Zaproszenie do zgłaszania uwag zgodnie z częścią I art. 1 ust. 2 protokołu 3 do Porozumienia między państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości dotyczących potencjalnej pomocy państwa udzielonej poprzez dzierżawę gruntów i wynajem nieruchomości w rejonie Gufunes w Reykjavíku w Islandii

(2015/C 316/10)

Decyzją nr 261/15/COL z dnia 30 czerwca 2015 r. zamieszczoną w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu Urząd Nadzoru EFTA wszczął postępowanie na mocy części I art. 1 ust. 2 protokołu 3 do Porozumienia między państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości. Władze Islandii otrzymały stosowną informację wraz z kopią wyżej wymienionej decyzji.

Urząd Nadzoru EFTA wzywa niniejszym państwa EFTA, państwa członkowskie UE oraz inne zainteresowane strony do zgłaszania uwag w sprawie omawianego środka w terminie jednego miesiąca od daty publikacji niniejszego zaproszenia na poniższy adres Urzędu Nadzoru EFTA:

EFTA Surveillance Authority
Registry
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel

Uwagi zostaną przekazane władzom islandzkim. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

STRESZCZENIE

Procedura

W kwietniu 2014 r. Urząd otrzymał skargę o rzekomym udzieleniu przez miasto Reykjavík niezgodnej z prawem pomocy państwa przedsiębiorstwu Íslenska Gámafélagið („ÍG”) poprzez wynajem nieruchomości i dzierżawę gruntów w rejonie Gufunes w Reykjavíku po stawce, która jest rzekomo niższa niż cena rynkowa. Urząd wystąpił o informacje dotyczące tych środków i otrzymał je od władz islandzkich w pismach z dnia 24 lipca 2014 r., 23 stycznia 2015 r. i 23 marca 2015 r.

Stan faktyczny

Rejon Gufunes znajduje się w dzielnicy Grafarvogur w Reykjavíku w Islandii. Do 2001 r. działała w nim fabryka nawozów – Áburðarverksmiðjan. W 2002 r. fabrykę i otaczające ją tereny kupił fundusz planowania miasta Reykjavík („SR”). W momencie zakupu przez SR gruntów i nieruchomości w rejonie Gufunes rejon ten zajmowało kilku wynajmujących (głównie przedsiębiorcy budowlani i deweloperzy), w tym ÍG. Na mocy umowy zakupu SR przejął wszystkie zobowiązania i prawa fabryki Áburðarverksmiðjan dotyczące istniejących umów dzierżawy.

Według miasta Reykjavík rejonem Gufunes trudno było zarządzać, budynki znajdowały się w złym stanie, a niektórzy wynajmujący nie płacili czynszu. W rejonie nagromadził się też złom, na przykład zniszczone samochody. W świetle tej sytuacji miasto zdecydowało nie przedłużać różnych umów dzierżawy i zawrzeć umowę tylko z jedną stroną. W związku z tym w 2005 r. SR zdecydował o podjęciu negocjacji warunków dzierżawy, sprzątania rejonu i nadzoru nad nim z ÍG, które było w tym czasie największym wynajmującym, jak również nie spóźniało się z płatnością czynszu. W dniu 14 października 2005 r. SR i ÍG podpisały umowę dotyczącą dzierżawy i uporządkowania gruntów w rejonie Gufunes i nadzoru nad nimi. Całkowitą miesięczną cenę wynajmu ustalono na kwotę w wysokości 2 000 000 ISK przeliczaną co miesiąc zgodnie ze wskaźnikiem cen konsumpcyjnych. Umowa obowiązywała do dnia 31 grudnia 2009 r., ale od tego czasu została trzykrotnie przedłużona i jest ważna do dnia 31 grudnia 2018 r.

Mimo że żadna z tych umów nie zawiera informacji dotyczących wartości usług świadczonych przez ÍG, miasto oszacowało koszty ponoszone przez to przedsiębiorstwo i uwzględniło je w umowie głównej i późniejszych aneksach do umowy. Według tych oszacowań średni miesięczny koszt ponoszony przez ÍG (z uwzględnieniem ceny wynajmu) wynosi 10 815 624 ISK. Miesięczna cena wynajmu stanowi zatem około 25 % całkowitych miesięcznych kosztów ÍG.

Według skarżącego sposób oszacowania ceny w wyżej wymienionych umowach nie jest jasny, tj. nie jest jasne, jaka była cena za metr kwadratowy i w jaki sposób ustalono cenę wynajmu. Skarżący twierdzi jednak, że cena rynkowa wynajmu nieruchomości powinna wynosić 12–41 mln ISK miesięcznie. Zdaniem skarżącego wynajem przedsiębiorstwu ÍG nieruchomości po cenie dużo niższej niż wartość rynkowa jest sprzeczny z zasadami pomocy państwa EOG.

Według miasta umowy z ÍG nie stanowią pomocy państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG, ponieważ ÍG nie uzyskało żadnej korzyści, która byłaby sprzeczna z warunkami rynkowymi. Według miasta umowy dzierżawy z dnia 22 lutego 2005 r. i 14 października 2005 r. odpowiadały normalnym warunkom rynkowym. Ponadto zdaniem miasta zły stan obszaru i budynków w momencie zakupu oraz niepewność w zakresie przyszłych planów zagospodarowania tego terenu przez miasto wpłynęły na cenę wynajmu i ograniczyły możliwości miasta w kwestii ogłoszenia przetargu na wynajem nieruchomości. Według miasta obowiązujące umowy wynajmu podpisane z ÍG nie zostaną przedłużone, ponieważ rodzaj działalności prowadzonej przez to przedsiębiorstwo nie jest zgodny z innymi rodzajami działalności, które mają być prowadzone na tym terenie.

Ocena

Urząd ma wątpliwości, czy warunki umów zawartych między miastem a ÍG spełniały wymagania testu prywatnego sprzedawcy, który polega na sprawdzeniu, czy prywatny sprzedawca zgodziłby się na takie same warunki dzierżawy gruntów i wynajmu nieruchomości, o których mowa w niniejszym zaproszeniu, w normalnych warunkach rynkowych. Wydaje się też, że przedmiotowe środki mają selektywny charakter, mogą naruszać konkurencję i wpływać na wymianę handlową na terenie EOG. W związku z tym Urząd nie może wykluczyć możliwości, że środki te stanowią pomoc państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG. Władze islandzkie nie przedstawiły na obecnym etapie żadnych argumentów na uzasadnienie zgodności potencjalnej pomocy państwa, o której mowa, z art. 59 ust. 2 lub art. 61 ust. 3 Porozumienia EOG.

Podsumowanie

W świetle powyższych zastrzeżeń Urząd podjął decyzję o wszczęciu formalnego postępowania wyjaśniającego zgodnie z częścią I art. 1 ust. 2 protokołu 3 do Porozumienia między państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości. Zainteresowane strony wzywa się do nadsyłania uwag w terminie jednego miesiąca od publikacji niniejszego zawiadomienia w *Dzienniku Urzędowym Unii Europejskiej* oraz w Suplemencie EOG do *Dziennika Urzędowego Unii Europejskiej*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 261/15/COL

of 30 June 2015

to initiate the formal investigation procedure into potential state aid granted through the rent of land and property in the Gufunes area

(Iceland)

The EFTA Surveillance Authority ('Authority'),

HAVING REGARD to:

The Agreement on the European Economic Area ('EEA Agreement'), in particular to Article 61 and Protocol 26,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Surveillance and Court Agreement'), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Articles 4(4), 6 and 13(1) of Part II,

Whereas:

I. FACTS

1. Procedure

(1) By e-mail dated 2 April 2014, Gámaþjónustan hf. ('GÞ' or 'complainant') lodged a complaint with the Authority concerning alleged unlawful state aid granted by the City of Reykjavík ('City') through the rent of property and land in the Gufunes area in Reykjavík, Iceland, to Íslenska Gámafélagið ('ÍG') for a rate which is allegedly below market price [1].

[1] Documents No 704341-704343.

(2) By letter dated 12 May 2014, the Authority requested information from the Icelandic authorities and invited them to comment on the substance of the complaint [1]. The Icelandic authorities responded to this request by letter dated 24 July 2014 [2].

(3) By letter dated 6 November 2014, the Authority requested additional information from the Icelandic authorities [3]. The second request for information was followed up with a telephone conference with the Icelandic authorities on 19 November 2014. By letter dated 23 January 2015, the Icelandic authorities replied to the request and provided the Authority with the relevant information [4].

(4) Moreover, the matter was discussed during a meeting between the Icelandic authorities and the Authority in Reykjavík on 13 February 2015. Following the meeting, the Icelandic authorities submitted additional clarifications to the Authority on 23 March 2015 [5].

2. **Description of the measure**

2.1. ***The Gufunes area***

(5) The Gufunes area is situated in the Grafarvogur district of Reykjavík, Iceland. Until the year 2001, a fertiliser factory, Áburðarverksmiðjan, was operating in the area. In 2002, the planning fund of Reykjavík (Skipulagssjóður Reykjavíkur, 'SR') bought the factory and the surrounding area. According to the Icelandic authorities, the plan at the time was to remove all the structures from the area. In 2007, SR was dissolved and a new fund, Eignasjóður, was founded and took over SR's assets and tasks.

(6) According to the Reykjavík Municipal Zoning Plan 2001-2024, the Gufunes area is intended for residential purposes and not for industrial activities [6]. Additionally, the area is intended for the construction of the Sundabraut highway, connecting Laugarnes and Gufunes. Moreover, according to the Reykjavík Municipal plan for 2010-2030, the industrial area of Gufunes is regressing and a mixed urban area of residential units and clean commercial activities is anticipated in the future [7]. Neither plan foresees that industrial activities will continue to be located in the area in the future. Additionally, it was agreed early in 2014 to establish a steering committee to present a vision for the Gufunes area [8]. The committee proposed an open idea competition for professionals on the future planning of the Gufunes area. This proposal was later approved by the Reykjavík City Council. The preparatory work regarding the competition has started, but it is uncertain when the competition will be launched [9].

2.2. ***Agreements concluded between the City of Reykjavík and Íslenska Gámafélagið***

(7) In February 2002, when SR purchased the land and the properties in the Gufunes area, the area was occupied by several tenants (mainly contractors and developers). At the time, ÍG had a lease agreement with Áburðarverksmiðjan, which had been concluded 29 October 1999 ('the 1999 Agreement'). The 1999 Agreement set out which properties ÍG rented, how big they were in square meters and the price per square meter for the respective property. The total monthly rental fee in the agreement was set at ISK 159.240 [10]. According to the purchase agreement, SR took over all obligations and rights from Áburðarverksmiðjan regarding the existing lease agreements, including the 1999 Agreement with ÍG.

(8) According to the City of Reykjavík, the area was continuingly busy around the clock and difficult to manage. Moreover, the structures were in bad shape, some tenants were not paying rent and there had been an accumulation of scrap, such as car wreckages. It was therefore clear to the City of Reykjavík that in order to serve its role as a landowner, it would have to hire staff to control the area during day and night.

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[1] Document No 706674.
[2] Document No 716985.
[3] Document No 721373.
[4] Document No 742948.
[5] Document No 751487.
[6] Available online at; http://skipulagssja.skipbygg.is/skipulagssja/.
See also http://reykjavik.is/sites/default/files/adalskipulag/08_grafarvogur.pdf.
[7] Ibid.
[8] Document No 716985.
[9] Document No 742948.
[10] Document No 716986, page 17.

(9) In light of that situation, it was not considered realistic to offer the area for rental purposes. It was therefore decided not to renew the current lease agreements and instead conclude an agreement with one party only. Consequently, SR decided to negotiate terms regarding lease, clean-up and supervision of the area with ÍG, which was the largest single tenant at the time, in addition to being on time with its rental payments ([1]). The following is an overview of the agreements concluded between SR and ÍG:

(i) **22 February 2005**. SR and ÍG concluded a lease agreement on some of the properties in the area, replacing the 1999 Agreement. The agreement set out which properties ÍG rented and their size in square meters. The total monthly rental fee was set at ISK 960.000 for a total of 4.676 square meters (including a 500 square meter lot) ([2]).

(ii) **14 October 2005**. SR and ÍG concluded an agreement ('Main Agreement'), replacing the previous agreement from 22 February 2005, regarding lease, clean-up and supervision of land in the area of Gufunes. According to the agreement, ÍG had the obligation to carry out all maintenance work and improvements on the property. The agreement was valid until 31 December 2009. The agreement did not set out how many square meters of property ÍG rented. However, as an annex to the agreement, an aerial printout demonstrated which parts of the area were rented to ÍG ([3]). Furthermore, the agreement did not set out the price paid per square meter or the value of ÍG's obligations. The total monthly rental fee was set at ISK 2.000.000, recalculated monthly in accordance with the consumer price index ([4]).

(iii) **29 December 2006**. The validity of the Main Agreement was extended until 31 December 2011. ÍG was also obliged to demolish specified properties and remove equipment on the ground. ÍG was allowed to keep devices and installations removed from the ground at its own expense ([5]).

(iv) **21 December 2007**. The validity of the Main Agreement was extended until 31 December 2015. The owner could at any time take over part or all of the leased land if necessary due to changes in land use planning. ÍG also committed to reconnect pipes for electricity, water and heating that had become unusable. Moreover, ÍG withdrew a tort claim against the City ([6]).

(v) **15 June 2009**. The validity of the Main Agreement was extended until 31 December 2018. ÍG undertook to handle the maintenance of the area, to raise a levee and an existing lease of a boat storage owned by Reykjav*k Yacht club was extended. ÍG also committed to withdraw a claim against the City regarding maintenance costs ([7]).

(10) According to the City, although the size of land rented by ÍG is 130.000 m², only 110.000 m² is usable for their purposes. The total registered size of the buildings is 24.722 m². According to the Icelandic Property Registry, the value of the land previously owned by Áburðarverksmiðjan is 211.000.000 ISK. The value of the land which ÍG rents has not been assessed, but it is estimated at around 137.000.000 ISK. The total registered value of buildings rented by ÍG is 850.323.512 ISK ([8]).

(11) According to Article 4(2) of the Act on Municipal Income No 4/1995, the property owner shall pay the property tax except where leased farms, leased lots or other contractual utilization of land are involved, in which case the tax shall be paid by the resident or the user. The land and structures in question are on a defined harbour area which belongs to Faxaflóahafnir sf. and is leased to the City of Reykjavík. The City therefore pays the property tax on the leased land and the properties rented out to ÍG.

(12) Although none of the aforementioned agreements include information concerning the value of the services provided by ÍG, the City has provided a table setting out an estimation of ÍG's costs stipulated in the Main Agreement and later amendments from the time when the Main Agreement was concluded and until the end of the lease period in 2018 ([9]). The estimation was carried out by the City of Reykjavík's expert analysts. Furthermore, the information provided contains both the cost of finished and unfinished demolition projects. According to the information provided, the average monthly cost borne by ÍG is ISK 10.815.624, including the rental fee. The rental fee per month is therefore approximately 25 % of ÍG's total cost per month.

([1]) Documents No 716985 and 742948.
([2]) Document No 716986, page 21.
([3]) The Icelandic authorities have later explained that ÍG rents about 130.000 square meters in the area. See Document No 716985.
([4]) Document No 716986, page 25.
([5]) Document No 716986, page 29.
([6]) Document No 716986, page 31.
([7]) Document No 716986, page 33.
([8]) Document No 716985.
([9]) Document No 742948.

Evaluation of ÍG's cost in accordance to ÍG's obligations stipulated in the agreement dated 14 October 2005													
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Rental Fee ISK	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315
Employee	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000
Administration	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Estimated maintainance	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Legal	1,500,000	1,000,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Energy costs of others	5,000,000	5,000,000											
Unfinished demolition	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462
Finished demolition	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222
Repairments	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Gates and fences	1,000,000	1,000,000	1,000,000	1,000,000	600	600	600	600	600	600	600	600	600
Cleaning	7,000,000	7,000,000	7,000,000	7,000,000	3,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Painting	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Restoration	30,000,000	10,000,000	10,000,000	8,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Wiring, heating- and waterpipe installations	7,500,000	8,000,000	9,000,000	12,000,000	9,500,000	7,200,000	6,500,000	5,000,000	4,000,000	3,000,000	3,000,000	3,000,000	3,000,000
Sewage system									10,600,000	10,600,000	10,600,000	10,600,000	
Breakwater						6,000,000	6,000,000						
Disposal	500,000	500,000	500,000	7,200,000	6,500,000	2,000,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Asphalt	8,000,000	8,000,000	8,000,000	8,000,000	6,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Soil	10,000,000	10,000,000	10,000,000	10,000,000	5,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Fire alarm system	10,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total obligation	**138,393,684**	**109,393,684**	**104,893,684**	**112,593,684**	**95,394,284**	**91,594,284**	**89,394,284**	**81,894,284**	**91,494,284**	**90,494,284**	**90,494,284**	**90,494,284**	**79,894,284**
Total ISK	**170,763,999**	**141,763,999**	**137,263,999**	**144,963,999**	**127,764,599**	**123,964,599**	**121,764,599**	**114,264,599**	**123,864,599**	**122,864,599**	**122,864,599**	**122,864,599**	**112,264,599**
Average per month	14,230,333	11,813,667	11,438,667	12,080,333	10,647,050	10,330,383	10,147,050	9,522,050	10,322,050	10,238,717	10,238,717	10,238,717	9,355,383
Average ISK	**10,815,624**												

Figure 1. Source: City of Reykjavík

(13) At the time when the lease agreement dated 22 February 2005 was concluded, SR did not impose any obligations on ÍG. ÍG's obligations, according to the Main Agreement, were determined in light of the proposed demolitions and estimated costs of cleaning, disposal and supervision of the area. The scope was determined by the City of Reykjavík's expert analysts in the year 2005. The cleaning and disposal obligations were considered an extensive procedure in light of the area's condition.

3. **The complaint from Gámaþjónustan hf. to the Icelandic Competition Authority**

3.1. ***The Complaint to the Icelandic Competition Authority***

(14) On 18 February 2013, GÞ sent a complaint to the Icelandic Competition Authority ('ICA') regarding the above mentioned agreements between SR and ÍG. The complaint concerned the allegedly low rental price for the land and property and the fact that the City had not tendered out the lease of the property to the highest bidder.

(15) The complainant noted that the rental price was set at ISK 2 million in the Main Agreement from 14 October 2005, with annual increases in accordance with the consumer price index. Furthermore, ÍG had specific maintenance obligations which are considered as being a part of the rental price, although the approximate costs of those obligations are not to be found in the agreements. Moreover, the agreements do not forbid ÍG from subleasing the land to third parties. The complainant stressed that there was no evaluation to be found in the agreements concerning the possible income from subletting parts of the property, and whether this effected the rental price.

(16) The complainant also mentioned that the price estimation was not clear, *i.e.* it was unclear what the price per square meter was and how the rental price was determined. According to the complainant, it was therefore impossible to measure the value of the agreements and the market price for the lease.

(17) According to the complainant, the renting of the property to ÍG at a price that is far below market value is contrary to the rules regarding public procurement, Icelandic competition law and EEA state aid rules.

3.2. ***The conclusion of the Icelandic Competition Authority***

(18) On 7 March 2014, ICA sent a letter to the City of Reykjavík where it noted that the competitors of ÍG had not been able to negotiate the rent of the property or the services which the City of Reykjavík considered to be required in the area. Therefore, the conditions in ICA Opinion No 1/2012 on public tendering had not been fulfilled.

(19) According to ICA, it might be a possibility that ÍG was the only party that could or would have been interested in negotiating the above mentioned agreements, but due to the lack of a call of interest or a tender this could not be confirmed. However, it was clear that other parties were, at least at a later stage, interested in the area. According to the City of Reykjavík, the rental price is reasonable and does not confer an advantage on ÍG. Moreover, the gross margin of the agreements was positive although the profits were limited. The ICA noted that it is difficult to determine the market price for the lease in light of the special characteristics of the buildings situated in the area. Therefore, public tendering is the only appropriate way to determine the correct market price for the land and the properties.

(20) Since ICA does not have the competence to apply the EEA state aid rules, it could not rule on that matter. However, ICA, on the basis of Article 8(1)(c) of the Icelandic Competition Act No 44/2005 [1], suggested that the City of Reykjavík would initiate a public tender for the lease of the property not later than 31 January 2015. Furthermore, it requested that the City of Reykjavík would inform the ICA before 30 June 2014 on how it intended to respond to those instructions [2].

3.3. ***Response by the City of Reykjavík***

(21) By letter dated 5 June 2014, the City of Reykjavík responded to ICA's suggestion. In its reply, the City stated that it was not clear how the area would be developed in the future. However, according to the City, it is clear that the agreements with the current tenants would not be extended, since their activities are not in line with the City's future zoning plans. Furthermore, the City stated that it would comply with competition rules when deciding on the future of the area, and that it would make sure that scarce resources will be equally available to all interested parties by way of a tender [3].

[1] Act No 44/2005, Competition Law, English version available online at: http://en.samkeppni.is/media/en-news/Competition_law_no_44_2005.pdf
[2] Document No 704343.
[3] Document No 718590.

3.4. *Response by the Icelandic Competition Authority to the complainant*

(22) By letter dated 13 November 2014, the ICA informed the complainant that the case had been formally closed with the letter dated 7 March 2014 [1]. Moreover, ICA informed the complainant that the City had responded to the ICA by letter dated 5 June 2014.

(23) ICA noted in its letter dated 7 March 2014 that it had instructed the City to initiate a public tender for the land and property in the Gufunes area before 31 January 2015 since the market value is not clear. However, as the City explained, since the activities in the area are not in line with the City's future zoning plans, the area will not be tendered out for similar activities and the current lease agreements will not be extended. ICA therefore concluded that there were not sufficient grounds for further pursuing the case, citing Article 8(3) of the Icelandic Competition Act No 44/2005, which concerns the prioritisation of cases.

4. **The complaint to the EFTA Surveillance Authority**

(24) According to GÞ, the City has granted unlawful state aid to ÍG through the rent of property and land in the Gufunes area at prices which are below market rate. In its complaint to the Authority, GÞ states that although it is difficult to pinpoint the exact aid amount, the price is clearly far below reasonable market price. Since ÍG is not paying normal market price, the company enjoys a competitive advantage. Furthermore, the land at Gufunes is of interest for many companies that need spacious land for their operations, for instance transport hubs and storages.

(25) The complainant noted that the rental price was set at ISK 2 million in the Main Agreement, with annual increases in accordance with the consumer price index (the property tax, which is not paid by ÍG but by the owner of the property (Reykjavík), amounts to 41 % of the yearly rental amount). Furthermore, ÍG has certain maintenance obligations, which are considered as being a part of the rental price, although the approximate costs of those obligations are not to be found in the agreements. Moreover, the agreements do not forbid ÍG from subleasing the land to third parties. The complainant stressed that there is no evaluation in the agreements concerning the possible income from subletting parts of the property, and whether this effected the rental price.

(26) The complainant also mentioned that the price estimation is not clear, *i.e.* it is unclear what the price per square meter is and how the rental price was determined. According to the complainant, it is therefore impossible to measure the value of the agreements and the market price of the lease. The complainant suggested three methods which could be used in order to determine the market price for the lease of the property:

(27) The complainant firstly noted that ÍG was ready to sublease a 300 square meter storage building with a 100 square meter outside area for ISK 300.000 per month. ÍG therefore estimates the price per square meter to be around ISK 1000 and consequently, according to the complainant, the agreements with SR should be valued at around ISK 27 million per month (excluding the outside area).

(28) Moreover, according to the complainant, the rental price per square meter for similar land (though in a more rural area) was around ISK 40-80 per square meter. The complainant has pointed out that the Gufunes land is 173.000 square meters and therefore the minimum rent for the land should be at least ISK 6.9 to 14 million per month. Moreover, it was stated that Efnamóttakan hf., a company which handles hazardous waste, was renting land in the Gufunes area, with the equivalent of some 2.9 % of the building area occupied by ÍG, but paying around 41 % of the price that ÍG pays. The complainant therefore claims that in order to pay market price for the property (including the land) ÍG should pay around ISK 44-66 million per month.

(29) Lastly, the complainant stated that a common way to determine rental price is to collect at least 1 % of the estimated market value of the property per month. The Icelandic Housing Financing Fund (i. Íbúðalánasjóður) base their evaluation on 1 % of rateable property value. The rateable property value of the area is 1.2 billion ISK, which would amount to ISK 12 million per month, and according the complainant the market value is supposedly higher.

(30) Therefore, according to the complainant the market price for the lease of the property should be from ISK 12 to 41 million per month. According to the complainant, the renting of the property to ÍG at a price that is far below market value is contrary to EEA state aid rules.

[1] Document No 730017.

5. **Comments by the City of Reykjavík**

(31) According to the City, the agreements with ÍG do not involve state aid within the meaning of Article 61(1) of the EEA Agreement since ÍG did not receive any advantage that was not in accordance with market conditions. According to the City, the lease agreements, dated 22 February 2005 and 14 October 2005, were in accordance with normal market conditions, since the rental fee was based on the rental fee determined following an open advertising process towards the end of the year 2003 and was in line with analyses/estimations conducted by the City's experts.

(32) The poor condition of the area and the buildings at the time of purchase in addition to the uncertainty of the planning of the area, *i.e.* the City's future zoning plans, affected the price of the rent and limited the City's options with regard to tendering out the lease of the property. Moreover, according to the City there is no intention of extending the existing rental agreements with ÍG at the end of its term since this kind of activity would not coincide with other planned activities in the area. Furthermore, the City of Reykjavík was not in the position of assigning lease rights for longer period than until the year 2019 since Faxaflóahafnir sf., a general partnership owned by five municipalities, has taken over all rights and obligations concerning all ports previously owned by the respective municipalities, including the land of Gufunes.

(33) According to the City, a public tender was not initiated because of the exceptional circumstances relating to the area in question, *i.e.* the distinct nature of the Gufunes area. It was therefore decided to conclude an agreement with ÍG, which was the largest lessee and therefore the best placed to supervise and manage the area for a short period of time. The City also noted that commercial property leasing agreements in Iceland are generally made for much longer periods than what was possible in this case, *i.e.* from 20 to 25 years.

(34) The City emphasised that the agreements in question are lease agreements and therefore there was not a legal obligation to conduct an open tender procedure. In October 2005, when the Main Agreement with ÍG was concluded, the applicable rules concerning public procurement were the Public Procurement Act No 94/2001 ('PPA') [1] and the Reykjavík Public Procurement Rules, adopted by the Reykjavík City Council on 17 February 2005 [2]. According to Paragraph 1 and 5(a) of Article 4 of the PPA, lease agreements fell outside the scope of the PPA. In paragraph 5(a) of Article 4 of the PPA, it is stipulated that contracts for the purchase or rental of land, existing buildings or other real estate or rights to same, shall not be considered supply, service or work contracts. The main objective of the aforementioned agreements was the leasing of land and existing buildings and therefore the contract fell outside the scope of the PPA.

(35) The reason for extending the Main Agreement three times was, according to the City, the uncertainty concerning the zoning plans for the Gufunes area, the main factor being the construction of Sundabraut, a traffic road between Laugarnes and Gufunes. This road has been on the schedule since 1984 and in 2005 all preparations were under way. However, in 2008, the Icelandic government postponed all major constructions due to the economic crisis, but according to the Ministry's Transport Plan 2013-2016, the preparatory work is scheduled to start again in the near future.

(36) Furthermore, according to the City, the rental fee was determined by SR with regard to other rental fees in the area, the lease agreement previously made between SR and ÍG and taking into account the tasks that ÍG undertook. The City emphasised that if it would be proven that the rental fee was not determined in accordance with market price, then the cost of ÍG due to the obligations imposed in the agreements must be taken into account, such as cleaning and maintenance of the area etc. Additionally, ÍG has the obligation to return part of the land upon request with 12 months' notice and in light of the substantial uncertainty of the planning of the area this obligation affected the value of the property and the rental price.

(37) The City further explained that the average property evaluation of all the properties rented by ÍG is 850 million ISK. The average rental fee per month, over the period of the validity of the Main Agreement and its amendments, is therefore 1.27 % of the average property evaluation.

(1) Act No 94/2001 was later repealed and replaced by Act No 84/2007.
(2) Document No 742953.

6. The position of Íslenska Gámafélagið

(38) By letter dated 11 June 2013, ÍG submitted comments regarding GÞ's complaint to the ICA [1]. ÍG noted that the company's operations in the Gufunes area started in 1999 with an agreement with Áburðarverksmiðjan. In 2003, ÍG and SR started negotiating for an extended lease agreement. Shortly after the lease agreement was concluded, in light of the issues at hand, SR contacted ÍG offering the company to lease the whole area, since it was the biggest single lessee at the time.

(39) ÍG emphasized that when they concluded the agreement, there were many tenants which were not paying rent and the area needed considerable clean-up. At the time, there were around 2-3 full time employees tasked with the maintenance of the area. The condition of the rental properties was poor and the assignment of lease agreements was encumbering for ÍG. For instance, the buildings were not heated, without power and water etc.

(40) Each time the agreement was extended, more obligations were imposed on ÍG regarding development in the area and other concessions. According to ÍG, the company has been responsible for demolition and restoration of buildings, raising a levee and labelling the parking lot. Additionally, ÍG has encountered costs resulting from disposal and soil work among other things. The average cost per month, relating to these obligations, was estimated by ÍG to be around 19 million ISK.

II. ASSESSMENT

1. The presence of state aid

(41) 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.*'

(42) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to have an impact on trade between Contracting Parties and to distort competition.

(43) In the following, the agreements between the City of Reykjavík and ÍG will be assessed with respect to these criteria.

1.1. *Presence of state resources*

(44) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute state aid.

(45) The State, for the purpose of Article 61(1) covers all bodies of the state administration, from the central government to the city level or the lowest administrative level as well as public undertakings and bodies [2].

(46) The land in question was owned by SR, a former municipal fund in charge of purchase and sale of real estate on behalf of the City of Reykjavík. In 2007, SR was dissolved and a new fund, Eignasjóður, was founded which took over SR's assets and tasks. The land rented by ÍG is located on a larger land fully owned Faxaflóahafnir, which is a general partnership owned by five municipalities, one of them being the City of Reykjavík. Any discount on rental price would therefore constitute a transfer of state resources.

1.2. *Undertaking*

(47) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed [3]. Economic activities are activities consisting of offering goods or services on a market [4].

(48) The alleged beneficiary of the measure is ÍG. The company is active on the waste collection market, providing such services in Iceland. Accordingly, any advantage involved in the leasing by the City of Reykjavík of the land in question would be conferred upon an undertaking.

(1) Document No 704341.
(2) Judgment in *Germany v Commission*, Case 248/84, EU:C:1987:437, paragraph 17.
(3) Judgment in *Höfner and Elser v Macroton*, Case C-41/90, EU:C:1991:161, paragraphs 21-23 and Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority* [2008] EFTA Ct. Rep. 61, paragraph 78.
(4) Judgment in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA*, C-222/04, EU:C:2006:8, paragraph 108.

1.3. ***Favouring certain undertakings or the production of certain goods***

(49) Firstly, the aid measure must confer on the beneficiary undertaking an economic advantage. An economic advantage, within the meaning of Article 61(1) of the EEA, is any economic benefit which an undertaking would not have obtained under normal market conditions [1], thus placing it in a more favourable position than its competitors [2]. For it to constitute aid, the measure must confer on ÍG advantages that relieve it of charges that would normally be borne from its budget. If the transaction was carried out under favourable terms, in the sense that ÍG was paying a lease price below market price, the company would therefore be receiving an advantage within the meaning of the state aid rules. To examine this question closer the Authority must apply the 'private vendor test' [3] whereby the conduct of states or public authorities when selling or leasing assets is compared to that of private economic operators.

(50) To assess whether a public authority has acted like a private economic operator, the European Courts have developed the 'market economy investor principle' [4], which in essence provides that state aid is granted whenever a state makes funds available to an undertaking which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria and disregarding other considerations of a social, political or philanthropic nature [5]. A closely related concept is the private vendor test, the purpose of which is to assess whether a sale or leasing of assets carried out by a public body involves state aid, by examining whether a private vendor, under normal market conditions, would have accepted the same terms. In both cases the public authority must disregard public policy objectives and instead focus on the single objective of obtaining a market rate of return or profit on its investments and a market price for the sale or leasing of assets [6].

(51) An open, transparent and unconditional bidding procedure as an appropriate means to ensure that the sale or leasing by national authorities of assets is consistent with the private vendor test and that a fair market value has been paid for the goods and services in question [7]. This is also reflected in the Authority's guidelines on State aid elements in sales of land and buildings by public authorities [8] as well as in its decision-making practice. However, this does not automatically mean that the absence of an orderly bidding procedure justifies a presumption of state aid. Indeed, public procurement law and state aid law exist in parallel and there is no reason that the violation of, for example, a public procurement rule should automatically mean that state aid rules have been infringed [9].

(52) Compliance with market conditions, and whether the rental charge corresponds to market price, can be established through certain proxies. In the case at hand, the organisation of an open, transparent, non-discriminatory and unconditional tender procedure could be seen as such a proxy. As stated in the Land Burgenland case: *'where a public authority proceeds to sell an undertaking belonging to it by way of an open, transparent and unconditional tender procedure, it can be presumed that the market price corresponds to the highest offer, provided that it is established, first, that the offer is binding and credible and, secondly, that the consideration of economic factors other than the price is not justified.'* [10] In the Authority's view, the same principle applies in the case of leasing of assets. A private operator leasing his assets would normally try to obtain the best offer with an emphasis on price, and, for example, not consider elements that would relate to the intended use of such assets, unless they might affect the value of the assets after the lease period. Therefore, assuming that the said pre-conditions are met, it can be presumed that the market price is the highest price which a private operator acting under normal competitive conditions is ready to pay for the use of the assets in question [11].

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(1) Judgment in *France v Commission*, C-301/87, EU:C:1990:67, paragraph 41; judgment in *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community*, Case 30/59, EU:C:1961:2, paragraph 19; judgment in *France v Commission (Kimberly Clark)*, C-241/94, EU:C:1996:353, paragraph 34, judgment in *Fleuren Compost*, T-109/01, EU:T:2004:4, paragraph 53 and judgment in *Land Burgenland and Others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

(2) See for instance judgment in *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 90; judgment in *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14, and judgment in *Italy v Commission*, C-6/97, EU:C:1999:251, paragraph 16.

(3) For the application of the '*private vendor test*', see judgment in *Land Burgenland and Others v Commission*, cited above, EU:C:2013:682.

(4) See, for instance, judgment in *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission*, T-2/96 and T-97/96, EU:T:1999:7, paragraph 104, and judgment in *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission*, T-228/99 and T-233/99, ECR, EU:T:2003:57.

(5) See for example, the Opinion of Advocate-General Jacobs in *Kingdom of Spain v Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:112, paragraph 28. See also judgment in *Belgium v Commission*, 40/85, EU:C:1986:305, paragraph 13; judgment in *France v Commission*, C-301/87, cited above, paragraphs 39-40, and judgment in *Italy v Commission*, C-303/88, EU:C:1991:136, paragraph 24.

(6) See judgment in *Land Burgenland and Others v Commission*, cited above.

(7) See Case E-1/13 *Míla ehf. v EFTA Surveillance Authority* [2014] EFTA Ct. Rep. 4, paragraph 97 and judgment in *Land Burgenland and Others v Commission*, cited above, paragraph 94.

(8) Available on the Authority's website at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/

(9) Judgment in *SIC v Commission*, T-442/03, EU:T:2008:228 paragraph 147. By analogy, see judgment in *Matra v Commission*, C-225/91, EU:C:1993:239, paragraph 44.

(10) See judgment in *Land Burgenland v European Commission*, cited above, paragraph 94.

(11) See for example judgment in *Banks*, C-390/98, EU:C:2001:456, paragraph 77 and judgment in *Germany v Commission*, C-277/00, EU:C:2004:238, paragraph 80.

(53) It follows from the above that a conditional sale or lease of assets may involve state aid, even when it is effected through a competitive procedure. This occurs when obligations imposed on the buyer result in a lower price. The kind of obligations which have such an effect are those that are imposed for the pursuit of public policy objectives, and thus make operations more costly. Such obligations would normally not be imposed by a private operator because they reduce the maximum amount of revenue that can be obtained from the sale or lease of the assets [1].

(54) It has been confirmed that no public tendering was initiated regarding the area in question. Additionally, an independent evaluation has not been performed. The City of Reykjavík stated that the rental fee was determined in line with other rental fees in the area, the previous agreement between SR and ÍG, and the tasks ÍG undertook.

(55) The City has stated that there are several issues that affect the market rental price for the Gufunes area. Firstly, the structures were in poor shape, some tenants were not paying rent and there had been accumulation of scrap which needed clean-up. Secondly, uncertainty has reigned concerning the zoning plans for the Gufunes area. Industrial activity is retreating in the area according to previous and current Municipal Plans and it is therefore impossible for the City to conclude a long term rental agreement for the property. Thirdly, ÍG has the obligation to return part of the land upon request upon 12 months' notice.

(56) Whereas the rental price is known, the value of the services provided by ÍG are uncertain. Moreover, it is not clear how ÍG's rental income affects the rental price. It is therefore challenging to determine the total value of the agreements and whether they are set at a market price. This raises difficulties determining whether the agreements are in line with the private vendor principle.

(57) The competitors of ÍG were not able to negotiate as to the rent or the services that the City of Reykjavík considered needed in the area. It is possible that ÍG was the only party that could or would have been interested in negotiating the above mentioned agreements, but due to the lack of a call of interest or a tender this cannot be confirmed. However, it is clear that other parties were later interested in the area. Moreover, it is also likely that other operators would have been interested in delivering the services entrusted to ÍG, if they had been tendered out, and it cannot be ruled out that they could have delivered those services at a lesser cost.

(58) Furthermore, the Authority notes that it stated in the case of *Haslemoen Leir* [2], that when deciding on how to take account of a price reduction resulting from a new obligation on a buyer of a land where a municipality was the seller: '*[…] in the absence of any supporting documentation as to the economic impact of this obligation, i.e. the possible loss for Haslemoen AS in not being able to lease out that building for one year, the Authority cannot accept any price reducing effect as such*' [3].

(59) Bearing in mind that the rental charge was not determined on the basis of a tender nor by means of an *ex ante* evaluation of an independent expert, especially since there are several factors of uncertainty in this case, it cannot be excluded that an advantage may have been granted in favour of ÍG.

(60) Secondly, the aid measure must be selective, in that it must favour '*certain undertakings or the production of certain goods*'. The City of Reykjavík only concluded a rental agreement for the lease of the Gufunes area with ÍG. No other companies had the opportunity to negotiate with the City for the lease of the land and the properties. In light of the above, the Authority preliminarily concludes that the measure appears to be selective.

1.4. *Distortion of competition and effect on trade between Contracting Parties*

(61) The measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement to be considered state aid within the meaning of Article 61(1) of the EEA Agreement.

(62) According to settled case-law, 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 [4]. Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade. Even a public subsidy granted to an undertaking, which provides only local or regional services and does not provide any services outside its state of origin, may nonetheless have an effect on trade if such internal activity can be increased or maintained as a result of the aid, with the consequence that the opportunities for undertakings established in other Contracting Parties are reduced [5].

[1] Case E-1/13 *Míla ehf. v EFTA Surveillance Authority*, cited above, paragraph 99.
[2] Decision 090/12/COL EFTA Surveillance Authority Decision of 15 March 2012 on the sale of certain buildings at the Inner Camp at Haslemoen Leir. Available at: http://www.eftasurv.int/media/decisions/90-12-COL.pdf
[3] Ibid, paragraph 81.
[4] Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] EFTA Ct. Rep. 76.
[5] Judgment in *Libert and Others*, Joined cases C-197/11 and C-203/11, EU:C:2013:288, paragraphs 76-78.

(63) Furthermore, when aid granted by an EFTA State strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as influenced by that aid [1].

(64) With regard to the particulars of this case, and the waste collection industry, it should be recalled that the Authority has previously found that, '*the practice of tendering out waste collection means that undertakings from other EEA States may compete for contracts with other municipalities.* [2] *Furthermore, in practice, waste collection and processing is increasingly an international industry.*' [3]

(65) Any aid granted to ÍG, in the form of a discounted rent, would in theory have allowed the company to increase or at least maintain its activities as a result of the aid. The aid is thus liable to limit the opportunities for undertakings established in other Contracting Partie, whichs might have wanted to compete with ÍG on the Icelandic waste collection market.

(66) In light of the foregoing considerations, the measure appears to be liable to distort competition and affect trade between the Contracting Parties.

1.5. *Conclusion on the existence of state aid*

(67) With reference to the above considerations the Authority cannot, at this stage and based on its preliminary assessment, exclude that the measure under assessment may involve state aid within the meaning of Article 61(1) of the EEA Agreement. Under these conditions, it is thus necessary to consider whether the measure can be found to be compatible with the functioning of the EEA Agreement.

2. **Procedural requirements**

(68) Pursuant to Article 1(3) of Part I of 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*'.

(69) The Icelandic authorities did not notify to the Authority the rent of land and property to ÍG. Moreover, the Icelandic authorities have, by concluding agreements with ÍG for the rent of land and property, put the measure in effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid involved would therefore be unlawful.

3. **Compatibility of the aid**

(70) Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation under Article 61(2) or (3) or Article 59(2) of the EEA Agreement and are necessary, proportional and do not cause undue distortion of competition. The derogation in Article 61(2) of the EEA Agreement is, however, clearly not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision.

(71) According to established case law, it is up to the Contracting Party concerned to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met [4].

(72) The Icelandic authorities have not at this stage put forward any arguments demonstrating that the potential state aid involved could be considered compatible on the basis of Article 59(2) or 61(3) of the EEA.

(73) Consequently, following its preliminary assessment, the Authority has doubts at this stage as to whether the agreements are compatible with the functioning of the EEA Agreement. The Authority therefore invites the Icelandic authorities to provide arguments and evidence to demonstrate that the lease could be considered to compatible on the basis of either Article 59(2) or Article 61(3)(c) of the EEA Agreement.

4. **Conclusion**

(74) As set out above, the Authority has doubts as to whether the agreements concluded between the City of Reykjavík and ÍG concerning the lease of the Gufunes area constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

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[1] Ibid, paragraph 141.

[2] Judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraphs 78 and 79.

[3] Decision 91/13/COL EFTA Surveillance Authority Decision of 27 February 2013 on the financing of municipal waste collectors [2013], paragraph 41. Available at: http://www.eftasurv.int/media/decisions/91-13-COL.pdf

[4] Judgment in *Italy* v *Commission*, C-372/97, EU:C:2004:234, paragraph 44.

(75) The Authority also has doubts as to whether the agreements in question are compatible with the functioning of the EEA Agreement.

(76) Consequently, and in accordance with Articles 4(4) and 13(1) of Part II of Protocol 3, the Authority is obliged to open 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 the Authority, which may conclude that the measure in question is compatible with the functioning of the EEA Agreement.

(77) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit within one month from notification of this Decision, their comments and to provide all documents, information and data needed for the assessment of the measure in light of the state aid rules.

(78) The Authority requests the Icelandic authorities to forward a copy of this decision to the potential aid recipient.

(79) The Authority must remind the Icelandic authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principle of EEA law.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the agreements concluded between the City of Reykjavík and Íslenska Gámafélagið concerning the lease of the Gufunes area.

Article 2

The Icelandic authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure, within one month from notification of this Decision.

Article 3

The Icelandic authorities are requested to provide, within one month from notification of this Decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

This Decision is addressed to Iceland.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 30 June 2015.

For the EFTA Surveillance Authority

Oda Helen SLETNES	Frank BÜCHEL
President	*College Member*