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Contents

(1) Text with EEA relevance

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

EN

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1723/2006

of 20 November 2006

amending Regulation (EC) No 379/2004 as regards the increase of the volumes of tariff quotas for certain fishery products for the year 2006

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 26 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) To ensure an adequate supply of certain fishery products to the Community processing industries, autonomous Community tariff quotas have been laid down in Council Regulation (EC) No 379/2004 of 24 February 2004 opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2004 to 2006 ([1]).

(2) The processing industries in some Member States are facing serious difficulties in securing for themselves sufficient Community supplies of certain fishery products. In order to overcome the shortage of raw materials, the industry is using substitute products originating from third countries.

(3) It is therefore appropriate to increase the volumes of tariff quotas for certain products laid down in Regulation (EC) No 379/2004 for the period from 1 January to 31 December 2006.

(4) Regulation (EC) No 379/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

For the quota period from 1 January to 31 December 2006, the Annex to Regulation (EC) No 379/2004 shall be amended as follows:

(a) the quota amount of the tariff quota 09.2759 shall be fixed at 70 000 tonnes;

(b) the quota amount of the tariff quota 09.2761 shall be fixed at 20 000 tonnes;

(c) the quota amount of the tariff quota 09.2770 shall be fixed at 8 000 tonnes;

(d) the quota amount of the tariff quota 09.2785 shall be fixed at 40 000 tonnes;

(e) the quota amount of the tariff quota 09.2790 shall be fixed at 5 500 tonnes;

(f) the quota amount of the tariff quota 09.2794 shall be fixed at 10 000 tonnes.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2006.

([1]) OJ L 64, 2.3.2004, p. 7.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 November 2006.

For the Council
The President
J. KORKEAOJA

COMMISSION REGULATION (EC) No 1724/2006

of 22 November 2006

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 November 2006.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 22 November 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	70,0
	204	28,6
	999	49,3
0707 00 05	052	115,9
	204	66,2
	628	171,8
	999	118,0
0709 90 70	052	140,9
	204	120,4
	999	130,7
0805 20 10	204	72,7
	999	72,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	68,2
	400	77,8
	999	73,0
0805 50 10	052	56,9
	388	46,4
	528	41,8
	999	48,4
0808 10 80	388	93,7
	400	104,4
	404	97,0
	720	66,7
	800	152,5
	999	102,9
0808 20 50	052	90,0
	720	54,8
	999	72,4

(1) Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1725/2006

of 22 November 2006

fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [1], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [2], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin [3], and in particular Article 3(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1484/95 [4], fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

(3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 November 2006.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 282, 1.11.1975, p. 49. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1).

[2] OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006.

[3] OJ L 282, 1.11.1975, p. 104. Regulation as last amended by Commission Regulation (EC) No 2916/95 (OJ L 305, 19.12.1995, p. 49).

[4] OJ L 145, 29.6.1995, p. 47. Regulation as last amended by Regulation (EC) No 1500/2006 (OJ L 279, 11.10.2006, p. 18).

ANNEX

to the Commission Regulation of 22 November 2006 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

'ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin (1)
0207 12 90	Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as "65 % chickens", or otherwise presented, frozen	88,3	9	01
		98,8	6	02
0207 14 10	Boneless cuts of fowl of the species Gallus domesticus, frozen	189,6	35	01
		204,7	29	02
		240,3	18	03
0207 25 10	Turkey carcases, known as 80 % turkeys, frozen	116,4	13	01
0207 27 10	Boneless cuts of turkey, frozen	230,8	20	01
		244,4	16	03
1602 32 11	Preparations of uncooked fowl of the species Gallus domesticus	208,4	23	01

(1) Origin of imports:
01 Brazil
02 Argentina
03 Chile.'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 13 November 2006

on the European Capital of Culture event for the year 2010

(2006/796/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 1419/1999/EC of 25 May 1999 of the European Parliament and the Council establishing a Community action for the European Capital of Culture event for the years 2005 to 2019 [1], and in particular Articles 2 paragraph 3 and 4, thereof,

Having regard to the Selection Panel report of April 2006 submitted to the Commission, the European Parliament and the Council in accordance with Article 2 paragraph 2 of Decision 1419/1999/EC,

Considering that the criteria laid down in Article 3 and Annex II of Decision No 1419/1999/EC are entirely fulfilled,

Having regard to the recommendation from the Commission of 23 October 2006,

HAS DECIDED AS FOLLOWS:

Article 1

Essen and Pécs are designated as 'European Capital of Culture 2010' in accordance with Article 2 paragraph 1 of Decision No 1419/1999/EC as amended by Decision No 649/2005/EC.

Article 2

Istanbul is designated as a 'European Capital of Culture 2010' in accordance with Article 4 of Decision No 1419/1999/EC as amended by Decision No 649/2005/EC.

Article 3

All cities designated shall take the necessary measures in order to ensure the effective implementation of Articles 1 and 5 of Decision 1419/1999/EC as amended by Decision No 649/2005/EC.

Done at Brussels, 13 November 2006.

For the Council

The President

S. HUOVINEN

[1] OJ L 166, 1.7.1999, p. 1. As amended by Decision No 649/2005/EC (OJ L 117, 4.5.2005, p. 20).

COMMISSION

COMMISSION DECISION

of 22 November 2006

concerning the non-inclusion of ammonium sulphamate, hexaconazole, sodium tetrathiocarbonate and 8-hydroxyquinoline in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these active substances

(notified under document number C(2006) 5535)

(Text with EEA relevance)

(2006/797/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1] and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

(1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I of that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.

(2) Commission Regulations (EC) No 451/2000 [2] and (EC) No 1490/2002 [3] lay down the detailed rules for the implementation of the second and third stages of the programme of work referred to in Article 8(2) of Directive 91/414/EEC. For active substances for which a notifier fails to fulfil its obligations under these Regulations no completeness check or evaluation of the dossier shall be performed. For ammonium sulphamate, hexaconazole, sodium tetrathiocarbonate and 8-hydroxyquinoline no complete dossier has been submitted within the prescribed time limit. Therefore it has not been demonstrated that, under the proposed conditions of use, plant protection products containing these active substances satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC. As a consequence, these active substances should not be included in Annex I to Directive 91/414/EEC and Member States should withdraw all authorisations for plant protection products containing these substances.

(3) For the active substances for which there is only a short period of advance notice for the withdrawal of plant protection products containing such substances, it is reasonable to provide for a period of grace for disposal, storage, placing on the market and use of existing stocks for a period no longer than 12 months to allow existing stocks to be used in no more than one further growing. In cases where a longer advance notice period is provided, such period can be shortened to expire at the end of the growing season.

(4) For sodium tetrathiocarbonate and 8-hydroxyquinoline information has been presented and evaluated by the Commission together with Member States experts which has shown a need for further use of the substances concerned. It is therefore justified in the present circumstances to prescribe under strict conditions aimed at minimising risk a longer period for the withdrawal of existing authorisations for the limited uses considered as essential for which no efficient alternatives appear currently to be available.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

[1] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2004/20/EC (OJ L 70, 9.3.2004, p. 32).
[2] OJ L 55, 29.2.2000, p. 25. Regulation as amended by Regulation (EC) No 1044/2003 (OJ L 151, 19.6.2003, p. 32).
[3] OJ L 224, 21.8.2002, p. 23. Regulation as amended by Regulation (EC) No 1744/2004 (OJ L 311, 8.10.2004, p. 23).

HAS ADOPTED THIS DECISION:

Article 1

Ammonium sulphamate, hexaconazole, sodium tetrathiocarbonate and 8-hydroxyquinoline shall not be included in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

(a) Authorisations for plant protection products containing ammonium sulphamate, hexaconazole, sodium tetrathiocarbonate and 8-hydroxyquinoline are withdrawn by 22 May 2007;

(b) From 23 November 2006 no authorisations for plant protection products containing ammonium sulphamate, hexaconazole, sodium tetrathiocarbonate and 8-hydroxyquinoline are granted or renewed under the derogation provided for in Article 8(2) of Directive 91/414/EEC.

Article 3

1. By derogation from Article 2, a Member State listed in column B of the Annex may maintain authorisations for plant protection products containing substances listed in column A for uses listed in column C of that Annex until 31 May 2010 at the latest. A Member State making use of the derogation provided for in the first subparagraph shall ensure that the following conditions are complied with:

(a) the continued use is only accepted so far as it has no harmful effects on human or animal health and no unacceptable influence on the environment;

(b) such plant protection products remaining on the market after 22 May 2007 are relabelled in order to match the restricted use conditions;

(c) all appropriate risk mitigation measures are imposed to reduce any possible risks;

(d) alternatives for such uses are being seriously sought.

2. The Member State concerned shall inform the Commission about the measures taken in application of paragraph 1, and in particular about the actions taken pursuant to points (a) to (d), by 31 December of each year.

Article 4

Any period of grace granted by Member States in accordance with Article 4(6) of Directive 91/414/EEC, shall be as short as possible.

Where authorisations shall be withdrawn in accordance with Article 2 by 22 May 2007 at the latest, the period shall expire on 22 May 2008 at the latest.

Where authorisations shall be withdrawn in accordance with Article 3(1) by 31 May 2010 at the latest, the period shall expire on 30 November 2010 at the latest.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 22 November 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

List of authorisations referred to in Article 3(1)

Column A	Column B	Column C
Active substance	Member State	Use
Sodium tetrathiocarbonate	Greece	Soil disinfection in horticulture.
	Spain	Soil disinfection in horticulture and woody crops.
8-Hydroxyquinoline	France	Vine cuttings application.
	Greece	Localised soil disinfection in horticulture, orchards, olive orchards and vineyards. Vine cuttings application.
	Spain	Protection of pruning wounds on woody crops. Localised soil disinfection in horticulture. Vine cuttings application.

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 55/05/COL

of 11 March 2005

to close the formal investigation procedure provided for in Article 1(2) in part I of Protocol 3 to the Surveillance and Court Agreement with regard to the sale of 1 744 rental apartments in Oslo (Norway)

THE EFTA SURVEILLANCE AUTHORITY,

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

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

HAVING REGARD TO the Authority's Guidelines [3] on the application and interpretation of Articles 61 and 62 of the EEA Agreement, in particular to Chapter 18B thereof,

HAVING CALLED ON interested parties to submit their comments pursuant to the provisions cited above [4] and having regard to their comments,

WHEREAS:

I. FACTS

1. Background

In March 2001, the Municipality of Oslo decided to sell a portfolio of 1 744 rental apartments before the end of May 2001. The 1 744 apartments were mainly let to employees of municipal hospitals. The decision to sell was taken after the Norwegian Government presented plans for the implementation of a hospital reform whereby *i.a.* the ownership of the county hospitals was to be transferred to the State [5].

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[1] Hereinafter referred to as the EEA Agreement.
[2] Hereinafter referred to as the Surveillance and Court Agreement.
[3] Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in OJ L 231, 3.9.1994. The Guidelines were last amended on 15 December 2004.
[4] Dec. No. 113/03/COL. The decision to open the formal investigation procedure was published in OJ C 294, 4.12.2003, p. 13, and in the EEA Supplement No 61, on the same date, p. 1.
[5] Ot.prp. nr 66 (2000-2001) Om lov om helseforetak mm. (helseforetaksloven). The bill was presented to the Parliament on 6 April 2001.

By letter dated 18 May 2001 (Doc. No: 01-3792-D), the Authority requested the Norwegian authorities to submit all relevant information regarding the sale of the apartments so that the Authority could assess whether the sale was in accordance with Article 61 of the EEA Agreement and Chapter 18B, *State aid elements in sales of land and buildings by public Authorities*, of the Authority's State Aid Guidelines.

On 30 May 2001, the Oslo City Council ('Bystyret') decided to sell the apartments, and on 31 May 2001 the Municipality signed a contract with Fredensborg Boligutleie ANS (hereinafter Fredensborg) on the sale of the apartments. The sales price was NOK 715 Million (approximately EUR 89 Million ([6])).

By letter dated 31 May 2001 (Doc. No: 01-4004-D), the Authority reminded the Norwegian authorities of the 'standstill-clause' in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement and the injunction provisions ('interim measures') contained in Chapter 6, *Specificities regarding aid unlawful on procedural grounds*, of the State Aid Guidelines.

By letter dated 26 June 2001 from the Mission of Norway to the European Union, forwarding a letter dated 15 June 2001 from the Ministry of Trade and Industry containing 17 annexes from the Municipality of Oslo, received and registered by the Authority on 26 June 2001 (Doc. No: 01-5730-A), the Norwegian authorities submitted the documents that they, in agreement with the Municipality of Oslo, regarded as containing the most relevant available information in order to assess whether the sale was in accordance with Article 61 of the EEA Agreement.

In the documentation from the Municipality of Oslo ([7]), the Municipality argued firstly that the sale was within the requirements set by the Authority's State Aid Guidelines ([8]). The Municipality claimed that an independent expert evaluation was carried out in accordance with Chapter 18B.2.2 of the State Aid Guidelines and that the divergence of 3,4 % between the sales price and the value assessment was in line with market conditions as described in Chapter 18B.2.2(b) of the State Aid Guidelines ([9]).

Secondly, the Municipality pointed out that the sales process had to be seen in light of the time constraints. The Government, implementing a hospital reform, was the cause of the time constraint that the Municipality was subject to. According to the Municipality, this might have resulted in a smaller number of bidders than desirable, and the buyers might have submitted bids lower than those submitted if they had had more time at their disposal ([10]). The Municipality argued, however, that the Municipality conducted the sale with a bidding process in the same way as a private seller would have done.

By letter dated 20 July 2001 to the Norwegian authorities (Doc. No: 01-5673-D), the Authority stated that it had doubts regarding whether the procedure provided for in Chapter 18B.2.2 of the State Aid Guidelines was followed. The Authority furthermore expressed doubts whether the assessments of the market value of the apartments were carried out prior to the sales negotiations, whether the evaluations were carried out on the basis of generally accepted market indicators and valuation standards and whether a sales price 3,4 % below the evaluation was in accordance with the State Aid Guidelines. The Authority invited the Norwegian authorities to submit comments on this matter, which the Authority would take into consideration before taking a decision on whether to open a formal investigation procedure.

([6]) NOK/EUR = 7,9952 per May 2001 according to the Norwegian Central Bank. http://www.norges-bank.no/stat/valutakurser/kurs_mn1.html

([7]) In particular Annex 1 to the letter from the Ministry of Trade and Industry dated 15 June 2001: Letter dated 5 June 2001 from the Municipality of Oslo to the Ministry of Trade and Industry.

([8]) The relevant sentence reads as follows in Norwegian: '*Oslo Kommune er av den oppfatning at salget e r innenfor rammen av de krav som stilles i ESAs retningslinjer*'.

([9]) More detailed descriptions of the sales process and the value assessments are given in point 2 below.

([10]) The relevant sentence reads as follows in Norwegian: '*Dette tidspresset kan ha ført til at kretsen av interesserte ble mindre enn ønskelig, og/eller at kjøperne la inn lavere bud enn de ville gjort i en situasjon med bedre tid*'.

The Ministry of Trade and Industry submitted its comments by telefax dated 27 July 2001, received and registered by the Authority on the same date (Doc. No: 01-6026-A). The Ministry stated that it did not disagree with the Authority that there might be doubts as to whether the sale is in accordance with Article 61 of the EEA Agreement and that further proceedings *'will be carried out with the purpose to ensure that Norway's obligations under Article 61 of the EEA Agreement are respected'*. The Ministry informed the Authority that on 25 July 2001 the County Governor of Oslo and Akershus had decided that the Municipality of Oslo can not lawfully transfer the right of ownership before the County Governor had made his final decision. A new expert evaluation of the value of the buildings would also be carried out.

By letter dated 31 July 2001 (Doc. No: 03-829-A), the Authority stated that it was awaiting a formal notification of the sale in accordance with its State Aid Guidelines.

2. **The notification**

2.1. *Introduction*

By letter from the Mission of Norway to the European Union dated 10 February 2003 (Doc. No: 03-829-A), forwarding a letter from the Ministry of Trade and Industry dated 7 February 2003 and a letter without date from the Municipality of Oslo (containing 31 annexes), all received and registered by the Authority on 11 February 2003, the Norwegian authorities submitted a notification pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, of the Municipality of Oslo's decision to sell the apartments. The letter dated 7 February 2003 from the Ministry of Trade and Industry and the letter from the Municipality of Oslo (without annexes) were also sent by telefax, received and registered by the Authority on 7 February 2003 (Doc. No: 03-768-A).

The letter from the Municipality of Oslo contained *i.a.* a description of the apartments, information about the sales process, descriptions of the different value assessments as well as an assessment of potential cross border impact.

Concerning the apartments, the Municipality provided certain comments. Firstly, the size of the portfolio implied that there were not many actors in the market who could be expected to be potential buyers. That would influence the possibility of carrying out the sale and also the terms of any transaction. Secondly, the price was dependent on when and how fast existing rents could be increased, which was highly uncertain. Thirdly, the uncertain circumstances with the existing contracts, an unfamiliarity with Norwegian mandatory tenant law, made an investment less attractive for undertakings not already established in the rental market in Norway. Fourthly, the apartments were of a varying age, standard and location which influenced the renovation costs.

Concerning the sales process (see point 2.2 below), the Municipality stated that: *'It is not disputed that the procedural requirements of the State aid Guidelines have not been fully observed in the present case.'*

The Municipality concluded that: *'The sale was conducted through a well-publicized, open and unconditional bidding process, albeit the period in which the apartments were marketed was shorter than the period required according to the State Aid Guidelines. There is, however, no reason to assume that the sale was conducted in a manner not likely to achieve market value for the apartments sold, or likely to exclude foreign investors. Even if the Authority should be of the opinion that the sale comprises an element of aid, we submit that it should be concluded that the transaction does not fall within the ambit of Article 61(1) EEA, as intra-EEA trade is not affected.'*

2.2. *The sales process*

The sales process was described in the notification received by the Authority on 11 February 2003, *i.a.* in Annex 1 and 10 to the notification. The Authority understands that the sales process took place as follows:

On 16 March 2001, the independent real estate agency, Akershus Eiendom AS (hereinafter Akershus), was given the task of selling the apartments *en bloc* on behalf of the Municipality of Oslo.

Akershus launched the sale on 2 April 2001, with a value assessment from Catella Eiendoms-Consult AS (hereinafter Catella), which estimated the value at NOK 1 143 Million (see point 2.3 below for a description of the assessment). The following six companies were contacted directly by Akershus:

— OBOS

— Selvaag Eiendom AS

— Olav Thon Gruppen AS

— KLP Eiendom AS

— Gjensidige Nor Næringseiendom AS

— Eiendomsspar AS

Another nine companies contacted Akershus on their own initiative. These were:

— Sunndal Collier & Co ASA

— Haugen & Damsund AS

— Catella Eiendoms-Consult AS

— Optimo AS

— Investra ASA

— The inhabitants, represented by Ole Løken, attorney at law

— Fredensborg eiendomsselskap AS

— DTZ Real Consult Eiendomsmegling AS

— Studentsamskipnaden i Oslo

An offer for the sale of the apartments was made public by a press release dated 19 April 2001.

A prospectus covering the apartments was distributed to the 15 companies mentioned above on 23 April 2001.

On 26 April 2001, OPAK AS (hereinafter OPAK) submitted a value assessment concluding that the market value was NOK 795 Million, which was also distributed (see point 2.3 below for a description of the assessment).

Investors were asked to submit their bids by 2 May 2001, and the bidding contest was brought to an end on 3 May 2001. Five companies submitted the following offers in the first round on 2 May 2001. These were:

— The inhabitants, represented by Ole Løken, attorney at law:	NOK 300 Million
— EiendomssparAS:	NOK 500 Million
— Olav Thon Gruppen AS:	NOK 505 Million
— Haugen & Damsund AS:	NOK 690 Million
— Sunndal Collier & Co ASA:	NOK 725 Million

On 3 May 2001, the five companies could change or increase their offers after having been informed about the highest offer submitted on 2 May 2001. The following new offers were received:

— The inhabitants, represented by Ole Løken, attorney at law: NOK 690 Million

— Sunndal Collier & Co ASA: NOK 735 Million

The Municipality of Oslo chose to accept the offer from Sunndal Collier & Co ASA and on 8 May 2001, Sundal Collier & Co ASA, Fredensborg being its successor, signed the contract.

After the offer was accepted, it was discovered that two buildings (Internat A og B) in connection with one of the hospitals (Ullevål Sykehus) was being used by Oslo og Akerhus høgskolenes studentsamskipnad (OAS) without any rent being paid (based on a contract not signed by the Municipality, but adhered to by Ullevål Sykehus and OAS, according to which OAS *i.a.* would only cover operating costs). As a consequence of this, the contract between the Municipality and Fredensborg was amended on several points. By letter dated 11 May 2001, the Municipality asked OPAK to assess the consequence of this for their value assessment.

On 14 May 2001, OPAK submitted a corrected value assessment of NOK 740 Million (see point 2.3 below).

By signing the contract on 31 May 2001, the Municipality of Oslo sold the 1 744 apartments *en bloc* at a price of NOK 715 Million to Fredensborg.

2.3. *The value assessments submitted as part of the notification*

The notification contained three appraisals: one from Catella (Annex 16 to the notification), one from OPAK (Annex 18 to the notification) and one from FIGA/Nortakst (Annex 21 to the notification).

— The valuation from Catella

Catella was engaged by the Municipality of Oslo on 14 March 2003 with a mandate to assess the market value of the apartments as a portfolio (all apartments sold at the same time to one buyer). The report was originally made in order to set up an opening balance sheet relating to the hospitals. The appraisal was to be finished by 30 March 2001. Catella stated that the appraisal was not in accordance with the rules of the Norwegian Appraisers Association ('Norges Takseringsforbund') and was conducted in a superficial way ([11]). Catella came to the conclusion that the market value was NOK 1 143 Million.

The Municipality of Oslo referred to the fact that Akershus considered that the value calculated by Catella did not reflect market value. One reason for this was that Akershus considered that the stipulated rentals were too high and the estimated initial costs too low. In addition, the appraisal done by Catella had several other shortcomings, according to the Municipality of Oslo. These were:

— the report included real estate not included in the sale (Trondheimsveien 235, estimated value NOK 61 million),

— the valuation was based on the assumption that maximum rental was obtainable from the first day,

([11]) The sentences read as follows in Norwegian: *'Denne "portøfaljetakst" følger ikke Norges Takseringsforbunds instruks for boligtaksering. Den er gjort på et generelt og relativt overfladisk grunnlag.'*

— the impact of the 'as-is' clause in the sales contract was not assessed. An 'as-is' clause implies that the buyer takes the entire risk as to the peculiarities of the apartments bought, and that he must rely on his own examinations.

A second company, OPAK, was therefore asked to make a new appraisal.

— The valuation from OPAK

OPAK was engaged by the Municipality of Oslo to assess the apartments as a portfolio. The (first) appraisal was dated 26 April 2001 and concluded that the market value was NOK 795 Million.

The estimated sales value was calculated as follows:

Net yearly rental income in net present value terms	= NOK 835 Million
– Cost of upgrading the apartments	= NOK 150 Million
+ Net present value of 'up-side' ([12]) (sale after 10 years)	= NOK 110 Million
= Sales value	NOK 795 Million

An adjustment of the OPAK appraisal was requested by the Municipality of Oslo in order to reflect a correction of the value of certain leases due to factual circumstances not considered in the original appraisal. These factual corrections led OPAK to reduce the value of the assets to NOK 740 Million. The adjustments were presented to the Municipality of Oslo on 14 May 2001.

— The valuation from FIGA and Nortakst DA

By letter dated 12 July 2001 from the Ministry of Trade and Industry to the Municipality of Oslo ([13]), the Ministry requested the Municipality to initiate a new value assessment. The Ministry also stated that the value assessment from OPAK did not fulfil the requirements of the State Aid Guidelines ([14]). The two firms FIGA and Nortakst DA, forming a committee ([15]) (hereinafter FIGA/Nortakst), were engaged by the Municipality to carry out a new value assessment. The mandate for the assessment was agreed upon with the Ministry of Trade and Industry. FIGA/Nortakst submitted its report on 26 April 2002 with the conclusion that the market value of the apartments was NOK 1 055 Million.

FIGA/Nortakst used three different methods to assess the value of the portfolio as of 30 May 2001: technical value, cash flow method and net capitalisation method. The results of the calculations based on these three methods were:

Technical value:	NOK 1 448 Million
Cash flow method:	NOK 1 055 Million
Net capitalisation method:	NOK 1 005 Million

FIGA/Nortakst concluded that the cash flow method reflected best what a potential investor would be willing to pay for the portfolio. The conclusion was thus that the market value of the apartments was NOK 1 055 Million.

In the letter from the Municipality of Oslo attached to the letter dated 7 February 2003 from the Ministry of Trade and Industry, the Municipality contested whether this appraisal reflected the value of the apartments and concluded that the appraisal from OPAK best reflected the market value.

([12]) Sale of 40 000 m^2 (sectioning) after 10 years in net present value terms.
([13]) The letter is enclosed as Annex 20 to the notification dated 7 February 2003.
([14]) The sentence reads as follows in Norwegian: '*Verdivurderingen foretatt av OPAK kan slik vi ser det ikke sies å tilfredsstille de krav som stilles til takst i ESAs retningslinjer*'.
([15]) The word '*takstnemd*' is used in Norwegian.

2.4. *Request for further information*

By letter dated 9 April 2003 (Doc. No: 03-2133-D), the Authority requested further information. In this letter, the Competition and State Aid Directorate also expressed doubts about the compatibility of the sale with the State aid provisions of the EEA Agreement.

By letter from the Norwegian Mission to the European Union dated 5 June 2003, forwarding two letters dated 14 May 2003 from the Ministry of Trade and Industry and the Municipality of Oslo, respectively, received and registered by the Authority on 10 June 2003 (Doc. No: 03-3630-A), the Norwegian authorities submitted additional information. The same documents were sent by telefax dated 14 May 2003 from the Ministry of Trade and Industry, received and registered by the Authority on the same date (Doc. No: 03-3127-A).

The Ministry of Trade and Industry did not express any views in its letter dated 14 May 2003, but simply forwarded the letter from the Municipality of Oslo.

In the letter dated 14 May 2003 from the Municipality of Oslo, the Municipality referred to the unconditional bidding procedure (cf. Chapter 18B.2.1 of the State Aid Guidelines) and stated that: '*The Municipality will not argue that the procedure followed when the apartments were sold were in full compliance with the requirements set out in the Guidelines. The sale of the apartments was not made public in the way prescribed in clause 18B.2.1(a) of the Guidelines*'. However, the Municipality considered that the sale was carried out in a way that ensured attainment of the objective behind the provision.

As to Chapter 18B.2.2 of the State Aid Guidelines, sale without an unconditional bidding procedure (value assessment by independent expert), the Municipality maintained that the sale was conducted in compliance with this provision. Furthermore, the Municipality considered that the valuation carried out by OPAK (the value assessment used by the Municipality) was obtained '*prior to the sale negotiations*' and according to '*generally accepted market indicators and valuation standards*'.

Finally, '*the Municipality cannot from the arguments presented by the Authority, see that the time pressure caused by the hospital reform is not relevant when assessing whether the price obtained for the apartments are below market value*'.

3. **The Decision to open the formal investigation procedure**

On 11 July 2003, the Authority decided to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement (hereinafter 'the formal investigation procedure') with regard to the sale of the 1 744 rental apartments in Oslo ([16]). In the opening Decision, the Authority described the notification, the background of the case and the correspondence with the Norwegian authorities.

As to the reasons for opening the formal investigation, the Authority expressed doubts on several points as to whether the sale was in compliance with Article 61(1) of the EEA Agreement. Firstly, the Authority referred to the sales process and, taking into account that the sale was not advertised in accordance with the State Aid Guidelines, expressed doubts as to whether the Municipality of Oslo complied with the objectives behind the provisions of Chapter 18B.2.1 of the State Aid Guidelines (sale with an unconditional bidding procedure).

Secondly, concerning the valuations (Chapter 18B.2.2 of the State Aid Guidelines), the Authority expressed doubts as to whether the evaluation by OPAK (the evaluation used by the Municipality) was carried out prior to the sales negotiations, whether the evaluation was carried out on the basis of generally accepted market indicators and valuation standards and, taking into account the time constraint, whether a reasonable effort to sell the apartments at market value took place. Furthermore, the sales price agreed (and notified) was NOK 715 Million, while the result of a new value appraisal, as requested by the Ministry of Trade and Industry, was NOK 1 055 Million (FIGA/Nortakst). Taking into account the huge discrepancy between the two appraisals, the Authority expressed doubts as to whether the agreed sales price (NOK 715 Million) reflected the market value.

([16]) See footnote 4.

Thirdly, the Authority referred to the fact that the Municipality argued that even if the price obtained were found to be below market value, the sale fell outside the scope of Article 61(1) of the EEA Agreement because the market in which Fredensborg was involved did not contain elements of cross-border trade. The Authority considered that the real estate market in Oslo was not limited to local undertakings and that Fredensborg was actually, or potentially, in competition with similar undertakings in Norway and other EEA States.

Fourthly, the Authority expressed doubts as to whether a sales price below market value could be justified on the basis of the market economy investor principle, *i.e.* that the Municipality behaved as any other private investor, taking into account the time constraint and the hospital reform initiated by the Government.

4. **Comments to the opening decision from the Norwegian authorities**

By letter dated 12 September 2003 from the Mission of Norway to the European Union, forwarding two letters dated 11 September 2003 from the Ministry of Trade and Industry and the Municipality of Oslo, respectively, all received and registered by the Authority on 15 September 2003 (Doc. No: 03-6307-A), the Norwegian authorities submitted their comments to the opening decision. The same letters were sent by telefax dated 11 September 2003 from the Ministry of Trade and Industry, received and registered by the Authority on the same date (Doc. No: 03-6201-A).

The letter from the Ministry of Trade and Industry dated 11 September 2003 did not express any views on the case, but only referred to the letter from the Municipality of Oslo.

The Municipality of Oslo referred to its previous arguments and maintained, firstly, that the objectives behind the provisions of Chapter 18B.2.1, *Sale through an unconditional bidding procedure*, of the State aid Guidelines, were obtained despite that the sale was not made public in the way prescribed in the Guidelines. The Municipality argued that all potential buyers established in Norway had been informed of the forthcoming sale and that there was little interest in investing in the Norwegian housing rental market among investors not already established in Norway.

Secondly, the Municipality argued that the value assessment by OPAK complied with the procedural requirements of Chapter 18B.2.2, *Sale without an unconditional bidding procedure*, of the State Aid Guidelines. That implied i.a. that the Municipality considered that the evaluation by OPAK was carried out '*in order to establish the market value on the basis of generally accepted market indicators and valuation standards*' and that the evaluation was carried out '*prior to the sale negotiations*'. The Municipality furthermore argued that the difference between the sales price (NOK 715 Million) and the OPAK evaluation (NOK 740 Million) was in line with Chapter 18B.2.2(b), '*Margin*', of the State Aid Guidelines ([17]).

Thirdly, the Municipality considered that there were grounds for being very sceptical about the new value appraisal from FIGA/Nortakst, which concluded that the value was NOK 1 055 Million. The Municipality stated that FIGA/Nortakst based its appraisal on an annual price increase for the property over the next 10 years of 4 %, while the prices fell by 5,2 % from the 2nd quarter 2002 to the 2nd quarter 2003. The Municipality considered that the FIGA/Nortakst assessment could not be relied upon.

Fourthly, the Municipality could '*not see that the Authority has defined the relevant market for rental homes and how this leads the Authority to their conclusion that Fredensborg Boligutleie ANS is actually or potentially in competition with similar undertakings in Norway or other EEA States*'.

([17]) Chapter 18B.2.2(b) states *i.a.* that: '*If, after a reasonable effort to sell the land and buildings at the market value, it is clear that the value set by the valuer cannot be obtained, a divergence of up to 5 % from that value can be deemed to be in line with market conditions*'.

5. **Comments from third parties**

The Decision to open the formal investigation procedure was published on 4 December 2003. The Authority received one comment from third parties to the opening decision. By letter dated 19 December 2003, received and registered by the Authority on 5 January 2004 (Doc No: 03-8980 A), Fredensborg (the buyer) submitted comments. Fredensborg referred to a previous letter dated 18 February 2003, received and registered by the Authority on 20 February 2003 (Doc. No: 03-1040 A), whereby two new value assessments were submitted. These were:

— The report by BER, Bygg og eiendomsrevisjon AS

BER, Bygg og eiendomsrevisjon AS (hereinafter BER), represented by Mr. Arnt K. Svendsen, was asked by Fredensborg to give their assessment of the value of the portfolio, and to comment upon the valuations from Catella, OPAK and FIGA. The report from BER was submitted on 13 January 2003.

BER's assessment was based on three different scenarios:

Return on investment value based on rental housing:	NOK 630,0 Million
Return on investment based on rental for 10 years, thereafter individual sales over a three year period:	NOK 796,5 Million
Same as above, but sale of all apartments individually in year 11:	NOK 851,5 Million
Average:	NOK 759,3 Million

BER concluded that the market value was in the range between NOK 700-800 Million.

BER also assessed the three previous assessments by Catella, OPAK and FIGA. The assessment by Catella was, according to BER, a theoretic value based on the assumption that the apartments were let out at market price from day one. The OPAK assessment did not take into account that rentals were half of the regular market price at the time of the bid, according to BER. Furthermore, the future loss due to current contracts below market price was not taken into account in the calculations. Neither were rental losses during rehabilitation phase calculated. No project gains or risks had been incorporated in the estimates. According to BER, the FIGA/Nortakst appraisal was also a theoretic 'going concern' value assessment. No project risks or gains had been taken into account. This did not reflect the way bidders normally act in this type of market. The technical standard of the objects, rental losses during the rehabilitation phase, *etc.* had not been calculated.

— The report by Agdestein Takst & Eiendomsrådgivning AS

Agdestein Takst & Eiendomsrådgivning AS (hereinafter Agdestein), represented by Mr. Pål Agdestein, was asked, in November 2002, by Fredensborg to analyse and comment on the three valuations mentioned above and to give his view on the market value of the portfolio. Mr. Agdestein was previously employed by Catella, and responsible for the report submitted by that firm. Agdestein submitted his report to Fredensborg on 17 February 2003.

Agdestein commented in detail on the three previous reports and found several assumptions that, in his view, should be corrected. Based on new 'corrected' assumptions, Agdestein found that the adjusted value in the Catella report was NOK 744 Million, in the OPAK report NOK 560 Million and in the FIGA/Nortakst report NOK 560 Million (or 760 NOK Million if the value of the sectioning was kept at NOK 200 Million) ([18]).

Agdestein concluded that the market value of the portfolio (in May 2001) was between NOK 670 Million and NOK 800 Million.

([18]) Sectioning means that the apartments are put up for sale instead of letting them.

As the price paid by Fredensborg was in the mid-range of all the value assessments, Fredensborg considered that this supported the view that Fredensborg had paid the market price. Fredensborg considered it important *'to stress the difference between a theoretic best case "value" considering the successful implementation and carrying out of a real-estate project and an investor's willingness to enter into a specific project that to a large extent involves a project risk.'* Fredensborg considered that this project risk was not taken into account in the FIGA/Nortakst or Catella appraisals.

6. **Comments from the Norwegian authorities to the third party comments**

By letter dated 5 March 2004 (Event No: 258313), the Authority submitted the comments from Fredensborg to the Norwegian authorities, and invited them to reply within one month.

By letter dated 23 March 2004 from the Mission of Norway to the European Union, forwarding a letter dated 22 March 2004 from the Ministry of Trade and Industry, both received and registered on 24 March 2004 (Event No: 260564), the Norwegian authorities asked *'the Authority to accept that the Norwegian comments will be submitted by 10 May 2004.'*. The Norwegian authorities referred to a pending conciliation between the Ministry of Health and the Municipality of Oslo regarding the ownership of the apartments. The letter dated 22 March 2004 from the Ministry of Trade and Industry was also sent by telefax dated 22 March 2004, received and registered on the same date (Event No: 260191).

By letter dated 25 March 2004, the Authority agreed to extend the deadline until 10 May 2004 (Event No: 260732).

By telefax dated 23 April 2004 from the Ministry of Trade and Industry, received and registered on the same date (Event No: 279122), the Ministry submitted a copy of the agreement ('Protokoll') between the Municipality of Oslo and the Norwegian State concerning the ownership of the hospital apartments.

By letter dated 13 May 2004 from the Mission of Norway to the European Union, forwarding a letter dated 10 May 2004 from the Ministry of Trade and Industry, both received and registered on 15 May 2004 (Event No: 281488), the Norwegian authorities stated that they did *'not have any comments to the third party comment received by the Authority'*. The letter dated 10 May 2004 from the Ministry of Trade and Industry was also sent by telefax dated 10 May 2004, received and registered on 11 May 2004 (Event No: 281014).

7. **Expert report from Eirik Holm AS**

In 2004, the Authority engaged Eirik Holm AS (hereinafter Holm) with the purpose of carrying out a study regarding the market value of the 1 744 apartments sold by the Municipality of Oslo. The contract referred to the fact that the Authority in the course of the proceedings had received 5 valuations/reports, but that the conclusions in these reports deviated from each other to such an extent that the Authority was still in doubt as to whether the sales price of NOK 715 Million reflected the market value. The Authority therefore wanted to clarify whether or not the previous valuations/estimates of value were based on generally accepted principles for the valuation of fixed property and the degree to which the presumptions and discretion used in the calculations were reasonable. The Authority also wanted an assessment on the question as to whether the manner in which the sales process was executed had influenced the sales price.

Holm is an independent Chartered Engineer with long experience of the real estate market in Oslo. In the execution of the contract, Holm engaged the services of Chartered Engineer Trygve Fossen and Engineer Sven P. Meyer, both of whom are experienced assessors with long practice. In addition, Lawyer Johan Hveding of the law company Grette DA, assisted in connection with questions concerning the rental contracts.

The report from Holm dated 24 February 2005 was received and registered by the Authority on 1 March 2005 (Event No: 311859).

7.1. *The previous value assessments/reports*

Holm's study of the five earlier assessments/reports showed *i.a.* partially deviating methods of calculation, differing estimates of both market rent rates, refurbishing costs/requirements, and the potential gains from sectioning. Holm also found direct factual errors, omissions of information and generally superficial examinations/surveys of the properties. After making corrections for obvious factual errors, there were still wide gaps between the valuations, that were attributed to differing in assessments and applied opinions. Holm expressed that this is not in itself unusual in cases where there is more than one valuation. He expressed that the deviations could be expected to be more pronounced in the case at hand than in other cases as there was a particularly unique portfolio put up for sale with no historic reference material anywhere in the country. Holm therefore concluded that: *'The result of this is that the useful application of the valuations in the context in which they are envisaged to be applied is limited'*. His conclusions concerning the different appraisals in relation to his own findings and assumptions are as follows:

— The Catella appraisal

Catella has carried out a superficial inspection in connection with an earlier valuation (1999-2000). The new valuation must be seen as an updating of the earlier valuation. An external inspection was carried out with random sampling of inside areas. A thorough inspection/assessment should in Holm's opinion have been carried out in order to provide a better basis for the valuation. Holm concluded that the result of the valuation was much too high. That was due *i.a.* to the fact that: the assumed market level for letting, in his view, was about 10 % too high; that Catella has ignored current rent contracts and has not taken into account that actual rents would be well below the market rates for a number of years; that Catella has been over-optimistic in relation to the number of apartments let out at anytime (there would always be vacancies due to change of tenants etc.); that initial refurbishment costs were too low (approximately NOK 60 Million). Holm also refers to a property which was included but later withdrawn from the portfolio and that Catella has not taken into account worth-reducing limitations of the 'as-is' clause in the contract.

— The OPAK appraisal

OPAK has inspected the majority of the buildings externally, but has only inspected ten flats/bed-sitters. This was in Holm's view insufficient to estimate the correct figures for refurbishments and maintenance. It is Holm's opinion that all the properties should have been inspected, and a more thorough inspection of the internal areas should have been carried out to attain a better basis on which to calculate the estimate. Holm concluded *i.a.* that the market rents were underestimated. On the contrary, OPAK did not take into account that there were limitations as to how fast rents could be brought up to market level. Assessment of value potential because of sectioning was based on too small a saleable area with added worth too low as a result, and initial refurbishment costs were approximately NOK 30 million too low. Holm concludes that these items influenced the valuation both positively and negatively and it was thus difficult to estimate the net effect.

— The FIGA/Nortakst appraisal

Holm referred to the fact that it was stated that FIGA/Nortakst had carried out inspections/surveys of a sufficient number of flats to be able to complete their commission. However, no information has been provided as to the extent and scope of the inspections/surveys. Holm holds forth, in particular, that the estimates of potential gains from sectioning were largely overestimated as the method of calculation of the sectioning value was unacceptable, among other things, based on technical value and due to assumptions on high annual rise in sales worth. Holm states that he finds *'these calculations to be irrelevant for the sales value and the sectioning potential.'* Furthermore he points out that rent revenues from two buildings were wrongly included up to 2008; market rent rates that were a little too high have been used in the calculations without taking necessary refurbishment costs into consideration. (Holm has estimated these costs to be considerably higher than FIGA/Nortakst); it was unrealistic to calculate with the sale of all the dwellings (flats) in a single year; and the 'as- is' clause in the contracts has not been afforded any value-reducing influence. The sum of these factors indicates a stipulation of market value that was far too high.

— BER

BER has not inspected or surveyed the properties, but bases its conclusions on the assessments and valuations already presented by Catella, OPAK and FIGA/Nortakst together with the application of own expertise. Holm's conclusions on the BER report are as follows: owner's operating costs were too high; BER has not carried out own inspections/surveys of the properties which can have an effect on both the cost estimate of initial refurbishing and for stipulating the market rent rate; BER has used wrong figures for current rent revenues (NOK 56 Million instead of NOK 42,5 Million per annum); insufficient time has been allowed for increasing current rent rates to market levels. The sum of these discrepancies resulted in a worth estimate that was too high, mainly due to the rent revenue flow being too high.

— Agdestein

Mr. Agdestein, who was previously in the employ of Catella and responsible for valuations/assessments at that time, has in Holm's view provided a comprehensive report on the valuations/assessments provided by Catella, OPAK and FIGA/Nortakst. In his comments on the various valuations/assessments Agdestein has provided an estimate of corrections he feels should be made in order to arrive at a more correct result that those given in the submitted valuations/assessments. These corrections reflected both factual errors that may be due to information not available at the time of valuation, insufficient regard taken of the actual situation, direct errors and mistakes etc. and larger and smaller deviations in comparison to Agdestein's own estimates. Holm considered this to be a blend of objective and concrete corrections and more subjective stipulations and estimates.

7.2. *Holm's own assessment of the market value of the portfolio*

Holm's assessment has been based on all the documents that have been submitted to the Authority by the Norwegian authorities. The Municipality's tabular overview of the properties, which forms part of the sales prospectus and the sales contract, has been the main basis for data about the properties. In addition, Holm has received information about the rental contracts for buildings related to two of the hospitals (Ullevål and Aker), in particular the number of non time-limited contracts.

In order to be able to stipulate the technical condition of the buildings and the need for rehabilitation as precisely as possible, external and internal inspections/surveys have been carried out on all buildings together with hospital staff. Approximately 70 flats of all types and in varying condition have been inspected. Further, rental statistics and sales statistics have been obtained for 2001, which have formed the basis for the assessment of market rent levels and the calculation of the potential for sectioning. All assessments, calculations and estimates have, to the degree this was possible, been based on the 1st quarter of 2001 without taking later price and market developments into consideration.

Holm's assessment of the portfolio showed a resulting valuation of NOK 752 772 286. The result was arrived at as follows (all amounts are discounted to 2001 values):

Worth created through rent revenues mid 2001 to mid 2011:	NOK 465 882 460
+ Net worth of sectioning and rent revenues in 2001:	NOK 470 676 826
– Deductions for liens and contractual limitations:	NOK 30 000 000
– Deductions for initial refurbishments during the period 2001-2005:	NOK 153 787 000
= Total value of the portfolio:	NOK 752 772 286

Holm's calculations are *i.a.* based on that the Municipality's pre-emptive rights to rent means that the portfolio must be considered to be a letting object throughout the whole of the ten-year period from 2001 onwards, while the portfolio will be sold (sectioning) over a three-year period after 2011.

The worth created through rent revenues from mid 2001 to mid 2011 is the capitalised worth of the estimated real net revenues for each year up to 2011. These revenues are foreseen to increase year-by-year and to achieve market rents for all leases in 2011. The increase is a combination of an increase in the percentage of letting to 95 % (defined as fully let), an increase to the market rate in 2005 for time-limited contracts, an increase in mean average level rents in 2006, and market rents in 2011 for non time-limited contracts. Allowance has been made for some non-lets in connection with refurbishment of the dwellings.

The net worth of sectioning and rent revenues in 2001 is made up of three components: a) sectioning/sales value in 2011. This worth arises in the years 2011-2014 and is written back to 2001, b) the capitalised worth of the further rent revenue flow from the non-sectioned areas, written back to 2001 and c) deductions for refurbishment/upgrading costs necessary to achieve the required standard for sectioning, carried out in the years 2011-2013 and written back to 2001.

Deductions for liens and contractual limitations are related to paragraph 8 — the 'as-is' clause — in the contract between the Municipality of Oslo and Fredensborg. Holm considered that this represented a risk to the buyer. This applies, in particular, in connection with information that is found in the municipal system concerning the properties, but has not come to the knowledge of the buyer, such as rent contracts, rent revenues and area specifications, and not least the technical condition of the buildings. Holm found it reasonable to assume that the 'as-is' clause has a certain financial influence. Seen in relationship to the size of the portfolio, Holm stipulated the worth deduction in this connection at NOK 30 Million, i.e. in the region of 4 % of the estimated value of the portfolio.

Deductions for initial refurbishment costs during the period 2001-2005 were costs for work necessary to undertake to be able to let out the dwellings at market rents. The costs arose in the years 2001-2005 and were discounted to 2001 values.

Holm has also conducted a 'sensitivity analysis' to see how different assumptions would influence the price. The analysis *i.a.* shows that if the estimated price per m^2 of flats to be sold in ten years time after acquisition was NOK 24 000 and not NOK 26 000 as assumed for the purpose of calculating the value, this 'adjustment' alone would result in a portfolio worth 720 million instead of 753 million. A further downrating of for example 2 % of the rent revenues, would result in a worth under that of the achieved sales price. Holm's conclusion is therefore that the achieved sales price of NOK 715 Million is so close to his evaluation of worth that in the light of the margins of uncertainty it can be said to represent the 'correct price' *i.e.* the market price.

Holm has also studied the sales process and how the way it was conducted influenced the sales price. Holm *i.a.* considered that the Authority's guidelines had not been strictly adhered to, and it is in particular the short implementation period and the limited initial market exposure that is in question. However, Holm concluded *i.a.* that: '*All things considered, we are of the opinion that the seller has had a sufficient number of interested parties on the playing field to achieve genuine bidding and a "correct and fair" price. There are however no absolute truths in this matter. A sale executed two months prior to or after the fact could have produced a totally different result. The individual buyer's interest in and will to acquire the object is the final decider where price is concerned, but motivation can, as is well known, vary.*

It must be said that a higher price could in all likelihood been achieved by selling the properties as individual units. In this scenario, the seller would have been forced to pace the release of the properties in accordance with what the market could absorb of residential blocks, and would thus have had a totally different horizon regarding revenues. We consider this to be purely theoretical, and have thus not delved deeper into the option.

In conclusion we would say that the seller has in all probability achieved the sales price in a real bidding competition in the Norwegian market, i.e. close to what one can call a correct and fair price. There is per definition no definable market price for a portfolio of this type in that there is no previous history of sales to refer to. The price achieved must therefore to all intents and purposes be deemed to be the market price.'

8. **Final correspondence with the Norwegian authorities**

By letter dated 22 December 2004 (Event No: 303758), the Authority requested additional information from the Norwegian authorities concerning the conciliation process between the State and the Municipality of Oslo, the views of the Norwegian authorities regarding whether the sale contained state aid and more detailed information concerning the sales process. The Authority also informed the Norwegian authorities that it had engaged an independent expert, Eirik Holm AS, to assess *i.a.* the previous value assessments. The Authority also asked the Norwegian authorities to agree to an extension of the deadline for taking a final decision until the end of February 2005.

By letter from the Mission of Norway to the EU dated 13 January 2005, forwarding two letters dated 10 January 2005 from the Ministry of Modernisation and the Ministry of Health and Care Services, respectively, received and registered by the Authority on 14 January 2005 (Event No: 305352), the Norwegian authorities submitted additional information. The Norwegian authorities agreed to an extension of the deadline for taking a final decision until the end of February 2005. The letters from the Ministry of Modernisation and the Ministry of Health and Care Services were also sent by telefax dated 10 January 2005 (Event No: 304852).

By letter dated 25 February 2005 to the Norwegian authorities (Event No: 311394), the Authority asked for an extension of the deadline for taking a final decision until 11 March 2005.

By telefax dated 7 March 2005 from the Ministry of Modernisation (Event No: 312289), the Norwegian authorities agreed to an extension of the deadline for taking a final decision until 11 March 2005.

II. **APPRECIATION**

1. **Introduction**

As mentioned above, the Norwegian authorities notified to the Authority the sale of 1 744 rental apartments from the Municipality of Oslo to Fredensborg at a price of NOK 715 Million (approximately EUR 89 Million). The Authority decided to open the formal investigation procedure with regard to the sale and called on interested parties to submit their comments.

By reference to Chapter 18B of the State Aid Guidelines, the Authority doubted that the sale had taken place in such a way that the existence of state aid automatically could be excluded. Furthermore, assessed values of the properties diverged to a substantial degree and gave reasons to doubt that the agreed sales price reflected the market price.

2. **The sales process**

Chapter 18B, '*State aid elements on sales of land and buildings by public Authorities*', of the State Aid Guidelines, describes two sales procedures that allow EFTA States to handle sales of land and buildings in a way that automatically precludes the existence of state aid. The two procedures are described, respectively, in Chapter 18B.2.1 (unconditional bidding procedure) and Chapter 18B.2.2 (independent expert evaluation).

2.1. *Unconditional bidding procedure*

In Chapter 18B.2.1(1) of the Guidelines, it is stated that '*A sale of land and buildings following a sufficiently well-publicized, open and unconditional bidding procedure, comparable to an auction, accepting the best or only bid, is by definition at market value and consequently does not contain State aid. The fact that a different valuation of the land and buildings existed prior to the bidding procedure, e.g. for accounting purposes or to provide a proposed initial minimum bid, is irrelevant*'.

'*An offer is "sufficiently well-publicized" when it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate publications and through real-estate agents addressing a broad range of potential buyers, so that it can come to the notice of all potential buyers. The intended sale of land and buildings, which in view of their high value or other features may attract investors operating on a Europe-wide or international scale, should be announced in publications which have a regular international circulation. Such offers should also be made known through agents addressing clients on a Europe-wide or international scale.*'

The sales process of the apartments did not comply with the above cited provisions on the unconditional bidding procedure. The offer was not *'repeatedly advertised for a reasonably long period (two months or more)'*. Furthermore, it can not be excluded that a sale of the size as in the case at hand could attract investors operating on a European-wide or international scale. No announcements were made in publications with a regular international circulation and no offer was made known through agents addressing clients on a European-wide or international scale.

The Municipality of Oslo has itself stated (letter of 14 may 2003) that: *'The Municipality will not argue that the procedure followed when the apartments were sold were in full compliance with the requirements set out in the Guidelines. The sale of the apartments was not made public in the way prescribed in clause 18B.2.1(a) of the Guidelines'*, and in an earlier correspondence (see point I.1 and footnote 10 above; see also similar statements of the Municipality under point 2.1 above), that the time constraint under which the sales procedure was conducted might have resulted in a smaller number of bidders than desirable and that the bidders submitted lower bids than they might have done with more time at their disposal.

On the basis of these various factors, the Authority concludes that the sales process was not conducted according to the principles laid down in Chapter 18B.2.1 of the State Aid Guidelines.

2.2. *Sale without an unconditional bidding procedure (independent expert evaluation)*

Concerning sale without an unconditional bidding procedure, Chapter 18B.2.2, of the State Aid Guidelines provides that *'an independent evaluation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The market price thus established is the minimum purchase price that can be agreed upon without granting state aid'*,

and furthermore:

' *"Market" value means the price at which land and buildings could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiations of the sale.*'

Finally, Chapter 18B.2.2. provides that: *'If, after a reasonable effort to sell the land and buildings at the market value, it is clear that the value set by the valuer cannot be obtained, a divergence of up to 5 % from that value can be deemed to be in line with market conditions'*.

It seems that the Municipality of Oslo claims that the sale was conducted in compliance with the above cited provisions.

The Authority disagrees with this view, for the following reasons: First, none of the expert evaluations, which were carried out prior to the final sale (i.e. the Catella and the OPAK reports), were based on generally accepted market indicators and valuation standards or were made in sufficient time prior to the sales negotiations (on these points see below under point 3.1). Second, none of the established market values in the Catella and OPAK reports were taken as the minimum purchase price for the final sale. Third, the Norwegian authorities have not substantiated the claim that they had undertaken reasonable efforts to sell the apartments at the values established in these reports, which would have justified a reduction in the sales price of 5 %.

Hence, the sale was not carried out in accordance with the provisions of Chapter 18B.2.2. of the State Aid Guidelines.

2.3. *Procedure when aid cannot automatically be excluded*

The conclusion is thus that neither the unconditional bidding procedure nor the procedure based on an independent expert evaluation were complied with. Therefore, the existence of state aid cannot be excluded. However, one cannot draw the opposite conclusion that state aid is necessarily involved if the prescribed procedures were not followed. It could still be that the sales price would be considered to reflect a true market value.

The Guidelines provide that when the prescribed procedures are not followed, the state concerned should notify the sale to the Authority to allow it to establish whether state aid exists. The Norwegian authorities have notified the sale. It is up to the Authority to conclude whether the sale of the 1 744 hospital apartments in Oslo contained any state aid. In other words, the Authority has to assess whether the sales price of NOK 715 Million can be considered to reflect the market value of the properties or not.

3. **Article 61(1) of the EEA Agreement**

For a measure to be state aid in the meaning of the EEA Agreement it has to fulfil the conditions of Article 61(1) of the Agreement which 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*.'

This implies that the following conditions have to be fulfilled cumulatively:

1. the aid is granted by '*EC Member States, EFTA States or through State resources in any form whatsoever*';

2. the aid '*distorts or threatens to distort competition*';

3. the aid '*favours certain undertakings or the production of certain goods*' (i.e. the measure confers an advantage on a specific recipient); and

4. the aid '*affects trade between the Contracting Parties*'.

Condition 1 above is directed at all aid financed from public resources, including aid granted by regional or local bodies. The notion of state resources is very broad and includes *i.a.* financial assistance granted by regional and local authorities ([19]). It is thus clear that any aid from the Municipality of Oslo would fall within the notion of '*State resources*'. A sale by the Municipality of publicly owned land and buildings below market value, presuming that the other three conditions of Article 61(1) are also fulfilled, implies that state aid would be granted to the buyer.

In the case at hand, any aid granted to Fredensborg would favour that undertaking and would thereby be specific. Furthermore, in order to be classified as state aid, the sale of the apartments must have conferred an advantage on Fredensborg. The sale would entail an advantage and thereby imply state aid if the apartments were sold under market value. Only to the extent the sale to Fredensborg was carried out below market value, would it also be necessary to establish that competition was distorted and that trade between Contracting parties was affected.

([19]) See for example ECJ Case 78/76, Steinike und Weilig v Germany [1977] ECR 595 or ECJ Case 248/84, Germany v Commission [1987] ECR 4013, para. 17.

3.1. *Did the final purchase price reflect market value?*

Several value assessments exist, which arrive at different results, concerning the market value of the apartments. The lowest indicated price is NOK 670 Million and the highest is NOK 1 143 Million. In light of these diverging results, the Authority considers it necessary to assess these evaluations in some detail, in order to establish, which one of these evaluations best reflects the market value of the apartments.

Catella

The first appraisal by Catella delivered on 30 March 2001, established a value of NOK 1 143 Million. According to the Municipality, this appraisal included real estate which was not covered by the sale. This aspect inflated the final value. As far as the Catella evaluation is concerned, the Authority also notes that inspection of the properties appears to have been rather superficial in relation to an earlier evaluation which, amongst others, may have lead to an underestimation of costs for renovation. Furthermore, contractual obligations that limit the possibilities for rent increases have not been sufficiently taken into consideration with the result that revenues are under-estimated. Catella itself stated that the valuation was not in accordance with established valuation standards. According to the sales agent, Akershus Eiendom, as well as the Municipality of Oslo, the estimated value could not be considered to reflect the market value. The Authority concurs with this. Furthermore, the impact of the 'as-is' clause was not assessed in the Catella appraisal. In light of these shortcomings, the Authority concludes that the Catella appraisal cannot be used as a sufficiently sound basis to establish the market value.

OPAK

The second appraisal carried out by OPAK and delivered on 26 April 2001, estimated the value at NOK 795 Million. It is important to note that although OPAK inspected the majority of the buildings externally, not all buildings were inspected. Furthermore, OPAK only inspected 10 out of 1 744 apartments. With respect to OPAK's evaluation, it has already been pointed out above that an inadequate inspection of the properties, not all the buildings and only 10 out of 1 744 apartments were inspected, cannot be considered to represent a proper basis for a value assessment. This is insufficient to estimate the correct figures for refurbishment and maintenance. Moreover, certain contractual limitations on obligations have not been taken sufficiently into account. While some of these elements may offset each other, the Authority cannot conclude that OPAK's evaluation is based on sufficiently accurate assumptions. Finally, the revised OPAK appraisal was concluded at the time when the contract was already signed.

FIGA/Nortakst

With respect to the FIGA/Nortakst assessment, it appears that inspection of properties has been adequate, although it is not apparent when reading the report. The estimation of the gain by a later sectioning of the apartments appears to be largely overestimated for several reasons. Sales prices are based on so-called technical values (costs of new buildings with deductions for age and usage) and not on established market rent. It is unreasonable to assume that prices on second hand apartments will be as high as those based on calculations of technical value. Furthermore, technical values are inflated in the sense that they are assumed to increase faster than reasonable assumptions for inflation. No reduction has been made with respect to the 'as is' clause in the contract. In addition, certain current rents are overestimated according to what current lease contracts provide for. Refurbishing costs appear to be substantially under-estimated and it seems also unrealistic to expect that all apartments can be sold in a single year. On this basis, the Authority questions to what extent the FIGA/Nortakst appraisal reflects the market value.

BER

In the Authority's view, BER has, like some of the other assessors, not taken sufficiently into account that it will take time to adjust rents up to market rents and it has overestimated the actual rent for 2001. This factor may, however, be partially offset by a relatively high estimate for owners' operating costs. BER has not undertaken any inspections of the properties. Therefore, this report also casts doubts as to whether the concluded market value is sufficiently reliable.

Agdestein

Agdestein did not carry out any inspections of the properties but studied the other valuations carried out by Catella (where he was engaged in the value appraisal), OPAK and FIGA/Nortakst. In his comments to these reports, he has pointed to various weaknesses, like direct mistakes but also to information which was not available at the time of the other valuations.

Holm

Holm estimates the market value of the apartments to be approximately NOK 753 Million. Holm has inspected all properties both externally and internally. Some 70 flats throughout the portfolio were inspected together with staff from the hospitals and information was obtained from operational staff. As minimum maintenance had been carried out in the period from 2001 until the inspection took place in early January 2005, Holm deems the information gathered to be representative for the situation in 2001. Detailed cost estimations have been undertaken in relation to upgrading (windows, balconies, bathrooms, etc.). Assumptions on rent developments and economic potential for sectioning and sale of part of the portfolio in the future appear reasonable amongst others in relation to contractual factors related to leases and future developments of the housing market. The method for calculating present value of future income and expenditure flows are based on well established principles and on use of a discount factor close to what has been used in the other value appraisals. The Authority sees no reason to question the methodology applied by Holm nor the assumptions used to establish the market value, keeping in mind that there are always uncertainties attached to such assumptions.

3.2. *Can it be established that the final sales price was under market value?*

In light of the above, it cannot be concluded that one single estimate by definition represents the market value a buyer would be ready to accept. An acceptable market value, after testing the market, may rather be found within a reasonable margin. In the Authority's view, there is no evident answer to how wide such a margin should be. That would possibly be different from case to case. It needs to be borne in mind that the transaction at hand implied certain particularities with respect to the size of the sales object, contractual obligations, future sectioning and sale of apartments.

As shown above, value assessments as in the case at hand are based on a number of uncertain parameters. This is illustrated, amongst others, by a sensitivity analysis to which Holm referred to. This sensitivity analysis demonstrates how different assumptions can substantially influence the price.

The sensitivity analysis shows that if the estimated price per m^2 of flats to be sold in ten years time after acquisition was NOK 24 000 and not NOK 26 000 as assumed for the purpose of calculating the value, this 'adjustment' alone would result in a portfolio worth of 720 Millions instead of 753 Millions. A change of 50 basis points in the required yield, would be of the same magnitude. A further down rating of for example 2 % of the rent revenues, would result in a worth under that of the achieved sales price.

In light of these uncertainties, it is not possible to pinpoint with a sufficient degree of reliance an aid element in the transaction. That the final sales price could be within a reasonable margin is further demonstrated by the bidding procedure that was organised by the Municipality of Oslo and conducted by Akershus. Six companies were contacted and another nine companies contacted Akershus on their own initiatives. Six offers were submitted. Among the bidders were professional investors and real estate companies. The two final offers were made at NOK 690 Million and NOK 735 Million. Although the bidding procedure was not in compliance with the State Aid Guidelines (see above), it still provides certain guidance as to what the Norwegian market would be willing to offer for such a real estate object. This 'market test' and its outcome demonstrate to a certain degree the reasonable margin in which the market price can be placed.

Hence, the Authority considers that the sales price of NOK 715 million for the sales object at hand is within a reasonable range in relation to Holm's assessed value of NOK 753 Million.

4. **Conclusion**

The Authority cannot establish that the sale of 1 744 hospital apartments from the Municipality of Oslo to Fredensborg involved state aid within the meaning of Article 61(1) of the EEA Agreement.

The Municipality of Oslo has argued that even if the price obtained was found to be below market value, the sale would not constitute aid within the meaning of Article 61(1) of the EEA Agreement as the market in which Fredensborg operates does not contain elements of cross-border trade. Given the Authority's conclusion that it cannot be established that market value was not obtained in the sale at hand, the Authority sees no reason to discuss effects on trade and competition,

HAS ADOPTED THIS DECISION:

1. The conditions of the proposed sale of 1 744 rental apartments from the Municipality of Oslo to Fredensborg Boligutleie ANS do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2. The formal investigation is hereby closed.

3. This Decision is addressed to Norway.

4. This Decision is authentic in the English language.

Done at Brussels, 11 March 2005.

For the EFTA Surveillance Authority

Hannes HAFSTEIN
President

Einar M. BULL
College Member

EFTA SURVEILLANCE AUTHORITY DECISION

No 303/05/COL

of 30 November 2005

amending for the fifty-first time the Procedural and Substantive Rules in the Field of State Aid

THE EFTA SURVEILLANCE AUTHORITY [1],

HAVING REGARD TO the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [3], in particular to Article 24 and Article 5(2)(b) thereof and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid [4] adopted on 19 January 1994 by the Authority [5],

WHEREAS, on the 9 November 2005, the Commission of the European Communities [6] adopted a prolongation of the Community framework for State aid for research and development [7] until 31 December 2006,

WHEREAS this prolongation is also of relevance for the European Economic Area,

WHEREAS the rules corresponding to the Community framework for State aid for research and development are taken into Chapter 14 of the State Aid Guidelines,

WHEREAS, Chapter 14 of the State Aid Guidelines expires on 31 December 2005,

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

WHEREAS according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

RECALLING that the Authority has consulted the EFTA States in letters to Iceland, Liechtenstein and Norway dated 9 November 2005 on the subject,

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[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 the 'State Aid Guidelines'.
[5] Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement No 32, 3.9.1994, as last amended by Decision of 30.11.2005.
[6] Hereinafter referred to as the 'EC Commission'.
[7] Community framework for aid for research and development, published in the OJ C 45, 17.2.1996, p. 5.

HAS ADOPTED THIS DECISION:

1. The validity of Chapter 14 of the State Aid Guidelines, Aid for Research and Development, is prolonged until 31 December 2006. Paragraph (2) of Section 14.9 of the State Aid Guidelines, shall read as follows:

   'These guidelines will apply until 31 December 2006'.

   Footnote 1 to Chapter 14 of the State Aid Guidelines shall read as follows:

   'This chapter has been amended by College decisions of 26 July 2002 and 30 November 2005. The Chapter corresponds to the Community framework for State aid for research and development (OJ C 45, 17.2.1996, p. 5) as amended by the Commission communication of 13 February 1998 (OJ C 48, 13.2.1998, p. 2), 8 May 2002 (OJ C 111, 8.5.2002, p. 3) and 9 November 2005.'

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision.

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

4. The Decision shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.

Done at Brussels, 30 November 2005.

For the EFTA Surveillance Authority

Einar M. BULL	Kurt JÄGER
President	*College Member*

EFTA SURVEILLANCE AUTHORITY DECISION

No 313/05/COL

of 7 December 2005

amending for the fifty-second time the Procedural and Substantive Rules in the field of State Aid

THE EFTA SURVEILLANCE AUTHORITY [1],

HAVING REGARD TO the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [3], in particular to Article 24 and Article 5(2)(b) thereof and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning state aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid [4] adopted on 19 January 1994 by the Authority [5],

WHEREAS the rules corresponding to the Community framework for state aid to short term export credit insurance [6] are taken into Chapter 17A of the State Aid Guidelines [7],

WHEREAS Chapter 17A of the State Aid Guidelines expires on 31 December 2005,

WHEREAS the European Commission is in the process of adopting before the end of 2005 amendments to the Community framework for state aid to short term export credit insurance,

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the European Commission,

WHEREAS due to time constrains the Authority will not be in the position to adopt by the end of 2005 similar amendments to its Chapter 17A of the State Aid Guidelines, which would correspond to those in the Community,

WHEREAS under such circumstances, in order to avoid a 'legal vacuum' due to the expiry of Chapter 17A of the State Aid Guidelines, the Authority finds it desirable to extent the validity of Chapter 17A until 30 June 2006 or until the date the Authority adopts any changes or new guidelines on short term export-credit insurance, whichever comes first,

HAVING consulted the European Commission,

RECALLING that the Authority has consulted the EFTA States in letters to Iceland, Liechtenstein and Norway dated 11 November 2005 on the subject,

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[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 the 'State Aid Guidelines'.
[5] Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date. An up-dated version of the State Aid Guidelines is available on the Authority's website: www.eftasurv.int
[6] Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 281, 17.9.1997, p. 4), amended by the Commission in 2001 (OJ C 217, 2.8.2001, p. 2) and in 2004 (OJ C 307, 11.12.2004, p. 12).
[7] Chapter 17A was re-enacted by the Authority's Decision No 144/05/COL (OJ L 294, 10.11.2005, p. 9).

HAS ADOPTED THIS DECISION:

1. The first sentence of paragraph (14) under Section 17A.4 of the State Aid Guidelines, short term export credit insurance, is hereby replaced by a new sentence, which reads as follows:

   'These rules will apply from 1 June 1998 until 30 June 2006 or until the date the Authority adopts any changes or new guidelines on short term export-credit insurance, whichever comes first'.

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision.

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

4. The Decision shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.

Done at Brussels, 7 December 2005.

For the EFTA Surveillance Authority

Einar M. BULL
The President

Kurt JÄGER
College Member

EFTA SURVEILLANCE AUTHORITY DECISION

No 69/06/COL

of 22 March 2006

amending for the fifty-fifth time the Procedural and Substantive rules in the field of State Aid

THE EFTA SURVEILLANCE AUTHORITY [1],

HAVING REGARD TO the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [3], in particular to Articles 24 and 5(2)(b) thereof and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid [4] adopted on 19 January 1994 by the Authority [5],

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the European Commission,

WHEREAS the former Chapter 34 of the State Aid Guidelines, which dealt with 'Reference and discount rates and interest rates to be applied for the recovery of unlawful aid' [6] was in whole deleted by College Decision No 195/04/COL on the 14 July 2004 [7],

WHEREAS the legal basis for the calculation of interest rates, in the case of recovery, is now to be found in College Decision No 195/04/COL,

WHEREAS reference rates are also dealt with outside recovery situations in the State aid Guidelines,

WHEREAS for the sake of clarity on which rules apply, the Authority finds it necessary to set out in one single document the various calculation methods and the legal bases for the rate of interest used for recovery of unlawful aid and for the reference rate and discount rate to be used in other than recovery situations,

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[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 the 'State Aid Guidelines'.
[5] Initially published in OJ L 231, 3.9.1994, p. 1, and in the EEA Supplement thereto No 32 on the same date. An updated version of the State Aid Guidelines is available on the Authority's website: www.eftasurv.int
[6] Implementing partially Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3) and Commission Communication on interest rates in the case of recovery of unlawful State aid (OJ C 110, 8.5.2003, p. 21).
[7] College Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (not yet published). Amended by Decision No 319/05/COL of 14 December 2005 (not yet published). Decision No 195/04/COL corresponds to Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of [ex] Article 93 of the EC Treaty [now Article 88] (OJ L 140, 30.4.2004, p. 1).

HAVING consulted the European Commission,

RECALLING that the Authority has consulted the EFTA States in letters to Iceland, Liechtenstein and Norway dated 15 February 2006 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

1. The Authority's State Aid Guidelines shall be amended by introducing a new Chapter 34 on the method for setting the reference and discount rates outside recovery cases. The new Chapter 34 is enclosed and forms an integral part of this Decision.

2. The new Chapter 34 will apply as of its adoption by the Authority.

Article 2

The EFTA States shall be informed by means of a letter, including a copy of this Decision and the enclosed new Chapter 34 of the Authority's State Aid Guidelines.

Article 3

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

Article 4

The Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 22 March 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND
President

Kurt JÄGER
College Member

ANNEX

34. **CHAPTER ON SETTING THE REFERENCE AND DISCOUNT RATES** [1]

34.1. INTRODUCTION

(1) The EFTA Surveillance Authority sets out in this Chapter the various calculation methods and the legal basis for the rate of interest used for recovery of unlawful aid in addition to the reference and discount rates to be used in situations other than for recovery, as for example for calculating the grant equivalent of investment aid [2].

34.2. INTEREST RATE TO BE USED IN THE CASE OF RECOVERY

(2) In the situation where unlawful aid has to be recovered by an EFTA State, the legal basis and the calculation method for the interest rate to be used is to be found in Article 9 of EFTA Surveillance Authority Decision No 195/04/COL [3].

(3) However, as stated in Article 13 of Decision No 195/04/COL [4], as regards the execution by EFTA States of recovery orders notified before 15 July 2004 (the entry into force day of Decision No 195/04/COL), the rules of the previous Chapter 34 of the EFTA Surveillance Authority's State Aid Guidelines on the interest rates to be applied when aid granted unlawfully is being recovered, remain in effect.

(4) According to Article 10 of Decision No 195/04/COL [5], the current and relevant historical State aid recovery interest rates are to be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union* and for information on the internet; www.eftasurv.int

34.3. REFERENCE AND DISCOUNT RATES TO BE USED IN SITUATIONS OTHER THAN FOR RECOVERY

(5) For the purposes of the monitoring of State aid as required by the EEA Agreement, the EFTA Surveillance Authority uses various parameters, including the reference and discount rates.

(6) Those rates are used to measure the grant equivalent of aid that is disbursed in several instalments and to calculate the aid element resulting from interest subsidy schemes for loans. They are also used in implementing the *de minimis* rule [6].

(7) The reference and discount rates are supposed to reflect the average level of interest rates charged, in the various EFTA States which are Contracting Parties to the EEA Agreement, on medium and long-term loans (five to ten years) backed by normal security.

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[1] This Chapter includes the Commission Notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3), as adapted by Commission Notice on technical adaptions to the method for setting the reference and discount rates (OJ C 241, 26.8.1999, p. 9) and Commission Notice on a technical adjustment to the reference and discount rates for Greece (OJ C 66, 1.3.2001, p. 7), the latter two not being EEA relevant.

[2] The previous Chapter 34 on reference and discount rates and interest rates to be applied for the recovery of unlawful aid was deleted by EFTA Surveillance Authority Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (not yet published). Amended by Decision No 319/05/COL of 14 December 2005 (not yet published). Decision No 195/04/COL largely corresponds to Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of [ex] Article 93 of the EC Treaty [now Article 88] (OJ L 140, 30.4.2004, p. 1). The previous Chapter 34 incorporated in its part 1 (partially) the Commission Notice on the method for setting the reference and discount rates (see footnote 1) and in its part 2 the Commission Communication on interest rates in the case of recovery of unlawful State aid (OJ C 110, 8.5.2003, p. 21). Decision No 195/04/COL contains, *inter alia*, provisions on interest rates for the recovery of unlawful aid. However, it does not concern the method for setting the reference and discount rates for purposes other than recovery. In the Community, the reference and discount rates for purposes other than the recovery of unlawful state aid is still governed by the Commission notice on the method for setting the reference and discount rates (see footnote 1). Commission Communication of 30 April 2004 concerning the obsolescence of certain State aid policy documents (OJ C 115, 30.4.2004, p. 1) does not list the Commission Notice on the method for setting the reference and discount rates.

[3] See footnote 2.

[4] In conjunction with footnote 9 of the EFTA Surveillance Authority Decision No 195/04/COL (see footnote 2).

[5] See footnote 2.

[6] Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), incorporated into Section 1e in Annex XV to the EEA Agreement by EEA Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3.10.2002, p. 42).

(8) As from 15 July 2004 the reference and discount rates are fixed as follows [7]:

— the indicative rate is defined as the five-year interbank swap rate, in the relevant currency, plus a premium of 0,75 points (75 basis points);

— the reference and discount rates are deemed to be equal to the average of indicative rates recorded in the preceding September, October and November;

— the reference and discount rates are adjusted again in the course of the year if they differ by more than 15 % from the average of the indicative rates recorded over the last known three months.

(9) It should also be noted that:

— the reference and discount rates thus determined are floor rates which may be increased in situations involving a particular risk (for example, an undertaking in difficulty, or where the security normally required by banks is not provided). In such cases, the premium may amount to 400 basis points or more if no private bank would have agreed to grant the relevant loan;

— the EFTA Surveillance Authority reserves the right, if necessary for examining cases, to use a shorter base rate (for example Libor one-year rate) or a longer base rate (for example, the rate on ten-year bonds) than the five-year interbank swap rate;

— in cases where the five-year interbank swap rate is not available, the base rate will be set at the level of the rate of yield on five-year (or ten-year) State bonds, plus a premium of 25 basis points;

— in the absence of reliable or equivalent data or in exceptional circumstances the Authority may, in close co-operation with the EFTA State(s) concerned, fix a reference/discount rate, for one or more EFTA States, on the basis of a different method and on the basis of the information available to it.

(10) Reference and discount rates will be made known by the EFTA Surveillance Authority on the Internet at the following address; www.eftasurv.int

34.4. ADOPTION

(11) The Chapter 34 will apply from the date of its adoption by the EFTA Surveillance Authority.

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[7] As this chapter only applies from 15 July 2004, the previous Chapter 34.1 remains in effect as regards calculation of reference/discount rates before that date.

EFTA SURVEILLANCE AUTHORITY DECISION

No 95/06/COL

of 19 April 2006

amending, for the fifty-eighth time the Procedural and Substantive Rules in the field of State Aid

THE EFTA SURVEILLANCE AUTHORITY,

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

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [2], in particular to Article 24 and Article 5(2)(b) thereof and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid [3] adopted on 19 January 1994 by the EFTA Surveillance Authority [4],

WHEREAS the European Commission adopted amendments to its Communication on short-term export credit insurance [5],

WHEREAS these amendments to the Communication are also of relevance for the European Economic Area,

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

WHEREAS according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States by letter dated 7 February 2006 on the subject,

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[1] Hereinafter referred to as the 'EEA Agreement'.
[2] Hereinafter referred to as the 'Surveillance and Court Agreement'.
[3] Hereinafter referred to as the 'State Aid Guidelines'.
[4] Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date, last amendment adopted by Decision No 94/06/COL of 19 April 2006 (not yet published).
[5] OJ C 325, 22.12.2005, p. 22.

HAS ADOPTED THIS DECISION:

Article 1

Chapter 17A of the State Aid Guidelines, '*Short-term export credit insurance*' shall be amended as follows:

1a) Footnote 1 shall be replaced by the following:

'This chapter corresponds to the Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term exportcredit insurance (OJ C 281, 17.9.1997, p. 4), amended by the Commission in 2001 (OJ C 217, 2.8.2001, p. 2), last amended in 2005 (OJ C 325, 22.12.2005, p. 22).'

1b) A new paragraph shall be inserted as 17A.2(8) with the following text:

'Notwithstanding the definition of "marketable" risks contained in the first sentence of the previous paragraph, if and to the extent that no private insurance market exists in an EFTA State, commercial and political risks incurred on public and non-public debtors established in the countries listed in the Annex are considered to be temporarily non-marketable if incurred by small and medium-sized enterprises falling within the relevant EEA definition (*) and having a total annual export turnover not exceeding EUR 2 million (**). In such circumstances, a public or publicly supported exportcredit insurer shall, as far as possible, align its premium rates for such "non-marketable" risks with the rates charged elsewhere by exportcredit insurers for the type of risk in question, namely taking into account the limited spread of foreign buyers, the characteristics of the insured enterprises, and the associated costs. EFTA States intending to submit a notification to the Authority on the application of this clause shall be subject to the same procedure and the same conditions as set out in Section 17A.4 (8-13) below for the application of the escape clause. The Authority reserves the right to discontinue this clause or to revise the conditions of its application in consultation with EFTA States if it finds that the capacity of the private insurance market in this segment changes during the period of validity of this Chapter.

(*) *See Chapter 10 of the State Aid Guidelines concerning the definition of small and medium-sized enterprises (not yet published). Chapter 10 of the State Aid Guidelines corresponds to Commission Recommendation 2003/361/EC of 6 May 2003 (OJ L 124, 20.5.2003, p. 36).*

(**) *The calculation of the relevant annual export turnover will be effected according to Section 10.2.4 in Chapter 10 of the State Aid Guidelines. The provisions laid down in paragraph 32 in Chapter 10 of the State Aid Guidelines will apply mutatis mutandis with respect to the annual export turnover of the relevant enterprise.'*

1c) The current paragraphs 17A.2(8)-(9) shall be renumbered to become 17A.2(9)-(10).

1d) The old paragraph 17A.2(10) shall be replaced by a new paragraph 17A.2(11) with the following text:

'The capacity of the private reinsurance market varies. This means that the definition of marketable risks is not immutable and may change over time. The definition may, therefore, be reviewed, notably at the expiry of this Chapter. The Authority will consult EFTA States' representatives with relevant experience in this field and other interested parties on such reviews. In so far as necessary, changes to the definition will have to take account of the scope of EEA legislation governing exportcredit insurance, in order to avoid any conflict or legal uncertainty.'

1e) Paragraph 17A.4(14) shall be replaced by the following:

'These Guidelines will apply until 31 December 2010.'

Article 2

The EFTA States shall be informed by means of a letter, including a copy of this Decision.

Article 3

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

Article 4

The Decision shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.

Article 5

These amendments will apply from the date of adoption of this decision.

Done at Brussels, 19 April 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND
President

Kurt JÄGER
College Member