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Contents

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[1] Text with EEA relevance

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.

EN

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 249/2012

of 21 March 2012

amending Regulation (EU) No 19/2011 as regards type-approval requirements for the manufacturer's statutory plate of motor vehicles and their trailers

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor [1], and in particular Article 14(1)(a) thereof,

Whereas:

(1) Regulation (EC) No 661/2009 is a separate Regulation for the purposes of type-approval provided for in Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) [2].

(2) Commission Regulation (EU) No 19/2011 of 11 January 2011 concerning type-approval requirements for the manufacturer's statutory plate and for the vehicle identification number of motor vehicles and their trailers and implementing Regulation (EC) No 661/2009 of the European Parliament and of the Council concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor [3] is one of the implementing measures with regard to the provisions of Article 5 of Regulation (EC) No 661/2009.

(3) Regulation (EU) No 19/2011 introduced the possibility for vehicle manufacturers to use self-adhesive labels for the making of the statutory plates. In order to ease the making of such labels by data processing, as well as their printing by electronic means, it is necessary to adapt the existing technical requirements to the specificities of these modern techniques.

(4) Regulation (EU) No 19/2011 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles,

HAS ADOPTED THIS REGULATION:

Article 1

Part A of Annex I to Regulation (EU) No 19/2011 is amended as follows:

(1) point 2.2 is replaced by the following:

'2.2. The height of the characters of the vehicle identification number referred to in point 2.1(c) shall not be less than 4 mm.';

(2) the following point 2.3 is inserted after point 2.2:

'2.3. The height of the characters of the information referred to in point 2.1, other than the vehicle identification number, shall not be less than 2 mm.'.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

[1] OJ L 200, 31.7.2009, p. 1.
[2] OJ L 263, 9.10.2007, p. 1.
[3] OJ L 8, 12.1.2011, p. 1.

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

Done at Brussels, 21 March 2012.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 250/2012

of 21 March 2012

amending Implementing Regulation (EU) No 961/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [1], and in particular Article 53(1)(b)(ii) thereof,

Whereas:

(1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for food and feed imported from a third country in order to protect public health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.

(2) Following the accident at the Fukushima nuclear power station on 11 March 2011, the Commission was informed that radionuclide levels in certain food products originating in Japan exceeded the action levels in food applicable in Japan. Such contamination may constitute a threat to public and animal health in the Union and therefore Commission Implementing Regulation (EU) No 961/2011 [2] was adopted.

(3) Implementing Regulation (EU) No 961/2011 provides that consignments of products covered by that Regulation are to be accompanied by a declaration signed by an authorised representative of the competent authority of Japan and attesting, inter alia, where the consignment originates in and where it is consigned from. The content of that declaration further differs depending on whether the products originate in or are consigned from a prefecture close to the Fukushima nuclear power station or not.

(4) For consignments originating in the Fukushima prefecture and in the 10 prefectures close to it, the Japanese authorities are required to certify that they do not contain levels of radionuclides caesium-134 and caesium-137 above the maximum levels set out in Annex II to Implementing Regulation (EU) No 961/2011. In addition, the competent authorities of the border inspection post or designated point of entry into the Union are to carry out identity and physical checks, including laboratory analysis on the presence of caesium-134 and caesium-137, on at least 10 % of such consignments.

(5) For consignments consigned from the Fukushima prefecture and from the 10 prefectures close to it, the Japanese authorities are required to certify that they had not been exposed to radioactivity during transit. In such cases, as well as in cases where the consignments originate and are consigned from other prefectures in Japan than Fukushima and its surrounding 10 prefectures, the competent authorities of the border inspection post or designated point of entry into the Union are to carry out identity and physical checks, including laboratory analysis on the presence of caesium-134 and caesium-137, on at least 20 % of such consignments.

(6) The results of the checks, including laboratory analysis, carried out pursuant to Implementing Regulation (EU) No 961/2011 by the competent authorities of the border inspection post or designated point of entry into the Union indicate that the control measures on feed and food intended for export to the Union are correctly and efficiently applied by the Japanese authorities. It is therefore appropriate to reduce the frequency of checks carried out on such consignments by the competent authorities of the border inspection post or designated point of entry into the Union.

(7) In addition, Implementing Regulation (EU) No 961/2011 is to apply until 31 March 2012. The Japanese competent authorities continue to monitor the presence of radioactivity in feed and food. The results of that monitoring show that certain feed and food in prefectures close to the Fukushima nuclear power station continue to contain levels of radioactivity above the action levels. It is therefore appropriate to extend the date of application of the measures laid down in Implementing Regulation (EU) No 961/2011.

(8) Implementing Regulation (EU) No 961/2011 should therefore be amended accordingly.

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

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 252, 28.9.2011, p. 10.

HAS ADOPTED THIS REGULATION:

Article 1

Amending provisions

Implementing Regulation (EU) No 961/2011 is amended as follows:

(1) in Article 5(1), point (b) is replaced by the following:

'(b) identity and physical checks, including laboratory analysis on the presence of caesium-134 and caesium-137, on at least:

— 5 % of the consignments of products referred to in Article 2(3)(d), and

— 10 % of the consignments of products referred to in Article 2(3)(b) and (c).';

(2) in Article 10, the second paragraph, the date '31 March 2012' is replaced by '31 October 2012'.

Article 2

Entry into force

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

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

Done at Brussels, 21 March 2012.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 251/2012

of 21 March 2012

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 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 Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 March 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

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	IL	188,6
	JO	64,0
	MA	47,9
	TN	68,9
	TR	96,0
	ZZ	93,1
0707 00 05	JO	107,2
	TR	165,2
	ZZ	136,2
0709 91 00	EG	76,0
	ZZ	76,0
0709 93 10	JO	225,1
	MA	55,1
	TR	127,5
	ZZ	135,9
0805 10 20	EG	52,6
	IL	79,2
	MA	52,2
	TN	80,1
	TR	70,0
	ZZ	66,8
0805 50 10	EG	43,8
	TR	52,6
	ZZ	48,2
0808 10 80	AR	89,5
	BR	83,2
	CA	125,0
	CL	84,7
	CN	108,7
	MK	31,8
	US	160,0
	UY	74,9
	ZA	119,9
	ZZ	97,5
0808 30 90	AR	85,1
	CL	123,8
	CN	63,0
	ZA	91,4
	ZZ	90,8

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 534/09/COL

of 16 December 2009

amending, for the 78th time, the procedural and substantive rules in the field of State aid by introducing a new chapter on best practices for the conduct of State aid procedures

THE EFTA SURVEILLANCE AUTHORITY [1],

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

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,

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 adopted on 19 January 1994 by the Authority [4],

WHEREAS, on 16 June 2009, the European Commission adopted a Code of Best Practice for the conduct of State aid procedures [5],

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

WHEREAS 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, after consultation with the European Commission, is to adopt acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission, and the EFTA States by a way of letters on the subject dated 20 November 2009 (Events No 537430, 537439 and 537441),

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new chapter on best practices for the conduct of State aid procedures. The new chapter is contained in the Annex to this Decision.

[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] Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231, 3.9.1994 p. 1 and EEA Supplement No 32, 3.9.1994, p. 1, as amended. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/.

[5] OJ C 136, 16.6.2009, p. 13.

Article 2

Only the English version is authentic.

Done at Brussels, 16 December 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján A. STEFÁNSSON
College Member

ANNEX

GUIDELINES ON BEST PRACTICE FOR THE CONDUCT OF STATE AID CONTROL PROCEDURES [1]

1. Scope and purpose

(1) The EFTA Surveillance Authority (the Authority) issues these Guidelines on best practice for the conduct of State aid control procedures in order to make State aid procedures as productive and efficient as possible for all parties concerned.

(2) This Chapter of the Authority's Guidelines is built on the experience acquired in the application of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (Part II of Protocol 3) [2]. The principal aim of this Chapter is to provide guidance on the day-to-day conduct of State aid procedures, thereby fostering a spirit of better cooperation and mutual understanding between the Authority, the EFTA States and the legal and business community.

(3) A successful improvement of State aid procedures requires discipline on both sides and a mutual commitment from the Authority and the EFTA States. The Authority will endeavour to enhance its cooperation with the EFTA States and interested parties, and will furthermore work to improve the conduct of its investigations and its internal decision-making process, in order to ensure greater transparency, predictability and efficiency of State aid procedures.

(4) In line with modern State aid architecture, this Chapter is the final part of a simplification package comprising the Authority's Guidelines on a simplified procedure for treatment of certain types of State aid [3] and the Authority's Guidelines on the enforcement of State aid law by national courts [4] which contributes to more predictable and transparent procedures.

(5) The specific features of an individual case may however require an adaptation of, or deviation from, this Chapter [5].

(6) Moreover, to the extent that the EEA Agreement applies to these sectors, the specificities of the fishery and aquaculture sectors and of the activities in the primary production, marketing or processing of agricultural products may also justify a deviation from this Chapter of the Guidelines.

2. Relationship to EEA Law

(7) This Chapter is not intended to provide a full or comprehensive account of the relevant legislative, interpretative and administrative measures which govern State aid control. It should be read in conjunction with and as a supplement to the basic rules governing State aid procedures.

(8) This Chapter therefore does not create or alter any rights or obligations as set out in the EEA Agreement, Protocol 3 and Decision No 195/04/COL of 14 July 2004 [6] as amended, as interpreted by the case-law of the EFTA Court and the Courts of Justice of the European Union.

(9) This Chapter sets out day-to-day best practices to contribute to speedier, more transparent and more predictable State aid procedures at each step of the investigation of a notified or non-notified case or a complaint.

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[1] This Chapter corresponds to the Commission Code of Best Practice for the conduct of State aid control procedures (OJ C 136, 16.6.2009, p. 13).

[2] Part II of Protocol 3 mirrors Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

[3] OJ L 75, 15.3.2012, p. 26 and EEA Supplement No 14, 15.3.2012, p. 1, available at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/ These Guidelines corresponds to the Commission Notice on a simplified procedure for treatment of certain types of State Aid (OJ C 136, 16.6.2009, p. 3).

[4] Not yet published in the OJ or the EEA Supplement. These Guidelines correspond to the European Commissions Notice on the enforcement of State aid law by national courts (OJ C 85, 9.4.2009, p. 1).

[5] In the context of the 2008 banking crisis, the Authority has taken appropriate steps to ensure the swift adoption of decisions upon complete notification, and when necessary within less than 2 weeks. See the Authority's Guidelines on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (not yet published in the OJ or the EEA Supplement), which corresponds to the Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8). As regards the real economy, see the Authority's Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (not yet published in the OJ or the EEA Supplement), which corresponds to the Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7.4.2009, p. 1).

[6] Decision No 195/04/COL (OJ L 139, 25.5.2006, p. 37, EEA Supplement No. 26, 25.5.2006, p. 1) corresponds to Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ L 140, 30.4.2004, p. 1), which implements Regulation (EC) No 659/1999.

3. **Pre-notification contacts**

(10) The Authority's experience demonstrates the added value of pre-notification contacts, even in seemingly standard cases. Pre-notification contacts provide the Authority and the notifying EFTA State with the possibility to discuss the legal and economic aspects of a proposed project informally and in confidence prior to notification, and thereby enhance the quality and completeness of notifications. In this context, the EFTA State and the Authority can also jointly develop constructive proposals for amending problematic aspects of a planned measure. This phase thus paves the way for a more speedy treatment of notifications, once formally submitted to the Authority. Successful pre-notifications should effectively allow the Authority to adopt decisions pursuant to Article 4(2), (3) and (4) of Part II of Protocol 3 within 2 months from the date of notification [1].

(11) Pre-notification contacts are strongly recommended for cases where there are particular novelties or specific features which would justify informal prior discussions with the Authority but informal guidance will be provided whenever an EFTA State calls for it.

3.1. *Content*

(12) The pre-notification phase offers the possibility to discuss and provide guidance to the EFTA State concerned about the scope of the information to be submitted in the notification form to ensure it is complete as from the date of notification. A fruitful pre-notification phase will also allow discussions, in an open and constructive atmosphere, of any substantive issues raised by a planned measure. This is particularly important as regards projects which could not be accepted as such and should thus be withdrawn or significantly amended. It can also comprise an analysis of the availability of other legal bases or the identification of relevant precedents. In addition, a successful pre-notification phase will allow the Authority and the EFTA State to address key competition concerns, economic analysis and, where appropriate, external expertise required to demonstrate the compatibility of a planned project with the functioning with the EEA Agreement. The notifying EFTA State may thus also request the Authority, in pre-notification, to waive the obligation to provide certain information foreseen in the notification form which in the specific circumstances of the case is not necessary for its examination. Finally, the pre-notification phase is decisive to determine whether a case qualifies *prima facie* for treatment under the simplified procedure [2].

3.2. *Scope and timing*

(13) In order to allow for a constructive and efficient pre-notification phase, it is in the interest of the EFTA State concerned to provide the Authority with the information necessary for the assessment of a planned State aid project, on the basis of a draft notification form. In order to facilitate swift treatment of the case, contacts by e-mails or conference calls will in principle be favoured rather than meetings. Within 2 weeks from the receipt of the draft notification form, the Authority will normally organise a first pre-notification contact.

(14) As a general rule, pre-notification contacts should not last longer than 2 months and should be followed by a complete notification. Should pre-notification contacts not bring the desired results, the Authority may declare the pre-notification phase closed. However, since the timing and format of pre-notification contacts depend on the complexity of the individual case, pre-notification contacts may last several months. The Authority therefore recommends that, in cases which are particularly complex (for example, rescue aid, large research and development aid, large individual aid or particularly large or complex aid schemes), EFTA States launch pre-notification contacts as early as possible to allow for meaningful discussions.

(15) In the Authority's experience, involving the aid beneficiary in the pre-notification contacts is very useful, particularly for cases with major technical, financial and project-related implications. The Authority therefore recommends that beneficiaries of individual aid be involved in the pre-notification contacts.

(16) Except in particularly novel or complex cases, the Authority will endeavour to provide the EFTA State concerned with an informal preliminary assessment of the project at the end of the pre-notification phase. That non-binding assessment will not be an official position of the Authority, it will only represent an informal guidance on the completeness of the draft notification and the *prima facie* compatibility of the planned project with the functioning of the EEA Agreement. In particularly complex cases, the Authority may also provide written guidance, at the EFTA State's request, on the information still to be provided.

(17) Pre-notification contacts are held in strict confidence. The discussions take place on a voluntary basis and remain without prejudice to the handling and investigation of the case following formal notification.

[1] This time limit cannot be respected where the Authority has to issue several requests for information due to incomplete notifications.
[2] See Guidelines on a simplified procedure for treatment of certain types of State aid.

(18) In order to enhance the quality of notifications, the Authority will endeavour to meet requests for training sessions by EFTA States. The Authority will also maintain regular contacts with EFTA States to discuss further improvements of the State aid procedure, in particular as regards the scope and content of the applicable notification forms.

4. **Mutually agreed planning**

(19) In cases which are particularly novel, technically complex or otherwise sensitive, or which have to be examined as a matter of absolute urgency, the Authority will offer mutually agreed planning to the notifying EFTA State to increase the transparency and predictability of the likely duration of a State aid investigation.

4.1. *Content*

(20) Mutually agreed planning is a form of structured cooperation between the EFTA State and the Authority, based on a joint planning and understanding of the likely course of the investigation and its expected time frame.

(21) In this context, the Authority and the notifying EFTA State could in particular agree on:

— the priority treatment of the case concerned, in return for the EFTA State formally accepting the suspension of the examination ([1]) of other notified cases originating from the same EFTA State, should this be necessary for planning or resource purposes,

— the information to be provided by the EFTA State and/or the beneficiary concerned, including studies or external expertise, or unilateral information-gathering by the Authority, and

— the likely form and duration of the assessment of the case by the Authority, once notified.

(22) In return for the EFTA State's efforts in providing all the necessary information in a timely manner and as agreed in the context of mutually agreed planning, the Authority will endeavour to respect the mutually agreed time frame for the further investigation of the case, unless the information provided by the EFTA State or interested parties raises unexpected issues.

4.2. *Scope and timing*

(23) Mutually agreed planning will in principle be reserved for cases which are so novel, technically complex or otherwise sensitive that a clear preliminary assessment of the case by the Authority proves impossible at the end of the pre-notification phase. In such cases, mutually agreed planning will take place at the end of the pre-notification phase, and be followed by the formal notification.

(24) However, the Authority and the EFTA State concerned may also agree, at the latter's request, on mutually agreed planning for the further treatment of the case at the outset of the formal investigation procedure.

5. **The preliminary examination of notified measures**

5.1. *Requests for information*

(25) In order to streamline the course of the investigation, the Authority will endeavour to group requests for information during the preliminary examination phase. In principle, there will therefore only be one comprehensive information request, normally to be sent within 4-6 weeks after the date of notification. Unless otherwise agreed in mutually agreed planning, pre-notification should enable EFTA States to submit a complete notification thereby reducing the need for additional information. However, the Authority may subsequently raise questions most notably on points that have been raised by the EFTA States' answers, although this does not necessarily indicate that the Authority is experiencing serious difficulties in assessing the case.

(26) Should the EFTA State fail to provide the requested information within the prescribed period, Article 5(3) of Part II of Protocol 3 will, after one reminder, normally be applied, and the EFTA State will be informed that the notification is deemed to have been withdrawn. The formal investigation procedure will normally be initiated whenever the necessary conditions are met, and generally after two rounds of questions at most.

5.2. *Agreed suspension of the preliminary examination*

(27) In certain circumstances, the course of the preliminary examination may be suspended if an EFTA State so requests to amend its project and bring it in line with State aid rules, or otherwise by common agreement. Suspension may

([1]) See Article 4(5) of Part II of Protocol 3.

only be granted for a period agreed in advance. Should the EFTA State fail to submit a complete, *prima facie* compatible project at the end of the suspension period, the Authority will resume the procedure from the point at which it was halted. The EFTA State concerned will normally be informed that the notification is deemed to have been withdrawn, or the formal investigation procedure opened without delay in case of serious doubts.

5.3. *State of play contacts*

(28) At their request, notifying EFTA States will be informed of the state of play of an ongoing preliminary examination. EFTA States are invited to involve the beneficiary of an individual aid in these contacts.

6. **The formal investigation procedure**

(29) In the light of the general complexity of cases subject to formal investigation, the Authority is committed to improving the transparency, predictability and efficiency of this phase as a matter of utmost priority, to contribute to meaningful decision-making in line with the needs of modern business. The Authority will therefore streamline the conduct of formal investigations through efficient use of all the procedural means available to it under Part II of Protocol 3.

6.1. *Publication of the decision and meaningful summary*

(30) Where the EFTA State concerned does not request the removal of confidential information, the Authority will endeavour to publish its decision to open the formal investigation procedure, including the meaningful summaries, within 2 months from the date of adoption of that decision.

(31) Where there is disagreement concerning confidentiality issues, the Authority will apply the principles of its Guidelines on professional secrecy in State aid decisions [1] and use its best endeavours to proceed with publication of the decision within the shortest possible time frame following its adoption. The same will apply to the publication of all final decisions.

(32) To improve the transparency of the procedure, the EFTA State, the beneficiary and other stakeholders (in particular potential complainants) will be informed of all delays triggered by disagreements concerning confidentiality issues.

6.2. *Comments from interested parties*

(33) According to Article 6 of Part II of Protocol 3, interested parties must submit comments within a prescribed period which must normally not exceed 1 month following the publication of the decision to initiate the formal investigation procedure. That time limit will not normally be extended, and the Authority will thus usually not accept any belated submission of information from interested parties, including the beneficiary of the aid [2]. Extensions may be granted only in exceptional duly justified cases, such as the provision of particularly voluminous factual information or following contact between the Authority and the interested party concerned.

(34) In order to improve the factual basis of the investigation of particularly complex cases, the Authority may send a copy of the decision to initiate the formal investigation procedure to identified interested parties including trade or business associations, and invite them to comment on specific aspects of the case [3]. Interested parties' cooperation in this context is purely voluntary, but if an interested party chooses to provide comments, it is in its interest to submit those comments in a timely manner so that the Authority will be able to take them into account. Therefore, the Authority will invite interested parties to react within 1 month from the date on which the copy of the decision is sent to them. The Authority will not wait any further for those comments to be submitted. In order to ensure equal treatment between interested parties the Authority will send the same invitation to comment to the aid beneficiary. In order to respect the EFTA State's right of defence, it will forward to the EFTA State a non-confidential version of any comments received from interested parties and invite the EFTA State to reply within 1 month.

(35) In order to ensure transmission of all comments from interested parties to the EFTA State concerned in the most expedient manner, EFTA States will, as far as possible, be invited to accept transmission of those comments in their original language. If an EFTA State so requests, the Authority will provide a translation, which may have implications as regards the expediency of procedures.

(36) EFTA States will also be informed of the absence of any comments from interested parties.

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[1] Adopted by College Decision No 15/04/COL of 18 February 2004 (OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1). These guidelines correspond to the European Commission Communication of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

[2] Without prejudice to Article 10(1) of Part II of Protocol 3.

[3] According to settled case-law of the Community Courts, the Authority is entitled to send the decision to open the formal investigation to identified third parties; see for example, Case T-198/01 *Technische Glaswerke Ilmenau* v *Commission* (2004) ECR II-2717, paragraph 195; T-198/01R *Technische Glaswerke Ilmenau* v *Commission* (2002) ECR II-2153; Joined Cases C-74/00 P and C-75/00 P *Falck Spa and others* v *Commission* (2002) ECR I-7869, paragraph 83.

6.3. *EFTA States' comments*

(37) To ensure timely completion of the formal investigation procedure, the Authority will rigorously enforce all time limits applicable to this phase under Part II of Protocol 3. If an EFTA State fails to submit its comments on the Authority's decision to initiate the formal investigation procedure and on interested parties' comments within the one-month time limit set in Article 6(1) of Part II of Protocol 3, the Authority will immediately send a reminder granting the EFTA State concerned an additional period of 1 month and informing the EFTA State that no further extension will be granted, save in exceptional circumstances. In the absence of a meaningful reply by the EFTA State concerned, the Authority will take a decision on the basis of the information available to it, in accordance with Articles 7(7) and Article 13(1) of Part II of Protocol 3.

(38) In the case of unlawful aid, and in the absence of comments from the EFTA State on the decision to initiate the formal investigation procedure, the Authority will, pursuant to Article 10 of Part II of Protocol 3, issue an information injunction. Should the EFTA State fail to reply to that injunction within the time limit set therein, the Authority will take a decision on the basis of the information available to it.

6.4. *Request for additional information*

(39) It cannot be excluded that, in particularly complex cases, the information submitted by the EFTA State in response to the decision to initiate the formal investigation procedure may require the Authority to send a further request for information. A time limit of 1 month will be set for the EFTA State to reply.

(40) Should the EFTA State not reply within the time limit, the Authority will immediately send a reminder setting a final deadline of 15 working days and informing the EFTA State concerned that the Authority will thereafter take a decision on the basis of the information available to it, or issue an information injunction in the case of unlawful aid.

6.5. *Justified suspension of the formal investigation*

(41) Only in exceptional circumstances and by common agreement between the Authority and the EFTA State concerned may the formal investigation be suspended. Suspension could, for example, occur if the EFTA State formally requests a suspension in order to bring its project in line with State aid rules, or if there is pending litigation before the EFTA Court or the EU Courts regarding similar issues, the outcome of which is likely to have an impact on the assessment of the case.

(42) Suspension will normally only be granted once, and for a period agreed in advance between the Authority and the EFTA State concerned.

6.6. *Adoption of the final decision and justified extension of the formal investigation*

(43) In accordance with Article 7(6) of Part II of Protocol 3, the Authority will as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. That time limit may be extended by common agreement between the Authority and the EFTA State concerned. An extension of the duration of the investigation may in particular be appropriate in cases concerning novel projects or raising novel legal issues.

(44) In order to ensure effective implementation of Article 7(6) of Part II of Protocol 3, the Authority will endeavour to adopt the final decision no later than 4 months after the submission of the last information by the EFTA State, or the expiry of the last time limit without information having been received.

7. **Complaints**

(45) The efficient and transparent handling by the Authority of complaints brought before it is of considerable importance to all stakeholders in State aid procedures. The Authority therefore proposes the following best practices, designed to contribute to that joint objective.

7.1. *The complaint form*

(46) The Authority will systematically invite complainants to use the complaint form available on its website (http://www.eftasurv.int/media/documents/Complaint-form—State-aid.doc) and, at the same time, to submit a non-confidential version of the complaint. The submission of complete forms will normally allow complainants to enhance the quality of their submissions.

7.2. *Indicative time frame and outcome of the investigation of a complaint*

(47) The Authority will use its best endeavours to investigate a complaint within an indicative time frame of 12 months from its receipt. That time limit does not constitute a binding commitment. Depending on the circumstances of the individual case, the possible need to request complementary information from the complainant, the EFTA State or interested parties may extend the investigation of a complaint.

(48) The Authority is entitled to give different degrees of priority to the complaints brought before it [1], depending for instance on the scope of the alleged infringement, the size of the beneficiary, the economic sector concerned or the existence of similar complaints. In the light of its workload and its right to set the priorities for investigations [2], it can thus postpone dealing with a measure which is not a priority. Within 12 months, the Authority will, therefore, in principle, endeavour to:

(a) adopt a decision for priority cases pursuant to Article 4 of Part II of Protocol 3, with a copy addressed to the complainant;

(b) send an initial administrative letter to the complainant setting out its preliminary views on non-priority cases. The administrative letter is not an official position of the Authority, it only represents a preliminary view, based on the information available and pending any additional comments the complainant might wish to make within 1 month from the date of the letter. If further comments are not provided within the prescribed period, the complaint will be deemed to be withdrawn.

(49) As a matter of transparency, the Authority will use its best endeavours to inform the complainant of the priority status of its submission, within 2 months from the date of receipt of the complaint. In the case of unsubstantiated complaints, the Authority will inform the complainant within 2 months from receipt of the complaint that there are insufficient grounds for taking a view on the case, and that the complaint will be deemed to be withdrawn if further substantive comments are not provided within 1 month. As regards complaints which refer to approved aid, the Authority will also endeavour to reply to the complainant within 2 months from receipt of the complaint.

(50) In the case of unlawful aid, complainants will be reminded of the possibility to initiate proceedings before national courts, which can order the suspension or recovery of such aid [3].

(51) When necessary, the non-confidential version of a complaint will be transmitted to the EFTA State concerned for comments. EFTA States and the complainants will systematically be kept informed of the closure or other processing of a complaint. In return, EFTA States will be invited to respect the time limits for commenting and providing information on complaints transmitted to them. They will also be invited to accept, as far as possible, transmission of complaints in their original language. If an EFTA State so requests, the Authority will provide a translation, which may have implications as regards the expediency of procedures.

8. **Internal decision-making procedures**

(52) The Authority is committed to streamlining and further improving its internal decision-making process, in order to contribute to an overall shortening of State aid procedures.

(53) To this effect, internal decision-making procedures will be applied as efficiently as possible. The Authority will also review its current internal legal framework to optimise its decision-making procedures.

(54) The Authority will keep its internal decision-making practice under constant review and adapt it if necessary.

9. **Future review**

(55) Procedural best practices can only be effective if they are based on a shared commitment by the Authority and EFTA States to diligently pursue State aid investigations, respect applicable time limits and thereby ensure the necessary transparency and predictability of procedures. This Chapter and the best practices enshrined therein are a first contribution to this joint commitment.

(56) The Authority will apply this Chapter to measures which have been notified to the Authority or otherwise brought to the Authority's attention as from 1 January 2010.

[1] Case C-119/97 *Ufex and Others* v *Commission* (1999) ECR I-1341, paragraph 88.
[2] Case T-475/04 *Bouygues SA* v *Commission* (2007) ECR II-2097, paragraphes 158 and 159.
[3] See the Authority's Guidelines on the enforcement of State aid law by national courts.

(57) This Chapter may be revised to reflect changes to legislative, interpretative and administrative measures or the case-law of the EFTA Court and the Courts of Justice of the European Union, which govern State aid procedure or any experience gained in its application. The Authority further intends to engage, on a regular basis, in a dialogue with the EFTA States and other stakeholders on the experience gained in the application of Part II of Protocol 3 in general, and this Chapter of best practice in particular.

EFTA SURVEILLANCE AUTHORITY DECISION

No 364/11/COL

of 23 November 2011

to close the formal investigation procedure concerning the relief of the Icelandic Housing Financing Fund *Íbúðalánasjóður* (HFF) from payment of a State guarantee premium (Iceland)

THE EFTA SURVEILLANCE AUTHORITY (THE AUTHORITY),

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

HAVING REGARD to Article 1(3) of Part I and 7(2) of Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement) (Protocol 3),

HAVING REGARD to the consolidated version of the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 (the Implementing Provisions Decision) ([1]),

HAVING CALLED on interested parties to submit their comments ([2]),

Whereas:

I. FACTS

1. *Procedure*

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

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

(3) The Authority's Decision No 406/08/COL of 27 June 2008 to initiate the formal investigation procedure with regard to the relief of the Icelandic Housing Financing Fund from payment of a State guarantee premium was published in the *Official Journal of the European Union* and in the EEA Supplement to it ([3]). By means of this Decision, the Authority called on interested parties to submit their comments. The Authority has not received any comments from interested parties. By letter dated 8 September 2008 (Event No 490696), the Icelandic authorities submitted comments on the Authority's Decision No 406/08/COL.

(4) In October 2008, the Authority put the case on hold due to the collapse of the Icelandic banking sector. However, some discussions concerning this case took place at a Package Meeting in Reykjavik on 4-5 November 2009. Following this meeting, on 16 November 2009, a letter was sent by the Authority with a reminder to submit information concerning compatibility assessment of the measure under investigation. A reply was provided by the Icelandic authorities by letter dated 7 December 2009 (Event No 539538).

(5) In a parallel investigation concerning State aid measures granted to the Icelandic Housing Financing Fund, the Authority concluded in its Decision No 405/08/COL of 27 June 2008 ([4]) that the State guarantee granted to HFF constitutes an existing aid measure. Subsequently, on 18 July 2011, the Authority adopted Decision No 247/11/COL on a proposal for appropriate measures in the financing of the Icelandic Housing Financing Fund *Íbúðalánasjóður* (HFF) ([5]), inter alia, in the form of the State guarantee.

2. *Description of the measure under investigation*

2.1. **The beneficiary**

(6) The Housing Financing Fund *Íbúðalánasjóður* (HFF) is a State-owned institution, which operates on an arms-length basis under the Icelandic Housing Act No 44/1998 (*lög um húsnæðismál*) ([6]). HFF is managed by a

([1]) Available at: http://www.eftasurv.int/media/decisions/195-04-COL.pdf

([2]) EFTA Surveillance Authority Decision No 406/08/COL of 27 June 2008 to initiate the formal investigation procedure with regard to the relief of the Icelandic Housing Financing Fund from payment of a State guarantee premium (OJ C 64, 19.3.2009, p. 21) and EEA Supplement No 15, 19.3.2009, p. 9.

([3]) See footnote 2 above for the publication references.

([4]) EFTA Surveillance Authority Decision No 405/08/COL of 27 June 2008 to close the formal investigation procedure with regard to the Icelandic Housing Financing Fund (OJ L 79, 25.3.2010, p. 40) and EEA Supplement No 14, 25.3.2010, p. 20.

([5]) A non-confidential text of Decision No 247/11/COL is available on the Authority's website: http://www.eftasurv.int/media/decisions/247-11-COL.pdf

([6]) The original predecessor of HFF, the State Housing Agency, was established in 1980.

board of directors within the administrative purview of the Minister of Welfare. The purpose of HFF is to promote security of, and equal rights to, housing. This is done through the granting of mortgages to individuals and loans to entities that provide rental accommodation, and through general organisation of matters relating to housing. Funding is provided for the specific purpose of increasing people's prospects of acquiring or renting housing on manageable terms (cf. Article 1 of the Housing Act).

(7) HFF is not directly funded by the State, but is financed through returns on its own equity (i.e. instalments, interest and price indexation payments on extended loans), through interests paid on issuing and sale of HFF bonds (*íbúðarbréf*) which are listed on the Icelandic Stock Exchange, and through service fees from its customers. HFF also benefits from a State guarantee which follows from the State's unlimited liability for the HFF's debts as its owner ([7]). Furthermore, HFF receives interest support directly from the State budget to cover losses resulting from lending below market rates to entities that construct and provide rental housing.

(8) For a more detailed description of the HFF system under the Housing Act, reference is made to the Authority's Decision No 405/08/COL.

2.2. **The State guarantee**

(9) HFF is a State institution governed by public law (cf. Article 4 of the Housing Act) and as such, under the general unwritten rules of Icelandic public law applicable to State institutions, it enjoys a State guarantee on all its obligations. The guarantee is applicable to all State institutions, regardless of when they were established or the type of their activities. As mentioned above, such guarantee follows from the State's unlimited liability for the HFF's debts as its owner. That means that the State is liable for the entirety of the HFF's obligations, since the guarantee is neither linked to any specific financial transaction of the HFF, nor limited to any fixed maximum amount. This is also reflected in paragraph 3 of Article 5 of the Insolvency Act No 21/1991 (*lög um gjaldþrotaskipti o.fl.*) which rules out the applicability of bankruptcy or other insolvency procedures to institutions such as the HFF.

(10) In the preamble to the bill which became Act No 121/1997 on State Guarantees (*lög um ríkisábyrgðir*) the following was stated:

'This is based on the unequivocal rule of Icelandic law that the State is liable for the obligations of its institutions and undertakings, unless the guarantee is limited by an explicit legal provision […] or the liability of the State in a limited liability company is limited to the share capital contribution.' ([8])

(11) The State guarantee was also available to the predecessors of HFF: the State Housing Agency, the State Building Fund and the Workers' Housing Fund operated by the State Housing Agency, as well as the State Housing Board (cf. Act No 97/1993 on the State Housing Agency (*lög um Húsnæðisstofnun ríkisins*)).

2.3. **The State guarantee premium**

(12) At the moment of the establishment of HFF and its predecessors, the unlimited State guarantee provided in their favour and covering the entirety of their obligations was not made subject to a risk premium or a guarantee premium. According to the Icelandic authorities, ever since the inception of HFF, the relevant rules of domestic law have been construed so as to exclude HFF from paying any fee for the State guarantee it enjoys ([9]).

(13) Provisional Act No 68/1987 on Fiscal Measures introduced for the first time a general obligation to pay a guarantee premium to the State for State guarantees that were not subject to the risk premium. Subsequently, Article 8 of the Act No 37/1961 on State Guarantees (*lög um ríkisábyrgðir*), as amended by Act No 65/1988 on State Guarantees (*lög um breyting á lögum nr. 37/1961, um ríkisábyrgðir, með síðari breytingum*), required banks, credit funds, financial institutions, enterprises and other such entities that, according to law, enjoy a State guarantee whether through the ownership of the State or other reasons, to pay a guarantee premium to the State as regards their commitments towards foreign entities. The premium was set at 0,0625 % per quarter on the principal of foreign commitments based on their average for each period (cf. paragraph 2 of Article 8 of Act No 37/1961) ([10]).

(14) Originally, no similar premium was imposed on domestic commitments. However, Act No 121/1997 on State Guarantees ([11]) introduced an obligation to pay a premium amounting to 0,0375 % in respect of domestic commitments. This rate was later raised to 0,0625 % by means of Act No 180/2000 ([12]).

([7]) Case E-9/04 *The Bankers' and Securities Dealers' Association of Iceland* v *EFTA Surveillance Authority* [2006] EFTA Court Report, p. 42, paragraph 72.

([8]) The Authority's unofficial translation. The original Icelandic text can be found at: http://www.althingi.is/altext/122/s/0099.html

([9]) See page 4 of the submission dated 8.9.2008 (Event No 490696).

([10]) Loans for which a risk premium had been paid, certain export guarantees and commitments due to credit balance in domestic currency accounts did not constitute a basis for calculation of the guarantee premium (cf. paragraph 2 of Article 9 of Act No 37/1961).

([11]) Entry into force on 1.1.1998.

([12]) Entry into force on 11.1.2001.

(15) Act No 121/1997 also provided for an exemption from payment of any premium for State guarantee in respect of housing bonds issued by the Housing Bond Division of the State Housing Agency. As regards other HFF's obligations, the Supplementary Budget Act for the year 2001 retroactively cancelled HFF's debts relating to unpaid premiums that HFF has accrued under Act No 121/1997. Finally, a general exemption of HFF from payment of a State guarantee premium in respect of all commitments was stipulated in Act No 70/2000 which entered into force on 26 May 2000.

(16) For a more detailed description of the legislation on State guarantees and subsequent changes to the generally applicable premium rates and the special provisions on HFF, reference is made to the Authority's Decision No 406/08/COL.

3. *Grounds for initiating the procedure*

(17) In Decision No 406/08/COL, the Authority explained that the State guarantee in favour of HFF, that existed before the EEA Agreement entered into force on 1 January 1994, as such was not being dealt with under the procedure on the guarantee premium concerning new aid but under a separate procedure for existing aid (Case No 64865, now Case No 70382). The Decision No 406/08/COL dealt with the fact that HFF is exempted from paying a guarantee premium which other undertakings organised in a similar way as HFF are obliged to pay. In this context, in the Authority's preliminary view, it was not relevant for the assessment of the classification of the aid as new or existing whether or not the Act on State Guarantees, as a matter of fact, changed the situation of HFF as regards the payment of guarantee premium. What was considered decisive was that the new Act No 121/1997 on State Guarantees introduced a new system where, for the first time, HFF was being treated more favourably than provided for under the general rule for undertakings benefiting from the implicit State guarantee. It was therefore the Authority's preliminary opinion that any advantage to HFF following from the exemption granted to the Housing Bond Division introduced by Article 7 of Act No 121/1997 would constitute new aid. The same would apply to the exemption/relief from paying the premium relating to other operations of HFF, cf. Act No 70/2000 amending Act No 121/1997 and Supplementary Budget Act 2001.

(18) In the preliminary view of the Authority, the exemption of HFF from paying a guarantee premium amounted to State aid in the meaning of Article 61(1) of the EEA Agreement. The following State aid elements were identified in the decision to initiate a formal investigation procedure:

(i) exemption (either originally or *ex post facto*) from payment of State guarantee premium amounting to 0,0625 % per quarter of the value of foreign commitments relating both to housing bonds and other commitments in the period from 1 January 1998 to date;

(ii) exemption (either originally or *ex post facto*) from payment of State guarantee premium amounting to 0,0375 % per quarter of the value of domestic commitments relating both to housing bonds and other commitments in the period from 1 January 1998 to 10 January 2001;

(iii) exemption from payment of State guarantee premium amounting to 0,0625 % per quarter of the value of all HFF's domestic commitments in the period from 11 January 2001 to date.

(19) Moreover, the Authority doubted that the above State aid elements can be considered compatible with the EEA Agreement. The Authority explained that, while certain lending for house financing may be defined to be a service of general economic interest in the meaning of Article 59(2) of the EEA Agreement and therefore possibly eligible for aid, the Authority's preliminary view was that the general loans system of the HFF is too broadly set up to comply with the conditions of Article 59(2). The Authority had not been presented with any information that would give it reason to believe that the market would not be able to provide for housing finance on manageable terms in general. Under the general loans scheme of HFF, loans are available to anyone irrespective of income and assets and irrespective of cost and size limitations of the dwelling to be financed. Moreover, loans may also be granted anywhere irrespective of whether local housing finance may be readily available or not.

4. *Comments by the Icelandic authorities*

(20) The comments of the Icelandic Government are focused on the fact that any aid element involved derives directly from the implicit State guarantee in favour of HFF, which has already been established to constitute existing aid. In view of the Icelandic authorities, any fee payment is an integral part of the State guarantee as such. Therefore, in view of lack of severable and substantive changes to the State guarantee and the payment of the fee, there is no new aid present and the issue should be dealt within the existing aid case. The Icelandic Government also expressed its view that in the case any new aid was considered to exist it was compatible aid, due to the social character of HFF and the fact that the aid granted to HFF fulfilled the conditions established in Altmark case-law ([13]).

([13]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR 1-7747.

(21) As regards the fact of introducing an obligation to pay a premium on State guarantees for foreign commitments of certain financial institutions by Act No 68/1987, the Icelandic authorities argue that HFF has in fact never paid any premium, as it did not have any foreign commitments.

(22) Furthermore, in view of the Icelandic authorities, liability to pay premium on other domestic commitments than housing bonds, based on Act 121/1997, was 'based on questionable legal basis', as it was never intended that the predecessors of the HFF pay a guarantee premium. Icelandic authorities also point to the fact that HFF's debts relating to any unpaid guarantee premium were retroactively cancelled in the 2001 Supplementary Budget Act, as an indication of the legislator's intention that HFF should have been exempted from paying a guarantee premium at all times.

(23) And finally, the exemption from the State guarantee premium for HFF was due to the fact that HFF collected an interest margin of 0,0375 % of mortgage instruments guaranteeing commitments relating to housing bonds ([14]). The Icelandic authorities call it a 'special State guarantee fee'. It is collected into a special reserve fund.

II. **ASSESSMENT**

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

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

(25) This implies that for measures to be classified as State aid within the meaning of Article 61(1) of the EEA Agreement, they must involve a grant by the State or through State resources, confer an advantage on the recipient undertaking, be selective, distort competition and be liable to affect trade between the Contracting Parties.

(26) The Authority's State aid guidelines on State guarantees ([15]) stipulate that guarantees given directly by the State, namely by central, regional or local authorities may constitute State aid. Moreover, more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency procedures or which benefit from an explicit State guarantee or coverage of any losses by the State provide for a benefit from an open-ended exposure of the State which is referred to as an unlimited State guarantee ([16]). Furthermore,

'[t]he benefit of a State guarantee is that the risk associated with the guarantee is carried by the State. Such risk-carrying by the State should normally be remunerated by an appropriate premium. Where the State forgoes all or part of such a premium, there is both a benefit for the undertaking and a drain on the resources of the State.' ([17])

(27) In Decision No 247/11/COL, the Authority concluded that the implicit and unlimited State guarantee in favour of HFF constitutes State aid in the meaning of Article 61(1) of the EEA Agreement as it represents a drain on State resources of the Icelandic State and gives HFF an economic advantage. The Authority referred to the fact that, in line with the Authority's Guidelines on State guarantees, enterprises whose legal form rules out bankruptcy or other insolvency procedures or which benefit from an explicit State guarantee or coverage of any losses by the State, can be regarded as beneficiaries of aid. Moreover, it is not necessary that the State makes any payments under the guarantee in question. The aid is granted continuously from the moment when the guarantee is given and not just at the moment at which the guarantee is invoked or the moment at which payments are made under the terms of guarantee ([18]).

(28) In view of the direct link between the presence of State aid elements in a measure consisting of a State guarantee and the necessity to establish (and pay) a (market) premium for such State intervention, the crucial question is whether the relief from the payment of a guarantee fee can be identified as a separate State aid element as compared to the advantage deriving from the guarantee as such. An appropriate premium can neutralise at least part of the advantage granted to the beneficiary of the aid. Had it been possible to establish a market premium for the guarantee at hand, corresponding to the risk for the State associated with the guarantee and had such premium been paid by HFF, the criteria of Article 61(1) of the EEA Agreement concerning the presence of State resources and of an economic advantage for HFF had not been met. Therefore, the premium constitutes an integral element of the calculation of the amount of State aid granted in

([14]) Originally, it was not intended to exempt the entirety of HFF's obligations guaranteed by the State from the guarantee premium.

([15]) Available at http://www.eftasurv.int/?1=1&showLinkID=15646&1=1

([16]) See Chapter 1.2(4) of the Guidelines on State guarantees and Chapter 7.2(2) of the State aid guidelines on the application of State aid provisions to public enterprises in the manufacturing sector, available at http://www.eftasurv.int/?1=1&showLinkID=16995&1=1

([17]) Chapter 2.1 of the Guidelines on State guarantees.

([18]) See footnote 17.

the form of a guarantee. Such conclusion also follows from the Guidelines on State guarantees, as referred to above.

(29) The Icelandic authorities expressed a similar view in their comments to the decision to initiate a formal investigation procedure (Decision No 406/08/COL). Moreover, the Icelandic authorities emphasised that the Act on State Guarantees was intended to be a general legislation on the conditions for granting State guarantees. The Act itself did not grant any guarantees as such, but just laid down conditions in respect of guarantees ([19]).

(30) Bearing in mind the above, the Authority considers that, due to the special nature of aid elements contained in a State aid measure in the form of a State guarantee, the relief of HFF from payment of a State guarantee premium does not constitute a separate State aid measure from the implicit and unlimited State guarantee provided by the Icelandic State, within the meaning of Article 61(1) of the EEA Agreement. The lack of payment of a premium constitutes a part of the advantage and State resources engaged in the State guarantee granted to HFF. Given that the advantages deriving from this State guarantee are dealt with by the Authority in the State aid procedure on existing aid (cf. Case No 70382 (former 64865), Decision No 247/11/COL), the formal investigation procedure concerning the relief of HFF from payment of a State guarantee premium is without object and can be closed,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure concerning the relief of HFF from payment of a State guarantee premium is closed.

Article 2

This Decision is addressed to the Republic of Iceland.

Article 3

Only the English version of this Decision is authentic.

Done at Brussels, 23 November 2011.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member

([19]) Letter dated 8.9.2008, p. 5.

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