Zaproszenie do zgłaszania uwag zgodnie z art. 1 ust. 2 w części I protokołu 3 do porozumienia o nadzorze i trybunale w sprawie pomocy państwa w odniesieniu do stosowania art. 3 norweskiej ustawy o zwrocie podatku VAT

(2006/C 305/15)

Decyzją nr 225/06/COL z dnia 19 czerwca 2006 r., zamieszczoną w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Urząd Nadzoru EFTA wszczął postępowanie na mocy art. 1 ust. 2 w części I protokołu 3 do Porozumienia pomiędzy państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości (porozumienia o nadzorze i trybunale). Władze Norwegii otrzymały stosowną informację wraz z kopią wyżej wymienionej decyzji.

Urząd Nadzoru EFTA wzywa niniejszym państwa EFTA, państwa członkowskie UE i zainteresowane strony do zgłaszania uwag w sprawie omawianego środka w ciągu jednego miesiąca od publikacji niniejszego zawiadomienia na poniższy adres Urzędu Nadzoru EFTA w Brukseli:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussels

Otrzymane uwagi zostaną przekazane władzom Norwegii. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio umotywowanym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

STRESZCZENIE

PROCEDURA

Pismem z dnia 16 października 2003 r. do Urzędu Nadzoru EFTA wniesiono skargę, w której podniesiono zarzut udzielenia przez Norwegię pomocy państwa niektórym okręgowym szkołom miejskim świadczącym specjalistyczne usługi edukacyjne i konkurującym z podmiotami prywatnymi, poprzez stosowanie zwrotu naliczonego podatku VAT przewidzianego w art. 3 norweskiej ustawy o zwrocie VAT.

Po wymianie korespondencji pomiędzy Urzędem a władzami Norwegii oraz z osobą skarżącą Urząd podjął decyzję o wszczęciu formalnego postępowania wyjaśniającego w odniesieniu do powyższego środka.

OCENA ŚRODKA

Władze Norwegii wprowadziły podatek od wartości dodanej w 1970 r. Mimo że od 2001 r. istnieje powszechny obowiązek płacenia podatku VAT należnego z tytułu świadczenia usług, niektóre usługi — wyraźnie wymienione — pozostają zwolnione z tego podatku. W związku z powyższym przedsiębiorstwa prowadzące działalność, która nie wchodzi w zakres ustawy o zwrocie podatku VAT, płacą podatek naliczony od zakupionych towarów i usług, ale nie mogą naliczyć podatku należnego na sprzedaż.

Władze Norwegii przyjęły ustawę o zwrocie podatku VAT ze skutkiem od 1 stycznia 2004 r. po to by zmniejszyć zakłócenia konkurencji wynikające z ustawy o VAT dla działalności niepodlegającej ustawie o VAT prowadzonej przez władze publiczne, które nie mogą odzyskać podatku naliczonego.

Zgodnie z art. 3 ustawy o zwrocie podatku VAT państwo norweskie rekompensuje podatek naliczony płacony przez władze lokalne i regionalne, przedsiębiorstwa międzygminne i prywatne oraz organizacje nie nastawione na zysk wykonujące statutowe obowiązki władz lokalnych lub regionalnych, jak również niektóre inne instytucje kupujące towary i usługi od innych przedsiębiorstw zarejestrowanych jako płatnicy VAT. Przedsiębiorstwa publiczne prowadzące działalność podlegającą ustawie o VAT i naliczające podatek należny mogą odliczyć podatek naliczony na tej samej zasadzie co inne przedsiębiorstwa prowadzące taką samą działalność. Jednak gdy przedsiębiorstwa publiczne prowadzą działalność niepodlegającą ustawie o VAT, wówczas ustawa o zwrocie podatku VAT przewiduje zwrot zapłaconego podatku naliczonego. Z kolei przedsiębiorstwa prywatne prowadzące taką samą działalność niepodlegającą ustawie o zwrocie podatku VAT, nie otrzymują zwrotu zapłaconego podatku naliczonego. Mimo że celem wspomnianej ustawy było stworzenie równych warunków konkurencji pomiędzy samodzielnym wykonywaniem zadań przez podmioty publiczne a zlecaniem zadań na zewnątrz przez te podmioty, to ustawa ta zakłóciła konkurencję w tych przypadkach, gdy podmioty publiczne świadczą usługi, konkurując z przedsiębiorstwami prywatnymi.

We wstępnej opinii Urzędu zwrot przyznany na mocy ustawy o zwrocie podatku VAT stanowi pomoc państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG. Państwo przyznaje wybiórczą korzyść jedynie tym przedsiębiorstwom, które są wymienione w ustawie o zwrocie podatku VAT, i które konkurują z innymi przedsiębiorstwami na terenie EOG.

Gdyby zwrot za podatek naliczony został uznany za pomoc państwa, wówczas stanowiłby również pomoc operacyjną. W związku z powyższym Urząd ma wątpliwości co do tego, czy którakolwiek z podstaw do uznania zgodności przewidzianych w art. 61 ust. 2 i 3 Porozumienia EOG ma zastosowanie w powyższym przypadku. Ponadto Urząd we wstępnej ocenie uznał, że art. 59 ust. 2 Porozumienia EOG nie uzasadnia zgodności ustawy o zwrocie podatku VAT z porozumieniem EOG.

WNIOSKI

W świetle powyższych uwag Urząd podjął decyzję o wszczęciu formalnego postępowania wyjaśniającego zgodnie z art. 1 ust. 2 Porozumienia EOG. Zainteresowane strony zachęca się do nadsyłania uwag w terminie jednego miesiąca od publikacji niniejszej decyzji w *Dzienniku Urzędowym Unii Europejskiej*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 225/06/COL

of 19 July 2006

to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to Article 3 of the Norwegian Act on compensation for value added tax (VAT)

(Norway)

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 thereof,

Having regard to Article 1(2) in Part I and Articles 4(4), 6 and 10 in Part II of Protocol 3 to the Surveillance and Court Agreement,

Whereas:

I. FACTS

1 Procedure

By letter dated 16 October 2003, the Authority received a complaint in which it was alleged that several county municipal schools, which provide specialised educational services in competition with the complainant, receive State aid through the application of input tax compensation provided for in Article 3 of the Value Added Tax Compensation Act [4]. According to the complainant, municipal schools that provide certain educational services falling outside the VAT system in competition with other undertakings, receive a compensation for the input VAT paid on goods and services purchased in relation to the services they provide on commercial basis, to which private competitors are not entitled. The letter was received and registered by the Authority on 20 October 2003 *(Doc. No. 03-7325 A)*.

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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] Act No 108 of 12 December 2003 on VAT compensation to local and regional authorities (Lov om kompensasjon av merverdiavgift for kommuner, fylkeskommuner mv). Hereinafter referred to as the 'VAT Compensation Act'.

After various telephone calls between the Authority and the complainant, the latter sent a letter dated 27 July 2004 providing additional information regarding the original complaint *(Event No. 289514)*.

By letter dated 15 December 2004 *(Event No. 189295)*, the Authority informed the Norwegian authorities about the complaint and asked the Norwegian authorities for comments. Further, the Authority requested information and clarifications on the application of the input tax compensation in general and, more specifically, to the public undertakings referred to in the above-mentioned complaint.

By letter dated 17 January 2005 from the Mission of Norway to the European Union, forwarding two letters dated 14 January 2005, respectively from the Ministry of Modernisation and the Ministry of Finance, the Norwegian authorities provided answers to the Authority's questions on the application of input tax compensation in Article 3 of the VAT Compensation Act. The letter was received and registered by the Authority on 18 January 2005 *(Event No. 305693)*.

By letter dated 12 April 2005 from the Mission of Norway to the European Union, forwarding two letters dated 11 April 2005, respectively from the Ministry of Modernisation and the Ministry of Finance, the Norwegian authorities provided information in relation to the seven county municipal schools. The letter was received and registered by the Authority on 14 April 2005 *(Event No. 316494)*.

By letter dated 12 October 2005 *(Event No. 345123)*, the Authority sent a second information request to which the Norwegian authorities replied by letter dated 7 December 2005 from the Mission of Norway to the European Union, forwarding two letters dated 2 December 2005 and 30 November 2005 respectively from the Ministry of Modernisation and the Ministry of Finance. The letter was received and registered by the Authority on 8 December 2005 *(Event No. 353753)*.

2 **Legal framework on VAT and VAT Compensation in Norway**

First, on the basis of the information provided by the Norwegian authorities, the Authority will briefly describe the general VAT system in Norway, and the provisions of the VAT compensation basically aimed at local and regional authorities.

2.1 *The VAT Act*

2.1.1 ***General introduction***

The Norwegian authorities introduced value added tax ([1]) in 1970 through the Value Added Tax Act of 19 June 1969 ([2]).

VAT is an indirect tax on consumption of goods and services. VAT is calculated at all stages of the supply chain and on imports of goods and services from abroad. The final consumer, not registered for VAT, absorbs VAT as part of the purchase price. The VAT due at each stage of the supply chain amounts to the difference between output tax and input tax. Output tax is, according to Article 4(1) of the VAT Act, a tax calculated and collected on sales of taxable goods and services. Input tax is, according to Article 4(2) of the VAT Act, a tax accrued on purchases of taxable goods and services. Taxable persons which are liable to output tax are entitled to deduct input tax for the goods and services acquired.

Until 1 July 2001, there was a general liability to pay output tax on supply of goods but only a limited number of services, specifically referred to in the VAT Act, were subject to output tax. From 1 July 2001 onwards, Norway introduced a general liability to pay output tax on supply of services. Certain services explicitly mentioned are still exempted from VAT.

2.1.2 ***Material scope of the VAT Act***

VAT is paid on the sale of goods and services covered by the VAT Act.

Article 2 in Chapter I of the VAT Act provides a definition of goods and services within the meaning of the VAT Act:

> *'By goods are meant physical objects, including real property. By goods are also meant electric power, water from waterworks, gas, heat and refrigeration. By a service is meant anything that can be supplied that is not regarded as goods as defined in the first sub-section. Also regarded as a service is a limited right to a physical object or real estate property, together with the total or partial utilisation of intangible property.'*

([1]) Hereinafter referred to as 'VAT'.
([2]) Act No 66 of 19 June 1969 on Value Added Tax (Lov om merverdiavgift). Hereinafter referred to as the 'VAT Act'.

Article 3 in Chapter I of the VAT Act defines a sale as follows:

'— The delivery of goods in return for a remuneration, including the delivery of goods produced on order or the delivery of goods in connection with the carrying out of services.

— The carrying out of services in return for remuneration.

— The delivery of goods or the carrying out of services as total or partial return for goods or services received'.

2.1.3 ***Deduction and refund (input tax)***

It follows from the first sentence in Article 21 in Chapter VI of the VAT Act that, as a main rule, a registered person engaged in trade or business may deduct input tax on goods and services for use in an enterprise from the output tax charged on sales.

2.1.4 ***Transactions falling outside the scope of the VAT Act*** ([1])

Articles 5, 5a and 5b in Chapter I of the VAT Act exempt certain transactions from the scope of application of the VAT Act. According to Article 5, sales by certain institutions, organisations etc ([2]) are not covered by the VAT Act ([3]). Furthermore, according to Article 5a, the VAT Act does not apply to the supply and letting of real estate or rights to real property. Finally, it follows from Article 5b that the supply of certain services, amongst others the supply of health and health related services, social services, educational services, financial services, services related to the exercise of public authority, services in the form of entitlement to attend theatre, opera, ballet, cinema and circus performances, exhibitions in galleries and museums, lottery services, services connected with the serving of foodstuffs in school and student canteens, etc, are not covered by the Act. The suppliers of such services are not permitted to charge output tax and, accordingly, do not get credit for input tax on purchases.

2.1.5 ***Liability to pay tax***

According to Article 10(1) in Chapter III of the VAT Act, persons engaged in trade or business and liable to VAT registration, shall calculate and pay tax on sales of goods and services covered by the Act ([4]).

It follows from the above that any undertaking carrying out an activity which does not fall within the scope of the VAT Act pays input tax on its purchases of goods and services but cannot charge output tax on its sales.

However, when the State, municipalities and institutions which are owned or operated by the State or a municipality engage in activities falling within the scope of the VAT Act, they are subject to VAT in the same way as any other person engaged in trade or business on goods and services ([5]). These undertakings shall be registered in the VAT Register and calculate output tax on their sales. Accordingly, such undertakings are entitled to deduct input tax but only on goods and services which are sold to others.

Finally, as mentioned above, like any other undertaking, the State, municipalities and institutions owned or operated by the State may carry out activities which fall outside the scope of the VAT Act. When they carry out such activities which fall outside the VAT Act, they cannot charge output tax. Thus, they cannot, according to the VAT Act, recover input tax paid on their purchases of goods and services related to the said activity.

([1]) Article 5 and following of the VAT Act needs to be distinguished from transactions covered by Articles 16 and 17 of the VAT Act, which cover the so-called zero-rated supply (Output tax equal to zero with credit for input tax). A zero-rated supply falls within the scope of the VAT Act, but no output tax is charged since the rate is zero. The provisions of the VAT Act apply in full for such supplies, including the regulations relating to deductions for input tax.

([2]) Reference is made to Article 5 of the VAT Act according to which sales by certain entities like museums, theatres, non profit associations, etc, fall outside the scope of the VAT Act.

([3]) Article 5(2) of the VAT Act states that the Ministry of Finance may issue regulations delimiting and supplementing the provisions in the first subsection and may stipulate that businesses referred to in the first subsection, 1(f) shall nevertheless calculate and pay output tax if the exemption brings about a significant distortion of competition in relation to other, registered businesses that supply equivalent goods and services.

([4]) See Chapter IV in connection with Chapter I of the VAT Act.

([5]) See Article 11 of the VAT Act.

2.2 *The VAT Compensation Act*

2.2.1 ***General introduction***

The VAT Compensation Act entered into force on 1 January 2004. According to Article 1, the objective of the VAT Compensation Act is to mitigate distortion of competition resulting from the VAT Act. According to the Norwegian authorities, the application of the VAT Act may result in distortions of competition for activities carried out by public authorities which are outside the scope of the VAT Act and which cannot accordingly recover input tax. This may influence decisions of public authorities when choosing between self supply of goods and services and purchase of goods and services liable for output tax from private service providers. By compensating public authorities for input tax on all goods and services, in general, the intention of the Norwegian authorities is to create a level playing field between self supply and outsourcing.

By introducing a general input tax compensation scheme in 2004 mainly for local and regional authorities, the Norwegian authorities replaced a limited input tax compensation scheme for local and regional authorities from 1995 ([1]). The old input tax compensation scheme was limited to services explicitly mentioned in the law. According to Article 2 of the old VAT Compensation Act, compensation of input tax covered only services such as laundry services, real estate construction work services and cleaning services.

2.2.2 ***Preparatory documents***

a) NOU 2003:3 ([2])

In 2002, the Norwegian authorities appointed an expert committee ([3]) to consider solutions for making the VAT system neutral for public authorities in relation to procurement of goods and services.

The Rattsø Committee recommended introducing a compensation scheme for all input tax incurred by local and regional authorities when buying goods and services.

The Rattsø Committee outlined in its report possible new distortions of competition resulting from the proposed general input tax compensation scheme. According to the Rattsø Committee, a general input tax compensation scheme may imply new significant distortions of competition between municipalities carrying out economic activity and private undertakings when the activities carried out fall outside the scope of the VAT Act. This may apply, in the view of the Rattsø Committee, to the provision of services such as health and education. This means that entities falling within the scope of Article 2 of the VAT Compensation Act ([4]) are compensated for the input tax paid on all their purchases of goods and services whereas private undertakings providing the same services are not.

The Rattsø Committee made an assessment in Section 11.2.8 of its report on the proposed input tax compensation scheme in relation to the State aid rules of the EEA Agreement. The Rattsø Committee pointed out some concerns as to whether the compensation of input tax provided for in Article 3 of the VAT Compensation Act could constitute State aid within the meaning of Article 61(1) of the EEA Agreement ([5]).

b) Ot.prp. nr. 1 (2003-2004) ([6])

Based on the considerations of the Rattsø Committee, the Norwegian Government on 3 October 2003 presented a proposition for a new Act on VAT Compensation ([7]) for municipalities and counties. According to the proposition, public authorities would be compensated for input tax on all goods and services.

The proposition acknowledged that a general compensation scheme would involve distortions of competition between public and private providers of services which are outside the scope of the VAT Act. In order to alleviate these distortions, it was *i.a.* proposed that private and non profit enterprises performing health, education and social services imposed by law should be comprised by the compensation.

([1]) Act No 9 of 17 February 1995 on VAT Compensation for local and regional authorities (Lov om kompensasjon for merverdiavgift til kommuner og fylkeskommuner mv.).
([2]) Norges Offentlige Utredinger (NOU) 2003: 3, Merverdiavgiften og kommunene, Konkurransevridninger mellom kommuner og private (hereinafter referred to as the 'Rattsø report').
([3]) Hereinafter referred to as 'the Rattsø Committee' or the 'Committee'.
([4]) For the text of this article, see Section 2.2.3 below.
([5]) For the notion of state aid within the meaning of Article 61(1) of the EEA Agreement reference is made to Section II.3 below.
([6]) Odelstingsproposisjon nr. 1 (2003-2004) Skatte- og avgiftsopplegget 2004 — lovendringer.
([7]) Hereinafter referred to as 'the proposition'.

2.2.3 ***Legal provisions***

Article 2 of the VAT Compensation Act exhaustively lists the legal persons falling within the scope of the Act. The Article reads:

'This act is applicable to:

a) *Local and regional authorities carrying out local or regional activities in which the local council or county council or another council under the Local Government Act* ([1]) *or other special local governmental legislation are the supreme body;*

b) *Intermunicipal companies established according to the Local Government Act* ([2]) *or other special local governmental legislation;*

c) *Private or non-profit undertakings in as far as they carry out health, educational or social services which are statutory obligations of local or regional authorities;*

d) *Day care institutions as mentioned in Article 6 of the Day Care Act* ([3])*;*

e) *Joint Parish Council (Kirkelig fellesråd).*

The undertakings shall be registered in the Central Coordinating Register for Legal Entities (Enhetsregisteret)'.

According to Article 3 of the VAT Compensation Act, the Norwegian State compensates input tax paid by legal persons falling within the scope of the VAT Compensation Act when buying goods and services from other registered undertakings.

When public undertakings carry out activities within the scope of the VAT Act and consequently charge output tax, they can deduct input tax like other undertakings carrying out the same activities ([4]). On the other hand, when public undertakings carry out activities which fall outside the VAT Act, the VAT Compensation Act provides for the reimbursement of paid input tax ([5]).

Pursuant to Article 4(2) of the VAT Compensation Act, compensation of input tax is not granted when the entity has the right to deduct input VAT according to the VAT Act Chapter VI.

Moreover, Article 5 of the VAT Compensation Act states that total amount of the input tax compensated according to Article 3 of the VAT Compensation Act shall as the main rule be financed by reductions in the annual State transfers to local and regional authorities.

Article 6(1) of the VAT Compensation Act requires legal persons entitled to compensation of input tax to periodically submit data to the County Tax Assessment Office (Fylkesskattekontoret) showing total amount of input tax paid. To qualify for compensation, paid input tax must amount to a minimum of NOK 20 000 within a calendar year ([6]).

2.3 *Comments by the Norwegian authorities*

In its correspondence with the Authority, the Norwegian authorities claim that the compensation of input tax foreseen under Article 3 of the VAT Compensation Act falls outside the scope of Article 61(1) of the EEA Agreement. The Norwegian authorities allege that when the scheme was introduced in 2004, municipal appropriations in the annual fiscal budget were reduced accordingly by the expected amount of input tax compensated. Therefore, the Norwegian authorities are of the opinion that the input tax compensation scheme is self-financing, and not financed through State resources from the fiscal budget ([7]).

Further, the Norwegian authorities justify the selective nature of Article 3 of the VAT Compensation Act by referring to the objective of the VAT Compensation Act. According to Article 1 of the VAT Compensation Act, the objective is to mitigate distortion of competition resulting from the general VAT system. By compensating the municipalities for input tax on all goods and services, the Norwegian authorities aim to create a level playing field between self-supply and outsourcing. Accordingly, the Norwegian authorities consider that the compensation of input tax provided for in Article 3 of the VAT Compensation Act falls within the nature and logic of the VAT system ([8]).

([1]) Act No 107 of 25 September 1992 on Local Government (Lov om kommuner og fylkeskommuner).
([2]) Act No 107 of 25 September 1992 on Local Government (Lov om kommuner og fylkeskommuner).
([3]) Act No 64 of 17 June 2005 on Day Care Institutions (Lov om barnehager).
([4]) See Chapter VI of the VAT Act.
([5]) Article 3 in connection with Article 4 of the VAT Compensation Act.
([6]) See Article 6(2) of the VAT Compensation Act.
([7]) Page 3 of the letter from the Norwegian Ministry of Finance dated 14 January 2005. The opinion of the Norwegian authorities is repeated on page 2 of letter dated 30 November 2005 form the Norwegian Ministry of Finance.
([8]) Page 2 of the letter from the Norwegian Ministry of Finance dated 30 November 2005.

Nevertheless, the Norwegian authorities acknowledge that the general input tax compensation scheme may imply an economic advantage for public entities carrying out economic activities falling outside the scope of the VAT Act.

On page 3 of the letter dated 30 November 2005 from the Norwegian Ministry of Finance, the Norwegian authorities state the following:

> *'The full compensation scheme does not include private undertakings which conduct health services, social services or educational services which the law does not require the municipalities to carry out. Input VAT related to these activities must therefore normally be borne by the private undertakings themselves. Consequently when private undertakings carry out such services their operating costs may exceed the operating costs of municipal participants offering the same services'.*

Finally, according to the Norwegian authorities, the scope of the VAT Compensation Act was limited in order to prevent it from becoming too extensive and costly for the tax authorities. When the scheme was framed it was also assumed that the number of public authorities carrying out commercial activities in sectors outside the VAT system was insignificant ([1]).

II. **APPRECIATION**

1. **The scope of the current State aid investigation**

The current State aid investigation started with a complaint regarding the concrete application of the VAT Compensation Act to a number of public undertakings involved in the provision of specialised educational services on a commercial basis. The State aid assessment of the allegations brought forward by the complainant is however intrinsically linked to the analysis of the VAT Compensation Act. Therefore, in the present decision, the Authority carries out an assessment of the VAT Compensation Act as such in relation to the State aid rules of the EEA Agreement.

2. **State aid within the meaning of Article 61(1) of the EEA Agreement**

2.1. *Introduction*

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.'*

First, it must be noted that, as a general rule, the tax system of an EFTA State is not covered by the EEA Agreement. It must be understood that it is for each EFTA State to design and apply a tax system according to its own choices of policy. However, application of a tax measure, such as the input tax compensation provided for in Article 3 of the VAT Compensation Act, may have consequences that would bring it within the scope of Article 61(1) of the EEA Agreement. According to the case-law ([2]), Article 61(1) does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects.

Second, the question as to whether the measure at issue constitutes State aid arises only in so far as it concerns an economic activity ([3]), that is, an activity consisting of offering goods and services on a given market ([4]). A measure constitutes State aid only if it benefits an undertaking, a concept that, for the purposes of application of the rules on competition, encompasses, according to settled case-law, *'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed'* ([5]).

([1]) Page 3 of the letter from the Norwegian Ministry of Finance dated 30 November 2005.

([2]) Case E-6/98 *The Government of Norway v EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 34; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, Pil and others and The Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, page 121, paragraph 76; Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13; and Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20.

([3]) The Authority would like to refer to the decision of the European Commission on case N630/2003, local museums in the region of Sardinia. In this decision, the Commission considered that the measures foreseen by the notified scheme were to support museum activities to be undertaken by natural and non-profit institutions and of such a scale that they could be considered as not being economic activities.

([4]) Joined cases C-180/98 to C-184/98 *Pavlov and others* [2000] ECR I-6451, paragraph 75.

([5]) Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

Third, aid may be granted to public undertakings as well as to private undertakings ([1]). A public undertaking, in order to be regarded as recipient of State aid does not necessarily need to have a legal identity separate from the State. The fact that an entity is governed by public law and is a non-profit making institution does not necessarily mean that it is not an 'undertaking' within the meaning of the State aid rules ([2]). As mentioned above, the criterion is whether the entity carries out activities of an economic nature ([3]). In the case at hand, the scope of the VAT Compensation Act is not limited to non-economic activities. While compensation for VAT paid for non-economic activities would not amount to State aid, compensation for input VAT in relation to activities of an economic nature may involve State aid.

The Authority will assess the VAT Compensation Act as a scheme. Following the definition laid down in Article 1(d) in Part II of Protocol 3 to the Surveillance and Court Agreement, an aid scheme is any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner. It also encompasses any act on the basis of which aid, which is not linked to a specific project, may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount. The measure under scrutiny concerns the compensation of input VAT to any legal person listed under Article 2 of the VAT Compensation Act which covers local and regional authorities, inter-municipal companies, private and non-profit undertakings carrying out statutory obligations on behalf of local authorities and certain other institutions. The compensation for input VAT is not an individual award of support to a single undertaking but a reoccurring event on a regular basis during an indefinite period of time in favour of an undefined number of beneficiaries. Hence, the notified measure has to be qualified as a scheme.

According to case law ([4]), the Authority would like to stress that it will assess the general characteristics of a scheme as such without examining each concrete application of the scheme in order to determine whether State aid is involved. The fact that support may also be granted to recipients which do not constitute undertakings does not alter this assessment.

2.2. *State resources*

In order to constitute State aid within the meaning of Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources.

The Authority considers that compensation granted under the VAT Compensation Act is granted by State resources since the compensation is granted by the State ([5]).

In the Authority's view it is not relevant for the assessment of whether the measure implies a drain on State resources, whether the central level of the State's cost of the compensation is counterbalanced by reduced transfer to the local and regional authorities as such. That the central level of the State finances is balanced by reducing internal block transfers between different levels of administration, does not alter this conclusion. In any case and although there is an aim to avoid reallocation of economic means between municipalities, reductions in transfers to individual municipalities are in principle independent of what they receive as compensation ([6]).

2.3. *Economic advantage*

First, an aid measure must confer on the beneficiaries advantages that relieve them of charges that are normally borne from their budget.

A financial measure granted by the State or through State resources to an undertaking which would relieve it from costs which would normally have to be borne by its own budget constitutes an economic advantage ([7]). As a preliminary remark, as stated above, a public authority is only considered to be an undertaking when it carries out an economic activity.

([1]) Case C–387/92 *Banco Exterior de España* v *Ayuntamiento de Valencia* [1994] ECR I-877, paragraph 11.

([2]) Case C-244/94 *Fédération Française des Sociétés d'Assurance et a. v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013, paragraph 21; and Case 78/76 *Steinike & Weinlig v Germany* [1977] ECR 595, paragraph 1.

([3]) Case 118/85 *Commission* v *Italy* [1987] ECR 2599, paragraph 7 et seq.

([4]) Case E-6/98 *The Government of Norway v EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 57; Case C-66/02 *Italy* v *Commission* ECR [2005] not yet published, paragraph 91-92; Cases C-15/98 and C-105/99 *Italy* v *Commission* ECR [2000] I-8855, paragraph 51; and C-278/00 *Greece* v *Commission*, [2004] I-3997 paragraph 24.

([5]) See also Case C-172/03 *Wolfgang Heiser* v *Finanzamt Innsbruck* [2005] ECR I-1627, paragraphs 27-28, where a deduction of VAT on input in a situation where there was no VAT on output was regarded to fulfil the criterion.

([6]) Cf. Ot. prp. Nr. 1 (2003-2004) Section 20.8.7.

([7]) Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, Pil and others and The Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, page 121, paragraphs 76 and 78-79; Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 41.

The payment of input tax is an operating cost related to purchases in the normal course of an undertakings' economic activity, which is normally borne by the undertaking itself. To the extent that the Norwegian authorities compensate input tax on purchases of goods and services to undertakings not subject to VAT, but falling within the scope of Article 2 of the VAT Compensation Act, they grant those undertakings an economic advantage. The operating costs which those undertakings will have to put up with are reduced in accordance with the amount of input tax compensated. In respect of goods and services not subject to output tax (with no credit for input tax), the Norwegian authorities grant, in application of the VAT Compensation Act, an advantage to the undertakings entitled to input tax compensation compared to those undertakings falling outside the scope of Article 2 of the VAT Compensation Act, which are not compensated for input tax.

2.4. *Selectivity*

Further, to constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the measure must be selective in that it favours *'certain undertakings or the production of certain goods'*. It has first to be assessed whether the VAT Compensation constitutes a selective measure for being a derogation from the general VAT System. If confirmative, it has to be assessed whether the derogation nevertheless is justified due to the nature or general scheme of the tax system in question. The EFTA Court and European Court of Justice has held that any measure intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system, without there being any justification for this exemption on the basis of the nature and logic of the general system, constitutes State aid ([1]). A specific tax measure can only be justified by the internal logic of the tax system if it is consistent with it ([2]). Only if the measure is justified by the nature or logic of the general system does it constitute a general measure ([3]) and does not fall under Article 61(1) of the EEA Agreement. Hence, if the VAT Compensation is a derogation which can not be justified due to the nature or general scheme of the system, the measure would be regarded as selective.

The VAT is an indirect tax on the consumption of goods and services. As a rule, VAT is calculated at all stages of the supply chain and on the import of goods and services from abroad. The final consumer, who is not registered for VAT, absorbs VAT as part of the purchase price. Although in principle all sales or goods and services are liable to VAT, some supplies are exempt (i.e. without a credit for input tax) which means that such supplies fall entirely outside the scope of the VAT Act. Businesses that only have such supplies cannot register for VAT and are not entitled to deduct VAT ([4]).

The scope of the VAT Compensation Act is positively defined in that only legal persons falling within Article 2 of the VAT Compensation Act can be compensated for input tax on purchases. The advantage granted under the VAT Compensation Act for undertakings refunded for their input tax implies a relief from the obligation that follows from the general VAT system. These undertakings are placed in a more favourable financial position than others providing the same services or goods but which are not listed under the VAT Compensation Act ([5]).

The fact that the number of undertakings able to claim entitlement under the measure at issue may be very large or that they belong to different sectors of activity is, according to settled case law ([6]), not sufficient to call into question its selective nature and therefore to rule out its classification as State aid. Similarly, aid may concern a whole economic sector and still be covered by Article 61(1) of the EEA Agreement ([7]).

The next step is then to assess whether this compensation nevertheless is in line with the nature and logic of the VAT system. In order to determine whether it is consistent with the nature and logic of the general VAT system, the Authority must assess whether the input tax refund provided for in Article 3 of the VAT Compensation Act meets the objectives inherent in the VAT system itself, or whether it pursues other objectives outside the VAT system.

([1]) Case E-6/98 *The Government of Norway v EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, Pil and others and The Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, page 121, paragraphs 76-89; Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 16.

([2]) Case E-6/98 *The Government of Norway v EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, Pil and others and The Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, page 121, paragraphs 84-85; Joined cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Alava et a* v *Commission* [2002] ECR II-1275, paragraph 163.

([3]) Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementswerke* [2001] ECR I-8365, paragraph 42; Case C-172/03 *Wolfgang Heiser* v *Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 43.

([4]) These exemptions must be differentiated from the supplies which are zero-rated (i.e. exempt with a credit for input tax). The provisions of the VAT Act apply in full to such supplies, including the regulations relating to deductions for input VAT.

([5]) Case C-387/92 *Banco Exterior de España* v *Ayuntamiento de Valencia* [1994] ECR I-877, paragraph 14.

([6]) Case C-172/03 *Wolfgang Heiser* v *Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 42; Case C-409/00 *Spain* v *Commission* [2003] ECR I-1487 paragraph 48.

([7]) Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671 paragraph 33.

The Norwegian authorities State that, according to Article 1 of the VAT Compensation Act, the objective of the input tax compensation is to create a level playing field between self-supply and outsourcing. The objective pursued with the introduction of the VAT Compensation Act is to facilitate and encourage the choice by public entities between self supply and outsourcing of goods and services subject to VAT. The merit of the VAT Compensation Act is thus to create a level playing field between self supply and outsourcing by public entities. Although this objective is commendable, in the opinion of the Authority this can hardly be said to be in the nature and logic of the VAT system itself which is, as mentioned above, a tax on consumption. The VAT compensation is not a part of the VAT system, established in 1970, as such but a later separate measure to rectify some of the distortions created by the VAT system.

For the above mentioned reasons, in the preliminary opinion of the Authority the VAT compensation cannot be seen to be in the nature and logic of the VAT system. Hence, the input tax compensation as provided for in Article 3 of the VAT Compensation Act is selective in the meaning of Article 61(1) of the EEA Agreement.

2.5. *Distortion of competition*

A measure must distort or threaten to distort competition for it to fall within the scope of Article 61(1) of the EEA Agreement.

Only public and private entities falling within the scope of Article 2 of the VAT Compensation Act benefit from input tax compensation. However, when these entities provide services falling outside the VAT system in competition with undertakings falling outside the scope of Article 2 of the VAT Compensation Act, the latter will have to put up with higher purchase costs although they carry out similar services. Although the input tax compensation has been aimed at mitigating distortions for municipal acquisitions, it has created a distortion of competition between public authorities carrying out economic activities and private undertakings carrying out the same economic activities in sectors outside the scope of the VAT Act. By way of example, public schools providing specialised educational services in competition with other private operators receive a compensation for the input VAT paid in relation to these services whereas the latter have to put up with this costs. Accordingly, due to the intervention of the State, the products offered by private operators could be more expensive and thus competition is distorted. In areas where both public and private operators are compensated the aid would still threaten to distort competition between national and other EEA operators.

Thus, regarding provision of services outside the scope of the VAT Act, the Authority is of the preliminary opinion that competition between undertakings is distorted.

2.6. *Effect on trade*

A State aid measure falls within the scope of 61(1) of the EEA Agreement only in as far as it affects trade between the Contracting Parties to the EEA Agreement.

In the following, the Authority will assess whether the limitation of the scheme under assessment to certain legal persons and certain sectors hinders the aid from being capable of affecting trade between the Contracting Parties and hence brings it outside the scope of Article 61(1) of the EEA Agreement.

Whenever an aid measure strengthens the position of an undertaking compared to other undertakings competing in intra EEA trade, the latter must be regarded as affected by that aid ([1]).

This is so even if the beneficiary undertaking is itself not involved in cross-border activities ([2]). This is because domestic production may be maintained or increased with the result that undertakings established within the area covered by the EEA Agreement have less chance of exporting their products to the market in the EEA State granting aid ([3]).

([1]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 59; Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11.

([2]) Case T-55/99 *CETM* v *Commission* [2000] ECR II-3207, paragraph 86.

([3]) Case E-6/98 *Norway* v *EFTA Surveillance Authority* [1999] EFTA Court Report, page 76, paragraph 59; Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 27; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 40; Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 78.

Moreover, the character of the aid does not depend on the local or regional character of the services supplied or on the scale of the field of activity concerned ([1]). The local character of the activities of the beneficiaries of a measure constitutes one of the features to be taken into account in the assessment of whether there is an effect on trade but it is not sufficient to prevent the aid from having an effect on trade ([2]). According to settled case-law, the relatively small amount of aid, or the relatively small size of the undertaking which receives it, does not, as such, exclude the possibility that trade within the EEA might be affected ([3]).

In the assessment of the effect on trade, the Authority is not required to determine the actual effect of an aid scheme but to examine whether it is potentially liable to affect trade within the EEA ([4]). Thus, the criterion of the effect on trade has been traditionally interpreted in a non restrictive way to the effect that, in general terms, a measure is considered to be State aid if it is *capable* of affecting trade between the EEA States ([5]).

In principle, the beneficiaries under the VAT compensation scheme can receive compensation for input VAT under the conditions of the scheme, regardless of whether aid to operators in these sectors would have an effect on trade. Since the VAT compensation arrangement is assessed as a scheme, the Authority must assess the general features of the scheme, as such, to ascertain whether it involves State aid within the meaning of Article 61(1) of the EEA Agreement. Case law of the ECJ has established that *'in the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies.'* ([6]). The EFTA Court has also endorsed this interpretation ([7]).

Aid can be granted to undertakings operating in sectors open for competition with other undertakings in the EEA. The complaint received by the Authority illustrates that aid might be granted to undertakings operating in competition with other undertakings in the EEA. Undertakings established in neighbouring European countries provide specialised educational services in competition with Norwegian institutions which benefit from the application of the VAT Compensation Act.

Articles 5 and 5a in Chapter I of the VAT Act exempt certain transactions from the scope of application of the VAT Act. Furthermore, Article 5b of the same Act provides that the supply of certain services, amongst others the supply of health and health related services, social services, educational services, financial services, services related to the exercise of public authority, services in the form of entitlement to attend theatre, opera, ballet, cinema and circus performances, exhibitions in galleries and museums, lottery services, services connected with the serving of foodstuffs in school and student canteens, etc, are not covered by the Act. All theses services are hence outside the scope of the VAT system, but are in principle covered by the VAT Compensation act ([8]). Some of these sectors are partly or fully open for EEA-wide competition. Aid granted to undertakings in these sectors is thus capable of affecting trade between the Contracting Parties to the EEA Agreement.

For these reasons, and taking into account the Court's jurisprudence, the Authority preliminarily considers that the VAT Compensation Act is a general nationwide compensation scheme which is capable of affecting trade between the Contracting Parties to the EEA Agreement ([9]).

([1]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 77; Case C-172/03 *Wolfgang Heiser* v *Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 33; Case C-71/04 *Administración del Estado* v *Xunta de Galicia* [2005] not yet reported, paragraph 40.

([2]) Joined Cases T-298/97 to T-312/97 e.a. *Alzetta a.o.* v *Commission* [2000] ECR II-2319, paragraph 91.

([3]) Case C-71/04 *Administración del Estado* v *Xunta de Galicia* [2005] not yet reported, paragraph 41; Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 81; Joined Cases C-34/01 to C-38/01 *Enirisorse* [2003] ECR I-14243, paragraph 28; Case C-142/87 *Belgium* v *Commission* (*Tubemeuse*) [1990] ECR I-959, paragraph 43; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42.

([4]) Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 49; and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44.

([5]) Joined Cases T-298/97-T-312/97 e.a. *Alzetta a.o.* v *Commission* [2000] ECR II-2319, paragraphs 76-78.

([6]) Case T-171/02 *Regione autonoma della Sardegna* v *Commission* [2005] not yet reported, paragraph 102; Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 18; Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 48; and Case C-278/00 *Greece* v *Commission* [2004] ECR I-3997, paragraph 24.

([7]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] Report of the EFTA Court, page 76, paragraph 57.

([8]) Article 4 of the VAT Compensation Act introduces some limitation of the possibility to be compensated.

([9]) The Authority and the European Commission have considered that local projects of limited scale, (see, amongst other examples, the Authority's Decision on the private day-care facilities on public sites with subsidised real estate leasehold fees in Oslo, Decision No 291/03/COL of 18 December 2003 or Commission's Decisions on cases N530/99 Restoration of Santa María de Retuerta Monastry or NN136/A/02 Ecomusée d'Alsace) do not affect trade. However, in the case of schemes with such a broad scope of application as the one at hand, the Authority has considered that the effect on trade cannot *a priori* be excluded (see in particular, the Authority's Decision No 298/05/COL on the proposal for regionally differentiated rates of social security contributions for certain economic sectors).

2.7. *Conclusion*

Since all conditions set out in Article 61(1) of the EEA Agreement seem to be fulfilled, it is the preliminary view of the Authority that, in applying the input tax compensation as provided for in Article 3 of the VAT Compensation Act, the Norwegian authorities grant State aid to undertakings falling within the scope of Article 2 of the VAT Compensation Act.

3. **Procedural requirements**

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

The Norwegian authorities did not notify the introduction of the input tax compensation provided for in Article 3 of the VAT Compensation Act to the Authority. For the reasons mentioned above, the Authority is of the preliminary opinion that the VAT Compensation Act constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Thus, the Norwegian authorities should have notified the introduction of this measure to the Authority and should have awaited the Authority's decision before putting the scheme into effect. The Authority therefore preliminarily concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

4. **Compatibility of the aid**

The Authority has doubts as to whether any of the grounds for compatibility foreseen under Article 61(2) and (3) of the EEA Agreement could be applicable to the case at hand.

The Authority is of the preliminary opinion that none of the derogations mentioned in Article 61(2) of the EEA Agreement can be applied to the case at hand.

Furthermore, the Authority has doubts whether the input tax compensation laid down in the VAT Compensation Act can be considered compatible on the basis of Article 61(3) of the EEA Agreement.

The input tax compensation cannot be considered within the framework of Article 61(3)(a) of the EEA Agreement since none of the Norwegian regions qualify for this provision, which requires an abnormally low standard of living or serious underemployment.

This compensation does not seem to promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a State, as it is requested for compatibility on the basis of Article 61(3)(b) of the EEA Agreement.

Concerning Article 61(3)(c) of the EEA Agreement, aid could be deemed compatible with the EEA Agreement if the aid facilitates the development of certain economic activities or of certain economic areas and where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The aid scheme at hand does not seem to facilitate the development of certain economic activities or areas.

In addition, the Authority considers that a reduction in the running costs of an undertaking, such as the input tax, constitutes operating aid. This type of aid is, in principle, prohibited. The Authority does not know of any reason in the case at hand to deviate from this approach.

Aid can be compatible under the derogation in Article 59(2) of the EEA Agreement. However, the Authority preliminarily considers that Article 59(2) of the EEA Agreement does not seem to justify the compatibility of the VAT Compensation Act.

5. **Conclusion**

Based on the information submitted by the Norwegian authorities, the Authority preliminarily considers that the input tax compensation as provided for in Article 3 of the VAT Compensation Act constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

Furthermore, the Authority has doubts that the input tax compensation can be considered compatible with the State aid rules of the EEA Agreement.

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

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

In light of the foregoing considerations, the Authority requires the Norwegian authorities within **two months** of receipt of this decision to provide all documents, information and data needed for the assessment of the compatibility of the VAT Compensation Act with the State aid rules of the EEA Agreement.

The Authority would like to remind the Norwegian authorities that, according to the provisions of Protocol 3 to the Surveillance and Court Agreement, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered, unless this recovery would be contrary to a general principle of EEA law.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has 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 against Norway regarding the input tax compensation as provided for in Article 3 of the VAT Compensation Act.

Article 2

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

Article 3

The Norwegian authorities are required to provide within two months from notification of this decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

Other Contracting Parties to the EEA Agreement and interested parties shall be informed by the publishing of a meaningful summary and the full text of this Decision in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication of this Decision.

Article 5

This Decision is addressed to the Kingdom of Norway.

Article 6

Only the English version is authentic.

Done at Brussels, 19 July 2006

For the EFTA Surveillance Authority,

Bjørn T. GRYDELAND
President

Kristján A. STEFÁNSSON
College Member