



C/2024/1232

1.2.2024

URZĄD NADZORU EFTA DECYZJA nr 173/23/COL

z dnia 6 grudnia 2023 r.

**o wszczęciu formalnego postępowania wyjaśniającego w sprawie sprzedaży nieruchomości
w Lørenskog (sprawa 89161)**

(C/2024/1232)

**Zaproszenie do zgłaszania uwag zgodnie z częścią I art. 1 ust. 2 protokołu 3 do Porozumienia między państwami
EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości dotyczących wyżej wymienionego
środka**

Wspomnianą wyżej decyzją, zamieszczoną w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Urząd Nadzoru EFTA poinformował władze norweskie o swojej decyzji o wszczęciu postępowania wyjaśniającego zgodnie z częścią I art. 1 ust. 2 protokołu 3 do Porozumienia między państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości w odniesieniu do przedmiotowego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat przedmiotowego środka pomocy w terminie jednego miesiąca od daty publikacji na adres Urzędu Nadzoru EFTA:

EFTA Surveillance Authority
Registry
Avenue des Arts 19H
1000 Bruxelles/Brussel
BELGIQUE/BELGIË
registry@eftasurv.int

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

STRESZCZENIE

1. Procedura

- 1 8 sierpnia 2022 r. Urząd otrzymał skargę od gminy Lørenskog („gmina”).
- 2 14 września 2022 r. Urząd otrzymał uwagi do skargi od rzekomego beneficjenta – Masserud Utvikling AS.
- 3 W odpowiedzi na wnioski Urząd otrzymał informacje od władz norweskich w pismach z 17 października 2022 r. i 7 marca 2023 r.

2. Opis środka

- 4 Masserud Utvikling AS jest spółką z ograniczoną odpowiedzialnością, która głównie zajmuje się działalnością deweloperską i sprzedażą nieruchomości.
- 5 27 stycznia 2014 r. gmina oraz Masserud Utvikling AS zawarły umowę sprzedaży nieruchomości położonej w Lørenskog. W umowie cenę zakupu nieruchomości określono na kwotę 8 268 428 NOK. Zgodnie z umową pierwszy termin płatności przypadał 6 czerwca 2017 r., tj. dwa tygodnie po otrzymaniu pozwolenia na czasowe użytkownika nowych budynków. Po upływie terminu płatności spółce Masserud Utvikling AS nigdy nie przesłano faktury dotyczącej płatności.
- 6 Masserud Utvikling AS nigdy nie przekazała płatności za nieruchomość, na co gmina po raz pierwszy zwróciła uwagę na początku 2021 r. Po kilku ponagleniach przesłanych Masserud Utvikling AS spółka odpowiedziała, że z uwagi na trzyletni termin przedawnienia przewidziany w sekcji 2 norweskiej ustawy o terminach przedawnienia roszczenie uległo przedawnieniu.

3. Ocena środka

- 7 W swojej decyzji Urząd doszedł do wstępnego wniosku, że środek może spełniać kryteria określone w art. 61 ust. 1 Porozumienia EOG i w związku z tym stanowić pomoc państwa.
- 8 Urząd nie może wykluczyć, że cena zakupu mogła być niższa od ceny rynkowej i w związku z tym wiązała się z korzyścią dla Masserud Utvikling AS. Urząd nie otrzymał żadnych dowodów, które wskazywałyby na to, że umowę zawarto na warunkach rynkowych zgodnie z wymogami testu prywatnego sprzedawcy.
- 9 Ponadto, aby ocenić, czy rezygnacja z płatności za nieruchomość stanowi korzyść, Urząd musi porównać zachowanie gminy jako podmiotu uprawnionego z tytułu roszczenia z zachowaniem ostrożnego i sumiennego wierzyciela prywatnego. Urząd wstępnie doszedł do wniosku, że w podobnej sytuacji ostrożny i sumienny wierzyciel prywatny podjąłby działania w związku z brakiem płatności przed upływem terminu przedawnienia.
- 10 Jeżeli środki stanowią pomoc państwa, obowiązek, o którym mowa w części I art. 1 ust. 3 protokołu 3 do Porozumienia między państwami EFTA w sprawie ustanowienia Urzędu Nadzoru i Trybunału Sprawiedliwości, dotyczący zgłoszenia pomocy Urzędowi przed wprowadzeniem jej w życie, nie został dopełniony. Taka pomoc państwa byłaby zatem bezprawna.
- 11 Władze norweskie nie przedstawiły argumentów, które by potwierdzały, że w zakresie, w jakim środek ten stanowi pomoc państwa, można go uznać za zgodny z funkcjonowaniem Porozumienia EOG. Urząd ma zatem wątpliwości co do zgodności środka z prawem.

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ANNEX

Brussels, 6 December 2023

Case No: 89161

Document No: 1365050

Decision No 173/23/COL

Ministry of Trade, Industry and Fisheries
P.O. Box 8090 Dep
0032 Oslo
Norway

Subject: Sale of property in Lørenskog municipality (complaint)**1. Summary**

- (1) The EFTA Surveillance Authority („ESA”) wishes to inform Norway that, having assessed the measure covered by the complaint related to the sale of a property in Lørenskog municipality („the measure”), it has doubts as to whether the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, and if it constitutes State aid, whether the aid is compatible with the functioning of the EEA Agreement. ESA has therefore decided to open a formal investigation procedure as set out in Article 1(2) of Part I of Protocol 3 ⁽¹⁾.
- (2) ESA has based its decision on the following considerations.

2. Procedure**2.1 Complaint from Lørenskog municipality**

- (3) By letter dated 8 August 2022 ⁽²⁾, Lørenskog Municipality (hereafter referred to as either „the complainant” or „the Municipality”) made a complaint alleging that they granted unlawful State aid to Masserud Utvikling AS, since they never received payment for a sold property in Lørenskog.
- (4) On 7 September 2022 ⁽³⁾, ESA forwarded the complaint to the Norwegian authorities and invited them to comment on it.
- (5) On 4 October 2022 ⁽⁴⁾, the Norwegian authorities requested an extension of the deadline to provide comments until 14 October. The extension was granted by ESA the same day. By letter dated 17 October 2022 ⁽⁵⁾, the Norwegian authorities provided their initial comments on the complaint.
- (6) By letter dated 14 September 2022, Masserud Utvikling AS sent their comments on the complaint ⁽⁶⁾.
- (7) By letter of 9 February 2023 ⁽⁷⁾, ESA requested information from the Norwegian authorities, both by questions directed to the complainant and to the authorities themselves. On 7 March 2023 ⁽⁸⁾, ESA received a reply to the requested information.

⁽¹⁾ Reference is made to Article 4(4) 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.

⁽²⁾ Documents No 1308444, 1308455, 1308457 and 1308458.

⁽³⁾ Document No 1310604.

⁽⁴⁾ Document No 1317746.

⁽⁵⁾ Document No 1321477.

⁽⁶⁾ Documents No 1313013 and 1312674.

⁽⁷⁾ Document No 1327441.

⁽⁸⁾ Documents No 1357235 and 1357237.

3. Description of the measure

3.1 Background

- (8) On 20 January 2014, the Municipality and Glitnegaarden AS, which later became Masserud Utvikling AS ⁽⁹⁾, entered into a development agreement regarding the establishment of new infrastructure and buildings for residential purposes in Lørenskog.
- (9) Masserud Utvikling AS is a limited company which mainly develops and sells real estate. The company is a wholly owned subsidiary of Olavsgaard Eiendom AS, which owns around 43000 m² of commercial properties in Nedre Romerike. The commercial properties include hotels, offices, businesses and apartments.
- (10) On 27 January 2014, the Municipality and Masserud Utvikling AS entered into a separate agreement concerning the sale of a property ⁽¹⁰⁾. A large part of the property was regulated for residential purposes and the remaining for access roads and infrastructure. The contract states that the purchase price for the property amounted to NOK 8 268 428.
- (11) Based on the contract the property was first transferred to Masserud Utvikling AS by registration of deed when the construction began on 21 August 2015. Before the construction started the Municipality had arranged the subdivision of the property and paid for the document and registration fees.
- (12) The purchase contract states that the payment for the property was due two weeks after receiving a temporary use permit for new buildings. On 23 May 2017, the temporary use permit was granted, which meant that payment was due on 6 June 2017. An invoice for the payment was never sent to Masserud Utvikling AS after the payment was due.
- (13) Masserud Utvikling AS never transferred the payment for the property. The Municipality first realised in early 2021 that the payment never had been settled. Subsequently, on 16 March 2021 the Municipality sent Masserud Utvikling AS an invoice in the amount of NOK 8 249 339, for the CPI-adjusted purchase price and costs. The invoice was calculated based on the Municipality's view that the purchase price and costs amounted to NOK 7 902 303, which differs from the purchase price in the contract.
- (14) After several reminders, Masserud Utvikling AS replied on 30 June 2021 stating that the claim was obsolete, due to the limitation period of three years in Section 2 of the Norwegian Limitation Act ⁽¹¹⁾.
- (15) The complainant and Masserud Utvikling AS had several meetings in 2021 and 2022. The meetings mostly concerned certain technical facilities, such as roads, that are covered by the development contract between the parties ⁽¹²⁾. They did not come to an agreement concerning the sold property.
- (16) The complainant did not pursue its claim before Norwegian courts before filing a complaint to ESA on 8 August 2022 ⁽¹³⁾.

3.2 Arguments brought forward by the complainant

- (17) The complainant holds that since the contract stated the transfer date for the payment, it was not necessary to send reminders to Masserud Utvikling AS. Nevertheless, they find that if the claim is obsolete, the lack of payment for the property is considered State aid in accordance with Article 61(1) of the EEA Agreement.
- (18) The complainant maintains that Masserud Utvikling AS carries out economic activities, since they develop and sell real estate. Furthermore, the complainant holds that the lack of payment is clearly considered to be an economic advantage, since not only positive actions are covered, but also reliefs of economic burdens.

⁽⁹⁾ Glitnegaarden AS renamed to Masserud utvikling AS in 2015.

⁽¹⁰⁾ Document No 1308455.

⁽¹¹⁾ Lov av 18 mai 1976 nr. 18 om foreldelse av fordringer.

⁽¹²⁾ Document No 1310226.

⁽¹³⁾ Document No 1357235.

- (19) The complainant also submits that the lack of payment is liable to effect competition and trade between the Contracting Parties to the EEA Agreement. From the complainant's point of view there is a low threshold for establishing that a measure is liable to effect competition and trade. The complainant finds that other competitors would have been interested in the property, if they knew of the possibility of the purchase price later becoming obsolete. Since the Municipality has a central location in Norway and the payment amounts to around NOK 8 million, the condition must be met.
- (20) Concerning the limitation period, the complainant points out that ESA can order recovery ten years from the date on which the State aid was granted. From their point of view the limitation period should be calculated from when the aid was awarded, which occurred when Masserud Utvikling AS chose not to transfer the due payment on 6 June 2017.

3.3 Arguments brought forward by Masserud Utvikling AS

- (21) Masserud Utvikling AS holds that the claim for payment has exceeded the prescription period set out under Norwegian law, and that such an expiry of a claim does not entail State aid within the meaning of Article 61(1) of the EEA Agreement.
- (22) Firstly, it argues that the State aid rules should not apply to agreements entered into on market terms, which later become obsolete due to inactions from public bodies. In its opinion, State aid rules cannot be used to protect public bodies against the rules in the Limitation Act, since the rules apply equally to all creditors. The Norwegian Limitation Act would be non-effective if it did not apply to public authorities' contracts with undertakings.
- (23) Secondly, Masserud Utvikling AS finds that if the lack of payment for the property constitutes unlawful aid, ESA cannot order its recovery. From its point of view, recovery is in breach of its legitimate expectations and legal certainty, as it has based itself on the claim being expired and non-enforceable.

3.4 Comments by the Norwegian authorities

- (24) In their initial comments to the complaint, the Norwegian authorities found it doubtful whether the measure was imputable to the State ⁽¹⁴⁾. From their point of view a measure cannot be imputable to the State as a grantor of aid when the State as a creditor has been passive and forgotten to collect a payment.
- (25) On 9 February 2023, ESA requested the Norwegian authorities to „elaborate on why the imputability criterion would not be fulfilled, and how the State aid rules are affected by the Norwegian Limitation Act” ⁽¹⁵⁾.
- (26) The Norwegian authorities responded on 7 March 2023 ⁽¹⁶⁾, confirming that the measure might not be considered imputable to the State. In their opinion, the lack of payment was a consequence of a regulatory limitation due to passivity from the Municipality, and it was not a conscious action that they forgot to send reminders concerning the lack of payment.
- (27) The Norwegian authorities also note that it would not be appropriate if general measures under the Limitation Act fall under the scope of the State aid rules, as such may run contrary to the purpose of the limitation rules. The Norwegian Limitation Act applies to all claims and the purpose of the rules are to encourage a final settlement of claims and to protect a debtor's legitimate interests.

⁽¹⁴⁾ Document No 1321477.

⁽¹⁵⁾ Document No 1327441.

⁽¹⁶⁾ Document No 1357237.

4. Presence of State aid

4.1 Introduction

- (28) 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.”
- (29) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

4.2 Presence of State resources

- (30) ESA finds that the lack of payment appears to constitute the foregoing of State resources within the meaning of Article 61(1) of the EEA Agreement. ESA also finds that the measure appears to be imputable to the State.
- (31) For a measure to constitute aid, the measure must be granted by the State or through State resources. State resources include all resources of the public sector, including resources of municipalities, see ESA's Guidelines on the notion of State aid („NoA”) ⁽¹⁷⁾.
- (32) A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. Waiving revenue which would otherwise have been paid to the State constitutes a transfer of State resources ⁽¹⁸⁾.
- (33) In cases where a public authority grants an advantage to a beneficiary, the measure is by definition imputable to the State, even if the authority enjoys legal autonomy from other public authorities ⁽¹⁹⁾.
- (34) The lack of payment for the property appears to entail a transfer of funds from the Municipality to the Masserud Utvikling AS. Furthermore, the measure appears to be imputable to the State, since it was the Municipality which sold the property to Masserud Utvikling AS and later omitted to pursue its claim for the payment before the expiry of the claim.

4.3 Conferring an advantage on an undertaking

- (35) ESA finds that foregoing of payment for the property appears to constitute an economic advantage within the meaning of Article 61(1) of the EEA Agreement.
- (36) The qualification of a measure as State aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement is any economic benefit that an undertaking could not have obtained under normal market conditions ⁽²⁰⁾.
- (37) Economic transactions carried out by public bodies are considered not to confer an advantage on the counterpart of the agreement if they are carried out in line with normal market conditions. Normal market conditions are assessed pursuant to the market economy operator principle („MEOP”) ⁽²¹⁾.

⁽¹⁷⁾ ESA's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement („NoA”) (OJ L 342, 21.12.2017, p. 35 and EEA Supplement No 82, 21.12.2017, p. 1), para. 48.

⁽¹⁸⁾ NoA, para. 51.

⁽¹⁹⁾ NoA, para. 39.

⁽²⁰⁾ NoA, para. 66.

⁽²¹⁾ NoA, para. 76.

- (38) The behaviour of public bodies should be compared to that of similar private economic operators under normal market conditions to determine whether the economic transactions carried out by such bodies grant an advantage to their counterparts ⁽²²⁾.
- (39) The measure confers an advantage not only if it confers positive economic benefits, but also in situations where it mitigates charges normally borne by the budget of the undertaking. This covers all situations in which economic operators are relieved of the inherent costs of their economic activities ⁽²³⁾.
- (40) When it comes to the sale of the property and the agreed purchase price, both the complainant and the alleged beneficiary maintain that the contract was entered into on market terms. However, there appears to be a discrepancy in what the complainant and the alleged beneficiary have submitted as the purchase price, and what is set out in the contract. The complainant holds that the purchase price was NOK 7 902 303, including the additional document and registration fees of NOK 193 245. Masserud Utvikling AS holds that the purchase price amounted to NOK 7 794 629. It is unclear why the prices differ.
- (41) ESA has also not received any evidence (neither *ex post* nor *ex ante* documentation) that the sales agreement was entered into on market terms in line with the private vendor test ⁽²⁴⁾. Consequently, ESA cannot at this stage exclude that the purchase price may have been below market price and therefore entailed an advantage in favour of Masserud Utvikling AS.
- (42) When assessing whether the foregoing of payment for the property constitutes an advantage, ESA must compare the behaviour of the Municipality as a claimholder to that of a normally prudent and diligent private creditor ⁽²⁵⁾. ESA considers that under similar circumstances a prudent and diligent private creditor would have followed up on the lack of payment before the limitation period expired.
- (43) In light of the above, ESA's preliminary view is that measure appears to entail an economic advantage.

4.4 Selectivity

- (44) ESA also finds that the measure appears to be selective within the meaning of Article 61(1) of the EEA Agreement.
- (45) A measure is characterised as selective if it favours „certain undertakings or the production of certain goods”. Not all measures that favour economic operators fall under the notion of aid. Only those that grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors ⁽²⁶⁾.
- (46) Masserud Utvikling AS holds that since they were in the same situation as other private entities entering into to a contract with a public authority, and where the limitation period is exceeded, the measure cannot be considered selective.
- (47) Due to the lack of payment, it appears that Masserud Utvikling AS is favoured over other undertakings. Under normal conditions, purchasers of municipal properties would be required to pay the purchase price. Not collecting the purchase price within the limitation period appears to have benefitted the alleged beneficiary over other operators in a similar situation. It is not relevant that the Municipality never intended to favour Masserud Utvikling AS. Therefore, ESA's preliminary view is that the measure appears to be selective.

⁽²²⁾ NoA, para. 75.

⁽²³⁾ NoA, para. 68.

⁽²⁴⁾ NoA, para. 74.

⁽²⁵⁾ Judgment of 24 January 2013, *Frucona Košice v Commission*, C-73/11 P, EU:C:2013:32, para. 78.

⁽²⁶⁾ NoA, para. 117.

4.5 Effect on trade and distortion of competition

- (48) ESA also finds that the measure appears to be liable to distort competition and affect trade between Contracting Parties to the EEA Agreement.
- (49) Measures granted by the State are considered liable to distort competition when they are liable to improve the competitive position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 61(1) of the EEA Agreement is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽²⁷⁾.
- (50) ESA notes that it is not obliged to establish the real effect of the aid on the market but is only required to show that the aid is liable to distort competition and affect trade ⁽²⁸⁾.
- (51) The real estate market in Lørenskog, and other surrounding areas of Oslo, are markets with a lot of activity, both for residential and developing purposes. Olavsgaard eiendom AS, the parent company of Masserud Utvikling AS, has in addition to the development of the property in Lørenskog, also other commercial properties in surrounding areas of Oslo. The real estate market in these areas also attracts foreign investors and international companies. That one developer is granted a property free of charge is a preferential treatment that appears to be liable to distort competition and affect trade between the Contracting Parties.

4.6 Conclusion

- (52) Based on the above assessment of the information provided by the Norwegian authorities, the complainant and Masserud Utvikling AS, ESA has formed the preliminary view that the measure appears to fulfil all criteria in Article 61(1) of the EEA Agreement and therefore constitutes State aid. In addition, ESA cannot at this stage exclude that the purchase price may have been below market price and therefore also entailed an advantage in favour of Masserud Utvikling AS.

5. Procedural requirements

5.1 Standstill obligation

- (53) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice („Protocol 3”): „The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”
- (54) The Norwegian authorities did not notify the potential aid measure to ESA. ESA has therefore reached the preliminary conclusion that if the measure constitutes State aid, the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

5.2 Limitation periods

- (55) ESA notes that the Norwegian authorities and the alleged beneficiary argue that the Norwegian limitation rules would be of less or no importance if State aid rules apply to instances where public bodies exceed the limitation period for claims. ESA would like to point out that national limitation rules do not affect the interpretation and application of EEA State aid rules.

⁽²⁷⁾ NoA, para. 187.

⁽²⁸⁾ Judgment of 20 May 1999, *Norway v ESA*, Case E-6/98 [1999] EFTA Ct. Rep. 76; Judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, para. 66; Judgment of 8 May 2013, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, para. 77.

- (56) Regarding the prescription period applied to national courts' powers to order recovery, the Court of Justice ruled that the ten-year limitation period provided for by the Procedural Regulation ⁽²⁹⁾ applies to the Commission ⁽³⁰⁾, which is equally applicable to the limitation period provided for by Part II of Protocol 3 in relation to ESA.

6. Compatibility of the aid

- (57) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, ESA can declare State aid compatible with the functioning of the EEA Agreement under its Articles 59(2), 61(2) and (3) provided that certain conditions are fulfilled.
- (58) It is for the Norwegian authorities to invoke possible grounds for compatibility and to demonstrate that the conditions for compatibility are met ⁽³¹⁾. However, the Norwegian authorities have not provided any arguments substantiating why the measure should be considered compatible with the functioning of the EEA Agreement. ESA has also not identified any clear grounds for compatibility.
- (59) To the extent that the measure constitutes State aid, ESA therefore has doubts as to its compatibility with the functioning of the EEA Agreement

7. Conclusion

- (60) As set out above, ESA has formed the preliminary view that the measure appears to fulfil all the criteria in Article 61(1) of the EEA Agreement and therefore constitutes State aid. Further, ESA cannot at this stage exclude that the purchase price may have been below market price and therefore entailed an advantage in favour of Masserud Utvikling AS. Furthermore, ESA has doubts as to whether the measure is compatible State aid within the meaning of Articles 59(2), 61(2) and (3) of the EEA Agreement.
- (61) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, ESA hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of ESA, which may conclude that the measure does not constitute State aid or is compatible with the functioning of the EEA Agreement.
- (62) ESA, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by 30 January 2024 their comments and to provide all documents, information and data needed for the assessment of the measure in light of the State aid rules.
- (63) The Norwegian authorities are requested to immediately forward a copy of this decision to the potential aid recipient.

⁽²⁹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union. Part II of Protocol 3 SCA is based on the „old“ Procedural Regulation, i.e. 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), since Council Regulation (EU) 2015/1589 has still not been incorporated into the EEA legal framework. However, with regard to the application of the „ten-year limitation period“ to the case at hand, there is no difference between the „old“ Procedural Regulation (Article 15 of Council Regulation (EC) No 659/1999, i.e. Article 15 in Part II of Protocol 3 SCA) and Council Regulation (EU) 2015/1589 (Article 17).

⁽³⁰⁾ Judgment of the Court of Justice of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, para. 61. However, this does not preclude national authorities and courts to enforce the „ten-year limitation period“ also at national level.

⁽³¹⁾ Judgment in *Italy v Commission*, C-364/90, EU:C:1993:157, para. 20.

- (64) If this letter contains confidential information which should not be disclosed to third parties, please inform ESA **by 9 January 2024**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult ESA's Guidelines on Professional Secrecy in State Aid Decisions ⁽³²⁾. If ESA does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on ESA's website: <http://www.eftasurv.int/state-aid/state-aid-register/>.
- (65) Finally, ESA will inform interested parties by publishing a meaningful summary in the Official Journal of the European Union and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Norwegian authorities.

For the EFTA Surveillance Authority,

Arne RØKSUND
President
Responsible College Member

Stefan BARRIGA
College Member

Árni Páll ÁRNASON
College Member

Melpo-Menie JOSÉPHIDÈS
Countersigning as Director,
Legal and Executive Affairs

⁽³²⁾ OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1.