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⁽¹⁾ Text with EEA relevance

I

(Resolutions, recommendations and opinions)

OPINIONS

COUNCIL

COUNCIL OPINION

of 10 March 2009

on the updated stability programme of France, 2008-2012

(2009/C 64/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽¹⁾, and in particular Article 5(3) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

- (1) On 10 March 2009, the Council examined the updated stability programme of France, which covers the period 2008 to 2012.
- (2) In 2008, the global financial crisis amplified the deceleration of growth via lower consumer and business confidence and tighter credit conditions. Following a collapse of industrial production in the fourth quarter of 2008, annual GDP is expected to contract sharply in 2009. The main policy challenges in the downturn are to stabilise the financial sector, restore consumer and business confidence, and support investment. The downturn will have a significant impact on the public finances as the deficit has exceeded 3 % of GDP in 2008 as indicated by the French Minister of the Economy, Industry and Employment, in a letter addressed to the Commissioner of Economic and Financial Affairs on 6 February 2009, and is expected to rise above 5 % of GDP in 2009 according to the Commission services' January 2009 interim forecast. The latter also reflects the 0,8 % of GDP impact on the budget balance of the recovery plan adopted in December, the main measures of which are a frontloading of public investment and providing financial support to enterprises. The Government has implemented a number of structural reforms, which are expected to have a positive impact on the potential growth of the economy.
- (3) The macro-economic scenario underlying the programme envisages that GDP growth will be positive throughout the programme period. After slowing to around 1 % in 2008 it is expected to further decelerate to a range of 0,2-0,5 % in 2009, before increasing to about 2 % in 2010 and further

⁽¹⁾ OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: http://ec.europa.eu/economy_finance/about/activities/sgp/main_en.htm

to 2,5 % for the rest of the programme period. Assessed against currently available information ⁽¹⁾, this scenario appears to be based on markedly favourable growth assumptions. This assessment takes into account the severe contraction of GDP in the fourth quarter of 2008 and the gloomy economic prospects based on the low level of confidence indicators and the projected sharp contraction of investment and trade, but also the impact on growth of the recovery plan and the law on the modernisation of the economy ⁽²⁾. In the light of the latest developments in oil prices and the intensity of the global downturn, the programme's projections for inflation appear to be on the high side for 2009, but can be considered realistic thereafter. On 6 February, the French authorities informed the Commission that the macro-economic and public finance forecasts would be revised.

- (4) For 2008, the general government deficit is estimated at 3,2 % of GDP in the Commission services' interim forecast, which is 0,3 % worse than the figure contained in the programme but confirmed by the above-mentioned letter on 6 February ⁽³⁾. The 0,9 % of GDP difference with the target from the previous update (2,3 % of GDP) can be largely explained by (i) a worse-than-anticipated outcome in 2007 (0,3 % of GDP); (ii) markedly weaker real GDP growth in 2008 than expected in the previous update lowering tax revenue compared to plan (by 0,3 % of GDP); and (iii) higher interest payments reflecting the impact of higher inflation in 2008 on the debt-servicing costs of inflation-linked bonds (0,2 % of GDP).
- (5) The update contains a deficit target for 2009 of 3,9 % of GDP, against a projection of 5,4 % in the Commission services' interim forecast. The deterioration in the 2009 deficit reflects the working of the automatic stabilisers in response to the economic downturn but also the impact of the December 2008 fiscal stimulus package amounting to 0,8 % of GDP. More recently, the Government announced a higher deficit target of 4,4 % of GDP ⁽⁴⁾. The structural deficit (i.e. the cyclically-adjusted balance net of one-off and other temporary measures), according to the information provided in the updated stability programme and recalculated by the Commission services, is projected to attain 3 % of GDP in 2009, compared to 2,5 % in 2008. This fiscal stance can be considered as expansionary and can be fully explained by the fiscal impulse associated with the stimulus package.
- (6) France's goal of the budgetary strategy over the medium term outlined in the programme is to reach the medium-term objective (MTO) of a balanced budget position in structural terms in 2012. According to the projections of the programme revised by the above-mentioned letter on 6 February, the general government deficit is expected to peak in 2009 at 4,4 % of GDP (from 3,9 % of GDP) and then to fall again to 3,1 % of GDP in 2010 (from 2,7 % of GDP) as the budgetary impact of the recovery plan would be phased out. This compares with the Commission services' interim forecast, which projects the general government deficit to increase to 5,4 % of GDP in 2009 and to then reach 5,0 % of GDP in 2010. According to the projections revised by the above-mentioned letter, the deficit is projected to further improve after 2010 to reach 1,5 % of GDP in 2012. The primary balance follows a similar pattern. The structural deficit is expected to bottom out at 3 % of GDP in 2009 and to improve by around 1 % of GDP in 2010 and by 0,5 % of GDP per annum in the outer years. Apart from the phasing-out of the recovery plan, this is projected to be achieved through a specified expenditure restraint. The updated programme expects the debt-to-GDP ratio to rise to 69,1 % in 2009 and to broadly stabilise at 69,4 % in 2010 before it slightly decreases in the two following years. Apart from the budgetary stance, this includes the impact of bank recapitalisations and the participation in the Strategic Investment Fund ⁽⁵⁾, amounting to around 0,75 % of GDP, but excludes potential contingent liabilities stemming from the guarantee scheme. According to the Commission services' interim forecast, the debt ratio would reach 72,4 % of GDP in 2009 and 76 % of GDP in 2010, the difference with the updated stability programme being explained by the divergent growth and general government deficit figures.

⁽¹⁾ The assessment notably takes into account the Commission services' January 2009 forecast, but also other information that has become available since then.

⁽²⁾ On this basis, the Commission services' interim forecast projects GDP to contract by 1,8 % in 2009; GDP growth is then expected to recover to 0,4 % in 2010 as financial sector conditions and confidence improve and global demand recovers.

⁽³⁾ In view of the reported breach of the Treaty reference value, as indicated in the letter sent by the French Minister of the Economy, Industry and Employment, the Commission prepared on 18 February 2009 a report under Article 104(3) of the Treaty.

⁽⁴⁾ In the letter sent on 6 February, the French Minister of the Economy, Industry and Employment estimated the general government deficit at 3,1 % of GDP in 2010.

⁽⁵⁾ Strategic investment funds will be used to participate in the capital of firms.

- (7) The budgetary outcomes are subject to downside risks throughout the programme period. First, they do not yet reflect the worse outcome in 2008 (by 0,3 % of GDP) recently confirmed by the above-mentioned letter. This outcome also reflects the fact that there has been a lack of fiscal consolidation in good/neutral economic times ⁽¹⁾ and it explains part of the upward revision of the 2009 deficit target to 4,4 % of GDP (which also takes into account a downward revision of corporate taxes). More importantly, the macro-economic outlook of the programme does not include the recession now expected for 2009, implying substantial budgetary risks, even to the latest deficit target announced by the Government. Moreover, on top of the impact of automatic stabilisers, there are risks of some expenditure overruns in healthcare spending ⁽²⁾. Finally, given the past track record of local authorities, there is a risk that the planned expenditure targets will not be met. Risks to the debt scenario are also on the upside, reflecting the risks to the budget balance as well as the possible effects of financial sector stabilisation measures.
- (8) The long-term budgetary impact of ageing is slightly lower than the EU average, with pension expenditure showing a somewhat more limited increase, as a result of the pension reforms already enacted, among which the reform of the so-called *régimes spéciaux* (special pension regimes), aimed at aligning the required contribution period with the rules of other regimes. The budgetary position in 2008, as estimated in the programme, which is worse than the starting position of the previous programme, compounds the budgetary impact of population ageing on the sustainability gap. If the 2009 budgetary position of the Commission services' interim forecast was taken as the starting point, the sustainability gap would worsen. The current level of gross debt is above the Treaty reference value. The above-mentioned schemes for the financial sector stability put in place by France, could have an impact on the long-term sustainability of public finances, if the costs of the government support would not be fully recouped in the future. Ensuring higher primary surpluses over the medium term, as already foreseen in the programme, would contribute to reducing the medium risks to the sustainability of public finances.
- (9) France's past track record shows that general government expenditure overruns have not been exceptional over the past decade, indicating weaknesses in the existing budgetary rules. The reform of the Constitution adopted on 23 July 2008 introduced a general objective of balanced budgets for general government ⁽³⁾. However, the non-binding character of the balanced budget objective raises the question whether it can be effectively controlled. The reform also introduces a pluri-annual budget, adopted by Parliament, starting in 2009, for the period 2009-2012, i.e. the same length of time as in the stability programme. This reform should contribute to better management of public finances and help budgetary discipline.

Moreover, following the launch of the General Review of Public Policies in mid-2007, a number of measures were taken to increase efficiency of public spending, including a reduction of civil servants. A new debt rule applied to the social security subsector has entered into force in 2008 ⁽⁴⁾.

- (10) In response to the financial crisis, the French Government undertook a number of measures addressed to ensure the stability of the financial sector. In order to dampen its consequences on the credit-providing capacity of French banks, the Government decided ⁽⁵⁾ to purchase subordinated bank debt up to EUR 40 billion without acquiring voting rights. In exchange, banks have committed to increase loans to the economy in order to guarantee a degree of financing in line with the needs of

⁽¹⁾ The assessment of whether the economy is experiencing good or bad economic times relies on the analysis of the output gap, positive in 2007 and in 2008 (which could indicate good economic times), but draws on an overall economic assessment, such as employment, private consumption, investment or external imbalances, which can modify the initial conclusions. On this basis, France would have been in good economic times in 2007 and in neutral times in 2008. Still, the structural balance deteriorated by 0,3 percentage points and 0,2 percentage points of GDP in 2007 and 2008, respectively, according to Commission services' interim forecast (see technical assessment).

⁽²⁾ When growth in healthcare expenditures in nominal terms exceeds by more than 0,75 point the objective (ONDAM) set by the Social Security Financing Act for 2009, an alert procedure is activated.

⁽³⁾ Article 34, 4th paragraph of the newly adopted Constitution: '*Des lois de programmation déterminent les objectifs de l'action de l'État. Les orientations pluriannuelles des finances publiques sont définies par des lois de programmation. Elles s'inscrivent dans l'objectif d'équilibre des comptes des administrations publiques.*'

⁽⁴⁾ The repayment of social debt is handled by a special fund ('*Caisse d'Amortissement de la Dette Sociale*'). A new law (adopted in 2005) finally came into force in 2008, stating that each new debt transfer to the fund has to be compensated by new revenue so as not to increase the CADES lifetime.

⁽⁵⁾ Of which the government has so far submitted EUR 21 billion to the Commission, which has authorised it; EUR 10,5 billion have been underwritten.

economic agents. Furthermore, a EUR 320 billion ⁽¹⁾ line has been authorised by law to guarantee bank debts. This guarantee scheme is aimed at improving the access to finance of banks, in the context of the severe pressure the market for interbank loans has had to face since the beginning of the financial crisis. Banks will pay a premium for the Government guarantee for their loans and will provide collateral.

- (11) In response to the economic crisis, the French Government unveiled on 4 December a recovery plan, which can be described as a balanced mix of revenue and expenditure instruments and is in line with the EERP. Its measures encompass public investment (mainly to public enterprises, infrastructures, research and defence), labour market measures (such as a total exemption from social security contributions by employers of small companies on new hirings), support to firms (such as sectoral aids for the housing and automobile industry as well as an acceleration of Government payments to enterprises, especially SMEs) and support to household purchasing power (mainly EUR 200 grants in April 2009 to lower-income households). The package can be considered as targeted and timely. The announced measures are temporary, therefore reversible, with no costs for public finances beyond 2010. The Government is also implementing a number of structural reforms, which are expected to have a positive impact on the potential growth of the economy, and, therefore, on public finances in the long run. As far as the goods and services markets are concerned, the above-mentioned law on the modernisation of the economy aims at raising potential growth, notably by promoting individual entrepreneurship and reducing existing barriers to competition, including in the retail sector. Also on the labour market front also new laws have been adopted, notably as regards flexicurity. The law on the modernisation of the labour market, which was adopted in June 2008 and represents the transposition of the social partners' first inter-professional agreement, aims to develop both more secure and more flexible contracts. An important reform of social dialogue procedures has also been brought in to facilitate majority agreements. These measures are related to the medium-term reform agenda and the country-specific recommendations proposed by the Commission on 28 January 2009 under the Lisbon Strategy for Growth and Jobs.
- (12) Following a deterioration of public finances in 2007 and 2008 when economic conditions were more favourable, the fiscal stance is expansionary in 2009 (reflecting the response of the French Government to the EERP) when times are bad. Thereafter, public finance will be consolidated according to the programme; however, taking into account the significant risks to the budgetary targets, which imply a deficit well above 3 % in 2009 and 2010, the MTO of a balanced budget in structural terms will not be achieved by 2012.

In this context, France can reduce the risk of expenditure overruns through the implementation and further improvements of its public finance framework, in particular regarding expenditure rules. Finally, taking into account the risks to the debt projections mentioned above, the debt ratio, reflecting the expansionary stance in 2009, will be high and decisive action will be needed in the coming years to reverse this trend.

- (13) As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme provides all required and most of the optional data ⁽²⁾.

The overall conclusion is that the insufficient progress when economic conditions were more favourable and the deterioration of the economic situation, especially in the last quarter of 2008, led to a deficit slightly above 3 % of GDP in 2008. In order to counteract the strong economic downturn the government adopted a recovery plan in line with the EERP which is well targeted, temporary and timely. This temporary fiscal expansion, coupled with the strong economic downturn will lead to a further widening of the government deficit in 2009. Thereafter, the programme foresees a consolidation of public finances through a restrictive stance, especially in 2010. Risks are linked, in particular, to the markedly favourable macro-economic assumptions in the programme and the current uncertain environment, but they also reflect the non-binding character of expenditure rules. Further consolidation efforts may therefore become necessary in the outer years as the economy strengthens. The structural reforms already adopted are expected to contribute to increasing potential growth, improving competitiveness and sustaining the consolidation process.

⁽¹⁾ Of which the government has so far submitted EUR 265 billion to the Commission, which has authorised it.

⁽²⁾ Assumptions on short and long-term interest rates are not provided.

In view of the above assessment, France is invited to:

- (i) implement the fiscal measures in 2009 as planned, including stimulus measures in line with the EERP and within the framework of the SGP while maintaining the objective of avoiding a further deterioration of public finances;
- (ii) in light of the forecast pick-up of economic activity, make a consolidation effort in 2010 and strengthen the pace of adjustment thereafter in order to ensure that the deficit is brought rapidly below the reference value, thereby setting the debt-to-GDP ratio on a declining path;
- (iii) effectively enforce existing expenditure rules and take further steps in order to guarantee the respect of the multi-annual expenditure reduction targets of the general government by all sub-sectors and continue to implement measures in the context of the General Review of Public Policies. Implement the structural reform programme, in particular as regards the sustainability of the pension system.

Comparison of key macro-economic and budgetary projections

		2007	2008	2009	2010	2011	2012
Real GDP (% change)	SP Dec 2008	2,2	1,0	0,2– 0,5	2,0	2,5	2,5
	COM Jan 2009	2,2	0,7	– 1,8	0,4	n.a.	n.a.
	SP Nov 2007	2– 2,5	2– 2,5	2,5	2,5	2,5	2,5
HICP inflation (%)	SP Dec 2008	1,6	3,3	1,5	1¾	1¾	1¾
	COM Jan 2009	1,6	3,2	0,8	1,5	n.a.	n.a.
	SP Nov 2007	1,4	1,7	1,6	1,6	1,6	1,6
Output gap ⁽¹⁾ (% of potential GDP)	SP Dec 2008	0,4	– 0,6	– 1,8	– 1,6	– 1,1	– 0,4
	COM Jan 2009 ⁽²⁾	1,8	1,0	– 1,7	– 2,3	n.a.	n.a.
	SP Nov 2007	– 0,8	– 0,8	– 0,6	– 0,5	– 0,3	0,0
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	SP Dec 2008	– 2,8	– 3,4	– 2,6	– 2,5	– 2,4	– 2,4
	COM Jan 2009	– 2,8	– 3,8	– 4,0	– 3,9	n.a.	n.a.
	SP Nov 2007	– 2,3	– 2,5	– 2,3	– 2,2	– 2,1	– 2,0
General government revenue (% of GDP)	SP Dec 2008	49,7	49,8	49,6	50,0	50,0	50,2
	COM Jan 2009	49,7	49,6	49,4	49,9	n.a.	n.a.
	SP Nov 2007	50,7	50,4	50,1	50,0	50,0	50,0
General government expenditure (% of GDP)	SP Dec 2008	52,4	52,7	53,5	52,7	52,0	51,3
	COM Jan 2009	52,4	52,7	54,9	54,9	n.a.	n.a.
	SP Nov 2007	53,2	52,6	51,9	51,2	50,6	49,9
General government balance (% of GDP)	SP Dec 2008	– 2,7	– 2,9	– 3,9	– 2,7	– 1,9	– 1,1
	p.m. MoF	– 2,7	– 3,2	– 4,4	– 3,1	– 2,3	– 1,5
	COM Jan 2009	– 2,7	– 3,2	– 5,4	– 5,0	n.a.	n.a.
	SP Nov 2007	– 2,4	– 2,3	– 1,7	– 1,2	– 0,6	0,0

		2007	2008	2009	2010	2011	2012
Primary balance (% of GDP)	SP Dec 2008	0,1	0,0	- 1,1	0,1	0,9	1,7
	COM Jan 2009	0,1	- 0,3	- 2,6	- 2,1	n.a.	n.a.
	SP Nov 2007	0,2	0,5	0,9	1,4	2,0	2,5
Cyclically-adjusted balance ⁽¹⁾ (% of GDP)	SP Dec 2008	- 2,9	- 2,6	- 3,0	- 1,9	- 1,4	- 0,9
	COM Jan 2009	- 3,5	- 3,7	- 4,6	- 3,8	n.a.	n.a.
	SP Nov 2007	- 2,0	- 1,9	- 1,4	- 1,0	- 0,4	0,0
Structural balance ⁽³⁾ (% of GDP)	SP Dec 2008	- 2,9	- 2,6	- 3,0	- 1,9	- 1,4	- 0,9
	COM Jan 2009	- 3,6	- 3,8	- 4,6	- 3,8	n.a.	n.a.
	SP Nov 2007	- 2,0	- 1,9	- 1,4	- 1,0	- 0,4	0,0
Government gross debt (% of GDP)	SP Dec 2008	63,9	66,7	69,1	69,4	68,5	66,8
	COM Jan 2009	63,9	67,1	72,4	76,0	n.a.	n.a.
	SP Nov 2007	64,2	64,0	63,2	61,9	60,2	57,9

Notes:

- (¹) Output gaps and cyclically-adjusted balances from the programmes as recalculated by Commission services on the basis of the information in the programmes.
- (²) Based on estimated potential growth of 1,6 %, 1,4 %, 0,9 % and 1,0 % respectively in the period 2007-2010.
- (³) Cyclically-adjusted balance excluding one-off and other temporary measures. One-off and other temporary measures are 0 all over the period covered (2007-2012) according to the most recent programme and are 0,1 % of GDP in 2007, 0,1 % in 2008, all deficit-reducing and 0 in 2009 and 2010 according to the Commission services' January 2009 interim forecast.

Source:

Stability programme (SP); Commission services' January 2009 Interim forecasts (COM); Commission services' calculations.

COUNCIL OPINION
of 10 March 2009
on the updated stability programme of Greece, 2008-2011

(2009/C 64/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽¹⁾, and in particular Article 5(3) (for SP) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

- (1) On 10 March 2009, the Council examined the updated stability programme of Greece, which covers the period 2008 to 2011 ⁽²⁾.
- (2) Greece has experienced strong economic growth at 4 % per year over the current decade. In parallel, domestic and external macro-economic imbalances have widened considerably, which has led to a rapid foreign debt accumulation while public debt remained at high levels. In the light of the impact of the ongoing global economic and financial crisis on the Greek economy, the implied re-pricing of risks puts further pressure on the debt burden.

According to the Commission services' January 2009 interim forecast, GDP growth slowed down in 2008, to 2,9 % in real terms and is expected to decelerate strongly in 2009, but remain positive. With the general government deficit having remained above the 3 % of GDP threshold since 2007 ⁽³⁾, and one of the highest public debt ratios in the EU, Greece has no room for a fiscal impulse, so as not to jeopardise further the long-term sustainability of public finances and the competitiveness position of the country. As a result, no fiscal stimulus package is envisaged. The Greek authorities have put forward in the 2009 budget law some measures, aiming at safeguarding social cohesion, including benefits to low-income households. Greece is facing the challenge to achieve substantial fiscal consolidation, while improving the quality of public finances and correcting the factors behind the large domestic and external imbalances of the economy.

- (3) The macro-economic scenario underlying the programme envisages that real GDP growth will fall from 3 % in 2008 to 1,1 % in 2009 before picking up again to 1,75 % on average over the rest of the programme period. Assessed against currently available information ⁽⁴⁾, the macro-economic scenario is based on favourable growth assumptions for 2009 and thereafter. In particular, private consumption and to a lesser extent investment growth are projected in the programme to remain robust, on the back of favourable employment growth and an optimistic assessment of the impact of recent initiatives to support investment and enhance the absorption of EU Structural Funds.

⁽¹⁾ OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: http://ec.europa.eu/economy_finance/about/activities/sgp/main_en.htm

⁽²⁾ On 6 February 2009, the Greek authorities submitted an addendum to the programme, providing clarifications on changes to the budgeted tax-enhancing measures and the planned budgetary process reform. The addendum does not introduce any change in the fiscal strategy outlined in the stability programme, while both the macro-economic scenario and the budgetary projections remained unchanged.

⁽³⁾ According to data notified by the Greek authorities in October 2008 and validated by Eurostat, the general government deficit reached 3,5 % of GDP in 2007, thus exceeding the 3 % of GDP reference value. In view of the notified breach of the Treaty reference value, the Commission prepared on 18 February 2009 a report under Article 104(3) of the Treaty.

⁽⁴⁾ The assessment notably takes into account the Commission services' January 2009 forecast, but also other information that has become available since then.

Moreover, the decline in Greece's trading partners' economic activity and the weakening international trade prospects entail considerable downside risks to the macro-economic scenario of the programme, reflecting mainly the vulnerability of the shipping and tourism sectors to the current crisis. The programme's projections for inflation appear to be realistic, while the evolution of the external imbalances in the medium term is somewhat favourable.

- (4) For 2008, the general government deficit is estimated at 3,7 % of GDP in the update (including 0,4 % of GDP deficit-decreasing one-off measures), which is 0,25 of a percentage point higher than the projection in the Commission services' January 2009 interim forecast. This compares with a target of 1,6 % of GDP set in the previous update. This deviation of 2 percentage points reflects both revenue shortfalls and expenditure overruns. In particular, revenue is estimated at about 1 percentage point of GDP lower than budgeted, mainly stemming from the lower-than-expected yield of the revenue-enhancing measures implemented in 2008. Expenditure overruns amount to around another 1 percentage point of GDP, resulting mainly from primary current expenditure slippages and, in particular, higher-than-expected public consumption and wages.
- (5) According to the update, the deficit target for 2009 is set at 3,7 % of GDP (including 0,5 % of GDP deficit-decreasing one-off measures), in line with the Commission services' interim forecast. Compared with the budgetary target set in the 2009 budget law, approved by the Parliament on 21 December 2008, it represents an upward revision by 1,75 percentage points of GDP. The new budgetary target takes into account the worse-than-expected budgetary outturn in 2008. It also reflects a more prudent projection for total revenue, which is revised downwards by 1 percentage point of GDP, while public expenditure is revised up by 0,4 percentage point of GDP. Nevertheless, the revenue ratio is still projected to grow by almost 1 percentage point of GDP in 2009, on the back of the tax revenue-enhancing package adopted in September 2008 and included in the 2009 budget law. To ensure meeting the revised targets, the update envisages a number of measures, on top of those included in the 2009 budget law, aiming at constraining primary public expenditure and rationalising the public expenditure management. These new measures, which should be adopted in the course of 2009, are not clearly detailed in the programme. The overall stance of fiscal policy will be broadly neutral in 2009.
- (6) The budgetary strategy outlined in the programme aims at reducing the structural deficit from 4,5 % of GDP in 2008 to 4,3 % in 2009 and 2,2 % by 2011, while the medium-term objective (MTO) of a balanced budget in structural terms (i.e. in cyclically-adjusted terms net of one-off and other temporary measures) is not projected to be attained within the programme horizon. After targeting 3,7 % of GDP in 2009, the headline deficit will decline over the programme period to 3,2 % of GDP in 2010 and 2,6 % by 2011. Similarly, the primary balance will reach a surplus of 1,7 % of GDP by 2011, which compares with 0,8 % in 2009. In structural terms, this would amount to an improvement of 0,75 percentage points of GDP on average. Budgetary consolidation in 2010 and 2011 is mainly based on an ambitious expenditure retrenchment, which is however not fully backed with concrete measures. Government gross debt, estimated at 94,6 % of GDP in 2008, is projected to exceed 96 % of GDP in 2009 and 2010, before returning to 94,75 % in 2011. Apart from the rise in the deficit and the decline in GDP growth, a significant stock-flow adjustment contributes to the rise in the debt ratio in 2009.
- (7) The budgetary outcomes are subject to significant downside risks. In particular, the underlying macro-economic scenario is based on favourable growth assumptions. Risks in 2009 are also linked to possible slippages in the implementation of the revised 2009 budgetary target, especially when taking into account track record of recurrent expenditure overruns and revenue shortfalls. From 2010 onwards, risks stem from the lack of information on the measures to support the envisaged consolidation, particularly on the expenditure side. Moreover, the envisaged cuts in some expenditure categories appear, *prima facie*, ambitious. Risks associated with the projected evolution of the debt-to-GDP ratio also appear to be on the upside, stemming from the risks attached to the deficit projections. These risks may be compounded by uncertainty about the stock-flow adjustments about which, as in the past, the programme does not provide information on components. In addition, possible debt-increasing financial transactions within the framework of the financial sector support package may put further upward pressure to the debt-to-GDP ratio. The programme does not include the potential impact of this financial package on the debt developments.

- (8) Long-term projections of pension expenditure according to the commonly agreed method are under preparation; the long-term budgetary impact of ageing is likely to be well above the EU average. The budgetary position in 2008 as estimated in the programme, which is worse than the starting position of the previous update, would compound the long-term budgetary impact of an ageing population. Moreover, the current level of gross debt is well above the Treaty reference value. Reducing it requires achieving high primary surpluses for a long period of time. Maintaining high primary surpluses over the medium term and further reforming the pension system aiming at containing the likely significant increase in age-related expenditures would contribute to reducing the high risks to the long-term sustainability of public finances. The above-mentioned risks from financial sector stabilisation schemes put in place by Greece could have a potential negative impact on the long-term sustainability of public finances, primarily via their impact on government debt, although some of the cost of the government support could be recouped in the future.
- (9) The medium-term budgetary framework remains weak, characterised by a poor track record. Fiscal developments in Greece reflect insufficient control of public expenditure, while revenue projections have proven to be systematically optimistic. Moreover, and despite some progress recorded in recent years, structural and endemic problems related to the recording of Greek government accounts have also been detrimental for timely and effective revenue and expenditure control. The programme envisages the continuation of the ongoing budgetary reform and further progress with the implementation of programme budgeting, with a view to improving the public expenditure monitoring and management, increasing transparency and introducing a multi-year planning perspective in the budgetary process. The full implementation of the budgetary process reform, however, is scheduled for 2012.
- (10) In response to the financial crisis, the Greek government has adopted a number of measures to ensure the stability of the financial sector, including the measure of deposit guarantees up to EUR 100 000. The package of measures consists of a recapitalisation scheme, making available new capital to credit institutions in exchange of preferential shares, a guarantee scheme covering new debt with a maturity between three months and three years, and a securities scheme providing government bonds to eligible credit institutions and enhancing their access to liquidity, in particular with the ECB. The overall amount of the package stands at EUR 28 billion (around 10 % of GDP).
- (11) According to the programme, fiscal policy is geared towards restoring investor confidence and addressing the macro-economic imbalances. The Greek government, given the lack of room for fiscal manoeuvre, and in view of the large economic imbalances, has not adopted a short-term stimulus package in response to the economic slowdown which would be in line with the EERP. The programme foresees a number of structural measures, including sectoral specific measures in the tourism sector without direct budgetary impact, such as those aimed at sustaining employment, enhancing business investment including private-public partnerships, boosting lending to SMEs and improving EU funds absorption. The update also includes a series of other structural reform measures, which are part of the longer-term strategy for improving the quality and sustainability of public finances, such as the reform in the public expenditure management and control and the implementation of the recently adopted pension reform. These measures are related to the medium-term reform agenda and the country-specific recommendations proposed by the Commission on 28 January 2009 under the Lisbon Strategy for Growth and Jobs.
- (12) Greece has adopted a consolidation programme with the aim of limiting the extent of the fiscal deterioration in 2009 and reducing the general government deficit below the 3 % of GDP threshold by 2011. On the basis of the change in the (recalculated) structural balance, the overall fiscal stance is broadly neutral in 2009 and restrictive in 2010. More specifically, the programme targets for 2010 a structural adjustment of 1,5 percentage points of GDP and a further structural improvement of some 0,5 in 2011. However, taking into account risks to the budgetary plans, the envisaged consolidation may fall short of the targets and the headline deficit remain above the 3 % of GDP reference value. In light of the large domestic and external imbalances of the Greek economy, the pace of the fiscal adjustment is insufficient and not fully backed by concrete permanent measures in 2010 and 2011, especially on the expenditure side. Finally, taking into account the risks to the debt projections mentioned above, the debt-to-GDP ratio may be increasing over the whole programme period, mainly reflecting insufficient progress in the reduction of the government deficit.

- (13) As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme has some gaps in the required and optional data ⁽¹⁾.

The overall conclusion is that the programme envisages reducing the budget deficit over the medium term, but falls short to address timely and effectively the structural imbalances of the Greek economy and reverse the upward trend of public debt. Although the consolidation strategy beyond 2009 relies on permanent expenditure restraint and increasing tax revenues, the programme does not spell out concrete measures to back fully the planned budgetary adjustment in 2010 and 2011. Moreover, against the background of a sharp deterioration in the global economic environment, the budgetary strategy is also subject to significant downside risks, with the growth assumptions underlying the macro-economic scenario of the programme being favourable.

Consolidation relies to some extent on the results from the fight against tax evasion, which is only partly supported by reforms in tax administration, while the planned cutbacks in expenditure are partly offset by plans to increase wages and social transfers. Strengthening the fiscal consolidation path, based on permanent measures to control current primary expenditure including public wages, would be paramount to achieve sound and sustainable public finances in Greece. Moreover, the envisaged adjustment in the programme is only partly supported by structural policies to improve the quality of public finances. The structural nature of the factors underlying competitiveness losses and the widening external imbalances urgently requires the implementation of bold structural reforms. In the long term, the level of debt which remains among the highest in the EU, coupled with the projected increase in age-related spending, will also affect negatively the long term sustainability of public finances.

In view of the above assessment, Greece is invited to:

- (i) strengthen significantly the fiscal consolidation path already in 2009, through well-specified permanent measures curbing current expenditure, including a prudent public sector wage policy, thereby contributing to a necessary reduction in the debt-to-GDP ratio;
- (ii) ensure that fiscal consolidation measures are also geared towards enhancing the quality of public finances, within the framework of a comprehensive reform programme, in the light of the necessary adjustment of the economy, with a view to recovering competitiveness losses and addressing the existing external imbalances;
- (iii) implement swiftly the policies to reform the tax administration and further improve the functioning of the budgetary process by increasing its transparency, spelling out the budgetary strategy within a longer time perspective and set up mechanisms to monitor, control and improve the efficiency of primary current expenditure;
- (iv) in view of the mounting level of debt and the projected increase in age-related expenditure, improve the long-term sustainability of public finances, by continuing the on-going reforms in the healthcare and pension system.

Greece is also urged to improve statistical governance and the quality of its statistical data, and invited to improve compliance with the data requirements of the code of conduct.

Comparison of key macroeconomic and budgetary projections

		2007	2008	2009	2010	2011
Real GDP (% change)	SP Jan 2009	4,0	3,0	1,1	1,6	2,3
	COM Jan 2009	4,0	2,9	0,2	0,7	n.a.
	SP Dec 2007	4,1	4,0	4,0	4,0	n.a.

⁽¹⁾ In particular, general government expenditure by function and information on debt developments and the components of stock-flow adjustment (differences between cash and accruals, net accumulation of financial assets, valuation effects and other), liquid financial assets and net financial debts are not provided.

		2007	2008	2009	2010	2011
HICP inflation (%)	SP Jan 2009	3,0	4,3	2,6	2,5	2,4
	COM Jan 2009	3,0	4,3	2,5	2,7	n.a.
	SP Dec 2007	2,9	2,8	2,7	2,6	n.a.
Output gap ⁽¹⁾ (% of potential GDP)	SP Jan 2009	2,2	1,9	0,3	- 0,8	- 1,0
	COM Jan 2009 ⁽²⁾	3,0	2,8	0,5	- 1,2	n.a.
	SP Dec 2007	1,3	1,2	1,2	n.a.	n.a.
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	SP Jan 2009	- 12,1	- 12,8	- 11,4	- 10,8	- 10,0
	COM Jan 2009	- 12,1	- 11,7	- 11,2	- 11,6	n.a.
	SP Dec 2007	- 12,8	- 12,7	- 12,5	- 12,2	n.a.
General government revenue (% of GDP)	SP Jan 2009	39,9	40,0	41,0	41,1	41,2
	COM Jan 2009	40,0	39,9	40,8	40,0	n.a.
	SP Dec 2007	39,9	41,1	41,7	42,3	n.a.
General government expenditure (% of GDP)	SP Jan 2009	43,4	43,7	44,7	44,3	43,8
	COM Jan 2009	43,4	43,4	44,5	44,2	n.a.
	SP Dec 2007	42,6	42,7	42,5	42,3	n.a.
General government balance (% of GDP)	SP Jan 2009	- 3,5	- 3,7	- 3,7	- 3,2	- 2,6
	COM Jan 2009	- 3,5	- 3,4	- 3,7	- 4,2	n.a.
	SP Dec 2007	- 2,7	- 1,6	- 0,8	0,0	n.a.
Primary balance (% of GDP)	SP Jan 2009	0,6	0,3	0,8	1,2	1,7
	COM Jan 2009	0,6	0,6	0,6	0,0	n.a.
	SP Dec 2007	1,2	2,4	3,1	3,8	n.a.
Cyclically-adjusted balance ⁽¹⁾ (% of GDP)	SP Jan 2009	- 4,4	- 4,5	- 3,8	- 2,8	- 2,2
	COM Jan 2009	- 4,8	- 4,7	- 3,9	- 3,7	n.a.
	SP Dec 2007	- 3,4	- 2,4	- 2,3	n.a.	n.a.

		2007	2008	2009	2010	2011
Structural balance ⁽³⁾ (% of GDP)	SP Jan 2009	- 4,4	- 4,5	- 4,3	- 2,8	- 2,2
	COM Jan 2009	- 4,6	- 5,0	- 4,7	- 3,7	n.a.
	SP Dec 2007	- 3,1	- 2,4	- 2,3	n.a.	n.a.
Government gross debt (% of GDP)	SP Jan 2009	94,8	94,6	96,3	96,1	94,7
	COM Jan 2009	94,8	94,0	96,2	98,4	n.a.
	SP Dec 2007	93,4	91,0	87,3	82,9	n.a.

Notes:

- (1) Output gaps and cyclically-adjusted balances according to the programmes as recalculated by Commission services on the basis of the information in the programmes.
- (2) Based on estimated potential growth of 3,2 %, 2,7 %, 2,8 % and 2,5 % respectively in the period 2008-2011.
- (3) Cyclically-adjusted balance excluding one-off and other temporary measures. One-off and other temporary measures are 0,4 % of GDP in 2008 and 0,5 % in 2009 (all deficit-reducing) according to the most recent programme and 0,4 % of GDP in 2008 and 0,8 % in 2009 (all deficit-reducing) in the Commission services' January interim forecast.

Source:

Stability programme (SP); Commission services' January 2009 interim forecasts (COM); Commission services' calculations.

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Non-opposition to a notified concentration**(Case COMP/M.5433 — Sanacorp/V.D. Linde)****(Text with EEA relevance)**

(2009/C 64/03)

On 4 March 2009, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website under document number 32009M5433. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).

Non-opposition to a notified concentration**(Case COMP/M.5438 — NBC Universal/De Agostini Communications/IMI Investimenti/Cattleya)****(Text with EEA relevance)**

(2009/C 64/04)

On 2 March 2009, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website under document number 32009M5438. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates ⁽¹⁾

18 March 2009

(2009/C 64/05)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,3130	AUD	Australian dollar	1,9840
JPY	Japanese yen	128,94	CAD	Canadian dollar	1,6563
DKK	Danish krone	7,4508	HKD	Hong Kong dollar	10,1787
GBP	Pound sterling	0,93910	NZD	New Zealand dollar	2,4753
SEK	Swedish krona	10,9630	SGD	Singapore dollar	2,0004
CHF	Swiss franc	1,5332	KRW	South Korean won	1 859,60
ISK	Iceland króna		ZAR	South African rand	12,9205
NOK	Norwegian krone	8,8090	CNY	Chinese yuan renminbi	8,9740
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,4395
CZK	Czech koruna	26,988	IDR	Indonesian rupiah	15 677,22
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,8351
HUF	Hungarian forint	301,70	PHP	Philippine peso	63,480
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	45,1795
LVL	Latvian lats	0,7075	THB	Thai baht	47,025
PLN	Polish zloty	4,5427	BRL	Brazilian real	2,9982
RON	Romanian leu	4,2965	MXN	Mexican peso	18,5133
TRY	Turkish lira	2,2459	INR	Indian rupee	67,3440

⁽¹⁾ Source: reference exchange rate published by the ECB.

NOTICES FROM MEMBER STATES

Update of the list of residence permits referred to in Article 2(15) of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ C 247, 13.10.2006, p. 1; OJ C 153, 6.7.2007, p. 5; OJ C 192, 18.8.2007, p. 11; OJ C 271, 14.11.2007, p. 14; OJ C 57, 1.3.2008, p. 31; OJ C 134, 31.5.2008, p. 14; OJ C 207, 14.8.2008, p. 12; OJ C 331, 21.12.2008, p. 13; OJ C 3, 8.1.2009, p. 5)

(2009/C 64/06)

The publication of the list of residence permits referred to in Article 2(15) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based on the information communicated by the Member States to the Commission in conformity with Article 34 of the Schengen Borders Code.

In addition to publication in the Official Journal, a monthly update is available on the website of Directorate-General for Justice, Freedom and Security.

AUSTRIA

Replacement of the list published in OJ C 192, 18.8.2007

— Gewöhnlicher Sichtvermerk gemäß § 6 Abs. 1 Z. 1 FrG 1992 (von Inlandsbehörden sowie Vertretungsbehörden bis 31 Dezember 1992 in Form eines Stempels ausgestellt)

(Normal visa under Section 6(1), line 1, of the Aliens Act 1992 — issued until 31 December 1992 in the form of a stamp by the Austrian authorities and the representing authorities)

— Aufenthaltstitel in Form einer grünen Vignette bis Nr. 790.000

(Residence permit in the form of a green sticker up to No 790.000)

— Aufenthaltstitel in Form einer grün-weißen Vignette ab Nr. 790.001

(Residence permit in the form of a green and white sticker as from No 790.001)

— Aufenthaltstitel in Form der Vignette entsprechend der Gemeinsamen Maßnahme 97/11/JI des Rates vom 16. Dezember 1996, Amtsblatt L 7 vom 10. Januar 1997 zur einheitlichen Gestaltung der Aufenthaltstitel (in Österreich ausgegeben im Zeitraum 1. Januar 1998 bis 31. Dezember 2004)

(Residence permit in the form of a sticker in accordance with the EU Joint Action (97/11/JHA) of 16 December 1996, OJ L 7 of 10 January 1997, concerning a uniform format for residence permits — issued in Austria between 1 January 1998 and 31 December 2004)

— Aufenthaltstitel „Niederlassungsnachweis“ im Kartenformat ID1 entsprechend der Gemeinsamen Maßnahmen aufgrund der Verordnung (EG) Nr. 1030/2002 des Rates vom 13. Juni 2002 zur einheitlichen Gestaltung des Aufenthaltstitels für Drittstaatsangehörige (in Österreich ausgegeben im Zeitraum 1. Januar 2003 bis 31. Dezember 2005)

(Residence permit 'proof of establishment' in the form of the ID1 card in accordance with the joint actions based on Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals — issued in Austria between 1 January 2003 and 31 December 2005)

— Aufenthaltstitel in Form der Vignette entsprechend der Gemeinsamen Maßnahmen aufgrund der Verordnung (EG) Nr. 1030/2002 des Rates vom 13. Juni 2002 zur einheitlichen Gestaltung des Aufenthaltstitels für Drittstaatsangehörige (in Österreich ausgegeben im Zeitraum 1. Januar 2005 bis 31. Dezember 2005)

(Residence permit in form of a sticker in accordance with the joint actions based on Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals — issued in Austria between 1 January 2005 and 31 December 2005)

- Aufenthaltstitel „Niederlassungsbewilligung“, „Familienangehöriger“, „Daueraufenthalt-EG“, „Daueraufenthalt-Familienangehöriger“ und „Aufenthaltsbewilligung“ im Kartenformat ID1 entsprechend der Gemeinsamen Maßnahmen aufgrund der Verordnung (EG) Nr. 1030/2002 des Rates vom 13. Juni 2002 zur einheitlichen Gestaltung des Aufenthaltstitels für Drittstaatsangehörige (in Österreich ausgegeben seit 1. Januar 2006)

(Residence permit 'authorisation of establishment', 'family member', 'permanent residence — EC', 'permanent residence — family member' and 'authorisation of residence' in the form of the ID1 card in accordance with the joint actions based on Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals — issued in Austria since 1 January 2006)

Der Bezeichnung der Aufenthaltstitel „Niederlassungsbewilligung“ und „Aufenthaltsbewilligung“ sind der jeweilige Aufenthaltswert beigefügt. Eine „Niederlassungsbewilligung“ kann nur für folgende Zwecke erteilt werden: „Schlüsselkraft“, „ausgenommen Erwerbstätigkeit“, „unbeschränkt“, „beschränkt“ sowie „Angehöriger“.

(The 'Niederlassungsbewilligung' (authorisation of establishment) and 'Aufenthaltsbewilligung' (authorisation of residence) permits indicate the purpose for which they were issued. A 'Niederlassungsbewilligung' can be issued only for the following purposes: 'Schlüsselkraft' (key worker), 'ausgenommen Erwerbstätigkeit' (no gainful activity), 'unbeschränkt' (unlimited), 'beschränkt' (limited) and 'Angehöriger' (dependant)).

Eine „Aufenthaltsbewilligung“ kann für folgende Zwecke erteilt werden: „Rotationsarbeitskraft“, „Betriebsentsandter“, „Selbständiger“, „Künstler“, „Sonderfälle unselbständiger Erwerbstätigkeit“, „Schüler“, „Studierender“, „Sozialdienstleistender“, „Forscher“, „Familiengemeinschaft“ sowie „Humanitäre Gründe“.

(An 'Aufenthaltsbewilligung' (authorisation of residence) can be issued for the following purposes: 'Rotationsarbeitskraft' (job-rotation worker), 'Betriebsentsandter' (posted worker), 'Selbständiger' (self-employed), 'Künstler' (artist), 'Sonderfälle unselbständiger Erwerbstätigkeit' (special cases of employment), 'Schüler' (school pupil), 'Studierender' (student), 'Sozialdienstleistender' (social service provider), 'Forscher' (researcher), 'Familiengemeinschaft' (family reunification) and 'Humanitäre Gründe' (humanitarian grounds)).

- „Daueraufenthaltskarte“ zur Dokumentation des gemeinschaftsrechtlichen Aufenthalts- und Niederlassungsrechtes für Angehörige von freizügigkeitsberechtigten EWR-Bürgern gem. § 54 NAG 2005

(‘Permanent residence card’ to document a Community right of residence and establishment for family members of EEA nationals entitled to freedom of movement under Section 54 of the Establishment and Residence Act (NAG) 2005)

- „Bestätigung über den Antrag auf Verlängerung des Aufenthaltstitels“ in Form einer Vignette aufgrund § 24/1 NAG 2005

(‘Confirmation of application for extension of residence permit’ in the form of a sticker under Section 24(1) of the Establishment and Residence Act (NAG) 2005)

- Lichtbildausweis im Kartenformat für Träger von Privilegien und Immunitäten in den Farben rot, gelb, blau, grün, braun, grau und orange, ausgestellt vom Bundesministerium für auswärtige Angelegenheiten.

(Identity card with photo for persons entitled to privileges and immunities in red, yellow and blue, issued by the Ministry of Foreign Affairs)

- Lichtbildausweis im Kartenformat für Träger von Privilegien und Immunitäten in den Farben rot, gelb, blau, grün, braun, grau und orange, ausgestellt vom Bundesministerium für auswärtige Angelegenheiten.

(Identity card with photo for persons entitled to privileges and immunities, in red, yellow, blue, green, brown, grey and orange, issued by the Ministry of Foreign Affairs)

- Konventionsreisepass in Buchform im Format ID 3 (in Österreich ausgegeben im Zeitraum 1. Januar 1996 bis 27. August 2006)

(Travel document in book form in ID 3 format (issued in Austria between 1 January 1996 and 27 August 2006))

- Konventionsreisepass in Buchform im Format ID 3 mit integriertem elektronischen Mikrochip (in Österreich ausgegeben seit 28. August 2006)

(Travel document in book form in ID 3 format with an integrated electronic microchip (issued in Austria since 28 August 2006))

- Fremdenpass in Buchform im Format ID 3 (in Österreich ausgegeben im Zeitraum 1. Januar 1996 bis 27. August 2006)

(Alien's passport in book form in ID 3 format (issued in Austria between 1 January 1996 and 27 August 2006))

- Fremdenpass in Buchform im Format ID 3 mit integriertem elektronischen Mikrochip (in Österreich ausgegeben seit 28. August 2006)

(Alien's passport in book form in ID 3 format with an integrated electronic microchip (issued in Austria since 28 August 2006))

Sonstige Dokumente, die zum Aufenthalt in Österreich oder zur Wiedereinreise nach Österreich berechtigen:

Other documents entitling the holder to reside in Austria or to re-enter Austria:

Liste der Reisenden für Schülerreisen innerhalb der Europäischen Union im Sinne des Beschlusses des Rates vom 30. November 1994 über die gemeinsame Maßnahme über Reiseerleichterungen für Schüler von Drittstaaten mit Wohnsitz in einem Mitgliedstaat

(List of participants in a school trip within the European Union within the meaning of the Council Decision of 30 November 1994 on a joint action concerning travel facilities for school pupils from third countries resident in a Member State)

Update of model cards issued by the Ministries of Foreign Affairs of Member States to accredited members of diplomatic missions and consular representations and members of their families, as referred to in Article 19(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ C 247, 13.10.2006, p. 85; OJ C 153, 6.7.2007, p. 15)

(2009/C 64/07)

The publication of Model cards issued by the Ministries of Foreign Affairs of Member States to accredited members of diplomatic missions and consular representations and members of their families, as referred to in Article 19(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based on the information communicated by the Member States to the commission in conformity with Article 34 of the Schengen Borders Code.

In addition to the publication in the Official Journal, a monthly update is available on the website of Directorate-General for Justice, Freedom and Security.

MALTA

1.



Bearer may enjoy from privileges and immunities as foreseen by the Diplomatic Immunities and Privileges Act, Chapter 191 of the Laws of Malta, and is an exempt person in accordance with the Immigration Act, Chapter 217 of the Laws of Malta.

Further information may be obtained by contacting the Protocol and Consular Services Directorate at the Ministry of Foreign Affairs on 00356 2204 2281.

Issued to heads of mission, members of the mission having diplomatic rank and their spouses and their children aged between 18 and 21 forming part of their respective households

2.



Bearer may enjoy from privileges and immunities as foreseen by the Diplomatic Immunities and Privileges Act, Chapter 191 of the Laws of Malta, and is an exempt person in accordance with the Immigration Act, Chapter 217 of the Laws of Malta.

Further information may be obtained by contacting the Protocol and Consular Services Directorate at the Ministry of Foreign Affairs on 00356 2204 2281.

Issued to administrative and technical staff members of the mission as well as to their spouses and their children aged between 18 and 21 forming part of their respective households

3.



Bearer may enjoy from privileges and immunities as foreseen by the Diplomatic Immunities and Privileges Act, Chapter 191 of the Laws of Malta, and is an exempt person in accordance with the Immigration Act, Chapter 217 of the Laws of Malta.

Further information may be obtained by contacting the Protocol and Consular Services Directorate at the Ministry of Foreign Affairs on 00356 2204 2281.

Issued to members of international organisations approved by the Government of Malta as well as to their spouses as well as their children between 18 and 21 forming part of their respective households

4.



Bearer may enjoy from privileges and immunities as foreseen by the Diplomatic Immunities and Privileges Act, Chapter 191 of the Laws of Malta, and is an exempt person in accordance with the Immigration Act, Chapter 217 of the Laws of Malta.

Further information may be obtained by contacting the Protocol and Consular Services Directorate at the Ministry of Foreign Affairs on 00356 2204 2281.

Issued to Honorary Consular Officers of foreign countries in Malta

5.



Bearer may enjoy from privileges and immunities as foreseen by the Diplomatic Immunities and Privileges Act, Chapter 191 of the Laws of Malta, and is an exempt person in accordance with the Immigration Act, Chapter 217 of the Laws of Malta.

Further information may be obtained by contacting the Protocol and Consular Services Directorate at the Ministry of Foreign Affairs on 00356 2204 2281.

Issued to Maltese Honorary Consuls

Update of the list of border crossing points referred to in Article 2(8) of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ C 316, 28.12.2007, p. 1; OJ C 134, 31.5.2008, p. 16; OJ C 177, 12.7.2008, p. 9; OJ C 200, 6.8.2008, p. 10; OJ C 331, 31.12.2008, p. 13; OJ C 3, 8.1.2009, p. 10; OJ C 37, 14.2.2009, p. 10)

(2009/C 64/08)

The publication of the list of border crossing points referred to in Article 2(8) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based on the information communicated by the Member States to the Commission in conformity with Article 34 of the Schengen Borders Code.

In addition to the publication in the Official Journal, a monthly update is available on the website of Directorate-General for Justice, Freedom and Security.

SWEDEN

Amendment of the information published in OJ C 316, 28.12.2007

Air borders

New border crossing point (was opened on 1 February 2009):

Pajala-Ylläs Airport (in the municipality of Pajala)

NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on State aid with regard to the Icelandic Housing Financing Fund from payment of a state guarantee premium

(2009/C 64/09)

By means of Decision No 406/08/COL dated 27 June 2008, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) in Part I of Protocol 3 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The Icelandic authorities have been informed by means of a copy of the decision.

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month from the publication of this notice to:

EFTA Surveillance Authority
Registry
Rue Belliard 35
1040 Brussels
BELGIQUE/BELGIË

The comments will be communicated to the Icelandic authorities. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

The Housing Financing Fund (hereafter referred to as 'the HFF'), which operates on the Icelandic mortgage market, is a State institution governed by public law. As such, it enjoys, under the general principles of Icelandic public law, a State guarantee on all its obligations without any special legal provision to that effect.

This guarantee existed before the EEA Agreement entered into force on 1 January 1994. The guarantee as such will not be dealt with under the current procedures concerning new aid but under the procedures for existing aid. The current procedure deals with the fact that the HFF is exempted from paying a guarantee premium which other undertakings organised in a similar way as the HFF are obliged to pay. By Act No 121/1997 and later amendments (Act No 70/2000 and Act No 180/2000) such institutions are charged guarantee premiums. The current premium is 0,0625 % per quarter on outstanding commitments.

In the preliminary view of the EFTA Surveillance Authority (hereinafter referred to as 'the Authority') the HFF's exemption from paying a guarantee premium amounts to State aid in the meaning of Article 61(1) of the EEA Agreement. Moreover, the Authority doubts that this exemption is compatible with the Agreement. Derogations provided for in Articles 61(2) and (3) do not seem to be applicable. Neither can the Authority see that Article 59(2) of the EEA Agreement would be applicable to the general loan scheme operated by the HFF.

While certain lending for house financing may be defined to be a service of general economic interest in the meaning of Article 59(2) and therefore possibly eligible for aid, the Authority's preliminary view is that the general loan system of the HFF is too broadly set up to comply with the conditions of Article 59(2). The

Authority has not been presented with any information that would give it reason to believe that the market would not be able to provide for housing finance on manageable terms in general. Under the general loan scheme of the HFF loans are available to anyone irrespective of income and assets and irrespective of cost and size limitations of the dwelling to be financed. Loans may also be granted anywhere irrespective of whether local housing finance may be readily available or not.

To the extent the Authority's preliminary views are upheld in the final decision, unlawful aid will need to be recovered.

The decision to open proceedings is without prejudice to the final decision of the Authority.

Any interested party is invited to submit comments to the Authority within one month of the publication of the Decision in the Official Journal of the European Communities and the EEA Supplement thereto.

EFTA SURVEILLANCE AUTHORITY DECISION

No 406/08/COL

of 27 June 2008

to initiate the formal investigation procedure with regard to the relief of the Icelandic Housing Financing Fund from payment of a State guarantee premium

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 59, 61 to 63 and Protocol 26 thereof,

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

Having regard to Article 1(2) of Part I and Articles 4(4) and 6 of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

Having regard to the Authority's Guidelines ⁽⁵⁾ on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Having regard to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 ⁽⁶⁾,

Having regard to the Authority's Decision No 405/08/COL of 27 June 2008 close the formal investigation procedure with regard to the Icelandic Housing Financing Fund ⁽⁷⁾,

Whereas:

I. FACTS

1. Procedure

By letter dated 28 September 2007 (Event No 442805), the Authority requested information from the Icelandic authorities regarding State guarantees and the obligation to pay a State guarantee premium under the Act on State Guarantees. By letter from the Icelandic Mission to the European Union dated 24 October 2007, forwarding the letter from the Icelandic Ministry of Finance of the same date, received and registered by the Authority on 25 October 2007 (Events No 448739 and 449598), the Icelandic authorities responded to this request.

⁽¹⁾ Hereinafter referred to as the Authority.

⁽²⁾ Hereinafter referred to as the EEA Agreement.

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

⁽⁴⁾ Hereinafter referred to as Protocol 3.

⁽⁵⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231 and EEA Supplement No 32 of 3 September 1994. The Guidelines were last amended on 19 December 2007. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/guidelines/>

⁽⁶⁾ Published in OJ C 139, 25.5.2006, p. 57 and EEA Supplements No 26 of 25 May 2006.

⁽⁷⁾ Not published yet. The non-confidential full text of the Decision will be available at: www.eftasurv.int/fieldofwork/fieldstateaid/stateaidregistry/

The case was subject to discussions between the representatives of the Authority and the Icelandic Government on 7 September 2007 in Brussels and on 29 October 2007 in Reykjavik as well as between the representatives of the Authority and the complainant, the Icelandic Financial Services Association, in a meeting on 6 March 2008 in Brussels.

2. Description of the relevant Icelandic law provisions

2.1. Introduction

The Housing Financing Fund (hereafter referred to as the HFF) is a State institution governed by public law, cf. Article 4 of the Housing Act No 44/1998 (*lög um húsnæðismál*). As such, it enjoys, under the general principles of Icelandic public law, a State guarantee on all its obligations without any special legal provision to that effect. The same applied to its predecessor, the State Housing Agency, and the State Building Fund and the Workers' Housing Fund operated by the Agency as well as the State Housing Board, cf. Act No 97/1993 on the State Housing Agency (*lög um Húsnæðisstofnun ríkisins*).

On 1 January 1999, the Housing Act No 44/1998 entered into force. Under the terms of the Housing Act, the Housing Financing Fund replaced the former State Housing Agency and took over its predecessor's obligations. Furthermore, the State Building Fund and the Workers' Housing Fund were merged and taken over by the HFF ⁽¹⁾.

2.2. Act No 37/1961 on State Guarantees, as amended by Act No 65/1988

Act No 68/1987 introduced an obligation to pay a guarantee premium to the State for State guarantees that were not subject to the risk premium. Article 8 of the Act No 37/1961 on State Guarantees (*lög um ríkisábyrgðir*), as subsequently amended by Act No 65/1988 on State Guarantees, (*lög um breyting á lögum nr. 37/1961, um ríkisábyrgðir, með síðari breytingum*) required banks, credit funds, financial institutions, enterprises and other such entities that, according to law, enjoy a State guarantee whether through the ownership of the State or other reasons, to pay a guarantee premium to the State as regards their commitments towards foreign entities. In contrast, no similar premium was imposed on domestic commitments at the time of the entry into force of the EEA Agreement in Iceland on 1 January 1994.

The premium was set at 0,0625 % per quarter on the principal of foreign commitments based on their average for each period, cf. paragraph 2 of Article 8. Loans for which a risk premium had been paid, certain export guarantees and commitments due to credit balance in domestic currency accounts did not constitute basis for calculation of the guarantee premium, cf. paragraph 2 of Article 9 of the Act.

In its submission of 24 October 2007, the Icelandic Government has claimed that the State Housing Agency was not liable to pay a guarantee premium under the terms of the Act No 37/1961 on State Guarantees. The Government did not, however, present arguments as to why the general obligation should not also cover the State Housing Agency. The Authority does not dispute the statement of the Icelandic Government that the Agency in fact never paid any premium as it did not have any foreign commitments. However, this does not change the fact that according to the Act, the Agency would have been liable for the premium in the event of undertaking foreign commitments. Hence, the Authority is of the preliminary opinion that the obligation to pay a guarantee premium did indeed apply to any foreign financial commitments that the State Housing Agency might have had.

2.3. Act No 121/1997 on State Guarantees

On 22 December 1997, a new Act on State Guarantees No 121/1997 was adopted. This Act, which entered into force on 1 January 1998, extended the obligation to pay a premium also to cover domestic commitments. Paragraphs 1 and 2 of Article 6 of the Act stated:

'Banks, credit funds, financial institutions, enterprises and other such entities that according to law enjoy or have enjoyed the guarantee of the Treasury, whether through the ownership of the State or for other reasons shall pay a guarantee premium on their State-guaranteed commitments. ...

The guarantee premium according to paragraph 1 shall amount to 0,0625 % per quarter on the principal of foreign commitments subject to the premium and 0,0375 % per quarter on the principal of the average of domestic commitments during each payment period, cf. Article 8. The proceeds shall accrue to the Treasury.' ⁽²⁾.

⁽¹⁾ For more information on this aspect and the continuity of activities, see the Authority's Decision No 405/08/COL.

⁽²⁾ Translation of the Act available at the website of the Ministry of Finance.

Article 7 of Act No 121/1997 provides for an exemption from the general obligation to pay a premium pursuant to Article 6 of the Act. In its original form paragraph 1 of Article 7 read as follows:

'Credits on which a risk premium has been paid cf. Article 4, housing bonds issued by the Housing Bond Division of the State Housing Agency, commitments in lieu of deposits in deposit accounts of deposit money banks and government-guaranteed export guarantees as well as the Central Bank of Iceland are exempt from payment of the guarantee premium cf. Article 6.' (emphasis added)

The State Housing Agency had other commitments than those relating to housing bonds issued by the Housing Bond Division of the Agency. It therefore seems to follow from an *a contrario* interpretation of Article 7 that the main rule on the payment of a fee was applicable to such activities. The same goes for the other public bodies operating on the basis of Act No 97/1993: the State Housing Board, the State Building Fund and the Workers' Housing Fund.

The Icelandic Government has, however, in its letter of 24 October 2007, submitted that as regards commitments other than housing bonds, the levying of the guarantee fee *'was based on questionable legal basis'*. According to the Government, due to their social character, the State Building Fund and the Workers' Housing Fund, operated by the Agency, were never intended to pay a guarantee premium under the Act. In this respect, the Government refers to a memorandum of 16 October 1998 by the Minister of Social Affairs as well as a report of a working group of June 1999 on the collection of a guarantee premium of the debts of the State Building Fund and the Workers' Housing Fund and the HFF ⁽¹⁾. The conclusion of the working group's report was that it was arguable that the commitments of the State Building Fund and Workers' Housing Funds fell outside the scope of Article 6 of Act No 121/1997. In arriving at that conclusion, the working group stated that the funds were of a social character which justified that they were operated under the responsibility of the State and were dependant on State contributions as well as always having been operated with a negative interest margin. Furthermore, the report referred to the general comments to the bill, which became Act No 121/1997, whereby distinction was made between funds in 'commercial' operation and those with a social role.

For the reasons set out below, the Authority questions this legal reasoning:

- first, according to Article 6 of the Act: *'Banks, credit funds, financial institutions, enterprises and other such entities that according to law enjoy or have enjoyed the guarantee of the Treasury, whether through the ownership of the State or for other reasons shall pay a guarantee premium on their State-guaranteed commitments'*. Even assuming, hypothetically, that HFF was not considered a *'bank, credit fund, financial institution or enterprise'* the wording *'any other entities'* seems to indicate that the provision covers all bodies enjoying a State guarantee, irrespective of operating form. Furthermore, it was considered necessary to explicitly exempt the commitments related to the Housing Bond Division, cf. Article 7 of the Act,
- second, as will be shown below in point 2.4, the preparatory works to Act No 70/2000 contain several statements which indicate that the Act was based on the premise that the HFF was indeed, at that time, subject to the guarantee premium on other commitments than those related to the housing bonds,
- third, a specific provision in the 2001 Supplementary Budget Act was inserted to cancel the debts relating to unpaid premiums the HFF had accrued under Act No 121/1997 until the entry into force of Act No 70/2000 ⁽²⁾. Such a provision would hardly have been necessary if the HFF and its predecessors had never been subject to the premium,
- fourth and finally, as far as the Authority can understand, the comments referred to by Iceland concerning the distinction between funds in commercial operation on the one hand, and those with a social role on the other, did not relate to the issue of whether or not a guarantee premium should be collected for commitments enjoying a State guarantee. Rather, they indicate that the legislator was of the opinion, that when it came to granting a Fund a State guarantee, it was of importance whether the Fund in question was operated on a commercial or social basis.

In any event, as already indicated, in the 2001 Supplementary Budget Act, a provision was inserted to cancel the debts related to unpaid premiums the HFF had accrued until the entry into force of Act No 70/2000. It therefore seems that the HFF, either was never liable to pay the fee or retroactively was exempted from it. Thus, in either situation the HFF was from the start, or with retroactive effect, exempted from the main rule in Act No 121/1997 on State Guarantees that State bodies enjoying a guarantee should pay a premium for it.

⁽¹⁾ Skýrsla starfshóps um innheimtu ábyrgðargjalds af skuldum Byggingarsjóðs ríkisins, Byggingarsjóðs verkamanna og Íbúðalánasjóðs.

⁽²⁾ Ítem 1.4 of Article 4 of the Supplementary Budget Act amending Article 7 of the Budget Act, which grants various permissions to the Minister of Finance provided as follows: *'To abolish guarantee premiums pursuant to Article 6 of Act No 121/1997 on State Guarantees levied on the House Financing Fund until the entry into force of Act No 70/2000 which exempts the Fund from the payment of the premium.'*

2.4. Act No 70/2000 amending Act No 121/1997

By Article 1 of Act No 70/2000 which entered into force on 26 May 2000, Article 7 of the Act No 121/1997 was amended and is currently as follows:

'Credits on which a risk premium has been paid cf. Article 4, commitments in lieu of deposits in deposit accounts of deposit money banks and government-guaranteed export guarantees as well as the ... the Housing Financing Fund ... are exempt from payment of the guarantee premium cf. Article 6.'

The bill, which subsequently became Act No 70/2000 did not originally include a proposal to exempt all obligations of the HFF guaranteed by the State from the guarantee premium. It was originally foreseen only to exempt the HFF's obligations taken over from the State Building Fund and the Workers' Housing Fund upon the entry into force of Act No 44/1998. Indeed, in the bill, it was stated that the exemption for the obligations deriving from the housing bonds (cf. Article 7 of the Act) was based on the fact that the Housing Bonds Division collected an interest margin of 0,35 % of mortgage instruments guaranteeing commitments relating to housing bonds. Other commitments of the HFF were not supposed to be exempted from the payment obligation of the guarantee premium as no money was put aside in a reserve fund to meet losses connected with lending on that basis ⁽¹⁾.

However, during the Parliamentary procedure, the bill was changed so that the exemption covered all the obligations of the HFF:

'During the procedure before the Committee it was specifically examined that the bill presupposes that a premium will still be paid on some of the loans taken by the Housing Financing Fund such as loans, which the Fund takes to finance additional loans and loans for rental apartments. ... Having regard to the above, the Committee proposes to amend the bill so that all the obligation of the Housing Financing Fund will be exempt from the premium.' ⁽²⁾ (emphasis added)

Therefore, as approved by Alþingi, the Act No 70/2000 amending Act No 121/1997 extended the exemption from the payment of a guarantee premium and covered all the obligations of the HFF. As a consequence, the HFF has not been paying a guarantee premium on its commitments, foreign as well as domestic, to the State Treasury.

2.5. Act No 180/2000 amending Act No 121/1997

In its judgment in *State Debt Management Agency*, the EFTA Court held that the difference in the amount of the State guarantee premium due under the provisions of the Act on State Guarantees was in breach of Article 40 EEA, as it was made dependant on whether the obligations were of domestic or foreign character ⁽³⁾. Following this judgment, the Act on State Guarantees was amended. By Act No 180/2000, which entered into force on 11 January 2001, the difference between foreign and domestic commitments was abolished for the purpose of calculation of the State guarantee premium. As from Act No 180/2000, the premium has been set at 0,0625 % per quarter irrespective of the origin of the commitments. Due to the above-mentioned exceptions pertaining to HFF, these changes did not apply to HFF.

II. ASSESSMENT

3. State aid within the meaning of Article 61(1) EEA and the classification of such aid as new or existing

3.1. The aid elements of the Icelandic system of implicit State guarantees

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.'

⁽¹⁾ The original Icelandic text is as follows: 'Aðrar skuldbindingar Íbúðalánasjóðs eru hins vegar ekki undanþegnar gjaldskyldu þar sem ekki er lagt fé í varasjóð til að mæta útlánatöpum vegna lánveitinga á grundvelli þeirra.'

⁽²⁾ Opinion of the Economic and Commerce Committee of Alþingi, the Authority's unofficial translation.

⁽³⁾ Case E-1/00 *State Debt Management Agency* [2000-2001] EFTA Court Report, p. 8.

For a measure to be classified as State aid within the meaning of Article 61(1) of the EEA Agreement, it must be granted by the State or through State resources, confer an advantage on the recipient undertaking, be selective and thereby distort or threaten to distort competition and be liable to affect trade between the Contracting Parties. Before examining each of these conditions in turn, the Authority makes the following remarks concerning the scope of the present decision to open the formal investigation procedure:

As any other undertaking organised as a public institution, the HFF enjoys an implicit State guarantee in the same manner as did the predecessors of the HFF from the start of their operations in the 1950's, cf. Act No 42/1957. The HFF pays neither a market based premium for the guarantee, nor the premium laid down in Act No 121/1997 on State Guarantees.

The implicit State guarantee for this type of public undertaking was at the outset granted without any obligation to pay a premium. However, Icelandic system for implicit State guarantees was changed in 1987. From this point in time, a guarantee premium was to be paid for foreign commitments, but not for domestic ones. The original State guarantee scheme, with the changes introduced in 1987, thus predates the EEA Agreement.

The Icelandic system relating to implicit guarantees was changed again as of 1 January 1998 when a general obligation to pay a guarantee premium was also introduced as regards domestic commitments. Considering the size of the premium the Authority finds it unlikely that the guarantee premium removed aid contained in the original guarantee scheme. Therefore, in the Authority's preliminary opinion, the original guarantee scheme still contains State aid. The State aid element will generally be the difference between the appropriate market price for the guarantee provided and the price paid for that measure according to Act No 121/1997 on State Guarantees ⁽¹⁾. This possible aid element will follow from the implicit guarantee in force since before the entry into force of the EEA Agreement, and would constitute existing aid. It will therefore be assessed separately following the procedures regarding existing aid.

Hence, the present decision to open the formal investigation procedure only relates to severable changes to the Icelandic system of implicit guarantees made after 1994 which would give a particular advantage to HFF ⁽²⁾. Indeed, only such changes could be classified as new aid ⁽³⁾.

With Act No 121/1997, Iceland introduced a premium for banks, credit funds, financial institutions, enterprises and other such entities that enjoy a State guarantee in respect of domestic commitments. The activities of the Housing Bonds Division were exempted from a guarantee premium both on domestic and foreign commitments from the entry into force of the Act. As regards other operations of the HFF, they were exempted from the premium by Act No 70/2000. In the 2001 Supplementary Budget Act the accrued unpaid premium for these activities was cancelled. Therefore, either from the beginning, or retroactively, the other operations of the HFF were exempted from this generally applicable guarantee premium. Indeed, according to Iceland itself, HFF has never paid any premium under the Act.

As HFF has, as a matter of fact, never paid any premium for the guarantee it enjoys, Iceland has in its letter of 24 October 2007 argued that the factual situation for HFF has remained the same over the years regardless of the introduction of the general premium with effect for other undertakings. Moreover, as the exemptions in the Act pertaining to HFF merely maintained the *status quo* in relation to that particular undertaking, Iceland is of the opinion that exemptions cannot constitute new aid.

In the Authority's view, it is not relevant for the assessment of the classification of the aid as new or existing whether or not the Act, as a matter of fact, changed the situation of HFF as regards the payment of guarantee premium. What is decisive is that the new Act introduced a new system where, for the first time, the HFF was being treated more favourably than provided for under the general rule for undertakings benefiting from the implicit State guarantee. It is therefore the Authority's preliminary opinion that any advantage to HFF following from the exemption granted to the Housing Bond Division introduced by Article 7 of Act No 121/1997 would constitute new aid. The same would apply to the exemption/relief from paying the premium relating to other operations of the HFF, cf. Act No 70/2000 amending Act No 121/1997, as well the 2001 Supplementary Budget Act ⁽⁴⁾.

⁽¹⁾ It could be questioned whether a guarantee covering the totality of a company's financial obligations exists on the market. It might therefore be difficult to establish a market premium for the guarantee in the present case.

⁽²⁾ Joined Cases T-195/01 and T-207/01 *Government of Gibraltar v Commission* [2002] ECR II-2309, paragraph 111.

⁽³⁾ Hence, these changes are not dealt with in the context of Decision No 185/06/COL to open the formal investigation procedure, partly because the rules in the State Guarantees Act were only briefly discussed in that opening decision, partly because the Icelandic authorities, in the above-mentioned letter of 24 October 2007, did not answer in the affirmative that the aid questions pertaining to HFF's exemption from the premium should be dealt with within that procedure.

⁽⁴⁾ In any event, the argumentation of the Icelandic authorities builds on the premise that HFF was never subject to a premium *de jure*. In contrast, it would not be sufficient that HFF never actually paid the fee, and that the legal obligation to do so was later cancelled, as such cancelling of a debt would in itself constitute aid. As illustrated above under point I.2.3, the Authority is not convinced that this premise is fulfilled in the case at hand.

3.2. Economic advantage

Exempting the HFF from payment of the guarantee premium provides a financial advantage to that undertaking as the corresponding costs of the premium are not covered by the HFF. This advantage amounts to what the HFF would have had to pay each time on its commitments under the applicable rate of the guarantee premium.

The advantage following from the non-payment of the State guarantee premium can be determined as follows:

- 1; exemption (either originally or *ex post facto*) from payment of State guarantee premium amounting to 0,0625 % per quarter of the value of foreign commitments relating both to housing bonds and other commitments in the period from 1 January 1998 to date;
2. exemption (either originally or *ex post facto*) from payment of State guarantee premium amounting to 0,0375 % per quarter of the value of domestic commitments relating both to housing bonds and other commitments in the period from 1 January 1998-10 January 2001;
3. exemption from payment of State guarantee premium amounting to 0,0625 % per quarter of the value of all HFF's domestic commitments in the period from 11 January 2001 to date.

In its letter of 24 October 2007, Iceland seems to be of the opinion that the HFF does not enjoy any real advantage as it levies a margin on the general loans it issues. Iceland submits that the Housing Bonds Division of the State Housing Agency and subsequently the HFF were subject to a special regime which entailed paying a 'special State guarantee fee', raised in the form of an interest margin, into a special reserve fund. According to Article 21 of the Act No 97/1993 (see subsequently Article 28 of the Housing Act), the Housing Bonds Division was permitted to claim an interest margin to cover its operating expenses and estimated losses from outstanding loans ⁽¹⁾. On that basis, the Icelandic Government has stated that the exclusion of the housing bonds from the general system of Act No 121/1997 was based on the fact that the risk associated with the guarantee was no longer borne by the State.

The Authority has doubts about this reasoning. The system provided for by the levying of an interest margin does not entail that the HFF pays a premium for the State guarantee it has on commitments related to housing bonds. Rather, it required the borrowers to pay higher interest rates to the HFF. The money raised by the levying of the interest margin was set aside in a special reserve fund. As far as the Authority has been able to ascertain, this fund is merely a part of the HFF. The Authority cannot see that charging borrowers higher interest rates and setting that aside in an in-house fund can be equated with paying a State guarantee premium pursuant to Act No 121/1997.

In conclusion, the Authority takes the preliminary view that the exemption from the guarantee premium does give the HFF an advantage in the sense of Article 61(1) EEA. Whether any advantages could be offset by public service obligations imposed on HFF will be addressed below.

3.3. Presence of State resources

HFF is exempted from the payment of a guarantee premium to the State Treasury otherwise applicable to all undertakings pursuant to Article 6 of Act No 121/1997. By exempting the HFF from paying a guarantee premium to it, the State foregoes revenues which would have normally to be paid to the State. The exemption therefore contains State resources. Similarly, to the extent HFF was originally liable to pay a guarantee premium, but later relieved of that obligation with retroactive effect, such *ex post facto* exemption would also imply a drain of State resources.

3.4. Selectivity

As outlined above, the HFF is according to Article 7 of Act No 121/1997 exempted from paying a guarantee premium pursuant to Article 6 of the Act. The main rule according to Act No 121/1997 is that every entity enjoying a State guarantee is subject to the guarantee premium provided for in Article 6. Those exempted are obligations that are subject to the higher risk premium pursuant to Article 4 of the Act, the HFF, the Central Bank of the Iceland and the Student Loan Fund.

Consequently, under Article 7 of the Act, it is only the HFF and the two other public institutions that are exempt from paying a premium to the State for being granted State guarantees. The aid measure therefore appears to be selective.

⁽¹⁾ The Minister of Social Affairs was to determine the level of the interest margin having obtained the proposal of the State Housing Board. On the basis of that Article, the Minister decided by Regulation No 540/1993 of 28 December 1993, amending Regulation No 467/1991, to charge an interest margin of up to 0,25 %. By Regulation of 11 October 1994, the Minister raised the ceiling of the interest margin to 0,35 %.

The State Guarantees Act links the payment of a premium to the existence of a guarantee issued by the State. Moreover, it seems to be intended to (partly) compensate the State for the risk it undertakes by being the guarantor. On that basis, the Authority does not view the Act on State guarantees as a tax measure. The Authority has therefore not found it necessary to discuss whether the exemption pertaining to HFF would have been within the logic or nature of a tax system.

3.5. *Effect on trade between Contracting Parties*

The HFF provides services on the market for housing mortgage loans, i.e. long-term house financing for residential accommodation. Aid granted to HFF may make it more difficult for banks in the EEA to enter the Icelandic housing mortgage market. Also markets related to the mortgage market, such as other financial markets may be affected ⁽¹⁾. The aid therefore seems to affect trade between the Contracting Parties.

3.6. *Altmark conditions*

In the *Altmark* judgment, the European Court of Justice held that provided that the following conditions are cumulatively fulfilled, a measure does not confer an advantage on the beneficiary and, thus, does not qualify as state aid in the meaning of Article 87(1) of the EC Treaty, corresponding to the provision of Article 61(1) of the EEA Agreement:

- first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined,
- second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid conferring an economic advantage which may favour the recipient undertaking over competing undertakings,
- third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations,
- fourth, where the undertaking which is to discharge public service obligations in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the 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 ⁽²⁾.

With regard to the first condition, i.e. the definition of public service obligations discharged to the HFF, it is highly doubtful, in light of the EFTA Court's judgment, that the general loans system of the HFF as defined today fulfils the criteria for qualifying as a service of general economic interest ⁽³⁾.

Concerning the second condition, the Court of First Instance of the European Communities (hereinafter 'the CFI') recalled in *BUPA* ⁽⁴⁾ that the Member States have wide discretion not only when defining a public service mission but also when determining the compensation for the costs, which calls for an assessment of complex economic facts. In the same ruling, the CFI also held that the second *Altmark* condition requires that the Community institutions must be in a position to verify the existence of objective and transparent parameters, which must be defined in such a way as to preclude any abusive recourse to the concept of a public service on the part of the Member State. The Icelandic Government has so far not demonstrated to the Authority that a methodology exists for calculation of public service compensation to the HFF. Moreover, to the Authority's knowledge, the Icelandic Government did not establish in advance the criteria on the basis of which the compensation for public service activities of the HFF was to be determined.

With regard to the third *Altmark* condition, the CFI found in *BUPA* that a public service compensation system which operates independently of receipts does not require a strict interpretation of this criterion, in particular as regards taking into account the relevant receipts for discharging public services ⁽⁵⁾. Nevertheless, as the aid measure in question benefits the entirety of the operations of the HFF, it cannot be established at this stage whether the level of compensation is limited to what is necessary to cover all or part of the costs incurred in the discharge of properly limited public service obligations.

⁽¹⁾ See also, Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, [2006] EFTA Court Report, page 42, paragraphs 80-81. Furthermore, in its recent *Concluding Report on the Retail Banking Sector Inquiry* (page 67) the Authority concluded that tying of different retail banking products is a common practice of financial institutions across EEA. In particular, in the above-mentioned report, the Authority underlined bundling of current accounts and other products such as mortgages or loans.

⁽²⁾ Case C-280/00 *Altmark Trans GmbH* [2003] ECR I-7747, paragraphs 89-93.

⁽³⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, page 42, paragraph 79.

⁽⁴⁾ Case T-289/03 *BUPA v Commission*, judgment of 12 February 2008, not yet reported, paragraph 214.

⁽⁵⁾ Case T-289/03 *BUPA v Commission*, cited above, paragraph 241.

Furthermore, with regard to the fourth condition set forth in *Altmark*, the HFF has neither been chosen by way of a public procurement procedure nor did the Icelandic authorities determine the level of compensation by way of a comparison between the HFF and a privately run efficient operator as a reference undertaking. As held by the CFI in *BUPA*, the purpose of the fourth *Altmark* condition is to ensure that the compensation does not entail the possibility of offsetting any costs that might result from inefficiency on the part of the beneficiary undertaking ⁽¹⁾.

In conclusion, it cannot be established, in the Authority's view, that the four cumulative *Altmark* conditions are fulfilled.

3.7. Conclusion with regard to state aid character of the measure in question

In light of the above, it is the Authority's preliminary conclusion that exempting HFF from paying a guarantee premium pursuant to Article 7 of Act No 121/1997 on State Guarantees, with subsequent amendments, involves State aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, it is the Authority's preliminary opinion that any such aid would constitute new aid.

4. Procedural requirements

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

The Icelandic authorities did not notify the Authority of the above-mentioned measures in the form of exemption of the HFF from payment of the guarantee premium. The Authority therefore concludes that Iceland has not respected its obligations pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

5. Compatibility of the aid

5.1. Possibilities to declare aid for housing purposes compatible

Article 61(1) of the EEA Agreement sets out that state aid as a principle is prohibited. Article 61(2) and 61(3) provide, however, for certain exceptions from this general prohibition.

The derogations in Article 61(2) of the EEA Agreement do not seem to be applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision. In particular, the aid measure involved cannot be considered to fulfil the conditions of derogation specified in Article 61(2)(a) of the EEA Agreement, namely aid having a social character, granted to individual consumers and without discrimination related to the origin of the product concerned.

Likewise, the derogations in Article 61(3) of the EEA Agreement do not apply to the aid measure under investigation. In particular, the aid measure is not granted with the aim of promoting or facilitating the economic development of certain areas or of certain economic activities. Thus, the derogations in Article 61(3)(a) and (c) of the EEA Agreement in conjunction with the Regional Aid Guidelines are not applicable in this case.

Furthermore, the aid measure under investigation is not given to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Iceland, therefore Article 61(3)(b) of the EEA Agreement does not apply.

The aid in question is not linked to any investment, but reduces the costs which HFF would normally have to bear in the course of pursuing its day-to-day business activities and is consequently to be classified as operating aid. Operating aid is normally not considered suitable to facilitate the development of certain economic activities or of certain regions as provided for in Article 61(3)(c) of the EEA Agreement, unless it is specifically envisaged by the Authority's Guidelines, which is not the case here.

Aid for housing purposes may, however, be declared compatible with the EEA Agreement on the basis of Article 59(2). That would be the case if the aid would be limited to provision of services of general economic interest and if the other conditions of Article 59(2) of the EEA Agreement would be fulfilled.

⁽¹⁾ Case T-289/03 *BUPA v Commission*, cited above, paragraph 249.

Article 59(2) of the EEA Agreement reads:

'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.'

Compliance with Article 59(2) of the EEA Agreement requires the fulfilment of the following conditions:

- that the aid is a compensation for the provision of services of general economic interest,
- that the undertaking receiving the aid is entrusted to provide such services,
- that the aid is necessary, and not more than necessary, to carry out the entrusted tasks, and
- that the aid does not affect trade against the interest of the Contracting Parties to the Agreement.

5.2. General remarks with regard to the concept of services of general economic interest

The concept of service in the general economic interest means, among other things, that the State assigns 'particular tasks' to an undertaking ⁽¹⁾. In order to qualify for classification as service of general economic interest, a service must have certain characteristics, the most important of which is that the service in question cannot be provided in the same manner on the market and that the service should be clearly defined ⁽²⁾. States may take account of objectives pertaining to their national policy when defining the service of general economic interest which they entrust to certain undertakings ⁽³⁾.

As an exception to the main rule in Article 59(1) of the EEA Agreement, the concept of 'services of general economic interest' must be interpreted restrictively ⁽⁴⁾ and applies only to activities of direct benefit to the public. Still, States remain free, in principle and where no common policy is established, to designate which services they consider to be of general economic interest and to organize these services as they see fit, subject to the rules of the EEA Agreement and the specific conditions laid down in Article 59(2) of the EEA Agreement ⁽⁵⁾. Thus, the competence to define such services lies with the States, subject to scrutiny by the Authority. This scrutiny must essentially be conducted on a case-by-case basis. In such an assessment, the nature of the undertaking entrusted with the service is not of decisive importance, nor whether the undertaking is entrusted with exclusive rights, but rather the essence of the service deemed to be of general economic interest and the special characteristics of this interest that distinguish it from the general economic interest of other economic activities ⁽⁶⁾.

5.3. Services of general economic interest in the field of social housing

The EFTA Court gave some guidance on how to assess the extent of the HFF's activities in light of the requirements of Article 59(2) of the EEA Agreement. The Court primarily addressed the issue of whether the Authority should have been in doubt whether the general loans scheme of HFF was operated in compliance with Article 59(2) of the EEA Agreement. The Court ruled that the Authority should have been in doubt and consequently should have opened the formal State aid investigation procedure. (This was based on the implicit, but non-verified, assumption that the aid in question was new aid.) While the Court did not address whether the general loan category fulfilled the conditions of Article 59(2) of the EEA Agreement, the Court's judgment raised issues of doubt in relation to:

- whether the HFF scheme fulfilled all conditions relating to services of general economic interest in Article 59(2),
- whether the derogation from the State aid rules was proportionate, and
- whether the scheme affected the development of trade contrary to the interest of the Contracting Parties.

⁽¹⁾ See for example: Case 10/71 Muller [1971] ECR 723; Case 127/73 BRT [1974] ECR 313; Case 7/82 GVL [1983] ECR 483; Case C-393/92 Almelo [1994] ECR I-1520; Case C-266/96 Corsica Ferries [1998] ECR I-3949.

⁽²⁾ Communication from the Commission — Services of General Interest in Europe (OJ C 17, 19.1.2001, p. 7), see paragraph 14.

⁽³⁾ Case E-9/04, *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 67.

⁽⁴⁾ See Case C-242/95 *GT-Link A/S* [1997] ECR I-4449, paragraph 50; Case T-260/94 *Air Inter* [1997] ECR II-147, paragraph 135; Case C-159/94 *Commission v France* [1997] ECR I-5815, paragraph 53.

⁽⁵⁾ See in this context for example: Services of General Interest, cited above, paragraph 22; Case T-106/95 *FFSA* [1997] ECR II-229, paragraph 192. As stated by Advocate General Léger in his opinion in Case C-438/02 *Krister Hanner* [2005] ECR I-4551, paragraph 139: '... it falls to the Member States to define the content of their services of general economic interest and, in so doing, they enjoy considerable leeway since the Court and the Commission will intervene only in order to penalise manifest errors of assessment'.

⁽⁶⁾ Case E-4/97 *Norwegian Bankers' Association v the Authority*, [1998] EFTA Court Report page 38, paragraph 47.

In relation to the first issue the Court stated *inter alia*:

'[...] The HFF general loans system is intended to promote security and equal rights as regards housing in Iceland by providing loans on manageable terms to the general public throughout the territory of Iceland and thereby foster private home ownership. This goes beyond the normal economic interest of operators in the financial sector. A service with this objective may qualify as a service of general economic interest justifying State aid, provided that the service fulfils the requirements laid down in Article 59(2) EEA.' ⁽¹⁾.

When the EFTA Court later turned to the questions on proportionality, it held, *inter alia*, that:

'[...] as long as it is not established that the effect of the low interest rate on HFF general loans is completely neutralised by an increase in housing prices, the HFF general loan scheme must be considered suitable to meet its aim.' ⁽²⁾.

And moreover:

'The Court does not find it doubtful that the State aid provided to the HFF system did not go beyond what is necessary in the case at hand to allow the HFF to cover expected losses and operate the general loans system under economically acceptable conditions [...] This does not mean, however, that the general loans system as operated by the HFF is necessarily compatible with the EEA Agreement.' ⁽³⁾.

Then the Court went on to, *inter alia*, state that:

'[...] it is necessary to address the question of whether the conditions under which the loans were granted did not go beyond what was necessary for HFF to perform the tasks entrusted to it. The Court recalls that the ultimate aim of the State's intervention in lending services through the general loans scheme is to foster private home ownership in Iceland through lending on "manageable terms". A service rendered with such an objective may, as has been stated above, be considered legitimate under Article 59(2) EEA. However, ESA has to make sure that public intervention does not, in reality, pursue other goals than those defined by Icelandic law or exceed what is necessary to achieve the defined goal.

In that regard, the Court notes that unlike the cost and size limitations practiced by the Norwegian Husbanken in Case E-4/97 Husbanken II, the HFF's relative and absolute lending caps do not limit the subsidised lending scheme to dwellings which fulfil certain criteria. They only limit the amount one may borrow from the HFF for any dwelling, regardless of the value or size of that dwelling. There is no limit as to how big or valuable a dwelling may be and still be eligible for a general loan under the HFF scheme; there are only limits to how much the HFF may grant as a general loan.

Moreover, the HFF general loans scheme is not limited to the financing of one unit of residential housing for each borrower. This means that in principle the system may provide financing for houses or apartments built or purchased for investment purposes. In 2004, a general limit of two units was introduced. As the Government of Iceland has pointed out, there may be social policy reasons why certain persons need to own more than one unit. The provision of more than one loan to the same person has not, however, been made dependent on that person fulfilling any criteria relating to such reasons.

These features mean that in principle the HFF general loans scheme provides subsidised financing, up to a certain limit, for any house or apartment regardless of size and value, and also for construction or purchase of residential units for investment purposes. The scheme is not formally limited to assisting the average citizen in financing his or her own dwelling. Even if it may be so that few people have in fact exploited these features of the system, they raise questions under Article 59(2) EEA. The Court recalls in this context that the HFF scheme is intended to promote security and equal rights as regards housing by providing loans on manageable terms.' ⁽⁴⁾.

(a) Manageable terms

The EFTA Court did not rule out *per se* that State intervention in lending services through general loans, which pursues the objective of fostering private home ownership through lending on 'manageable terms' might be considered legitimate under Article 59(2) of the EEA Agreement. In this respect, the EFTA Court clarified that the Contracting Parties enjoy a margin of discretion in deciding what 'manageable terms' should mean in relation to a housing financing scheme which qualifies as a service of general economic interest ⁽⁵⁾.

⁽¹⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 68.

⁽²⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 71.

⁽³⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 73.

⁽⁴⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraphs 76 to 79.

⁽⁵⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 71.

In the view of the Authority, the concept of 'manageable terms' cannot be understood in any absolute or isolated manner. While noting the Court's view that there should be a margin of discretion to decide what is manageable, the concept has to relate to certain general parameters of the national economy. What is manageable in a rich country may not be manageable in a less prosperous one. In a well-functioning market without a particular skewed distribution of income, it would appear reasonable to assume that the market interest rates on mortgages would be 'manageable' for the population at large. Excluding that public activity itself is distorting the market, to the extent the market is not well functioning there could be a reason for government measures to provide for loans on 'manageable terms'.

It was confirmed in the EFTA Court's judgment that the commercial banks were only able to match the interest rate of HFF's general loans from August 2004 onwards ⁽¹⁾. In its Decision No 185/06/COL, the Authority requested up-dated information on the development on the Icelandic mortgage market, in order to assess to what extent commercial banks had offered mortgage secured loans on terms the Icelandic State would consider as manageable. While some information has been provided the Authority would require up-dated information in this respect as there are indications that the state of the market has changed recently. The amount of mortgage loans, especially from the commercial banks has fallen considerably ⁽²⁾.

A connected, but separate, issue is whether the market would be able to develop satisfactorily if it would operate under conditions without any State aid distorting the competitive situation of the respective lenders. Up till now, the Authority has not been presented with any arguments or factual information that give it reason to believe that this should be the case.

(b) Social element

The general loan scheme of the HFF is not limited to those below certain income and/or assets thresholds but is available to everyone irrespective of those elements and as the EFTA Court has pointed out, without any cost and size limitations on the dwellings. Furthermore, the general lending system is also open to others than individuals, for example building contractors may qualify for loans under that system.

In the Court's words, the '*lending caps do not limit the subsidised lending scheme to dwellings which fulfil certain criteria*' and '*there is no limit as to how big or valuable a dwelling may be and still be eligible for a general loan under the HFF scheme; there are only limits to how much the HFF may grant as a general loan*' ⁽³⁾.

Moreover, the EFTA Court pointed out that the scheme provided for construction or purchase of individual units for investment purposes, and it was not formally limited to assisting the average citizen in financing of his or her house. The rules have now been changed and Article 21 of the Regulation No 522/2004, as subsequently amended, provides that lending from the HFF is limited so that an individual can only own one property carrying a mortgage from the Fund. However, the Board of the Fund may set rules providing for exemption from this requirement. On 10 August 2006, the Board passed such rules. The Icelandic authorities are requested to explain these exemptions and their application and how the HFF monitors that residential housing financed by the HFF's loans is actually used for purposes of being the applicant's own dwelling.

In a letter received by the Authority on 14 June 2007, the Icelandic Government argued that there were no grounds for questioning the compatibility of the general lending scheme with the EEA Agreement. In light of the observations of the EFTA Court, quoted above, the Authority is of the preliminary opinion that the Icelandic Government has not demonstrated that the current general loan scheme is in compliance with Article 59(2) of the EEA Agreement. Moreover, the Commission's practice regarding social housing shows that the Commission has only accepted systems of social housing, which contained limitations as to who could qualify for loans under the system.

In 2001, the Commission adopted a decision with regard to a guarantee for borrowings of the Irish Housing Finance Agency (hereinafter referred to as the HFA) ⁽⁴⁾. At the time of this decision, the HFA was itself

⁽¹⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 74.

⁽²⁾ See e.g.

http://www.mbl.is/mm/frettir/innlent/2006/04/27/samdrattur_i_ibudalanum_bankanna/ and http://www.mbl.is/mm/vidskipti/frettir/2008/05/26/verulegur_samdrattur_i_ibudalanum_bankanna/

⁽³⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 77.

⁽⁴⁾ Decision of 3 July 2001 in State aid N 209/01 — Ireland — Guarantee for borrowings of the Housing Finance Agency, SG (2001) D/289528. The Commission has also dealt with two Swedish schemes regarding social housing which it considered compatible aid on the basis of Article 87(3)(c) of the EC Treaty. In the first case (Commission Decision of 24 June 2003 in State aid N 40/03 — Sweden — Measures to promote certain house building, C(2003) 1762 fin) a State support in the form of a VAT tax exemption was granted to constructions in certain areas of Stockholm, Gothenburg and Malmö. The scheme was restricted to rented dwellings measuring up to 70 m² and student accommodation at college and university sites with a maximum size of 25 m² with additional ceilings on the aid level per dwelling. The rent for both types of dwellings was regulated. In the second case (Commission Decision of 7 March 2007 in State aid N 798/06 — Sweden — Support for construction of special housing for elderly people, C(2007) 652 fin) the scheme was targeted to benefit elderly people who were not able to continue living independently. The scheme provided direct grant support to special housing for elderly. According to the conditions of the scheme, the size of the apartment could not exceed 35 m² per one-person apartment and 50 m² per two-persons apartment with additional support to 15-20 m² for common space (used for example for meals, hobbies, group activities). The maximum aid intensity was 10 % of actual construction costs.

not empowered to extend loans. Its objective was to raise funds at the best rate on the capital markets which were then advanced to local authorities to be used by them for social housing financing. In this case, social housing was defined as provision of housing for the most socially disadvantaged households, and in particular those which due to their economic circumstances were unable to fund their own housing requirement at socially acceptable conditions through recourse to commercial lenders. This objective was entrusted to local authorities who operated social housing programmes such as general mortgage finance, the operation of a share ownership scheme, and affordable housing schemes aimed at providing low cost housing, a rental subsidy scheme and miscellaneous grant schemes for elderly and disabled persons. The eligibility for social housing loan finance was assessed according to the following limitations: (i) need must be established; (ii) income and loan ceilings; (iii) households which seek to avail of schemes unavailable in the private sector (this had to be proved by the applicant by attaching letters of rejection from two private sector mortgage lenders); and (iv) only households which are mentioned on local authority housing lists. Thus, the Commission accepted that the operations of the Agency could be regarded as services of general economic interest for the purposes Article 86(2) of the EC Treaty.

The Authority also refers to a case concerning the financing of activities of Dutch Housing Corporations which is still pending before the Commission. In 2005, DG Competition sent an Article 17(2) letter, inviting the Dutch authorities to make appropriate changes to the system. DG Competition has, *inter alia*, criticised the broad scope of definition of services of general economic interest provided by the Housing Corporations. In particular, it was not considered acceptable that, whereas the priority to rental housing is given to persons that have difficulties in finding suitable housing, the activities in question are not restricted to socially disadvantaged persons. Therefore, DG Competition was of the opinion that the possibility to let dwellings to persons with a higher income or to enterprises must be regarded as a manifest error in the definition of a service of general economic interest. Moreover, this concern was not removed by the proposed solution of the Dutch authorities to limit the maximum value of the dwellings to be rented out which would be then defined as 'social housing'. In the preliminary view of DG Competition, the definition of public service activities of Housing Corporations was to have a direct relation to socially disadvantaged households and not only be linked to the maximum value of the property ⁽¹⁾.

Furthermore, the Icelandic Government referred to the fact that the Authority, in its decision in the Norwegian Husbanken case, accepted loans that were not limited to those qualifying under certain income and assets criteria but limited the size of the of house/apartment being acquired. Iceland has argued that the Norwegian limit should not be regarded as being universal and that the situation in Iceland would justify a higher limit. The Authority will, at this stage, not pass judgment on whether only imposing a size limitations would be sufficient to ensure compliance with Article 59(2) of the EEA Agreement as it observes that currently the HFF system operates without any limitations as to the size of house/apartment that may qualify for loans under the general system.

In light of all of the above, it is the preliminary view of the Authority that the general loan scheme of the HFF does not pursue a sufficiently restricted social objective.

(c) Territorial cohesion

As regards the element of territorial cohesion, the Authority is aware of the particular situation of certain regions in Iceland, where the market for mortgage loans might be of such a nature that commercial providers do not have incentives to offer mortgage loans. Such a situation might justify exceptional treatment of certain territories as regards the conditions for eligibility of loans ⁽²⁾. Currently, the general loans scheme of the HFF is operated without any criteria related to territorial cohesion.

In its Decision No 185/06/COL it was the Authority's opinion that SFF had not submitted any tangible evidence during the EFTA Court proceedings, which demonstrated that the commercial banks had offered loans on 'manageable terms' outside the Reykjavik area during the period between 1999 and August 2004. In response to the Authority's request for information the SFF and the Icelandic Government submitted conflicting evidence as to the extent the commercial banks had offered mortgage loans outside the Reykjavik area and other more densely populated areas after August 2004. In light of the currently available information the Authority cannot conclude that the loans provided by the commercial banks have not been offered in rural areas as well, as far as the period after August 2004 is concerned.

⁽¹⁾ Letter dated 14 July 2005 from DG Competition to the Dutch authorities, 0/55413.

⁽²⁾ See for example the differentiation of ceiling for the level of aid per dwelling according to the area in the Swedish Case N 40/03, referred to above.

5.4. *Development of trade and the interest of the Contracting Parties*

Article 59(2) of the EEA Agreement further requires an assessment of whether the specific service in question affects the development of trade to an extent contrary to the interests of the Contracting Parties. The Authority is charged with striking a balance between the right of Iceland to invoke the derogation and the interest of the Contracting Parties to avoid distortions of competition and restrictions to the 'four freedoms' ⁽¹⁾.

This entails that it must be established that the performance of the service of general economic interest does not disproportionately affect competition and the internal market. In light of the EFTA Court's conclusions on this point ⁽²⁾, the Authority will have to assess to what extent the aid granted to the HFF could affect other parts of the EEA internal market, in particular other financial markets, such as, for example, the private lending market. However, as outlined above, the Authority is of the preliminary opinion that the current lending scheme is not compatible with Article 59(2) as it is too widely defined. In light of that, the Authority does not consider it necessary to assess whether the service affects the development of trade to an extent contrary to the interest of the Contracting Parties. In any event, an amended scheme will have to strike the right balance between the interests at stake.

Against the background of the various points referred to above, the preliminary view of Authority is that the general loan scheme of HFF does not comply with all the conditions laid down in Article 59(2) of the EEA Agreement.

5.5. *Other loan categories of the HFF*

In the discussion above regarding the compatibility of the aid, only the general loans category of the HFF has been referred to. However, the exemption in Article 7 of Act No 121/1997, as amended, covers entire operations of the HFF. Currently, the HFF is also providing loans for rental housing to municipalities, etc. pursuant to Chapter VIII of the Housing Act. Furthermore, the Minister of Social Affairs has, on the basis of Article 16 of the Housing Act, issued Regulation No 458/1999, with subsequent amendments, which lists the other loan categories offered by the HFF, cf. Article 2 of the Regulation ⁽³⁾.

As outlined above, the Authority is of the preliminary opinion that the general loans scheme of the HFF is incompatible with Article 59(2) EEA. Since the exemption from the guarantee premium benefits all the operations of the HFF, it follows that this measure cannot be regarded as compatible aid on the basis of Article 59(2). This is so even though the individual loan categories referred to above examined in isolation might comply with the conditions laid down in that provision.

5.6. *Conclusion with regard to compatibility*

On the basis of the foregoing considerations, the Authority has doubts as to whether the guarantee premium exemption in favour of the HFF can be regarded as compatible with the functioning of the EEA Agreement.

6. **Recovery**

According to Article 14(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, '[w]here negative decisions are taken in cases of unlawful aid, the EFTA Surveillance Authority shall decide that the EFTA State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The EFTA Surveillance Authority shall not require recovery of the aid if this would be contrary to a general principle of EEA law'.

In other words, any unlawful aid which cannot be declared compatible with the State aid rules will be subject to recovery. In case of recovery, it is the Authority's preliminary view that, in the case at hand, no legitimate expectations could be invoked, which would preclude the recovery.

⁽¹⁾ See similar Case E-4/97 *Norwegian Bankers' Association v the Authority*, cited above, paragraph 70.

⁽²⁾ Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v the Authority*, cited above, paragraph 81.

⁽³⁾ Article of Regulation No 458/1999, as amended, provides for the following categories: '1. Loans for the construction or purchase of day-care institutions, service centres, homes and apartments specially designed for the needs of the elderly; 2. Loans for the construction or purchase of communal housing for the disabled; 3. Special loans — loans to those with special needs; 4. Maintenance loans; 5. Loans for major outdoor maintenance of redeemed apartments; 6. Loans or grants for technical innovations and other reforms in the construction industry; 7. Loans for rental housing; 8. Loans for the construction or purchase of homes and day-care institutions for children and young people.'.

According to settled case-law, '[...] undertakings to which an aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article. A diligent businessman should normally be able to determine whether that procedure has been followed' ⁽¹⁾.

Consequently, any unlawful aid which will ultimately be declared incompatible with the State aid rules will be subject to recovery.

7. Conclusion

The Authority is of the preliminary opinion that the exemption from the guarantee premium in favour of the HFF constitutes aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that this measure can be regarded as complying with Article 61(2) and (3) of the EEA Agreement or with Article 59(2) of the EEA Agreement. Any unlawful aid which ultimately will be declared incompatible with the State aid rules will be subject to recovery.

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

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement, requests the Icelandic authorities to submit their comments within one month of the date of receipt of this Decision.

In light of the foregoing consideration, the Authority requires that, within one month of receipt of this decision, the Icelandic authorities provide all documents, information and data needed for assessment of the compatibility of the exemption from the payment of the guarantee premium in favour of the HFF. It requests the Icelandic authorities to forward a copy of this decision to the potential aid recipient of the aid immediately.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to initiate the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement against Iceland regarding the exemption of the Housing Financing Fund contained in the Act on State Guarantees to pay a premium on the guarantee provided by the Icelandic State in its favour.

Article 2

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

Article 3

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

Article 4

The Icelandic Government is requested to forward a copy of this Decision to the recipient of the potential aid immediately.

⁽¹⁾ Case C-5/89 *Commission v Germany* [1990] ECR I-3437, paragraph 14; Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51.

Article 5

The EC Commission shall be informed, in accordance with Protocol 27(d) of the EEA Agreement, by means of a copy of this Decision.

Article 6

Other EFTA States, EC Member States, and interested parties shall be informed by the publishing of this Decision in its authentic language version, accompanied by a meaningful summary in languages other than the authentic language version, in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.

Article 7

This Decision is addressed to the Republic of Iceland.

Article 8

Only the English version is authentic.

Done at Brussels, 27 June 2008.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JAEGER
College Member

The EFTA Surveillance Authority has decided not to raise objections against the notified measure

(2009/C 64/10)

EFTA Surveillance Authority Decision regarding alleged state aid granted by the Municipality of Tromsø to Sommarøy Arctic Hotel AS in connection with the planned sale of the property known as 'Hillesøyfyllinga' [property number 189/196].

The EFTA Surveillance Authority considers that no state aid within the meaning of Article 61(1) of the EEA Agreement has been granted to Sommarøy Arctic Hotel A/S in connection with the planned sale of the property.

Date of adoption:	1 October 2008
EFTA State:	Norway
Case No:	62527
Title:	Sale of property in Tromsø
Objective:	n.a.
Legal basis:	n.a.
Duration:	n.a.

The authentic text of the decision, from which all confidential information has been removed, can be found at:

<http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

Information communicated by the EFTA States regarding State aid granted under the Act referred to in point 1 f of Annex XV of the EEA Agreement (Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises)

(2009/C 64/11)

Aid No	Aid to SMEs 1/08		
EFTA State	Norway		
Region	All regions		
Title of aid scheme or name of company receiving individual aid	The Bioenergy Scheme		
Legal basis	Annual Agricultural Agreement, State Budget, Annual Letter of allocation from The Royal Ministry of Food and Agriculture		
Annual expenditure planned under the scheme or overall amount of individual aid granted to the company	Aid scheme	Annual overall amount	Around 15 % of the total annual budget of EUR 4,3 million
		Loans guaranteed	—
	Individual aid aid	Overall aid amount	—
		Loans guaranteeec	—
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation		Yes
Date of implementation	1 January 2008		
Duration of scheme or individual aid award	Until 31 December 2014		
Objective of aid	Aid to SMEs	Yes	
Economic sectors concerned	All sectors eligible for aid to SMEs		Yes
	Limited to specific sectors — Coalmining All manufacturing or Steel Shipbuilding Synthetic fibres Motor vehicles Other manufacturing All services or Transport services Financial services Other services		Yes
Name and address of the granting authority	Ministry of Agriculture and Food Postbox 8007 0030 Oslo NORWAY		
Large individual aid grants	In conformity with Article 6 of the Regulation		Yes

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

Call for proposals under the work programme of the ENIAC Joint Undertaking

(2009/C 64/12)

Notice is hereby given of the launch of a call for proposals under the work programme of the **ENIAC Joint Undertaking**.

Proposals are invited for the following call: **ENIAC-2009-1**.

Call documentation including deadline and budget is given in the call text, which is published on the following website: <http://eniac.eu>

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.5347 — Mapfre/Salvador Caetano/JVS)

(Text with EEA relevance)

(2009/C 64/13)

1. On 11 March 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertakings Mapfre S.A. ('Mapfre', Spain) and Grupo Salvador Caetano SGPS, S.A. ('Salvador Caetano', Portugal), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertakings Choice Car-Comércio de Automóveis, S.A. ('Choice Car', Portugal), Finlog-Aluguer e Comércio de Automóveis, S.A. ('Finlog', Portugal), Guerin-Rent-A-Car (Dois), Lda ('Guerin', Portugal), and Luso Assistência — Gestão de Acidentes, S.A. ('Luso', Portugal), currently owned by Salvador Caetano, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Mapfre: group of companies mainly providing insurance products, including car insurance worldwide,
- for Salvador Caetano: group of companies active in car retailing and repair services in Portugal and Spain,
- for Choice Car: car retailing in Portugal,
- for Finlog: fleet management services in Portugal,
- for Guerin: car rental in Portugal,
- for Luso: services ancillary to car accident management in Portugal.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 2964301 or 2967244) or by post, under reference number COMP/M.5347 — Mapfre/Salvador Caetano/JVS, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Brussels
BELGIQUE/BELGIË

⁽¹⁾ OJL 24, 29.1.2004, p. 1.

Prior notification of a concentration
(Case COMP/M.5477 — Votorantim/Aracruz)

(Text with EEA relevance)

(2009/C 64/14)

1. On 12 March 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Votorantim Group ('Votorantim', Brazil) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking Aracruz Celulose S.A. ('Aracruz', Brazil) currently jointly controlled by the Votorantim Group, Arapar and Arainvest, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for the Votorantim Group: cement and concrete, mining and metallurgy (aluminum, steel, nickel and zinc), pulp and paper, concentrated orange juice, chemical specialty markets, generation of electric power and the financial sector activities,

— for Aracruz: production of pulp and paper.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301 or 2967244) or by post, under reference number COMP/M.5477 — Votorantim/Aracruz, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Brussels
BELGIQUE/BELGIË

⁽¹⁾ OJL 24, 29.1.2004, p. 1.