based on the information provided by the Norwegian authorities, it is unclear how the impact of the implementation of the IFRS-16 affected the benchmarking, specifically, if it was appropriate to benchmark with operators pre IFRS-16 implementation while at the same time applying this rate to a capital base which incorporated the IFRS-16 standard.

(369) In light of the above, ESA invites the Norwegian authorities to submit further information in relation to the benchmarking exercise and, in particular, the reasons behind the exclusion of Transdev from the benchmarking exercise, the considerations made with regard to the timespan covered by the benchmarking and concerning the impact of the implementation of the IFRS-16 on the benchmarking.

7.1.6.2. Assessment of commercial risk involved in the PSO contracts

(370) According to point 6 of the Annex to Regulation 1370/2007, the assessment of a 'reasonable profit' must take account of the risk, or absence of risk, incurred by the PSO operator by virtue of public authority intervention.

(371) According to the Interpretative Guidelines, when assessing PSO contracts to determine the adequate level of reasonable profit, the competent authority '[…] *must take into account* […] *the level of risk involved in each public service contract. For example, a public service contract that includes specific provisions protecting the level of compensation in the case of unforeseen costs is less risky than a public service contract that does not contain such guarantees. All other things being equal, the reasonable profit in the former contract should therefore be lower than in the latter contract*.'

(372) According to the Norwegian authorities, the commercial risk of the PSO contracts rests almost entirely with Vy, underpinning that it was appropriate to set the reasonable profit within the upper half of the range of the benchmarks gathered. The Norwegian authorities have further explained that any reduced risk is taken into account through the implementation of the *ex post* mechanism, specifically through the cap on the potential upside of the financial outcome.

(373) ESA notes that Vy bears the risk of not meeting the projected costs and revenue estimates and has no guarantee of obtaining the foreseen reasonable return or protection from incurring losses. This is comparable to the situation of a commercial operator which does not meet return targets. However, contrary to a commercial operator, in the case of profits exceeding the required rate of return, Vy will not be able to fully retain the extraordinary profits generated. As a result, if Vy were to achieve returns above the reasonable level, the *ex post* mechanism places Vy in a less favourable position compared to a commercial operator.

(374) The compensation under the PSO contracts is in the form of a fixed sum, determined in advance and cannot be increased in the event of a rise in costs or decrease in passenger numbers as opposed to PSO contracts under which the net cost incurred is essentially compensated *ex post* in full ([184]). ESA therefore acknowledges that Vy assumes risk under the PSO contracts different but comparable to an undertaking operating under competitively tendered PSO contracts as Vy's potential upside is capped while it still faces the full downside risk. In comparison, a competitively tendered PSO contract would not be subject to the same cap of upside potential.

([184]) ESA's Framework for State aid in the form of public service compensation (OJ L 161, 13.6.2013, p. 12 and EEA Supplement No 34, 13.6.2013, p. 1), point 38.

(375) The complainants have noted that in a case of directly awarded contracts the operator is not under the same competitive pressure to influence the estimation of the relevant costs and revenues for the duration of the contract. Further, the complainants have referred to a newspaper article from 2 February 2022, ([185]) published following the cancellation of the competitive tender procedure for traffic package 4, in which Vy's CEO stated that Vy had, in its bid for traffic package 4, reduced their safety margin and taken a high risk ([186]). Further that the risk involved was not as high in the directly awarded contract for traffic package 4 ([187]).

(376) ESA's preliminary view is that the Norwegian authorities' approach to assessing the risk involved in the PSO contracts appears to be in line with the underlying logic of the requirements set out in Regulation 1370/2007 as provided for by the Interpretative Guidelines. However, the final assessment of the risk-return consideration has to be made in the broader context of the overall assessment of the compensation awarded under the PSO contracts, as further described above in section 7.1.5.

7.1.7. *Efficiency incentives*

(377) According to point 7 of the Annex to Regulation 1370/2007, the method of compensation must promote the maintenance or development of effective management by the public service operator which can be the subject of an objective assessment and the provision of services of a sufficiently high standard. The Interpretive Guidelines further state that the use of efficiency incentives in the compensation mechanism is generally to be encouraged.

(378) The Norwegian authorities have explained that to provide for an efficiency incentive, the contracts include an *ex post* mechanism. The *ex post* mechanism included in the PSO contracts covers the entire contract period. The lower threshold for profit sharing is set at an amount reflecting a return on capital employed of 7 %. The maximum reasonable profit is an amount that represents a return on capital employed at approximately 10,6 %.

(379) This means that profit up to, but not exceeding the lower threshold of 7 % is kept by the operator. Profits exceeding the lower threshold, but not the upper limit of approximately 10,6 % will be divided between parties in accordance with a profit-sharing schedule introduced into the contracts, as described above in section 3.2.4. All profits exceeding the upper limit of approximately 10,6 % are to be returned to the Norwegian authorities.

(380) The complainants allege that the *ex post* mechanism does not provide incentives to reduce cost. Efficiency incentives should focus on reducing cost and/or increasing the quality of service.

(381) Regulation 1370/2007 leaves some leeway for the competent authorities to design incentive schemes for the PSO operator within the obligation set out in point 7 of the Annex as described above. This implies that the compensation system must be designed to ensure at least a certain improvement in efficiency over time.

(382) Efficiency incentives should nevertheless be proportionate and remain within a reasonable level, taking into account the difficulty in attaining the efficiency objectives. This may, for example, be ensured through a balanced sharing of any rewards linked to efficiency gains between the operator, the public authorities and/or the users.

(383) A system must be put in place to ensure that the operator is not allowed to retain disproportionate efficiency benefits. The system should not prevent the provision of high-quality services. Efficiency must be understood as the relation between the quality or level of the public services and the resources used to provide those services. Efficiency incentives should therefore focus on reducing cost and/or increasing the quality or level of service ([188]).

([185]) Published in Aftenposten 2 February 2022, *En bedre jernbane gir et billigere togtilbud – også uten konkurranse*.
([186]) In Norwegian '*Vi har redusert vår sikkerhetsmargin i tilbudet og tar høy risiko*'.
([187]) In Norwegian '*Vi kan for egen del også si at det ikke er like stor risiko i den nåværende, direktetildelte avtalen om togdrift på Østlandet*'.
([188]) The Interpretative Guidelines, section 2.4.5.

(384) The underlying objective of including such a mechanism is to improve the quality and effectiveness of railway passenger services to increase the share of railway transport in relation to other modes of transport. Depending on the design of such a mechanism, it can also lead to reduction of State expenditure.

(385) The combination of an *ex ante* determined compensation and the ex *post* mechanism for profit sharing included in the PSO contracts incentivises cost efficiencies and/or improvement of the quality of service as the operator is exposed to losses from cost overruns and importantly can retain earnings generated through cost efficiency and/or service improvements. The parameters of the *ex post* mechanism are fully and precisely defined in the PSO contracts.

(386) In light of the above, ESA therefore takes the preliminary view that the design of the *ex post* mechanism fulfils the requirements set out in Regulation 1370/2007 and the Annex, as provided for by the Interpretative Guidelines.

7.1.8. *The cost allocation in relation to the Oslo – Halden – Gothenburg route*

(387) Vy provides railway passenger services on the Oslo-Halden-Gothenburg route. Domestic railway passenger services between Oslo and Halden are covered by the directly awarded PSO contracts but the cross-border leg between Halden and Gothenburg is operated on commercial terms.

(388) The first complainant claims that the railway passenger services between Oslo and Gothenburg are being cross-subsidised by the compensation awarded to Vy under the PSO contracts. According to the complainant, the metrics applied to separate costs between the commercial and the PSO route, fail to capture that Vy's commercial service covers the entire Oslo-Halden-Gothenburg route and not just the Halden-Gothenburg leg. Specifically, the metrics fail to account for the demand network effects generated by combining the Oslo-Halden service and the Halden-Gothenburg service.

(389) The first complainant further claims that Vy's commercial services appear to have access to train capacity intended for services carried out under the PSO contracts. Moreover, the onboard personnel as well as the ticket distribution system employed are the same for the services provided under the PSO contracts and for Vy's commercial service. Therefore, Vy commercial service can utilize these inputs on favourable terms.

7.1.8.1. Network effects

(390) According to point 2 of the Annex to Regulation 1370/2007, any positive financial effects generated within the network operated under the public service obligation in question must be deducted from the cost incurred in relation to the PSO.

(391) Point 3 of the Annex states that '[c]*ompliance with the public service obligation may have an impact on possible transport activities of an operator beyond the public service obligation(s) in question. In order to avoid overcompensation or lack of compensation, quantifiable financial effects on the operator's networks concerned shall therefore be taken into account when calculating the net financial effect*'.

(392) The Interpretative Guidelines further state that '[t]*he operation of public passenger transport services under a public service contract by a transport undertaking also involved in other commercial operations may bring about positive induced network effects. For example, by serving a certain network under a public service contract which links to other routes operated under commercial terms, an operator may be able to increase its client base. The Commission welcomes induced network effects such as those brought about by through-ticketing and integrated timetabling, provided that they are designed to benefit passengers. The Commission is also aware of the practical difficulties in quantifying these potential network effects. Nevertheless, in accordance with the Annex to Regulation (C) No 1370/2007, any such quantifiable financial benefits shall be deducted from the costs for which compensation is claimed*' ([189]).

(393) Positive network effects are therefore foreseen by Regulation 1370/2007. If such financial benefits are quantifiable, a corresponding deduction from the costs under the compensation must be made.

([189]) Interpretative Guidelines, section 2.4.2.

(394) The Norwegian authorities recognised that Vy may be able to increase its passenger base by operating both the Oslo-Halden route as well as the Halden-Gothenburg route but underlined that any network effects are designed to benefit passengers ([190]). Accordingly, cost synergies between the two routes lead to lower costs for the Oslo-Halden route compared to the costs that would have been incurred without the Halden-Gothenburg route.

(395) Regulation 1370/2007 and the Interpretative Guidelines foresee circumstances where PSO are linked to commercial routes and therefore include a requirement of accounting separation as well as a requirement to take into account network effects.

(396) In this regard, the Norwegian authorities provided a description of the methodology applied when allocating costs between the PSO and the commercial route. Vy relies on Activity Based Costing method ('the ABC method'), where each route is categorised as separate products.

(397) With regard to rolling stock, Vy establishes how many trains each product requires and then allocates rental costs accordingly. A margin of error is employed so that the PSO contracts are charged with 0,3 trains less than it would have been charged had the commercial route not existed.

(398) Furthermore, each train is granted a train number based on the stations it operates. The trains operating Oslo-Halden and Halden-Gothenburg have different numbers. The cost of train drivers and conductors is allocated according to the service hours for each train number.

(399) The ticketing system is supplied by Entur AS ('Entur'). The largest cost item charged by Entur is a licence fee. Each product covers a share of Entur's total costs including a profit margin. The share that each product must bear is determined on the basis of passenger traffic. Vy allocates the ticketing cost according to the shares of ticket income attributed to the Oslo-Halden and Halden-Gothenburg products. Internal sales and marketing costs are allocated in the same way ([191]).

(400) In a situation where an operator subject to PSO also carries out commercial activities, it is necessary to ensure that the compensation under the PSO contracts is not used to strengthen the competitive position of the operator in its commercial activities. Such a situation can be avoided with an accounting separation between the two types of activities and a sound cost allocation reflecting the costs of providing the public services ([192]).

(401) ESA recognises that an appropriate cost and revenue allocation method can ensure that there is no cross-subsidization between commercial and PSO routes. However, it is unclear whether the chosen approach sufficiently accounts for the positive network effects in the specific circumstances of the case as the separation of the Oslo-Halden-Gothenburg route into two distinct 'products' may not reflect the underlying economic logic and, in particular, as regards revenue allocation. ESA therefore invites the Norwegian authorities to provide further information on this issue.

7.1.8.2. No beneficial terms for rolling stock and other input

(402) The first complainant claims that Vy obtains trains and other inputs which Vy employs at highly beneficial terms through its directly awarded PSO contracts.

(403) The Norwegian authorities have explained that Vy rents rolling stock from Norske tog AS ('Norske tog') and accesses the ticket distribution system of Entur on the same terms for the whole Oslo-Gothenburg route. Vy is offered the same terms for these services as other train operators in Norway.

([190]) Submission by the Norwegian authorities dated 15 September 2022, Document No 1313413.
([191]) Vy presents annual accounts for PSO services, audited by external auditor, to the Railway Directorate.
([192]) Interpretative Guidelines, section 2.4.4.

(404) The articles of association of both Norske tog ([193]) and Entur ([194]) state that their services must be provided based on competitively neutral terms. The rolling stock and ticket distribution system supplied by Norsk tog and Entur respectively are priced based on cost coverage and a market confirm profit margin ([195]).

(405) According to the Norwegian authorities, the rent offered by Norske tog is based on estimated capital costs such as interest on external financing, a rate of return on equity and amortisation and estimated operating costs, such as administration and maintenance. The prices set in the rental agreements for rolling stock under the tendered contracts include an insurance, which is not the case for the directly awarded and tendered contracts with Vy ([196]).

(406) In all other respect, the terms of Vy's contract with Norske tog shall at all times correspond to the standard terms applicable to other rental agreements for rolling stock offered by Norske tog ([197]).

(407) As leasing of rolling stock and other input appears to be provided on market terms and on the same terms for all operators, ESA takes the preliminary view that there are no indications that Vy is obtaining trains and other input at more beneficial terms than other operators active on the Norwegian railway passenger market.

7.1.9. *Cost estimates under the directly awarded PSO contracts*

(408) The first complainant claims that the cost estimates used to calculate the PSO compensation are likely to be excessive. The second complainant claims that the 2016 investigation by the Norwegian Railway Authority ('NRA') supports that Vy likely has been allowed to inflate its internal costs to extract extra profits.

(409) On 20 February 2015, NRA opened an investigation into an announced capital injection from Vy (NSB at the time) to its rail freight subsidiary, CargoNet AS. NRA concluded the investigation, stating that it had not found sufficient grounds for corrective measures or orders. However, NRA stated that this did not mean that NRA could exclude that there had been transfers of public funds or other financial dispositions contrary to railway legislation. NRA discontinued the investigation as it would have required significant resources to pursue and assess the case further ([198]).

(410) According to the conclusions of NRA, the Transport Ministry had informed NRA that amendments were expected to be adopted to the Railway Act, entering into force on 1 January 2017 ([199]). NRA further stated that NSB Persontog ([200]) was organised as part of Vy (NSB at the time) ([201]) which made it difficult to control that there is no overlap of the finances within Vy, the parent company, and to or from other business areas through direct or indirect transfer of funds. NRA further stated that the risk of such transfers would be less if Vy had organised the railway passenger services in a separate subsidiary ([202]).

([193]) The articles of association of Norske tog, Section 3 state (in Norwegian) '*Selskapets virksomhet er å anskaffe, eie og forvalte togmateriell, som fortrinnsvis skal brukes til utførelse av persontransport med tog som offentlig tjenesteforpliktelse. Selskapets togmateriell skal tilbys på konkurransenøytrale vilkår. Selskapet har også en rådgiverfunksjon overfor staten. Selskapet skal ha effektiv drift.*'

([194]) The articles of association of Enture, Section 3 state (in Norwegian) '*Selskapets virksomhet er å tilby tjenester på konkurransenøytrale vilkår for reiseplanlegging og billettering for kollektivtransportsektoren i Norge, og nært relaterte tjenester*'.

([195]) Submission by the Norwegian authorities dated 15 September 2022, Document No 1313413.

([196]) Submission by the Norwegian authorities dated 15 September 2022, Document No 1313413.

([197]) Section 6.3.1 of the directly awarded PSO contract for the period 2019 – 2022: '*Vilkårene i Leverandørens avtale med Norske tog skal til enhver tid samsvare med de standardvilkår som gjelder for øvrige leieavtaler for Kjøretøy hos Norske tog*'.

([198]) Letter from the Norwegian Railway Authority dated 2 November 2016 informing Vy (NSB at the time) that the case concerning capital injection to CargoNet would be closed.

([199]) The amendments would also implement Directive 2012/34 of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32), referred to at point 37 of Annex XIII to the EEA Agreement, Decision of the EEA Joint Committee No 247/2021 of 24 September 2021 amending Annex XIII (Transport) to the EEA Agreement, into Norwegian law.

([200]) The entity managing the railway passenger transport services.

([201]) NSB Persontog was organised as a part of the parent company, Vy.

([202]) Letter from the Norwegian Railway Authority dated 2 November 2016 informing Vy (NSB at the time) that the case concerning capital injection to CargoNet would be closed.

(411) The second complainant further refers to a report from the Office of the Auditor General in Norway ('OAG') from 2010 where OAG reviewed the bus operations of Vy for the period 2008-2010. OAG noted in the report that to ensure that funds from Government procurements do not finance the part of NSB's business that operates in competition with others, the competitive part of the business must achieve a satisfactory return over time. The report showed that Vy buss' (Nettbuss at the time) return in the period 2008-2010 had been lower than the stipulated requirement for Vy (NSB at the time) and that a significant part of the operating profit had been related to the non-scheduled bus-for-train service that the company performs for Vy (NSB at the time) ([203]).

(412) As part of the Railway Reform (described in section 3.1.4), Vy (NSB at the time) was subject to reorganization where certain activities were structurally separated into subsidiary entities. This reorganization took place after the reports by NRA and OAG were concluded and before the conclusion of the PSO contracts subject to this decision. The circumstances in which NRA and OAG raised concerns therefore appear to be no longer relevant.

(413) However, ESA requests that the Norwegian authorities provide information regarding the methodology applied for determining intra-group prices and any relevant legal obligations applicable to Vy in this respect.

7.1.10. *Comparison with compensation established in public tenders*

(414) The complainants claim that a comparison between the compensation under the directly awarded PSO contracts, subject to this decision, and the corresponding tendered traffic packages demonstrates that Vy has been overcompensated.

(415) In ESA's view, if compensation has been determined in line with Regulation 1370/2007, based on cost estimates at the time of the award of the PSO contracts, a comparison with an *ex post* event such as tenders, which were not available at the time of the conclusion of the contracts, cannot in and of itself evidence overcompensation.

(416) Basing the assessment on an *ex post* benchmark would jeopardise legal certainty as State authorities, as well as PSO providers, would never be able to verify, at the point in time when contracts are concluded, whether the conditions therein are compatible with the requirements set out in Regulation 1370/2007.

(417) ESA further notes that Regulation 1370/2007 does not require competent authorities to award contracts to the most efficient operator. Even if Vy would have relatively high costs, it would not render, in and of itself, the compensation unlawful.

(418) The Norwegian authorities have provided several examples of differences in circumstances between the tendered and directly awarded contracts. Notwithstanding, ESA will not address directly the underlying reasoning explaining the difference in compensation. As set out in this decision, ESA will assess whether the method used by the Norwegian authorities for calculating compensation under the directly awarded PSO contracts is in line with the requirements set out in Regulation 1370/2007.

8. **Conclusion**

(419) As set out above, ESA has doubts as to whether the measures constitute existing aid and, in case the measures were considered new aid, as to whether the measures are compatible with the functioning of the EEA Agreement.

(420) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, ESA hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of ESA, which may conclude that the measures constitute existing aid or that they are compatible with the functioning of the EEA Agreement.

([203]) *Riksrevisjonens kontroll med forvaltningen av statlige selskaper for 2010. Dokument 3:2 (2011-2012).*

(421) ESA, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by 29 June 2023, their comments and to provide all documents, information and data needed for the assessment of the measures in light of the State aid rules.

(422) The Norwegian authorities are requested to immediately forward a copy of this decision to the potential aid recipient.

(423) If this letter contains confidential information which should not be disclosed to third parties, please inform ESA by 22 June 2023, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult ESA's Guidelines on Professional Secrecy in State Aid Decisions ([204]). If ESA does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on ESA's Internet: http://www.eftasurv.int/state-aid/state-aid-register/. For the EFTA Surveillance Authority,

(424) Finally, ESA will inform interested parties by publishing a meaningful summary in the *Official Journal of the European Union* and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Norwegian authorities.

For the EFTA Surveillance Authority,

Arne RØKSUND
President
Responsible College Member

Stefan BARRIGA
College Member

Árni Páll ÁRNASON
College Member

For Melpo-Menie JOSÉPHIDÈS
Director,
Legal and Executive Affairs

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

STÄNDIGER AUSSCHUSS DER EFTA-STAATEN

Arzneimittel — Liste der Zulassungen in der zweiten hälfte des Jahres 2022 in den dem EWR angehörenden EFTA-Staaten

(2023/C 239/04)

Unterausschuss I für den freien Warenverkehr

Zur Kenntnisnahme durch den Gemeinsamen EWR-Ausschuss

Der Gemeinsame EWR-Ausschuss wird unter Bezugnahme auf seinen Beschluss Nr. 74/1999 vom 28. Mai 1999 ersucht, in der Sitzung vom 17. März 2023 von den folgenden Listen betreffend Zulassungen von Arzneimitteln im Zeitraum 1. Juli bis 31. Dezember 2022 Kenntnis zu nehmen:

Anhang I Liste neuer Zulassungen

Anhang II Liste verlängerter Zulassungen

Anhang III Liste erweiterter Zulassungen

Anhang IV Liste widerrufener Zulassungen

Anhang V Liste ausgesetzter Zulassungen

ANHANG I

Liste neuer Zulassungen

Folgende Zulassungen wurden im Zeitraum 1. Juli bis 31. Dezember 2022 in den dem EWR angehörenden EFTA-Staaten erteilt:

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/21/1579	Nexviadyme	Island	13.7.2022
EU/1/21/1579	Nexviadyme	Norwegen	4.7.2022
EU/1/21/1580	VidPrevtyn Beta	Island	7.12.2022
EU/1/21/1580	VidPrevtyn Beta	Liechtenstein	30.11.2022
EU/1/21/1580	VidPrevtyn Beta	Norwegen	11.11.2022
EU/1/21/1587	Rayvow	Island	31.8.2022
EU/1/21/1587	Rayvow	Liechtenstein	31.8.2022
EU/1/21/1587	Rayvow	Norwegen	6.9.2022
EU/1/22/1629	ZOLSKETIL pegylated liposomal	Norwegen	11.8.2022
EU/1/22/1646	Amifampridin SERB	Island	12.8.2022
EU/1/22/1650	Tabrecta	Island	12.7.2022
EU/1/22/1650	Tabrecta	Norwegen	5.7.2022
EU/1/22/1652	Filsuvez	Island	12.8.2022
EU/1/22/1652	Filsuvez	Norwegen	1.8.2022
EU/1/22/1653	Upstaza	Island	12.8.2022
EU/1/22/1653	Upstaza	Liechtenstein	31.7.2022
EU/1/22/1653	Upstaza	Norwegen	25.7.2022
EU/1/22/1655	Pirfenidon AET	Island	12.7.2022
EU/1/22/1655	Pirfenidon axunio	Liechtenstein	30.6.2022
EU/1/22/1655	Pirfenidon AET	Norwegen	5.7.2022
EU/1/22/1656	Ertapenem SUN	Island	11.8.2022
EU/1/22/1656	Ertapenem SUN	Liechtenstein	31.7.2022
EU/1/22/1656	Ertapenem SUN	Norwegen	10.8.2022
EU/1/22/1657	Kinpeygo	Island	19.7.2022
EU/1/22/1657	Kinpeygo	Liechtenstein	31.7.2022
EU/1/22/1657	Kinpeygo	Norwegen	21.7.2022
EU/1/22/1658	Ganirelix Gedeon Richter	Island	21.7.2022
EU/1/22/1658	Ganirelix Gedeon Richter	Liechtenstein	31.7.2022
EU/1/22/1658	Ganirelix Gedeon Richter	Norwegen	25.7.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/22/1659	Xenpozyme	Island	13.7.2022
EU/1/22/1659	Xenpozyme	Norwegen	4.7.2022
EU/1/22/1660	Zokinvy	Island	21.7.2022
EU/1/22/1660	Zokinvy	Liechtenstein	31.7.2022
EU/1/22/1660	Zokinvy	Norwegen	21.7.2022
EU/1/22/1661	Sitagliptin/Metforminhydrochlorid Accord	Island	15.8.2022
EU/1/22/1661	Sitagliptin/Metforminhydrochlorid Accord	Liechtenstein	31.7.2022
EU/1/22/1661	Sitagliptin/Metforminhydrochlorid Accord	Norwegen	1.8.2022
EU/1/22/1662	Pyrukynd	Island	1.12.2022
EU/1/22/1662	Pyrukynd	Liechtenstein	30.11.2022
EU/1/22/1662	Pyrukynd	Norwegen	30.11.2022
EU/1/22/1663	Sugammadex Fresenius Kabi	Island	19.7.2022
EU/1/22/1663	Sugammadex Fresenius Kabi	Liechtenstein	31.7.2022
EU/1/22/1663	Sugammadex Fresenius Kabi	Norwegen	25.7.2022
EU/1/22/1664	Cevenfacta	Island	12.8.2022
EU/1/22/1664	Cevenfacta	Liechtenstein	31.7.2022
EU/1/22/1664	Cevenfacta	Norwegen	22.8.2022
EU/1/22/1666	Celdoxome pegylated liposomal	Liechtenstein	30.9.2022
EU/1/22/1666	Celdoxome pegylated liposomal	Norwegen	10.10.2022
EU/1/22/1667	Celdoxome pegylated liposomal	Island	11.10.2022
EU/1/22/1667	Vegzelma	Island	23.8.2022
EU/1/22/1667	Vegzelma	Liechtenstein	31.8.2022
EU/1/22/1667	Vegzelma	Norwegen	30.8.2022
EU/1/22/1668	Roctavian	Island	31.8.2022
EU/1/22/1668	Roctavian	Liechtenstein	31.8.2022
EU/1/22/1668	Roctavian	Norwegen	30.8.2022
EU/1/22/1669	Pepaxti	Island	23.8.2022
EU/1/22/1669	Pepaxti	Liechtenstein	31.8.2022
EU/1/22/1669	Pepaxti	Norwegen	30.8.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/22/1670	Scemblix	Island	30.8.2022
EU/1/22/1670	Scemblix	Liechtenstein	31.8.2022
EU/1/22/1670	Scemblix	Norwegen	30.8.2022
EU/1/22/1671	Sunlenca	Island	23.8.2022
EU/1/22/1671	Sunlenca	Liechtenstein	31.8.2022
EU/1/22/1671	Sunlenca	Norwegen	30.8.2022
EU/1/22/1672	Livtencity	Island	1.12.2022
EU/1/22/1672	Livtencity	Liechtenstein	30.11.2022
EU/1/22/1672	Livtencity	Norwegen	9.11.2022
EU/1/22/1673	Ranivisio	Island	30.8.2022
EU/1/22/1673	Ranivisio	Liechtenstein	31.8.2022
EU/1/22/1673	Ranivisio	Norwegen	30.8.2022
EU/1/22/1674	Vyvgart	Island	17.8.2022
EU/1/22/1674	Vyvgart	Liechtenstein	31.8.2022
EU/1/22/1674	Vyvgart	Norwegen	15.8.2022
EU/1/22/1675	Tecvayli	Island	7.9.2022
EU/1/22/1675	Tecvayli	Liechtenstein	31.8.2022
EU/1/22/1675	Tecvayli	Norwegen	30.8.2022
EU/1/22/1676	Thalidomid Lipomed	Island	12.10.2022
EU/1/22/1676	Thalidomid Lipomed	Liechtenstein	30.9.2022
EU/1/22/1676	Thalidomid Lipomed	Norwegen	5.10.2022
EU/1/22/1677	Tezspire	Island	12.10.2022
EU/1/22/1677	Tezspire	Liechtenstein	30.9.2022
EU/1/22/1677	Tezspire	Norwegen	26.9.2022
EU/1/22/1678	Lupkynis	Island	12.10.2022
EU/1/22/1678	Lupkynis	Liechtenstein	30.9.2022
EU/1/22/1678	Lupkynis	Norwegen	20.9.2022
EU/1/22/1679	Opdualag	Island	11.10.2022
EU/1/22/1679	Opdualag	Liechtenstein	30.9.2022
EU/1/22/1679	Opdualag	Norwegen	20.9.2022
EU/1/22/1680	ilLuzyce	Island	10.10.2022
EU/1/22/1680	ilLuzyce	Liechtenstein	30.9.2022
EU/1/22/1680	ilLuzyce	Norwegen	20.9.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/22/1681	Amvuttra	Island	10.10.2022
EU/1/22/1681	Amvuttra	Liechtenstein	30.9.2022
EU/1/22/1681	Amvuttra	Norwegen	20.9.2022
EU/1/22/1683	Vabysmo	Island	11.10.2022
EU/1/22/1683	Vabysmo	Liechtenstein	30.9.2022
EU/1/22/1683	Vabysmo	Norwegen	26.9.2022
EU/1/22/1684	Nulibry	Liechtenstein	30.9.2022
EU/1/22/1684	Nulibry	Norwegen	26.9.2022
EU/1/22/1685	Mounjaro	Island	11.10.2022
EU/1/22/1685	Mounjaro	Liechtenstein	30.9.2022
EU/1/22/1685	Mounjaro	Norwegen	28.10.2022
EU/1/22/1687	Enjaymo	Island	8.12.2022
EU/1/22/1687	Enjaymo	Liechtenstein	30.11.2022
EU/1/22/1688	Spevigo	Liechtenstein	31.12.2022
EU/1/22/1688	Spevigo	Norwegen	21.12.2022
EU/1/22/1689	Beyfortus	Island	18.11.2022
EU/1/22/1689	Beyfortus	Liechtenstein	31.10.2022
EU/1/22/1689	Beyfortus	Norwegen	23.11.2022
EU/1/22/1690	Mycapssa	Island	14.12.2022
EU/1/22/1690	Mycapssa	Liechtenstein	31.12.2022
EU/1/22/1690	Mycapssa	Norwegen	2.12.2022
EU/1/22/1691	Ximluci	Island	1.12.2022
EU/1/22/1691	Ximluci	Liechtenstein	30.11.2022
EU/1/22/1691	Ximluci	Norwegen	30.11.2022
EU/1/22/1692	Locametz	Liechtenstein	31.12.2022
EU/1/22/1693	Teriflunomid Accord	Island	8.12.2022
EU/1/22/1693	Teriflunomid Accord	Liechtenstein	30.11.2022
EU/1/22/1693	Teriflunomid Accord	Norwegen	30.11.2022
EU/1/22/1694	Melatonin Neurim	Island	7.12.2022
EU/1/22/1694	Melatonin Neurim	Liechtenstein	30.11.2022
EU/1/22/1694	Melatonin Neurim	Norwegen	1.12.2022
EU/1/22/1695	Zynlonta	Liechtenstein	31.12.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/22/1696	Sorafenib Accord	Island	8.12.2022
EU/1/22/1696	Sorafenib Accord	Liechtenstein	30.11.2022
EU/1/22/1696	Sorafenib Accord	Norwegen	30.11.2022
EU/1/22/1697	Teriparatide Sun	Island	1.12.2022
EU/1/22/1697	Teriparatide Sun	Liechtenstein	30.11.2022
EU/1/22/1697	Teriparatide Sun	Norwegen	1.12.2022
EU/1/22/1698	Teriflunomid Mylan	Island	8.12.2022
EU/1/22/1698	Teriflunomid Mylan	Liechtenstein	30.11.2022
EU/1/22/1698	Teriflunomid Mylan	Norwegen	1.12.2022
EU/1/22/1699	Qdenga	Island	15.12.2022
EU/1/22/1699	Qdenga	Liechtenstein	31.12.2022
EU/1/22/1699	Qdenga	Norwegen	14.12.2022
EU/1/22/1700	Ebvallo	Liechtenstein	31.12.2022
EU/1/22/1700	Ebvallo	Norwegen	21.12.2022
EU/1/22/1701	Plerixafor Accord	Liechtenstein	31.12.2022
EU/1/22/1701	Plerixafor Accord	Norwegen	22.12.2022
EU/1/22/1702	Dimethylfumarat Teva	Liechtenstein	31.12.2022
EU/1/22/1703	Pluvicto	Liechtenstein	31.12.2022
EU/1/22/1703	Pluvicto	Norwegen	15.12.2022
EU/1/22/1704	Livmarli	Liechtenstein	31.12.2022
EU/1/22/1704	Livmarli	Norwegen	15.12.2022
EU/1/22/1705	Pemetrexed Baxter	Island	20.12.2022
EU/1/22/1705	Pemetrexed Baxter	Liechtenstein	31.12.2022
EU/1/22/1705	Pemetrexed Baxter	Norwegen	21.12.2022
EU/1/22/1706	Eladynos	Liechtenstein	31.12.2022
EU/1/22/1706	Eladynos	Norwegen	21.12.2022
EU/1/22/1687	Enjaymo	Norwegen	1.12.2022
EU/1/22/1687	Enjaymo	Liechtenstein	30.11.2022
EU/1/22/1656	Ertapenem Sun	Norwegen	10.8.2022
EU/1/22/1656	Ertapenem Sun	Liechtenstein	31.7.2022
EU/2/21/281	CircoMax	Island	12.8.2022
EU/2/22/284	Evanovo	Island	16.8.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/2/22/284	Evanovo	Liechtenstein	31.7.2022
EU/2/22/284	Evanovo	Norwegen	24.8.2022
EU/2/22/286	Coxatab	Island	31.8.2022
EU/2/22/286	Coxatab	Liechtenstein	31.8.2022
EU/2/22/286	Coxatab	Norwegen	1.9.2022
EU/2/22/287	Cortaderm	Island	17.8.2022
EU/2/22/287	Cortaderm	Liechtenstein	31.7.2022
EU/2/22/287	Cortaderm	Norwegen	24.8.2022
EU/2/22/288	Lotilaner Elanco	Island	13.10.2022
EU/2/22/288	Lotilaner Elanco	Liechtenstein	30.9.2022
EU/2/22/288	Lotilaner Elanco	Norwegen	11.10.2022

ANHANG II

Liste verlängerter Zulassungen

Folgende Zulassungen wurden im Zeitraum 1. Juli bis 31. Dezember 2022 in den dem EWR angehörenden EFTA-Staaten verlängert:

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/11/699	Fampyra	Island	8.9.2022
EU/1/11/749	Caprelsa	Island	13.12.2022
EU/1/11/749	Caprelsa	Liechtenstein	30.11.2022
EU/1/11/749	Caprelsa	Norwegen	9.12.2022
EU/1/12/782	Kalydeco	Island	8.9.2022
EU/1/12/784	Cuprymina	Norwegen	5.7.2022
EU/1/12/794	Adcetris	Norwegen	27.9.2022
EU/1/12/794	Adcetris	Liechtenstein	31.5.2022 ([1])
EU/1/12/803	NexoBrid	Island	23.8.2022
EU/1/12/803	NexoBrid	Liechtenstein	31.8.2022
EU/1/12/803	NexoBrid	Norwegen	30.8.2022
EU/1/13/901	Sirturo	Liechtenstein	31.12.2022
EU/1/13/902	Translarna	Norwegen	12.7.2022
EU/1/16/1094	Ninlaro	Island	6.10.2022
EU/1/16/1094	Ninlaro	Liechtenstein	30.9.2022
EU/1/16/1094	Ninlaro	Norwegen	24.10.2022
EU/1/16/1169	Alecensa	Island	11.8.2022
EU/1/16/1169	Alecensa	Liechtenstein	31.7.2022
EU/1/16/1169	Alecensa	Norwegen	17.8.2022
EU/1/17/1192	Brineura	Island	15.7.2022
EU/1/17/1192	Brineura	Norwegen	15.8.2022
EU/1/17/1195	Erelzi	Norwegen	16.8.2022
EU/1/17/1199	Cuprior	Island	30.8.2022
EU/1/17/1199	Cuprior	Liechtenstein	31.8.2022
EU/1/17/1199	Cuprior	Norwegen	30.8.2022
EU/1/17/1211	Entecavir Accord	Island	14.7.2022
EU/1/17/1211	Entecavir Accord	Liechtenstein	31.7.2022
EU/1/17/1211	Entecavir Accord	Norwegen	8.7.2022
EU/1/17/1213	Maviret	Norwegen	16.8.2022
EU/1/17/1215	Fotivda	Island	11.8.2022

([1]) Die Zulassung wurde in der Liste für die erste Hälfte des Jahres 2022 unabsichtlich nicht berücksichtigt.

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/17/1215	Fotivda	Liechtenstein	31.7.2022
EU/1/17/1215	Fotivda	Norwegen	17.8.2022
EU/1/17/1217	Nitisinon MDK	Island	11.8.2022
EU/1/17/1217	Nitisinon MDK	Liechtenstein	31.7.2022
EU/1/17/1217	Nitisinon MDK	Norwegen	17.8.2022
EU/1/17/1218	Rydapt	Norwegen	15.8.2022
EU/1/17/1222	Efavirenz/Emtricitabin/ Tenofovirdisoproxil Mylan	Norwegen	12.8.2022
EU/1/17/1223	Vosevi	Island	22.8.2022
EU/1/17/1224	Xermelo	Island	12.7.2022
EU/1/17/1224	Xermelo	Norwegen	12.7.2022
EU/1/17/1226	Lutathera	Island	14.7.2022
EU/1/17/1226	Lutathera	Liechtenstein	31.7.2022
EU/1/17/1226	Lutathera	Norwegen	21.7.2022
EU/1/17/1227	Entecavir Mylan	Island	12.7.2022
EU/1/17/1227	Entecavir Mylan	Norwegen	5.7.2022
EU/1/17/1228	Tookad	Island	13.10.2022
EU/1/17/1228	Tookad	Liechtenstein	30.9.2022
EU/1/17/1228	Tookad	Norwegen	27.10.2022
EU/1/17/1229	Dupixent	Island	8.9.2022
EU/1/17/1229	Dupixent	Liechtenstein	30.9.2022
EU/1/17/1229	Dupixent	Norwegen	6.9.2022
EU/1/17/1230	Lacosamid Accord	Island	30.8.2022
EU/1/17/1230	Lacosamid Accord	Liechtenstein	31.8.2022
EU/1/17/1230	Lacosamid Accord	Norwegen	24.8.2022
EU/1/17/1231	Ocrevus	Island	12.10.2022
EU/1/17/1231	Ocrevus	Liechtenstein	30.9.2022
EU/1/17/1231	Ocrevus	Norwegen	27.9.2022
EU/1/17/1232	Miglustat Gen.Orph	Island	12.10.2022
EU/1/17/1232	Miglustat Gen.Orph	Liechtenstein	30.9.2022
EU/1/17/1232	Miglustat Gen.Orph	Norwegen	6.10.2022
EU/1/17/1233	Zubsolv	Island	12.8.2022
EU/1/17/1233	Zubsolv	Liechtenstein	31.7.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/17/1233	Zubsolv	Norwegen	25.8.2022
EU/1/17/1234	Tremfya	Island	21.7.2022
EU/1/17/1234	Tremfya	Liechtenstein	31.7.2022
EU/1/17/1234	Tremfya	Norwegen	21.7.2022
EU/1/17/1235	Zejula	Island	11.8.2022
EU/1/17/1235	Zejula	Liechtenstein	31.7.2022
EU/1/17/1235	Zejula	Norwegen	15.8.2022
EU/1/17/1236	Trelegy Ellipta	Island	19.7.2022
EU/1/17/1236	Trelegy Ellipta	Liechtenstein	31.7.2022
EU/1/17/1237	Elebrato Ellipta	Island	19.7.2022
EU/1/17/1237	Elebrato Ellipta	Liechtenstein	31.7.2022
EU/1/17/1237	Elebrato Ellipta	Norwegen	21.7.2022
EU/1/17/1238	Nyxoid	Island	7.10.2022
EU/1/17/1238	Nyxoid	Liechtenstein	30.9.2022
EU/1/17/1238	Nyxoid	Norwegen	20.9.2022
EU/1/17/1239	VeraSeal	Island	13.10.2022
EU/1/17/1239	VeraSeal	Liechtenstein	30.9.2022
EU/1/17/1239	VeraSeal	Norwegen	25.10.2022
EU/1/17/1241	Ontruzant	Island	17.8.2022
EU/1/17/1241	Ontruzant	Liechtenstein	31.7.2022
EU/1/17/1241	Ontruzant	Norwegen	18.8.2022
EU/1/17/1242	Ritonavir Mylan	Island	25.8.2022
EU/1/17/1242	Ritonavir Mylan	Liechtenstein	31.8.2022
EU/1/17/1242	Ritonavir Mylan	Norwegen	30.8.2022
EU/1/17/1244	Tacforius	Island	15.8.2022
EU/1/17/1244	Tacforius	Liechtenstein	31.8.2022
EU/1/17/1244	Tacforius	Norwegen	25.8.2022
EU/1/17/1245	Prevymis	Liechtenstein	31.8.2022
EU/1/17/1245	Prevymis	Norwegen	13.9.2022
EU/1/17/1246	Mvasi	Island	18.10.2022
EU/1/17/1246	Mvasi	Liechtenstein	30.9.2022
EU/1/17/1246	Mvasi	Norwegen	13.10.2022
EU/1/17/1247	Adynovi	Liechtenstein	30.11.2022
EU/1/17/1247	Adynovi	Norwegen	6.12.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/17/1249	Darunavir Krka	Liechtenstein	30.11.2022
EU/1/17/1249	Darunavir Krka	Norwegen	8.12.2022
EU/1/17/1251	Ozempic	Island	12.10.2022
EU/1/17/1251	Ozempic	Liechtenstein	30.9.2022
EU/1/17/1251	Ozempic	Norwegen	27.9.2022
EU/1/17/1252	Fasenra	Island	7.10.2022
EU/1/17/1252	Fasenra	Liechtenstein	30.9.2022
EU/1/17/1252	Fasenra	Norwegen	26.9.2022
EU/1/17/1254	Jorveza	Island	13.10.2022
EU/1/17/1254	Jorveza	Liechtenstein	30.9.2022
EU/1/17/1254	Jorveza	Norwegen	27.9.2022
EU/1/17/1255	Intrarosa	Island	10.10.2022
EU/1/17/1255	Intrarosa	Liechtenstein	30.9.2022
EU/1/17/1255	Intrarosa	Norwegen	20.9.2022
EU/1/17/1256	Anagrelid Mylan	Island	12.12.2022
EU/1/17/1256	Anagrelid Mylan	Liechtenstein	30.11.2022
EU/1/17/1256	Anagrelid Mylan	Norwegen	8.12.2022
EU/1/17/1257	Herzuma	Liechtenstein	31.12.2022
EU/1/17/1257	Herzuma	Norwegen	9.12.2022
EU/1/17/1260	Alkindi	Island	5.12.2022
EU/1/17/1260	Alkindi	Liechtenstein	30.11.2022
EU/1/17/1260	Alkindi	Norwegen	6.12.2022
EU/1/17/1263	Efavirenz/Emtricitabin/ Tenofovirdisoproxil Krka	Island	5.12.2022
EU/1/17/1263	Efavirenz/Emtricitabin/ Tenofovirdisoproxil Krka	Liechtenstein	30.11.2022
EU/1/17/1263	Efavirenz/Emtricitabin/ Tenofovirdisoproxil Krka	Norwegen	6.12.2022
EU/1/18/1265	Segluromet	Island	5.12.2022
EU/1/18/1265	Segluromet	Liechtenstein	30.11.2022
EU/1/18/1265	Segluromet	Norwegen	6.12.2022
EU/1/18/1266	Steglujan	Island	14.12.2022
EU/1/18/1266	Steglujan	Liechtenstein	31.12.2022
EU/1/18/1266	Steglujan	Norwegen	5.12.2022
EU/1/18/1267	Steglatro	Island	8.12.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/18/1267	Steglatro	Liechtenstein	30.11.2022
EU/1/18/1267	Steglatro	Norwegen	23.11.2022
EU/1/18/1271	Hemlibra	Island	7.10.2022
EU/1/18/1271	Hemlibra	Liechtenstein	30.9.2022
EU/1/18/1271	Hemlibra	Norwegen	20.9.2022
EU/1/18/1272	Shingrix	Island	14.12.2022
EU/1/18/1272	Shingrix	Liechtenstein	31.12.2022
EU/1/18/1272	Shingrix	Norwegen	5.12.2022
EU/1/18/1274	Trydonis	Liechtenstein	31.12.2022
EU/1/18/1275	Riarify	Liechtenstein	31.12.2022
EU/1/18/1275	Riarify	Norwegen	9.12.2022
EU/1/18/1277	Mylotarg	Island	8.12.2022
EU/1/18/1277	Mylotarg	Liechtenstein	30.11.2022
EU/1/18/1277	Mylotarg	Norwegen	8.12.2022
EU/1/18/1280	Zessly	Island	14.12.2022
EU/1/18/1280	Zessly	Liechtenstein	30.11.2022
EU/1/18/1280	Zessly	Norwegen	28.11.2022
EU/1/19/1355	Lorviqua	Norwegen	16.8.2022
EU/1/19/1376	Libtayo	Island	14.7.2022
EU/1/19/1376	Libtayo	Norwegen	28.7.2022
EU/1/19/1376	Libtayo	Liechtenstein	31.7.2022
EU/1/19/1385	Vitrakvi	Island	31.8.2022
EU/1/19/1385	Vitrakvi	Liechtenstein	31.8.2022
EU/1/19/1385	Vitrakvi	Norwegen	12.9.2022
EU/1/20/1437	Dovprela	Island	12.7.2022
EU/1/20/1437	Dovprela	Norwegen	2.8.2022
EU/1/20/1446	Hepcludex	Island	18.8.2022
EU/1/20/1446	Hepcludex	Norwegen	16.8.2022
EU/1/20/1459	Veklury	Island	17.8.2022
EU/1/20/1459	Veklury	Norwegen	15.8.2022
EU/1/20/1460	Rozlytrek	Island	1.9.2022
EU/1/20/1460	Rozlytrek	Norwegen	16.8.2022
EU/1/20/1471	Idefirix	Island	21.7.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/20/1471	Idefirix	Liechtenstein	31.7.2022
EU/1/20/1471	Idefirix	Norwegen	3.11.2022
EU/1/20/1473	Ayvakyt	Island	30.8.2022
EU/1/20/1473	Ayvakyt	Liechtenstein	31.7.2022
EU/1/20/1473	Ayvakyt	Norwegen	2.8.2022
EU/1/20/1474	Blenrep	Island	13.7.2022
EU/1/20/1474	Blenrep	Norwegen	28.7.2022
EU/1/20/1476	Adakveo	Liechtenstein	31.8.2022
EU/1/20/1476	Adakveo	Norwegen	10.10.2022
EU/1/20/1492	Tecartus	Island	8.12.2022
EU/1/20/1492	Tecartus	Liechtenstein	30.11.2022
EU/1/20/1507	Spikevax	Island	13.10.2022
EU/1/20/1507	Spikevax	Norwegen	10.10.2022
EU/1/20/1507	Spikevax	Liechtenstein	31.10.2022
EU/1/20/1508	Enhertu	Liechtenstein	31.10.2022
EU/1/20/1508	Enhertu	Norwegen	7.12.2022
EU/1/20/1527	Retsevmo	Liechtenstein	31.12.2022
EU/1/20/1528	Comirnaty	Norwegen	13.10.2022
EU/1/20/1528	Comirnaty	Island	9.11.2022
EU/1/20/1528	Comirnaty	Liechtenstein	31.10.2022
EU/1/21/1529	Vaxzevria	Norwegen	4.11.2022
EU/1/21/1529	Vaxzevria	Liechtenstein	31.10.2022
EU/1/21/1537	NEXPOVIO	Island	25.8.2022
EU/1/21/1539	Abecma	Island	12.7.2022
EU/1/21/1539	Abecma	Norwegen	27.9.2022
EU/1/21/1552	Koselugo	Island	8.9.2022
EU/1/21/1555	Gavreto	Island	7.10.2022
EU/1/21/1555	Gavreto	Liechtenstein	30.9.2022
EU/1/21/1555	Gavreto	Norwegen	26.9.2022
EU/1/21/1570	Minjuvi	Island	15.7.2022
EU/1/21/1570	Minjuvi	Liechtenstein	31.7.2022
EU/1/21/1570	Minjuvi	Norwegen	3.8.2022
EU/1/21/1594	Rybrevant	Island	13.10.2022
EU/1/21/1594	Rybrevant	Liechtenstein	30.9.2022

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/21/1594	Rybrevant	Norwegen	24.10.2022
EU/1/21/1603	Lumykras	Liechtenstein	30.11.2022
EU/1/21/1618	Nuvaxovid	Liechtenstein	31.10.2022
EU/1/21/1618	Nuvaxovid	Norwegen	11.10.2022
EU/1/22/1625	Paxlovid	Island	12.12.2022
EU/1/22/1625	Paxlovid	Liechtenstein	30.11.2022
EU/1/22/1625	Paxlovid	Norwegen	9.12.2022
EU/2/12/143	Nobivac L4	Island	16.9.2022
EU/2/12/143	Nobivac L4	Liechtenstein	31.7.2022
EU/2/12/143	Nobivac L4	Norwegen	18.8.2022
EU/2/16/197	Clynav	Liechtenstein	30.6.2022
EU/2/16/197	Clynav	Norwegen	16.8.2022
EU/2/17/205	CYTOPOINT	Island	6.10.2022
EU/2/17/206	Credelio	Island	6.10.2022
EU/2/17/207	Zulvac BTV	Island	6.10.2022
EU/2/17/209	RESPIPORC FLUpan H1N1	Island	6.10.2022
EU/2/17/210	Zeleris	Island	15.9.2022
EU/2/17/211	Prevomax	Island	16.9.2022
EU/2/17/211	Prevomax	Liechtenstein	31.7.2022
EU/2/17/211	Prevomax	Norwegen	18.8.2022
EU/2/17/212	Exzolt	Island	16.9.2022
EU/2/17/212	Exzolt	Liechtenstein	31.7.2022
EU/2/17/212	Exzolt	Norwegen	29.9.2022
EU/2/17/214	Vepured	Liechtenstein	31.7.2022
EU/2/17/214	Vepured	Norwegen	25.8.2022
EU/2/17/215	Suvaxyn PRRS MLV	Island	16.9.2022
EU/2/17/215	Suvaxyn PRRS MLV	Liechtenstein	31.7.2022
EU/2/17/215	Suvaxyn PRRS MLV	Norwegen	18.8.2022
EU/2/17/218	Bovilis Blue-8	Liechtenstein	31.10.2022
EU/2/17/218	Bovilis Blue-8	Norwegen	25.10.2022
EU/2/17/223	Suvaxyn Circo	Norwegen	22.7.2022
EU/2/19/245	Gumbohatch	Norwegen	11.10.2022
EU/2/20/269	Solensia	Island	16.9.2022
EU/2/20/269	Solensia	Norwegen	7.9.2022
EU/2/21/273	Bonqat	Norwegen	9.11.2022

ANHANG III

Liste erweiterter Zulassungen

Folgende Zulassungen wurden im Zeitraum 1. Juli bis 31. Dezember 2022 in den dem EWR angehörenden EFTA-Staaten erweitert:

EU-Nummer	Produkt	Land	Zeitpunkt der Zulassung
EU/1/13/861/003-004	Procysbi	Island	23.8.2022
EU/1/13/861/003-004	Procysbi	Norwegen	17.8.2022
EU/1/15/1061	Genvoya	Norwegen	3.10.2022
EU/1/15/1061/003-004	Genvoya	Island	13.10.2022
EU/1/17/1217/004	Nitisinon MDK	Norwegen	16.8.2022
EU/1/17/1229	Dupixent	Norwegen	13.10.2022
EU/1/17/1229/021-022	Dupixent	Norwegen	16.8.2022
EU/1/18/1289/005-006	Biktavry	Norwegen	9.12.2022
EU/1/18/1289/005-006	Biktavry	Island	14.12.2022
EU/1/19/1361/004-005	Skyrizi	Norwegen	8.12.2022
EU/1/19/1404/010-011	Rinvoq	Island	16.8.2022
EU/1/19/1404/010-011	Rinvoq	Norwegen	16.8.2022
EU/1/20/1500/003	Xofluza	Island	6.9.2022
EU/1/20/1507/002-003	Spikevax	Norwegen	16.8.2022
EU/1/20/1507/004-005	Spikevax bivalent Original/Omicron BA.1	Norwegen	1.9.2022
EU/1/20/1507/002-003	Spikevax	Island	1.9.2022
EU/1/20/1507/006	Spikevax bivalent Original/Omicron BA.4-5	Norwegen	20.10.2022
EU/1/20/1507/007-008	Spikevax bivalent Original/Omicron BA.1	Norwegen	20.10.2022
EU/1/20/1507/009-010	Spikevax bivalent Original/Omicron BA.4-5	Norwegen	19.12.2022
EU/1/20/1528/006-007	Comirnaty Original/Omicron BA.1	Norwegen	1.9.2022
EU/1/20/1528/008-009	Comirnaty Original/Omicron BA.4-5	Norwegen	12.9.2022
EU/1/20/1528/010	Comirnaty	Norwegen	20.10.2022
EU/1/20/1528/010	Comirnaty	Island	3.11.2022
EU/1/20/1528/011-012	Comirnaty Original/Omicron BA.4-5	Norwegen	11.11.2022
EU/1/20/1528/011-012	Comirnaty Original/Omicron BA.4-5	Island	8.12.2022
EU/1/20/1528/013	Comirnaty	Norwegen	22.12.2022
EU/1/20/1528/014	Comirnaty Original/Omicron BA.4-5	Norwegen	22.12.2022
EU/2/10/111/009-017	Meloxoral	Island	15.12.2022
EU/2/10/111/009-017	Meloxoral	Norwegen	30.11.2022

ANHANG IV

Liste widerrufener Zulassungen

Folgende Zulassungen wurden im Zeitraum 1. Juli bis 31. Dezember 2022 in den dem EWR angehörenden EFTA-Staaten widerrufen:

EU-Nummer	Produkt	Land	Zeitpunkt des Widerrufs
EU/1/00/166	NeuroBloc	Liechtenstein	31.12.2022
EU/1/00/166	NeuroBloc	Norwegen	31.12.2022
EU/1/01/174	Starlix	Island	17.8.2022
EU/1/03/251	Hepsera	Island	12.12.2022
EU/1/03/251	Hepsera	Liechtenstein	30.11.2022
EU/1/03/251	Hepsera	Norwegen	12.12.2022
EU/1/07/384	Docetaxel Zentiva	Norwegen	13.9.2022
EU/1/07/421	Glubrava	Island	1.9.2022
EU/1/08/498	Thymanax	Island	13.7.2022
EU/1/08/498	Thymanax	Liechtenstein	31.7.2022
EU/1/08/498	Thymanax	Norwegen	21.9.2022
EU/1/10/616	Temozolomid HEXAL	Liechtenstein	30.9.2022
EU/1/10/617	Temozolomid Sandoz	Liechtenstein	30.9.2022
EU/1/10/617	Temozolomid Sandoz	Norwegen	27.10.2022
EU/1/13/825	Imatinib Actavis	Island	1.9.2022
EU/1/13/825	Imatinib Actavis	Norwegen	14.7.2022
EU/1/15/1042	Zalviso	Island	17.8.2022
EU/1/15/1042	Zalviso	Liechtenstein	31.8.2022
EU/1/15/1042	Zalviso	Norwegen	13.9.2022
EU/1/15/1069	Episalvan	Norwegen	21.9.2022
EU/1/19/1359	Trogarzo	Liechtenstein	31.12.2022
EU/1/19/1378	Temybric Ellipta	Liechtenstein	31.8.2022
EU/1/19/1378	Temybric Ellipta	Norwegen	26.10.2022
EU/1/19/1387	Senstend	Island	25.8.2022
EU/1/19/1387	Senstend	Norwegen	21.9.2022
EU/2/02/036	Nobilis OR inac	Liechtenstein	30.9.2022
EU/2/02/036	Nobilis OR inac	Norwegen	14.10.2022

EU-Nummer	Produkt	Land	Zeitpunkt des Widerrufs
EU/2/10/106	Bovilis BTV8	Liechtenstein	31.8.2022
EU/2/10/106	Bovilis BTV8	Norwegen	14.9.2022
EU/2/11/137	Activyl Tick Plus	Liechtenstein	30.9.2022
EU/2/11/137	Activyl Tick Plus	Norwegen	25.10.2022

ANHANG V

Liste ausgesetzter Zulassungen

Folgende Zulassungen wurden im Zeitraum 1. Juli bis 31. Dezember 2022 in den dem EWR angehörenden EFTA-Staaten ausgesetzt:

EU-Nummer	Produkt	Land	Zeitpunkt des Aussetzens

Gefährliche Stoffe — Liste der von den EWR-EFTA-Staaten im Einklang mit Artikel 44 Absatz 5 der Verordnung (EU) nr. 528/2012 in der zweiten Jahreshälfte 2022 erlassenen zulassungsentscheidungen

(2023/C 239/05)

Unterausschuss I für den freien Warenverkehr

Zur Kenntnisnahme durch den Gemeinsamen EWR-Ausschuss

Der Gemeinsame EWR-Ausschuss wird unter Bezugnahme auf seine Entscheidung Nr. 225/2013 vom 13. Dezember 2013 ersucht, in der Sitzung vom 17.3.2023 von der folgenden Liste betreffend die im Zeitraum vom 1. Juli bis zum 31. Dezember 2022 auf der Grundlage von Artikel 44 Absatz 5 der Verordnung (EU) Nr. 528/2012 getroffenen Zulassungsentscheidungen Kenntnis zu nehmen:

ANHANG

Liste der Zulassungsentscheidungen

Im Zeitraum vom 1. Juli bis zum 31. Dezember 2022 wurden von den EWR-EFTA-Staaten folgende Zulassungsentscheidungen im Einklang mit Artikel 44 Absatz 5 der Verordnung (EU) Nr. 528/2012 erlassen:

Bezeichnung des Biozid-Produkts	Entscheidungen über die Unionszulassung nach Artikel 44 Absatz 5 der Verordnung (EU) Nr. 528/2012	Staat	Datum der Entscheidung
SOPUROXID	32022R0964	Island	19.9.2022
SOPUROXID	32022R0964	Liechtenstein	22.7.2022
SOPUROXID	32022R0964	Norwegen	20.9.2022
INTEROX	32022R1232	Island	22.9.2022
INTEROX	32022R1232	Liechtenstein	11.8.2022
INTEROX	32022R1232	Norwegen	15.11.2022
Contec Hydrogen Peroxide	32022R1185	Island	22.9.2022
Contec Hydrogen Peroxide	32022R1185	Liechtenstein	11.8.2022
Contec Hydrogen Peroxide	32022R1185	Norwegen	15.11.2022
Knieler & Team	32022R1282	Island	15.11.2022
Knieler & Team	32022R1282	Liechtenstein	14.11.2022
Knieler & Team	32022R1282	Norwegen	24.11.2022
L+R	32022R1186	Island	22.9.2022
L+R	32022R1186	Liechtenstein	11.8.2022
Bioquell HPV-AQ	32022R1226	Island	22.9.2022
Bioquell HPV-AQ	32022R1226	Liechtenstein	16.8.2022
Bioquell HPV-AQ	32022R1226	Norwegen	6.10.2022
Hydrogen Peroxide Family 1’	32022R1423	Island	22.9.2022
Hydrogen Peroxide Family 1’	32022R1423	Liechtenstein	29.9.2022
Hydrogen Peroxide Family 1’	32022R1423	Norwegen	18.11.2022
Lactic acid based products – CID Lines NV	32022R1391	Island	5.12.2022
Lactic acid based products – CID Lines NV	32022R1391	Liechtenstein	8.12.2022
CMIT-MIT Aqueous 1.5-15	32022R1434	Island	15.11.2022
CMIT-MIT Aqueous 1.5-15	32022R1434	Liechtenstein	22.11.2022
CMIT-MIT Aqueous 1.5-15	32022R1434	Norwegen	24.11.2022
Ecolab UA BPF 1-Propanol’	32022R2127	Norwegen	21.12.2022
Colgate-Palmolive Lactic acid PT 2	32022R2253	Island	5.12.2022

Gefährliche Stoffe — Liste der von den EWR-EFTA-Staaten im Einklang mit Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006 (REACH) in der zweiten Jahreshälfte 2022 erlassenen Zulassungsentscheidungen

(2023/C 239/06)

Unterausschuss I für den freien Warenverkehr

Zur Kenntnisnahme durch den Gemeinsamen EWR-Ausschuss

Der Gemeinsame EWR-Ausschuss wird unter Bezugnahme auf seine Entscheidung Nr. 25/2008 vom 14. März 2008 ersucht, in der Sitzung vom 17.2.2023 von der folgenden Liste betreffend die im Zeitraum vom 1. Juli bis zum 31. Dezember 2022 auf der Grundlage von Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006 (REACH) getroffenen Zulassungsentscheidungen Kenntnis zu nehmen:

ANHANG

Liste der Zulassungsentscheidungen

Im Zeitraum vom 1. Juli bis zum 31. Dezember 2022 wurden von den EWR-EFTA-Staaten folgende Zulassungsentscheidungen im Einklang mit Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006 (REACH) erlassen:

Bezeichnung des Stoffs	Beschluss der Kommission nach Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006	Staat	Datum der Entscheidung
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1497	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1498	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1499	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1500	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1501	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1503	Island	3.8.2022
4-Nonylphenol, verzweigt und linear, ethoxyliert (4-NPnEO)	C(2022) 1504	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1506	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1508	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1510	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1511	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1512	Island	3.8.2022
Pech, Kohlenteer, Hochtemperatur	C(2022) 1513	Island	3.8.2022
Bleisulfochromatgelb	C(2022) 1514	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1521	Island	3.8.2022
4-Nonylphenol, verzweigt und linear, ethoxyliert (4-NPnEO)	C(2022) 1525	Island	3.8.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 1527	Island	3.8.2022
4-Nonylphenol, verzweigt und linear, ethoxyliert (4-NPnEO)	C(2022) 1528	Island	3.8.2022
Chromtrioxid	C(2022) 3678	Island	2.7.2022
Chromtrioxid	C(2022) 3685	Island	2.7.2022
Natriumchromat	C(2022) 6036	Island	21.9.2022
Natriumchromat	C(2022) 6036	Liechtenstein	13.9.2022
Natriumchromat	C(2022) 6036	Norwegen	27.9.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6463	Island	13.10.2022

Bezeichnung des Stoffs	Beschluss der Kommission nach Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006	Staat	Datum der Entscheidung
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6463	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6463	Norwegen	27.9.2022
Chromtrioxid	C(2022) 6701	Island	13.10.2022
Chromtrioxid	C(2022) 6701	Liechtenstein	14.12.2022
Chromtrioxid	C(2022) 6701	Norwegen	20.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6861	Island	13.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6861	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6861	Norwegen	20.10.2022
Trichlorethylen (TCE)	C(2022) 6874	Island	13.10.2022
Trichlorethylen (TCE)	C(2022) 6874	Liechtenstein	31.10.2022
Trichlorethylen (TCE)	C(2022) 6874	Norwegen	20.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6886	Island	13.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6886	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6886	Norwegen	20.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6922	Island	13.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6922	Liechtenstein	31.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 6922	Norwegen	20.10.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7381	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7381	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7381	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7397	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7397	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7397	Norwegen	15.11.2022

Bezeichnung des Stoffs	Beschluss der Kommission nach Artikel 64 Absatz 8 der Verordnung (EG) Nr. 1907/2006	Staat	Datum der Entscheidung
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7399	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7399	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7399	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7402	Island	8.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7402	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7402	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7405	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7405	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7405	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7407	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7407	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7407	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7411	Island	1.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7411	Liechtenstein	14.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7411	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7512	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7512	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO) 4-Nonylphenol, verzweigt und linear, ethoxyliert (4-NPnEO)	C(2022) 7525	Liechtenstein	14.12.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO) 4-Nonylphenol, verzweigt und linear, ethoxyliert (4-NPnEO)	C(2022) 7525	Norwegen	15.11.2022
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7569	Liechtenstein	19.1.2023
4-(1,1,3,3-Tetramethylbutyl)phenol, ethoxyliert (4-tert-OPnEO)	C(2022) 7569	Norwegen	15.11.2022

V

(Bekanntmachungen)

VERFAHREN BEZÜGLICH DER DURCHFÜHRUNG DER WETTBEWERBSPOLITIK

EUROPÄISCHE KOMMISSION

Vorherige Anmeldung eines Zusammenschlusses

(Sache M.11135 — PORR / RIGIPS / SAUBERMACHER / JV)

Für das vereinfachte Verfahren infrage kommender Fall

(Text von Bedeutung für den EWR)

(2023/C 239/07)

1. Am 28. Juni 2023 ist die Anmeldung eines Zusammenschlusses nach Artikel 4 der Verordnung (EG) Nr. 139/2004 des Rates ([1]) bei der Kommission eingegangen.

Diese Anmeldung betrifft folgende Unternehmen:

— PORR Umwelttechnik GmbH („PORR“, Österreich), gemeinsam kontrolliert von der Strauss-Gruppe und der IGO Industries-Gruppe,

— Saint-Gobain Austria GmbH („Rigips“, Österreich), kontrolliert von Compagnie de Saint-Gobain SA,

— Saubermacher Bau Recycling und Entsorgung GmbH („Saubermacher“, Österreich), kontrolliert von der Roth Privatstiftung.

PORR, Rigips und Saubermacher werden im Sinne des Artikels 3 Absatz 1 Buchstabe b und Absatz 4 der Fusionskontrollverordnung die gemeinsame Kontrolle über das neu zu gründende Gemeinschaftsunternehmen übernehmen.

Der Zusammenschluss erfolgt durch Erwerb von Anteilen an einem neu gegründeten Gemeinschaftsunternehmen (das „JV“, Österreich).

2. Die beteiligten Unternehmen sind in folgenden Geschäftsbereichen tätig:

— PORR ist Teil des PORR-Konzerns, der sich als Full-Service-Anbieter in der Bauwirtschaft versteht und innerhalb und außerhalb Europas Bauprojekte realisiert. Der PORR-Konzern ist unter anderem auch im Bereich des technischen Umweltschutzes tätig.

— Rigips ist Teil der Saint-Gobain-Gruppe. Der Schwerpunkt des Konzerns liegt weltweit in den Bereichen innovative Werkstoffe, Hochleistungswerke und Bauprodukte. Unter der Marke RIGIPS werden von Saint-Gobain Austria GmbH in Österreich im Bereich Leichtbau Spezial- und Akustikplatten, Pulverprodukte und pastöse Spachtelmassen produziert sowie Profiltechnik, Zubehör und Dämmstoffe vertrieben.

— Saubermacher bietet Dienstleistungen im Bereich Bauabfälle für Privatkunden, Gewerbe und aus dem kommunalen Bereich an. Die Saubermacher-Gruppe insgesamt bietet in Österreich und seinen Nachbarländern (sowie Kroatien) eine Reihe von Dienstleistungen entlang der Abfallwertschöpfungskette an, von der Sammlung und Aufbereitung bis hin zur Verwertung und Entsorgung von Abfällen.

3. Das voll funktionsfähige JV wird in folgenden Geschäftsbereichen tätig sein: Errichten und Betreiben einer Gipsrecyclinganlage in Stockerau, Österreich.

([1]) ABl. L 24 vom 29.1.2004, S. 1 („Fusionskontrollverordnung“).

4. Die Kommission hat nach vorläufiger Prüfung festgestellt, dass das angemeldete Rechtsgeschäft unter die Fusionskontrollverordnung fallen könnte. Die endgültige Entscheidung zu diesem Punkt behält sie sich vor.

Dieser Fall kommt für das vereinfachte Verfahren im Sinne der Bekanntmachung der Kommission über ein vereinfachtes Verfahren für bestimmte Zusammenschlüsse gemäß der Verordnung (EG) Nr. 139/2004 des Rates [2] infrage.

5. Alle betroffenen Dritten können bei der Kommission zu diesem Vorhaben Stellung nehmen.

Die Stellungnahmen müssen bei der Kommission spätestens 10 Tage nach dieser Veröffentlichung eingehen. Dabei ist stets folgendes Aktenzeichen anzugeben:

M.11135 — PORR / RIGIPS / SAUBERMACHER / JV

Die Stellungnahmen können der Kommission per E-Mail oder Post übermittelt werden, wobei folgende Kontaktangaben zu verwenden sind:

E-Mail: COMP-MERGER-REGISTRY@ec.europa.eu

Postanschrift:

Europäische Kommission
Generaldirektion Wettbewerb
Registratur Fusionskontrolle
Bruxelles/Brussel
BELGIQUE/BELGIË

[2] ABl. C 366 vom 14.12.2013, S. 5.

SONSTIGE RECHTSHANDLUNGEN

EUROPÄISCHE KOMMISSION

Veröffentlichung eines Antrags auf Eintragung eines Namens nach Artikel 50 Absatz 2 Buchstabe a der Verordnung (EU) Nr. 1151/2012 des Europäischen Parlaments und des Rates über Qualitätsregelungen für Agrarerzeugnisse und Lebensmittel

(2023/C 239/08)

Diese Veröffentlichung eröffnet die Möglichkeit, gemäß Artikel 51 der Verordnung (EU) Nr. 1151/2012 des Europäischen Parlaments und des Rates ([1]) innerhalb von drei Monaten ab dieser Veröffentlichung Einspruch gegen den Antrag zu erheben.

EINZIGES DOKUMENT

„Huître de Normandie“

EU-Nr.: PGI-FR-02864 – 9.9.2022

g. U. ( ) g. g. A. (X)

1. **Name(n)**

„Huître de Normandie“

2. **Mitgliedstaat oder Drittland**

FRANKREICH

3. **Beschreibung des Agrarerzeugnisses oder Lebensmittels**

3.1. *Art des Erzeugnisses*

Klasse 1.7. Fisch, Muscheln und Schalentiere, frisch und Erzeugnisse daraus

3.2. *Beschreibung des Erzeugnisses, für das der unter Punkt 1 aufgeführte Name gilt*

Bei dem Erzeugnis mit der g. g. A. „Huître de Normandie“ handelt es sich um ganze und frische Pazifische Felsenaustern (Arten: *Crassostrea gigas, Crassostrea angulata*).

Es hat eine harte, regelmäßig geformte äußere Schale, die keine ausgebrochenen oder brüchigen Stellen aufweist (keine Bruchstelle oder Einkerbung am Schalenrand). Die Schale ist frei von Schlick.

Bei der Auster mit der g. g. A. „Huître de Normandie“ handelt es sich um eine *huître fine* (feine Auster) oder eine *huître spéciale* (besondere Auster):

— Eine *huître fine* weist einen Füllungsindex von mindestens 6,5 und weniger als 10,5 auf.

— Der Füllungsindex einer *huître spéciale* beträgt mindestens 10,5.

Der Füllungsindex wird wie folgt berechnet:

Füllungsindex = (Abtropfgewicht des Fleisches von 20 Austern / Gewicht von 20 ungeöffneten Austern) x 100

Austern mit einem Formindex von mehr als 3, die sogenannten *huîtres longues* (lange Austern), dürfen die g. g. A. nicht tragen. Der Formindex wird wie folgt berechnet:

Formindex = (Länge + Dicke) / Breite.

Das Innere der Schale ist frei von Sand und Schlick. Die Schale weist keine nicht von einer Perlmuttschicht überzogenen Hohlraumbildungen (chambre) auf.

([1]) ABl. L 343 vom 14.12.2012, S. 1.

Das Fleisch ist elfenbeinfarben/perlweiß bis beige mit einem perlgrauen Schimmer. Der Mantelrand kann von gleicher Farbe wie das Fleisch sein oder einen hellbraunen bis schwarzen Farbton aufweisen.

Der feste Muskel hält die Schalenklappen während des Transports und der gesamten Dauer der Vermarktung dicht verschlossen und sorgt so für eine gute Haltbarkeit des Erzeugnisses mit der g. g. A. „Huître de Normandie".

3.3. *Futter (nur für Erzeugnisse tierischen Ursprungs) und Rohstoffe (nur für Verarbeitungserzeugnisse)*

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3.4. *Besondere Erzeugungsschritte, die in dem abgegrenzten geografischen Gebiet erfolgen müssen*

Sämtliche Erzeugungsschritte der Austern (Aufzucht, Trompage und Hälterung) erfolgen im geografischen Gebiet der g. g. A.

3.5. *Besondere Vorschriften für Vorgänge wie Schneiden, Reiben, Verpacken usw. des Erzeugnisses mit dem eingetragenen Namen*

Die Austern mit der g. g. A. „Huître de Normandie" werden in Spankörben (bourriche) verpackt zum Verkauf angeboten. Sie dürfen, wenn sie im Originalspankorb angeboten werden, einzeln verkauft werden.

Für den Direktverkauf an den Endverbraucher durch den Erzeuger können die Austern in wiederverwendbaren Tragekörben, die zur Aufbewahrung und zum Transport von Austern dienen, angeboten werden.

Die Verpackung der Austern in Spankörben erfolgt im geografischen Gebiet, um dem Verbraucher einen optimalen Frischezustand des Erzeugnisses zu gewährleisten.

Die Austern mit g. g. A. „Huître de Normandie" werden nämlich lebend verkauft. Um ihr Überleben sicherzustellen, muss das in der Schale zurückgehaltene Meerwasser während der gesamten Zeit des Transports und der Vermarktung erhalten bleiben. Der Erzeugungsschritt des Verpackens besteht somit darin, die Austern mit der gewölbten Schalenklappe nach unten so in die Spankörbe zu platzieren, dass der Wasserverlust minimiert wird. Die unterschiedlich geformten Austern werden dicht an dicht in den Spankorb gekeilt, der mit einem Deckel verschlossen und mit Spannbändern fest verschnürt wird.

Beim Verpacken unterzieht die Person, die diesen Vorgang durchführt, die Austern einer Sichtprüfung, um *huîtres longues* oder Austern mit beschädigter Schale auszusortieren, überprüft durch Gegeneinanderstoßen der Austern, ob sie bis zum Rand mit Wasser gefüllt sind, zählt sie entsprechend der Gepflogenheit, die Austern im Dutzend zu verkaufen, und platziert sie dann in das Behältnis. Es ist echtes Know-how erforderlich, um all diese Aspekte zu berücksichtigen.

Außerdem sollte dieser Vorgang so nah wie möglich an den Orten der Hälterung stattfinden, um die Zeit, in der die Austern lose gelagert werden, möglichst kurz zu halten.

Die Sorgfalt, mit der dieser Schritt durchgeführt wird, hat direkten Einfluss auf die Qualität des Erzeugnisses und die Zufriedenheit der Verbraucher.

3.6. *Besondere Vorschriften für die Kennzeichnung des Erzeugnisses mit dem eingetragenen Namen*

Neben den für die Kennzeichnung und Aufmachung von Lebensmitteln geltenden gesetzlichen Pflichtangaben umfasst die Kennzeichnung jeder Einzelverpackung die folgenden Informationen:

— den eingetragenen Namen des Erzeugnisses „Huître de Normandie" gut sichtbar, deutlich lesbar und unverwischbar,

— das EU-Zeichen „IGP" (g. g. A.) im selben Sichtfeld.

4. Kurzbeschreibung der Abgrenzung des geografischen Gebiets

Das geografische Gebiet umfasst die Küstengemeinden der Departements Manche, Calvados, Eure und Seine-Maritime, und zwar von der Gemeinde Granville im Westen bis zur Gemeinde Sainte-Marguerite-sur-Mer im Osten, gemäß dem amtlichen Gemeindeschlüssel von 2021.

5. Zusammenhang mit dem geografischen Gebiet

Das Zusammenspiel der natürlichen Umgebung der normannischen Küste mit dem Know-how der Austernzüchter in diesem geografischen Gebiet verleiht dem Erzeugnis mit der g. g A. „Huître de Normandie" seine besonderen Eigenschaften. Die natürlichen Gegebenheiten in der Normandie bieten günstige Voraussetzungen für die Austernzucht: breite und offene Gezeitenzone, starken Tidenhub, kräftige Strömungen, gute Wasserqualität. Das Know-how der normannischen Austernzüchter besteht in der Handhabung der Netzsäcke (poche), um eine gleichmäßige Schalenbildung zu erreichen, im Umsetzen der Austern von einer Austernbank zur anderen, um ihr Wachstum zu fördern, und in der Durchführung der sogenannten Trompage (Täuschung), die für eine sehr gute Haltbarkeit der Austern bei der Vermarktung sorgt.

Besonderheit des Gebiets

Natürliche Einflüsse

Das geografische Gebiet der g. g. A. „Huître de Normandie“ setzt sich aus allen Küstengemeinden der Normandie zwischen Granville im Westen und Sainte-Marguerite-sur-Mer im Osten zusammen. Es erstreckt sich somit auf vier Departements der Normandie: Manche, Calvados, Eure und Seine-Maritime.

Die Austernproduktion erfolgt in der Gezeitenzone, d. h. auf dem Küstenstreifen, der bei Ebbe trocken fällt. Sie steht in enger Wechselwirkung mit der Umwelt, weil die Austern den natürlichen und klimatischen Bedingungen unterworfen sind, aber auch, weil sie sich ausschließlich von den trophischen Ressourcen des Meerwassers ernähren, in dem sie gezüchtet werden. Die normannische Küste bietet in dieser Hinsicht günstige Bedingungen für die Austernzucht.

Erstens liegt der Ärmelkanal, der Meeresarm vor der normannischen Küste, auf einem Festlandsockel. Er weist allgemein eine geringe Wassertiefe auf. Die Küsten zeichnen sich durch sehr sanft abfallenden Meeresgrund und somit eine relativ flache Gezeitenzone aus, vor allem im westlichen Teil des Gebiets.

Außerdem sind am Ärmelkanal halbtägige Gezeiten vorherrschend, d. h., die Küste durchläuft in einem Zeitraum von etwa 24 Stunden zwei vollständige Gezeitenzyklen (zwei Hoch-, zwei Niedrigwasser). Der Tidenhub, also der Unterschied zwischen Ebbe und Flut, an den Küsten des Ärmelkanals gehört zu den stärksten der Welt und sorgt dafür, dass eine umso breitere Fläche der Gezeitenzone trocken fällt, je flacher diese ist. Die Pegel bei Ebbe und Flut variieren je nach Gezeitenkoeffizient. Einige Bereiche der Gezeitenzone fallen täglich trocken, selbst bei niedrigem Koeffizienten, während dies bei anderen nur bei hohen Koeffizienten der Fall ist.

Die normannische Gezeitenzone ist ein offener Bereich: Es gibt hier keine natürlichen Barrieren zwischen dem offenen Meer und den Küstengewässern, in denen sich die Zuchtanlagen befinden. Dementsprechend sind die Austern in diesem Gebiet während der Aufzucht einer starken Wasserdynamik (Strömungen, Wellen, Seegang, Gezeitenbewegungen) ausgesetzt. Die Gezeitenströmungen im Ärmelkanal sind nämlich die stärksten im französischen Mutterland. Sie spielen eine wichtige Rolle bei der Bewegung von Wassermassen und tragen zu deren vertikaler Homogenität bei.

Außerdem ist der Wattstreifen in der Normandie tragfähig genug für ein regelmäßiges Befahren mit Traktoren. Die Austernbänke sind somit auf dem Landweg erreichbar. Der sandig-schlickige Untergrund mit Einlagerungen von Schotter und Kies ermöglicht das Aufstellen von Austerntischen.

Zweitens sind die Gewässer an der normannischen Küste von hoher trophischer Qualität. Die zahlreichen Wasserläufe in den verschiedenen Wassereinzugsgebieten des Gebiets spülen die Nährsalze ins Meer, die für die Bildung des Phytoplanktons benötigt werden, von dem sich die Austern ernähren. Die Durchmischung des Wassers durch Strömungen trägt einerseits zur Verbreitung von Nährstoffen aus Sedimenten oder terrigenen Elementen und andererseits zur Sauerstoffanreicherung des Wassers bei.

Schließlich ist der Ärmelkanal aufgrund der Wassertemperatur und des Fehlens von Felsgestein nicht für die Fortpflanzung von Austern und Miesmuscheln sowie für natürlichen Brutfang in der Gezeitenzone geeignet. Dementsprechend ist die Umgebung kaum besiedelt, was für die Zuchtaustern kaum Nahrungskonkurrenz und reichlich vorhandene trophische Ressourcen bedeutet.

Menschliche Einflüsse

Historisch gesehen hat sich die Vermarktung von Austern aus der Normandie aus wilden Austernvorkommen entwickelt. Ein Edikt von Ludwig XIV. aus dem Jahr 1691, mit dem der Titel des Austernlieferanten und -verkäufers eingeführt wurde, sowie zahlreiche Schriften aus dem 18. Jahrhundert zeugen von entsprechenden Praktiken und der Verbreitung dieser Tätigkeiten in der Normandie zu dieser Zeit. Im 19. Jahrhundert wurden die Austern nach Paris, in die großen west- und nordfranzösischen Städte und sogar bis nach Straßburg, Lyon, Genf und Belgien verschickt.

Die Austern wurden mit Booten abgefischt und dann bis zu ihrem Versand in Becken in der Gezeitenzone gehalten. In dieser Zeit wurde der Effekt der Trompage entdeckt: Austern, die aufgrund des Wechsels der Gezeiten täglich trocken liegen, sind beständiger gegen das Auslaufen des Schalenwassers und dadurch haltbarer beim Transport und bei der Vermarktung.

Als die natürlichen Vorkommen Ende des 19. Jahrhunderts allmählich erschöpft waren, suchten die Erzeuger nach Alternativen und entwickelten Zuchtmethoden. Zunächst bestand die Zucht darin, Jungaustern in entsprechenden Bereichen direkt auf den Meeresgrund auszusäen. In einer zweiten Phase, in den 1960er-Jahren, entwickelte sich die Hochkultur, bei der die Austern zunächst in mit einem Drahtgitter verschlossene und an kurzen Pfählen befestigte Holzkisten platziert wurden. Anfang der 1970er-Jahre wurden dann mit dem Aufkommen der Netzsäcke aus Kunststoff, die den Meeresbedingungen besser standhielten, die Techniken der Hochkultur verbessert und die Austernzucht konnte auch an der Westküste von Cotentin Fuß fassen.

Seither haben sich die Verfahren nicht mehr wesentlich weiterentwickelt: Die Austern werden in Netzsäcke und Körbe gepackt, die in der Gezeitenzone an Metallgestellen oder Tischen befestigt sind. So kommen sie nicht mit dem Boden in Berührung, was unangenehme Geschmäcker und Gerüche vermeidet.

Im Zuge der Umstellung von der Fischerei auf die Austernzucht haben die Erzeuger auf die am besten geeigneten Arten gesetzt. Derzeit werden Austern der Gattung Crassostrea gezüchtet, die in den 1960er-Jahren in der Normandie eingeführt wurden.

Im Laufe des Produktionszyklus werden die Netzsäcke mit den Austern geschüttelt und gewendet, damit sie gleichmäßig wachsen. Gelegentlich werden die Austern an Land gebracht, um sie zu sortieren und wieder in Netzsäcke mit Exemplaren einheitlicher Größe zu packen, die dann in die Gezeitenzone zurückgebracht werden.

Der Vorgang der Trompage wurde beibehalten, um die Austern für die Vermarktung vorzubereiten. Am Ende des Produktionszyklus, nach der Kalibrierung für die Vermarktung, werden sie wieder in Netzsäcke gefüllt. Diese Netzsäcke werden für mindestens 28 Tage auf den Tischen der sogenannten Trompage-Anlage befestigt, die sich im oberen Bereich der Gezeitenzone befinden.

Schließlich wechseln die Austern in die Hälterungsbecken an Land. Die Becken werden durch eine direkte Wasserentnahme aus dem Meer oder aus Bohrlöchern versorgt. Das Wasser darf nicht in einem Kreislauf geführt werden, um natürliches Meerwasser von sehr guter Qualität für den Transport der Austern zu gewährleisten. Die Austern werden dann für den Verkauf verpackt. Sie werden sortiert und mit der gewölbten Schalenklappe nach unten in die mit einem Deckel verschlossenen und mit Spannbändern fest verschnürten Spankörbe platziert, um möglichst viel von dem für ihr Überleben notwendigen Schaleninnenwasser zu erhalten.

Besonderheit des Erzeugnisses

Bei der Auster mit der g. g. A. „Huître de Normandie“ handelt es sich um eine Pazifische Felsenauster, wobei zwischen *huître fine* (feine Auster) und *huître spéciale* (besondere Auster) unterschieden wird. Sie hat eine harte, regelmäßig geformte äußere Schale, die keine ausgebrochenen oder brüchigen Stellen aufweist. Die sogenannten *huîtres longues* (lange Austern) sind von der g. g. A. ausgeschlossen. Der feste Muskel hält die Schalenklappen dauerhaft geschlossen und sorgt so für eine gute Haltbarkeit der Auster beim Transport und bei der Vermarktung.

Das Erzeugnis mit der g. g. A. „Huître de Normandie“ durchläuft nach der mindestens 28-wöchigen Phase der Aufzucht im geografischen Gebiet die mindestens 28-tägige Phase der Trompage, wodurch es sich von anderen Erzeugnissen aus dem Ärmelkanal abhebt. In dieser Phase können die Austern ihre eventuell bei der Kalibrierung beschädigte Schale regenerieren. Sie trägt auch dazu bei, die Austern beständiger gegen das Auslaufen des Schalenwassers zu machen. Der Trompage-Effekt wurde in einer vom Comité régional de la conchyliculture Normandie - Mer du Nord (Regionalkomitee für Muschel- und Schalentierzucht Normandie – Nordsee) im Jahr 2019 durchgeführten Studie bewertet. Darin wird die Haltbarkeit von Austern, die eine Trompage durchlaufen haben, im Vergleich zu anderen Austern (Kontrollcharge) beurteilt. Die aus dem Wasser entnommenen Austern werden in Spankörben in einem Kühlraum gelagert, um die Bedingungen bei der Vermarktung nachzubilden. Ihre Vitalität nach 14-tägiger Lagerung wird anhand der folgenden Kriterien evaluiert: Geschlossenheit der Schale und Austritt von Wasser nach dem Öffnen (anhand dieser Kriterien beurteilen französische Verbraucher üblicherweise, ob eine Auster lebendig und damit genießbar ist). Der Vitalitätsindex der Austern, die eine 28-tägige Trompage durchlaufen haben, lag der Studie zufolge bei 97 %. Fast alle Austern, die einer Trompage unterzogen wurden, waren genießbar.

Kausaler Zusammenhang

Die Produktion des Erzeugnisses mit der g. g. A. „Huître de Normandie“ steht in enger Wechselwirkung mit der geografischen Umgebung, deren Besonderheiten sich die normannischen Austernzüchter zunutze gemacht haben. Die Austernzucht in der Normandie erfordert neben Techniken, die mit denen in anderen Erzeugungsgebieten identisch sein können, ein echtes Know-how, das darin besteht, die menschlichen Eingriffe an die Bedingungen des natürlichen Umfelds anzupassen.

Die Gezeitenzone an der normannischen Küste verfügt über große, vom Land aus zugängliche Flächen, auf denen die Tische für die Austern aufgestellt werden können. Beim Heranwachsen nutzen sie – ohne Nahrungskonkurrenz – die trophischen Ressourcen des Wassers im Ärmelkanal, da es dort keine wilden Muschelbänke gibt. Die Durchmischung durch die Gezeitenströme sowie das Wenden der mit Austern gefüllten Netzsäcke durch die Austernzüchter tragen zur Bildung einer gleichmäßig geformten Schale bei. Die Häufigkeit, mit der die Netzsäcke auf den Tischen gewendet werden, wird an die Lage der Austernbänke und ihre natürlichen Bedingungen angepasst. *Huîtres longues*, die dadurch entstehen, wenn sie während des Wachstums unzureichend bewegt wurden, werden aussortiert.

Die Austernzüchter können die Austern während der Aufzucht innerhalb des geografischen Gebiets von einem Becken in ein anderes umsetzen. Diese mit der Transhumanz vergleichbare Praxis ermöglicht es, lokale Strömungsbedingungen und trophische Ressourcen zu nutzen, um an der Qualität der Auster zu „arbeiten“. So können insbesondere die *huîtres spéciales* gewonnen werden, die einen höheren Fleischanteil haben als die *huîtres fines*.

Nach Ablauf der mindestens 28-wöchigen Aufzucht im geografischen Gebiet durchlaufen die Austern die Trompage-Phase. Dieser Erzeugungsschritt, mit dem Austern darauf trainiert werden, ihre Schalenklappen dauerhaft geschlossen zu halten, und womit eine längere Lebensdauer erreicht wird, zusammen mit der Sorgfalt bei der Verpackung gewährleisten eine gute Haltbarkeit des Erzeugnisses mit der g. g. A. „Huître de Normandie“ beim Transport und bei der Vermarktung sowie eine Schale ohne ausgebrochene oder brüchige Stellen.

Hinweis auf die Veröffentlichung der Spezifikation

(Artikel 6 Absatz 1 Unterabsatz 2 der Durchführungsverordnung (EU) Nr. 668/2014 der Kommission)

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