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Price: EUR 3

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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 154/2013

of 18 December 2012

**amending Annex II to Regulation (EU) No 978/2012 of the European Parliament and of the Council
applying a scheme of generalised tariff preferences**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 207 thereof,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 ⁽¹⁾, and in particular Article 5(3) thereof,

Whereas:

- (1) Article 4 of Regulation (EU) No 978/2012 (GSP Regulation) establishes criteria for the granting of tariff preferences under the general arrangement of the Generalised Scheme of Preferences (GSP). Accordingly, a country that has been classified by the World Bank as a high or an upper-middle income country for three consecutive years should not benefit from such preferences.
- (2) The list of beneficiary countries of the general arrangement of the GSP is established in Annex II to the GSP Regulation.
- (3) The Commission has been empowered to adopt a delegated act in accordance with Article 290 TFEU to

review Annex II by 1 January of each year following the entry into force of the GSP Regulation as provided in its Article 5(2).

- (4) The Republic of Azerbaijan and the Islamic Republic of Iran have been classified by the World Bank as upper-middle income countries in 2010, 2011 and 2012.
- (5) The Republic of Azerbaijan and the Islamic Republic of Iran should be removed from the list of the beneficiary countries of a general arrangement of the GSP and Annex II to the GSP Regulation should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) No 978/2012 is replaced by the Annex to this Regulation.

Article 2

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

It shall apply as from one year after the date of entry into force of this Regulation.

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

Done at Brussels, 18 December 2012.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 303, 31.10.2012, p. 1.

ANNEX

‘ANNEX II

Beneficiary countries ⁽¹⁾ of the general arrangement referred to in point (a) of Article 1(2)

Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

A	B
AF	Afghanistan
AM	Armenia
AO	Angola
BD	Bangladesh
BF	Burkina Faso
BI	Burundi
BJ	Benin
BO	Bolivia
BT	Bhutan
CD	Congo, Democratic Republic of
CF	Central African Republic
CG	Congo
CK	Cook Islands
CN	China, People's Republic of
CO	Colombia
CR	Costa Rica
CV	Cape Verde
DJ	Djibouti
EC	Ecuador
ER	Eritrea
ET	Ethiopia
FM	Micronesia, Federated States of
GE	Georgia
GM	Gambia
GN	Guinea
GQ	Equatorial Guinea
GT	Guatemala

⁽¹⁾ This list includes countries for which preferences may have been temporarily withdrawn or suspended. The Commission or the competent authorities of the country concerned will be able to provide an updated list.

A	B
GW	Guinea-Bissau
HN	Honduras
HT	Haiti
ID	Indonesia
IN	India
IQ	Iraq
KG	Kyrgyz Republic
KH	Cambodia
KI	Kiribati
KM	Comoros
LA	Lao People's Democratic Republic
LK	Sri Lanka
LR	Liberia
LS	Lesotho
MG	Madagascar
MH	Marshall Islands
ML	Mali
MM	Burma/Myanmar
MN	Mongolia
MR	Mauritania
MV	Maldives
MW	Malawi
MZ	Mozambique
NE	Niger
NG	Nigeria
NI	Nicaragua
NP	Nepal
NR	Nauru
NU	Niue
PA	Panama
PE	Peru
PH	Philippines
PK	Pakistan
PY	Paraguay
RW	Rwanda
SB	Solomon Islands

A	B
SD	Sudan
SL	Sierra Leone
SN	Senegal
SO	Somalia
ST	São Tomé and Príncipe
SV	El Salvador
SY	Syrian Arab Republic
TD	Chad
TG	Togo
TH	Thailand
TJ	Tajikistan
TL	Timor-Leste
TM	Turkmenistan
TO	Tonga
TV	Tuvalu
TZ	Tanzania
UA	Ukraine
UG	Uganda
UZ	Uzbekistan
VN	Vietnam
VU	Vanuatu
WS	Samoa
YE	Yemen
ZM	Zambia

Beneficiary countries of the general arrangement referred to in point (a) of Article 1(2) which have been temporarily withdrawn from that arrangement, in respect of all or of certain products originating in these countries

Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

A	B
MM	Burma/Myanmar'

**COMMISSION DELEGATED REGULATION (EU) No 155/2013
of 18 December 2012**

establishing rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance under Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 207 thereof,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 ⁽¹⁾, and in particular Article 10(7) thereof,

Whereas:

- (1) Article 9(1) of Regulation (EU) No 978/2012 establishes the requirements for the granting of the preferences under the special incentive arrangement for sustainable development and good governance. To ensure the transparency and predictability of the process, the Commission has been empowered by the European Parliament and the Council to adopt a delegated act to establish rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance in particular with respect to deadlines and the submission and processing of requests.
- (2) In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on the procedural rules provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Submission of application

1. The requesting country shall submit its request in writing. The requesting country shall explicitly state that its request is made in the framework of the special incentive arrangement for sustainable development and good governance (GSP+ arrangement) under Article 9(1) of Regulation (EU) No 978/2012 (GSP Regulation).
2. The request shall be accompanied by the following documentation:
 - (a) comprehensive information concerning the ratification of the conventions listed in Annex VIII to the GSP Regulation (the 'relevant conventions'), including a copy of the deposited ratification instrument to the relevant international organisation, the reservations made by the requesting country and the objections to these reservations made by other parties to the convention;

(b) the binding undertaking, to be done by the signature by the competent authority of the requesting country of the form in the Annex to this Regulation, containing:

- (i) a statement of the commitment to maintain ratification of the relevant conventions and to ensure their effective implementation;
- (ii) a statement to accept without reservation the reporting requirements imposed by each relevant convention and to accept regular monitoring and review of its implementation record in accordance with the provisions of the relevant conventions;
- (iii) a statement of the commitment to participate in and cooperate with the monitoring procedure referred to in Article 13 of the GSP Regulation.

3. To facilitate the review process of the applications, all requests and accompanying documentation shall be submitted in English. The copy of the documents under point 2(a) if the original language is different from English shall be accompanied by an English translation.

4. The request, together with the accompanying documents, shall be submitted to the Commission's mail reception service:

Central mail service (Courrier central)
Bâtiment DAV1
Avenue du Bourget/Bourgetlaan 1
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

5. In addition to the formal written submission, the request and the accompanying documents shall also be submitted in electronic format. Any request submitted exclusively in electronic format will not be considered valid for the purposes of this Regulation.

6. To facilitate information exchange and verification, in its application the requesting country shall inform the Commission of the contact person who is competent to handle the processing of the application.

7. The request shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

Article 2

Examination of application

1. The Commission shall examine whether the conditions of Article 9(1) of the GSP Regulation have been met. When examining the request the Commission shall assess the most

⁽¹⁾ OJ L 303, 31.10.2012, p. 1.

recent available conclusions of the monitoring bodies of the relevant conventions. It may ask the requesting country any questions which it considers relevant, and may verify the information received with the requesting country or with any other relevant sources.

2. Failure to provide the necessary information as required by Article 10(2) of the GSP Regulation or requested by the Commission may lead to termination of the examination and the rejection of the request.

3. The Commission shall finalise the examination of the request and decide whether to grant a requesting country the GSP+ arrangement within six months from the date of acknowledgement of receipt of the request.

Article 3

Constituted file

1. The Commission shall establish a constituted file. A constituted file shall contain the documents submitted by the requesting country and the relevant information which has been obtained by the Commission.

2. The content of a constituted file shall comply with provisions of confidentiality in accordance with Article 38 of the GSP Regulation.

3. The requesting country has a right of the access to the constituted file. Upon written request, it may inspect all information contained in the constituted file except internal documents prepared by the Commission.

Article 4

Disclosure

1. The Commission shall disclose the details underlying the essential facts and considerations on the basis of which the Commission's decisions are taken.

2. Disclosure shall be given in writing. It shall contain the Commission's findings and shall reflect its provisional intention whether to grant a requesting country the GSP+ arrangement.

3. Disclosure shall be made, with due regard to the protection of confidential information, as soon as possible

and, normally, not later than 45 days prior to a definitive decision by the Commission of any proposal for final action. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter.

4. Disclosure shall not prejudice any subsequent decision which may be taken but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Submissions made after disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 20 days, due consideration being given to the urgency of the matter.

Article 5

General hearing

1. A requesting country has the right to be heard by the Commission.

2. The requesting country shall submit a written request specifying the reasons for it to be heard orally. Such a request shall be received by the Commission at the latest one month after the date of acknowledgement of receipt of the application.

Article 6

Involvement of Hearing Officer

1. On procedural grounds a requesting country may also request the intervention of the Hearing Officer of the Directorate-General for Trade. The Hearing Officer shall review requests for access to the constituted file, disputes on the confidentiality of documents, requests for extension of time limits and requests of a requesting country to be heard.

2. If the requesting country has an oral hearing with the Hearing Officer the relevant Commission service shall participate in it.

Article 7

This Regulation shall enter into force on the day following that 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, 18 December 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Binding Undertaking

We, the Government of ..., represented by ..., in our capacity as ..., express our commitment to maintain the ratification of the conventions listed in Annex VIII of the Regulation (EU) No 978/2012 and to ensure effective implementation thereof.

We accept without reservation the reporting requirements imposed by each convention and regular monitoring and review of the implementation record in accordance with the provisions of the conventions listed in Annex VIII of the Regulation (EU) No 978/2012.

We express our commitment to participate in and cooperate with the monitoring procedure referred to in Article 13 of the Regulation (EU) No 978/2012.

We fully accept that withdrawal of any of these commitments may result in removal of the GSP+ arrangement according to Article 10(5) of the Regulation (EU) No 978/2012.

Place and date

Signature(s)

COMMISSION IMPLEMENTING REGULATION (EU) No 156/2013**of 20 February 2013****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 multi-lateral 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, 20 February 2013.

*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	80,1
	MA	61,7
	TN	81,6
	TR	96,5
	ZZ	80,0
0707 00 05	EG	191,6
	MA	191,6
	TR	175,4
	ZZ	186,2
0709 91 00	EG	76,0
	ZZ	76,0
0709 93 10	MA	42,2
	TR	112,9
	ZZ	77,6
0805 10 20	EG	50,7
	IL	52,2
	MA	63,1
	TN	56,7
	TR	58,5
	ZZ	56,2
0805 20 10	IL	126,3
	MA	103,1
	ZZ	114,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	57,7
	IL	150,3
	KR	134,8
	MA	122,1
	TR	70,0
	ZA	148,7
	ZZ	113,9
0805 50 10	EG	83,9
	TR	76,5
	ZZ	80,2
0808 10 80	CN	82,9
	MK	34,9
	US	202,1
	ZZ	106,6
0808 30 90	AR	130,3
	CL	178,0
	CN	77,9
	TR	179,9
	US	187,5
	ZA	118,0
	ZZ	145,3

⁽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'.

DIRECTIVES

COMMISSION DIRECTIVE 2013/6/EU

of 20 February 2013

amending Directive 98/8/EC of the European Parliament and of the Council to include diflubenzuron as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

the Standing Committee on Biocidal Products on 21 September 2012, in an assessment report.

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ⁽²⁾ establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes N-[[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide, which is a synonym for diflubenzuron.
- (2) Pursuant to Regulation (EC) No 1451/2007, diflubenzuron has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 18, insecticides, acaricides and products to control other arthropods, as defined in Annex V to that Directive.
- (3) Sweden was designated as rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 19 November 2007 in accordance with Article 10(5) and (7) of Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 ⁽³⁾.
- (4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within

- (5) It appears from the evaluations that biocidal products used as insecticides, acaricides and products to control other arthropods and containing diflubenzuron may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include diflubenzuron for use in product-type 18 in Annex I to that Directive.

- (6) Not all potential uses and exposure scenarios have been evaluated at Union level. For example, outdoor use, use by non-professionals, and exposure of livestock were not assessed. It is therefore appropriate to require that Member States assess those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

- (7) In the light of the findings in the assessment report that there is a possible indirect human exposure via consumption of food as a result of those uses represented in the assessment, it is appropriate to require, where relevant, verification of the need to set new or to amend existing maximum residue levels in accordance with Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council ⁽⁴⁾ or with Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽⁵⁾. Special consideration should be given to the *in vivo* genotoxic metabolite PCA. Measures should be adopted ensuring that the applicable maximum residue levels are not exceeded.

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ OJ L 325, 11.12.2007, p. 3.

⁽³⁾ OJ L 307, 24.11.2003, p. 1.

⁽⁴⁾ OJ L 152, 16.6.2009, p. 11.

⁽⁵⁾ OJ L 70, 16.3.2005, p. 1.

- (8) In view of the assumptions made during the risk assessment, it is appropriate to require that professional users of products containing diflubenzuron wear appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks to workers and operators can be reduced to an acceptable level.
- (9) In view of the risks identified for the environment, it is appropriate to require, unless it can be demonstrated in the application for product authorisation that risks to the aquatic and terrestrial ecosystems can be reduced to an acceptable level, that products are not authorised in water systems, and that products authorised for use on manure are only used on dry manure, which has to undergo complete aerobic composting prior to application of the manure on arable land.
- (10) The provisions of this Directive should be applied simultaneously in all Member States in order to ensure equal treatment on the Union market of biocidal products of product-type 18 containing the active substance diflubenzuron and also to facilitate the proper operation of the biocidal products market in general.
- (11) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC, in order to permit Member States and interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.
- (12) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.
- (13) Directive 98/8/EC should therefore be amended accordingly.
- (14) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between

the components of a directive and the corresponding parts of national transposition instruments.

- (15) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 31 January 2014 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2015.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 20 February 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

No	Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (*)	Date of inclusion	Deadline for compliance with Article 16(3), unless one of the exceptions indicated in the footnote to this heading applies (**)	Expiry date of inclusion	Product type	Specific provisions (***)
'63	diflubenzuron	1-(4-chlorophenyl)-3-(2,6-difluorobenzoyl)urea EC No: 252-529-3 CAS No: 35367-38-5	960 g/kg	1 February 2015	31 January 2017	31 January 2025	18	The Union level risk assessment did not address all potential uses and exposure scenarios; certain uses and exposure scenarios, such as outdoor use, use by non-professionals, and exposure of livestock were excluded. When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, where relevant for the particular product, those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment. For products containing diflubenzuron that may lead to residues in food or feed, Member States shall verify the need to set new or to amend existing maximum residue levels (MRLs) in accordance with Regulation (EC) No 470/2009 or Regulation (EC) No 396/2005, with special consideration to the <i>in vivo</i> genotoxic metabolite PCA, and take any appropriate risk mitigation measures ensuring that the applicable MRLs are not exceeded. Member States shall ensure that authorisations are subject to the following conditions unless it can be demonstrated in the application for product authorisation that the risks can be reduced to an acceptable level: (1) Professional users shall wear appropriate personal protective equipment.

No	Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (*)	Date of inclusion	Deadline for compliance with Article 16(3), unless one of the exceptions indicated in the footnote to this heading applies (**)	Expiry date of inclusion	Product type	Specific provisions (***)
								(2) Product information shall include the requirement that products shall only be used on dry manure, and that the manure must undergo complete aerobic composting by professionals prior to application on arable land. (3) Products shall not be used in water systems.'

(*) The purity indicated in this column was the minimum degree of purity of the active substance used for the evaluation made in accordance with Article 11. The active substance in the product placed on the market can be of equal or different purity if it has been proven technically equivalent with the evaluated substance.

(**) For products containing more than one active substance covered by Article 16(2), the deadline for compliance with Article 16(3) is that of the last of its active substances to be included in this Annex. For products for which the first authorisation has been granted later than 120 days before the deadline for compliance with Article 16(3) and a complete application has been submitted for mutual recognition in accordance with Article 4(1) within 60 days of the granting of the first authorisation, the deadline for compliance with Article 16(3) in relation to that application is extended to 120 days after the date of reception of the complete application for mutual recognition. For products for which a Member State has proposed to derogate from mutual recognition in accordance with Article 4(4), the deadline for compliance with Article 16(3) is extended to 30 days after the date of the Commission Decision adopted in accordance with the second subparagraph of Article 4(4).

(***) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: <http://ec.europa.eu/comm/environment/biocides/index.htm>

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 19 February 2013

approving restrictions of authorisations of biocidal products containing difenacoum notified by Germany in accordance with Directive 98/8/EC of the European Parliament and of the Council*(notified under document C(2013) 772)***(Only the German text is authentic)**

(2013/95/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) Annex I to Directive 98/8/EC contains the list of active substances approved at Union level for inclusion in biocidal products. Commission Directive 2008/81/EC of 29 July 2008 amending Directive 98/8/EC of the European Parliament and of the Council to include difenacoum as an active substance in Annex I thereto ⁽²⁾ added the active substance difenacoum to belonging to product type 14, Rodenticides, as defined in Annex V to Directive 98/8/EC.
- (2) Difenacoum is an anticoagulant rodenticide known to pose risks of accidental incidents with children, as well as risks for animals and the environment. It has been identified as potentially persistent, liable to bioaccumulate and toxic ('PBT'), or very persistent and very liable to bioaccumulate ('vPvB').
- (3) For reasons of public health and hygiene, it was nevertheless found to be justified to include difenacoum and other anticoagulant rodenticides in Annex I to Directive 98/8/EC, thus allowing Member States to authorise difenacoum-based products. However, Directive 2008/81/EC obliges Member States to ensure, when granting authorisation of products containing difenacoum, that primary as well as secondary exposure of humans, non-target animals and the environment is minimised, by considering and applying all appropriate and available risk mitigation measures. The risk mitigation measures mentioned in Directive 2008/81/EC therefore include, amongst others, restriction to professional use only.
- (4) The company Zapi S.p.A. ('the applicant') has, in accordance with Article 8 of Directive 98/8/EC, submitted an application to the United Kingdom for authorisation of four rodenticides containing difenacoum ('the products').
- (5) The United Kingdom granted the authorisations on 19 September 2011. The products were authorised with restrictions to ensure the conditions of Article 5 of Directive 98/8/EC were met in the United Kingdom. Those restrictions did not include restriction to trained or licensed professional users.
- (6) On 30 June 2010, the applicant submitted a complete application to Germany for mutual recognition of the first authorisations in respect of the products.
- (7) On 8 June 2012, Germany notified the Commission, the other Member States and the applicant of its proposal to restrict the first authorisations in accordance with Article 4(4) of Directive 98/8/EC. Germany proposed to impose a restriction on the products to use by trained or licensed professionals.
- (8) The Commission invited the other Member States and the applicant to submit comments to the notification in writing within 90 days in accordance with Article 27(1) of Directive 98/8/EC. No comments were submitted within that deadline. The notification was also discussed between the Commission and Member States' Competent Authorities for biocidal products in the meeting of the Product Authorisation and Mutual Recognition Facilitation Group of 3-4 July 2012.
- (9) In accordance with Directive 2008/81/EC, authorisations of biocidal products containing difenacoum are to be subject to all appropriate and available risk mitigation measures, including the restriction to professional use only. The scientific evaluation leading to the adoption of Directive 2008/81/EC concluded that only professional users could be expected to follow the instructions minimising the risk of secondary poisoning of non-target animals, and to use products in a way that prevents the development and spreading of resistance. A restriction to

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.⁽²⁾ OJ L 201, 30.7.2008, p. 46.

professional users should therefore in principle be considered to be an appropriate risk mitigation measure, in particular in Member States where resistance to difenacoum occurs.

- (10) In the absence of any indication to the contrary, restriction to professional users is therefore an appropriate and available risk mitigation measure for the authorisation of products containing difenacoum in Germany. This conclusion is reinforced by the arguments put forward by Germany that resistance against difenacoum in rats has been found and is thought to be developing in the country. Furthermore, Germany has a well-functioning infrastructure of trained pest control operators and licensed professionals, such as farmers, gardeners and foresters who received professional training, which means that the proposed restriction does not hinder infection prevention.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC for the products mentioned in the Annex to this Decision to use by trained or licensed professionals.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 February 2013.

For the Commission

Janez POTOČNIK

Member of the Commission

ANNEX

Products for which Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC to use by trained or licensed professionals:

Product name in UK	UK application reference number in the Register for Biocidal Products	Product name in Germany	German application reference number in the Register for Biocidal Products
Bonirat Wax Block	2010/4089/5286/UK/AA/6165	Bonirat Blöcke	2010/4089/5286/DE/MA/10012
Bonirat Pasta Bait	2010/4089/5346/UK/AA/6225	Bonirat Pasta	2010/4089/5346/DE/MA/10018
Bonirat Pellet	2010/4089/5366/UK/AA/6245	Bonirat Pellet	2010/4089/5366/DE/MA/10023
Bonirat Wheat	2010/4089/5367/UK/AA/6246	Bonirat Korn	2010/4089/5367/DE/MA/10024

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of 19 February 2013

regarding restrictions of authorisations of biocidal products containing difenacoum notified by Germany in accordance with Directive 98/8/EC of the European Parliament and of the Council*(notified under document C(2013) 780)***(Only the German text is authentic)**

(2013/96/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

(1) Annex I to Directive 98/8/EC contains the list of active substances approved at Union level for inclusion in biocidal products. Commission Directive 2008/81/EC of 29 July 2008 amending Directive 98/8/EC of the European Parliament and of the Council to include difenacoum as an active substance in Annex I thereto ⁽²⁾ added the active substance difenacoum to belonging to product type 14, rodenticides, as defined in Annex V to Directive 98/8/EC.

(2) Difenacoum is an anticoagulant rodenticide known to pose risks of accidental incidents with children, as well as risks for animals and the environment. It has been identified as potentially persistent, liable to bioaccumulate and toxic ('PBT'), or very persistent and very liable to bioaccumulate ('vPvB').

(3) For reasons of public health and hygiene, it was nevertheless found to be justified to include difenacoum and other anticoagulant rodenticides in Annex I to Directive 98/8/EC, thus allowing Member States to authorise difenacoum-based products. However, Directive 2008/81/EC obliges Member States to ensure, when granting authorisation of products containing difenacoum, that primary as well as secondary exposure of humans, non-target animals and the environment is minimised, by considering and applying all appropriate and available risk mitigation measures. The risk mitigation measures mentioned in Directive 2008/81/EC therefore include, amongst others, restriction to professional use only.

(4) The company Kwizda France S.A.S. ('the applicant') has, in accordance with Article 8 of Directive 98/8/EC,

submitted an application to the United Kingdom for authorisation for six rodenticides containing difenacoum ('the products').

(5) The United Kingdom granted the authorisations to five products on 3 November 2011 and to another one on 14 November 2011. The products were authorised for general use against rats and mice for the protection of stored products, food, health and material. The restrictions to ensure that the conditions of Article 5 of Directive 98/8/EC were met in the United Kingdom included a requirement to indicate 'Keep away from food, drink and animal feedingstuffs' on the label, but did not include restriction to trained or licensed professional users.

(6) On 31 March 2010, the applicant submitted a complete application to Germany for mutual recognition of the first authorisations in respect of the products.

(7) On 8 June 2012, Germany notified the Commission, the other Member States and the applicant of its proposal to restrict the first authorisations in accordance with Article 4(4) of Directive 98/8/EC. Germany proposed to impose a restriction on the products to use by trained or licensed professionals, as well as by excluding food protection from the authorised intended uses of the contested products if the food consists of plants or plant products within the meaning of Article 3 points 5 and 6 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽³⁾.

(8) The Commission invited the other Member States and the applicant to submit comments to the notification in writing within 90 days in accordance with Article 27(1) of Directive 98/8/EC. No comments were submitted within that deadline. The notification was also discussed between the Commission and Member States' Competent Authorities for biocidal products in the meeting of the Product Authorisation and Mutual Recognition Facilitation Group of 3-4 July 2012.

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ OJ L 201, 30.7.2008, p. 46.

⁽³⁾ OJ L 309, 24.11.2009, p. 1.

- (9) Concerning the restriction on the products to use by trained or licensed professionals, in accordance with Directive 2008/81/EC, authorisations of biocidal products containing difenacoum are to be subject to all appropriate and available risk mitigation measures, including the restriction to professional use only. The scientific evaluation leading to the adoption of Directive 2008/81/EC concluded that only professional users could be expected to follow the instructions minimising the risk of secondary poisoning of non-target animals, and to use products in a way that prevents the development and spreading of resistance. A restriction to professional users should therefore in principle be considered to be an appropriate risk mitigation measure, in particular in Member States where resistance to difenacoum occurs.
- (10) In the absence of any indication to the contrary, restriction to professional users is therefore an appropriate and available risk mitigation measure for the authorisation of products containing difenacoum in Germany. This conclusion is reinforced by the arguments put forward by Germany that resistance against difenacoum in rats has been found and is thought to be developing in the country. Furthermore, Germany has a well-functioning infrastructure of trained pest control operators and licensed professionals, such as farmers, gardeners and foresters who received professional training, which means that the proposed restriction does not hinder infection prevention.
- (11) Regarding the exclusion of food protection from the authorised intended uses, Germany argued that products used for food of plant origin protection are covered, for this purpose, by Regulation (EC) No 1107/2009 and hence excluded from the scope of Directive 98/8/EC if the protected food consists of plants or plant products within the meaning of Article 3 points 5 and 6 of Regulation (EC) No 1107/2009.
- (12) The Commission notes that it is undisputed that the contested products are covered by the definition of a biocidal product in Article 2(1)(a) of Directive 98/8/EC. It therefore merely should be examined whether the products are nevertheless excluded from the scope of Directive 98/8/EC by virtue of Article 1(2)(r) of that Directive for the purpose of certain uses, in which case those particular uses would require additional authorisations in accordance with Regulation (EC) No 1107/2009.
- (13) It follows from Article 2(1)(a) of Regulation (EC) No 1107/2009 that that Regulation does not apply to products whose main purpose is considered to be hygiene rather than the protection of plants or plant products.
- (14) The contested products are, inter alia, intended for use as rodenticides against mice and rats to protect food, and food can constitute plants or plant products as defined in Article 3 points 5 and 6 of Regulation (EC) No 1107/2009.
- (15) However, the contested products are also intended for a number of other purposes than food protection, and most food does not constitute plants or plant products. Furthermore, the labelling requirements in the authorisations of the contested products ensure that the products are not directly applied on food ⁽¹⁾. The application of the products referred to as 'food protection' in the authorisation should be seen as primarily intended to avoid food contamination from rodents and the consequent danger for transmission of zoonotic diseases, in line with the general hygiene requirements for all stages of production, processing and distribution according to Annex II to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽²⁾.
- (16) As the main purpose of the contested products is hygiene rather than the protection of plants or plant products, the products are not excluded from the scope of Directive 98/8/EC by virtue of Article 1(2)(r) of that Directive for the purpose of its use. The restriction requested by Germany in this respect cannot be justified on the grounds put forward.
- (17) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,
- HAS ADOPTED THIS DECISION:
- Article 1*
- Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC for the products mentioned in the Annex to this Decision to use by trained or licensed professionals, without excluding food protection from the authorised intended uses of the products.
- ⁽¹⁾ See, in this respect, a published guidance document agreed between the Commission services and the competent authorities of Member States for the biocidal products Directive 98/8/EC and for the plant protection products Directive 91/414/EEC entitled 'Borderline between Directive 98/8/EC concerning the placing on the market of Biocidal product and Directive 91/414/EEC concerning the placing on the market of plant protection products', available on the website http://ec.europa.eu/food/plant/protection/evaluation/borderline_en.htm
- ⁽²⁾ OJ L 139, 30.4.2004, p. 1.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 February 2013.

For the Commission

Janez POTOČNIK

Member of the Commission

ANNEX

Products for which Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC to use by trained or licensed professionals:

Product name in UK	UK application reference number in the Register for Biocidal Products	Product name in Germany	German application reference number in the Register for Biocidal Products
Murabloc LM	2010/1329/5686/UK/AA/7269	Murablock	2010/1329/5686/DE/MA/8105
Souribloc	2010/1329/5706/UK/AA/7465	Souriblock	2010/1329/5706/DE/MA/8109
Raticide VK	2010/1329/5726/UK/AA/7468	MUSCIDAN Haferkörder	2010/1329/5726/DE/MA/8113
Le Souriquois	2010/1329/5728/UK/AA/7470	MUSCIDAN Weizenkörder	2010/1329/5728/DE/MA/8120
Ratigum	2010/1329/5707/UK/AA/7466	Ratigum	2010/1329/5707/DE/MA/8110
Super Pellets	2010/1329/5708/UK/AA/7467	Super Pellets	2010/1329/5708/DE/MA/8112

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granting derogations to certain Member States with respect to the transmission of statistics pursuant to Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics based on the European Health Interview Survey (EHIS)

*(notified under document C(2013) 784)***(Only the German, English, French, Dutch and Swedish texts are authentic)****(Text with EEA relevance)**

(2013/97/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work ⁽¹⁾, and in particular Article 9(2) thereof,

Having regard to the requests made by the Kingdom of Belgium, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland,

Whereas:

- (1) In accordance with Article 9(2) of Regulation (EC) No 1338/2008, the Commission may grant Member States derogations and transition periods, both to be based upon objective grounds.
- (2) It emerges from the information provided to the Commission that the Member States' requests for derogations are due to the need for major adaptations to national administrative and statistical systems in order to comply in full with Regulation (EC) No 1338/2008.

- (3) Such derogations should be granted, at their request, to Belgium, France, the Netherlands, Sweden and the United Kingdom.

- (4) The measures provided for in this Decision are in accordance with the opinion of the European Statistical System Committee,

HAS ADOPTED THIS DECISION:

Article 1

Derogations as set out in the Annex are granted to the Member States listed therein.

Article 2

This Decision is addressed to the Kingdom of Belgium, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 19 February 2013.

For the Commission

Algirdas ŠEMETA

Member of the Commission

⁽¹⁾ OJ L 354, 31.12.2008, p. 70.

ANNEX

Derogations from Regulation (EC) No 1338/2008, as implemented by the Commission, concerning statistics based on the European Health Interview Survey (EHIS)

Belgium, France and the Netherlands shall not deliver the variables specified in the following table:

Belgium	— INTLANG (interview language); — PL4, PL5, PL7 of the set on physical and sensory functional limitations; — MH1a till MH1h on mental health; — AM3 and AM5 on ambulatory care; — PA4 on preventive activities; — UN1a till UN2d on unmet needs.
France	— AL1 till AL6 on alcohol consumption; — IC1 till IC3 on informal care.
the Netherlands	— PL5 and PL6 on physical and sensory functional limitations; — MH1a till MH1h on mental health; — PE1 till PE8 on physical activities; — AL1 and AL6 on alcohol consumption.

Sweden and the United Kingdom: the reference population in Sweden and in the United Kingdom shall be individuals aged 16 and over living in private households residing in the territory of these Member States at the time of the data collection.

COMMISSION IMPLEMENTING DECISION**of 19 February 2013****as regards a Union financial aid towards a coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods***(notified under document C(2013) 1035)**(2013/98/EU)*

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 66 thereof,

Whereas:

- (1) Following controls being carried out since December 2012 in a number of Member States, the Commission was informed of fraudulent practices in certain foods. It was therefore necessary for the Commission to recommend to the Member States, by means of Commission Recommendation 2013/99/EU ⁽²⁾, a coordinated control plan with a view to establish the prevalence of these fraudulent practices in the marketing of such foods. The coordinated control plan should be carried out for a period of one month starting from the date of the adoption of the Commission Recommendation, or at the latest by 1 March 2013.
- (2) In order to facilitate smooth and fast application of this plan, the Union should financially support the Member States which carry out this plan at the most appropriate level. Taking into account the exceptional character of the situation, the urgent need to reassure consumers, to prevent disruption of trade in the concerned market and ensure that Union exports are not affected, it is duly justified to fix the rate of eligible costs borne by the Union at 75 %.
- (3) Based on current information the cost for carrying out DNA tests on foods marketed and/or labelled as containing beef and for detecting phenylbutazone (PBZ) residues in horse meat are estimated at EUR 400 per test or detection.
- (4) With a Union co-financing rate of 75 %, the maximum Union contribution for carrying out DNA and PBZ tests would be EUR 300 per test.
- (5) In accordance with Article 84 of the Financial Regulation and Article 94 of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of

application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union ⁽³⁾ (hereinafter referred to as 'the Rules of Application'), the commitment of expenditure from the Union budget shall be preceded by a financing decision setting out the essential elements of the action involving expenditure and adopted by the institution or the authorities to which powers have been delegated by the institution.

- (6) The measures eligible for Union financial support are defined within the current Commission Implementing Decision.
- (7) The financial contribution from the Union should be granted subject to the condition that the tests and analyses have been carried out and that the competent authorities supply all the necessary information within the time limits laid down in this Decision.
- (8) For reasons of administrative efficiency all expenditure submitted for a financial contribution by the Union should be expressed in euro. In accordance with Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽⁴⁾, the conversion rate for expenditure in a currency other than the euro should be the most recent exchange rate set by the European Central Bank prior to the first day of the month in which the application is submitted by the Member State concerned.
- (9) Under Regulation (EC) No 1290/2005, financial contribution to these kind of plans are to be financed under the European Agricultural Guarantee Fund. For financial control purposes, Articles 9, 36 and 37 of that Regulation shall apply,

HAS ADOPTED THIS DECISION:

*Article 1***Subject matter**

The Union shall contribute to the costs incurred by the Member States for the application of the control plan referred to in the Recommendation 2013/99/EU (hereinafter 'Commission Recommendation'), with a total maximum amount of EUR 1 357 500 to be financed from budgetary line 17 04 07 01.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ See page 28 of this Official Journal.

⁽³⁾ OJ L 362, 31.12.2012, p. 1.

⁽⁴⁾ OJ L 209, 11.8.2005, p. 1.

*Article 2***Eligible costs**

1. The Union contribution referred to in the Commission Recommendation shall take the form of a partial reimbursement of 75 % of the costs of the tests performed by the competent authorities to implement the control plan referred to in Article 1 of Commission Recommendation.

The Union contribution cannot exceed:

(a) EUR 300 per test;

(b) the amounts indicated in Annex I.

2. Only the costs indicated in Annex II shall be eligible to the contribution.

*Article 3***Eligibility rules**

1. The Union contribution referred to in Article 1 is subject to the following conditions:

(a) the tests have been performed in accordance with the terms of the Commission Recommendation during the period referred to in Section II of the Annex thereto;

(b) the Member States have provided the Commission with the report referred to in Section III of the Annex to Commission Recommendation and within the deadline set out in that section;

(c) by 31 May 2013, the Member States have provided the Commission, in electronic form, with a financial report according to the format laid out in Annex III.

2. The Commission may reduce the amount of the contribution referred to in Article 1 in cases where the

conditions referred to in paragraph 1 are not met, having regard to the nature and gravity of the non-compliance and to the potential financial loss for the Union.

*Article 4***Currency and conversion rate**

1. The expenditure submitted by the Member States for a financial contribution by the Union shall be expressed in euro and shall exclude value added tax and all other taxes.

2. Where the expenditure of a Member State is in a currency other than the euro, the Member State concerned shall convert it into euro by applying the most recent exchange rate set by the European Central Bank prior to the first day of the month in which the application is submitted by the Member State.

Article 5

This Decision constitutes a financing decision in the meaning of Article 84 of the Financial Regulation.

Article 6

This Decision shall be applicable from the date of publication of the Commission Recommendation.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 19 February 2013.

For the Commission

Tonio BORG

Member of the Commission

ANNEX I

Maximum amount of the EU contribution referred to in Article 2(1)

(EUR)

Member State	Maximum EU contribution DNA test	Maximum EU contribution PBZ test	TOTAL EU contribution
Belgium	30 000	100 500	130 500
Bulgaria	30 000	46 500	76 500
Czech Republic	30 000	1 500	31 500
Denmark	15 000	1 500	16 500
Germany	45 000	15 000	60 000
Estonia	3 000	1 500	4 500
Ireland	15 000	10 500	25 500
Greece	30 000	15 000	45 000
Spain	45 000	34 500	79 500
France	45 000	78 000	123 000
Italy	45 000	183 000	228 000
Cyprus	3 000	1 500	4 500
Latvia	15 000	1 500	16 500
Lithuania	15 000	1 500	16 500
Luxembourg	3 000	1 500	4 500
Hungary	30 000	1 500	31 500
Malta	3 000	1 500	4 500
Netherlands	30 000	30 000	60 000
Austria	30 000	1 500	31 500
Poland	45 000	75 000	120 000
Portugal	30 000	1 500	31 500
Romania	30 000	51 000	81 000
Slovenia	3 000	1 500	4 500
Slovakia	15 000	1 500	16 500
Finland	15 000	1 500	16 500
Sweden	30 000	6 000	36 000
United Kingdom	45 000	16 500	61 500
TOTAL	675 000	682 500	1 357 500

*ANNEX II***Eligible expenditure as referred to in Article 2(2)**

The expenditure eligible for a financial contribution by the Union for carrying out the tests mentioned in this Implementing Decision shall be limited to the costs incurred by the Member States for:

- (a) the purchase of test kits, reagents and all consumables identifiable and especially used for carrying out the tests;
 - (b) personnel, whatever the status, specifically allocated entirely or in part for carrying out the tests in the premises of the laboratory; the costs are limited to actual salaries plus social security charges and other statutory costs included in the remuneration;
 - (c) costs for sending samples to the laboratory carrying out the analysis/tests; and
 - (d) overheads equal to 7 % of the sum of the costs referred to in (a), (b) and (c).
-

ANNEX III

Financial report as referred to in Article 3(1)(c)

DNA			
Specify staff category	Hours	Cost/hour	Staff cost
(1)	(2)	(3)	(4) = (2) × (3)
		Subtotal staff	(5)
Specify: kits/reagents/consumables	Quantity/number	Unit cost	Total cost
(6)	(7)	(8)	(9) = (7) × (8)
		Subtotal kits reagents/consumables	(10)
Transport costs to laboratory			(11)
		TOTAL	(12) = (5) + (10) + (11)
TOTAL INCLUDING OVERHEADS			= (12) × 1,07

PBZ			
Specify staff category	Hours	Cost/hour	Staff cost
(1)	(2)	(3)	(4) = (2) × (3)
		Subtotal staff	(5)
Specify: reagents/consumables	Quantity/number	Unit cost	Total cost
(6)	(7)	(8)	(9) = (7) × (8)
		Subtotal reagents/consumables	(10)
Transport costs to laboratory			(11)
		TOTAL	(12) = (5) + (10) + (11)
TOTAL INCLUDING OVERHEADS			= (12) × 1,07

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 19 February 2013

on a coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods

(2013/99/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 53 thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 882/2004 empowers the Commission to recommend coordinated plans where considered necessary, organised on an ad hoc basis, in particular with a view to establishing the prevalence of hazards in feed, food or animals.
- (2) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ⁽²⁾ sets out Union rules on food labelling applicable to all foods.
- (3) According to Directive 2000/13/EC, the labelling and methods used should not mislead the consumer, particularly as to the characteristics of the food, including its true nature and its identity. Furthermore, in the absence of specific Union or national rules, the name under which a food is sold should be the name customary in the Member State in which it is sold, or a description of the food which is clear enough to let the purchaser know its true nature.
- (4) Moreover, all ingredients must be mentioned on the label of pre-packaged foodstuffs intended for the final

consumer or mass caterers. In particular, foods containing meat as an ingredient, when intended for the final consumer or mass caterers, must also indicate the animal species from which the meat originates directly on the package or on a label attached thereto. If an ingredient is mentioned in the name of the food, its quantity expressed as a percentage must also be provided in the list of ingredients in order to avoid the consumer being misled as regards the identity and the composition of the food.

- (5) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽³⁾ provides for additional labelling requirements applicable to specific foods. In particular, it provides that packages intended for supply to the final consumer containing minced meat, amongst others, from solipeds are to bear a notice indicating that such products should be cooked before consumption, if, and to the extent that, national rules in the Member State in the territory of which the product is placed on the market so require.
- (6) Section III of Annex II to Regulation (EC) No 853/2004 requires the food business operators operating slaughterhouses to request, receive, check and act upon food chain information in respect of all animals, other than wild game, sent or intended to be sent to the slaughterhouse. The relevant food chain information is to cover, in particular, veterinary medicinal products administered to the animals within a relevant period and with a withdrawal period greater than zero, together with their dates of administration and withdrawal periods. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽⁴⁾ requires, inter alia, the official veterinarian to perform auditing and inspection tasks. In particular, the official veterinarian is to check and analyse relevant information from the records of the holding of provenance of animals intended for slaughter, including food chain information and to take account of the documented results of this check and analysis when carrying out ante- and post-mortem inspection.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ OJ L 109, 6.5.2000, p. 29.

⁽³⁾ OJ L 139, 30.4.2004, p. 55.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206.

- (7) Following official controls being carried out since December 2012 in a number of Member States, the Commission was informed that certain pre-packaged products contained horsemeat, which was not declared in the list of ingredients appearing directly on the package or on a label attached thereto. Instead, the name of certain such foods and/or the accompanying list of ingredients misleadingly referred solely to the presence of beef.
- (8) In accordance with Article 17 of 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⁾, food business operators at all stages of production, processing and distribution within their businesses under their control must ensure that foods satisfy the requirements of food law which are relevant to their activities and must verify that such requirements are met.
- (9) Horses are animal species that can be 'food producing' or 'non-food producing'. Phenylbutazone is a veterinary drug whose use is allowed only in non-food producing animals pursuant to Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin⁽²⁾. Accordingly, non-food producing horses, which have been treated with phenylbutazone at some point in their life, cannot enter the food chain. Considering the fraudulent practices relating to the unlabelled presence of horsemeat in certain food products, it is appropriate, for preventive purposes, to ascertain whether non-food producing horses treated with phenylbutazone have entered the food chain.
- (10) It is therefore necessary for the Commission to recommend to the Member States to carry out a coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods for a period of one month. This period may be extended by an additional period of two months.
- (11) The recommended control plan should consist of two actions.
- (12) The first action should consist of appropriate controls carried out at retail level, on foods destined for the final consumer or mass caterers, which are marketed and/or labelled as containing beef. These controls could also be extended to other establishments (e.g. cold stores). The objective of these controls would be to establish whether such products contain horsemeat, which is not properly labelled on the packaging or, in the case of non-pre-packaged foodstuffs, whether information relating to its presence is not made available to the consumer or mass caterers. Such controls should be carried out on a representative sample.
- (13) Reliable methods exist which allow with a sufficient degree of accuracy the detection of the presence of proteins of undeclared species in a sample. The European Union Reference Laboratory for animal proteins in feedstuffs can provide useful advice on those methods and their use. The competent authorities should be invited to rely on the advice of that laboratory as to the methods that can be used.
- (14) The second action should consist of appropriate controls being carried out in establishments handling horsemeat destined for human consumption, including foods originating from third countries, for the detection of phenylbutazone residues. These controls should also be carried out on a representative sample, taking into account production and import figures. It is appropriate in this case to refer to methods provided for by Commission Decision 2002/657/EC of 12 August 2002 implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results⁽³⁾.
- (15) The Member States should communicate the results of these controls to the Commission on a regular basis, in order to assess the findings and decide on an appropriate course of action.
- (16) After consulting the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS RECOMMENDATION:

Member States should apply a coordinated control plan, in accordance with the Annex to this Recommendation, consisting of the following actions:

- (a) official controls on foods destined for the final consumer or mass caterers, which are marketed and/or labelled as containing beef; and

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 15, 20.1.2010, p. 1.

⁽³⁾ OJ L 221, 17.8.2002, p. 8.

(b) official controls on horsemeat destined for human consumption to detect phenylbutazone residues.

Done at Brussels, 19 February 2013.

For the Commission
Tonio BORG
Member of the Commission

ANNEX

Coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods**I. ACTIONS AND SCOPE OF COORDINATED CONTROL PLAN**

The coordinated control plan should consist of two actions:

ACTION 1: Controls of foods marketed and/or labelled as containing beef**A. Product scope**

1. Foodstuffs marketed and/or labelled as containing beef (e.g. minced meat, meat products, meat preparations) falling within the following categories:
 - (a) Pre-packaged foodstuffs destined for the final consumer or mass caterers, which are labelled as containing beef;
 - (b) Foodstuffs offered for sale to the final consumer or to mass caterers without pre-packaging and foodstuffs packaged on the sales premises at the consumer's request or pre-packaged for direct sale, which are marketed and/or otherwise indicated as containing beef.
2. For the purpose of this coordinated control plan, the definition of 'pre-packaged foodstuff' in Article 1(3)(b) of Directive 2000/13/EC shall apply.
3. For the purpose of this coordinated control plan, the definitions of 'minced meat', 'meat preparations' and 'meat products' in points 1.13, 1.15 and 7.1 of Annex I to Regulation (EC) No 853/2004 shall apply.

B. Objective

Competent authorities should carry out official controls in order to establish whether the products referred in point A contain horsemeat, which is not properly labelled on the packaging or, in the case of non-pre-packaged foodstuffs, whether information relating to its presence is not made available to the consumer or mass caterers, in accordance with Union and, where appropriate, national provisions.

C. Sampling points and procedure

1. The sample should be representative of the products concerned and covering a variety of products.
2. The sampling of the products should be carried out at retail level (e.g. supermarkets, smaller shops, butchers) and could also be extended to other establishments (e.g. cold stores).

D. Sample numbers and modalities

The table below gives an overview on the indicative recommended minimum number of samples to be taken within the period provided in Section II. Competent authorities are invited to take more samples when possible. The distribution of samples per Member State is based on population figures with a minimum number of 10 samples of the products concerned per Member State per calendar month as indicated in Section II.

Foodstuffs marketed and/or labelled as containing beef	
Country of sale	Indicative monthly recommended sample numbers
France, Germany, Italy, the United Kingdom, Spain, Poland	150
Romania, the Netherlands, Belgium, Greece, Portugal, Czech Republic, Hungary, Sweden, Austria, Bulgaria	100
Lithuania, Slovakia, Denmark, Ireland, Finland, Latvia	50
Slovenia, Estonia, Cyprus, Luxembourg, Malta	10

E. Methods

Competent authorities should preferably use the method(s) recommended by the European Union Reference Laboratory for animal proteins in feedstuffs, at <http://eurl.craw.eu/en/164/legal-sources-and-sops>

ACTION 2: Controls of horsemeat destined for human consumption**A. Product scope**

Meat of horses, asses, mules or hinnies, fresh chilled or frozen, classified under the Combined Nomenclature Code 0205 and which are destined for human consumption.

B. Objective

Competent authorities should carry out official controls in order to detect the possible presence of phenylbutazone residues in the products referred to in point A.

C. Sampling points and procedure

The sampling of the products should be carried out in establishments handling the products referred to in point A (e.g. slaughterhouses, border inspection posts).

D. Sample numbers and modalities

The recommended minimum number of samples to be taken within the period provided in Section II should be set at 1 sample every 50 tonnes of the products referred to in point A, with a minimum of 5 samples per Member State.

E. Methods

Competent authorities should use methods validated according to Decision 2002/657/EC. Such methods are available at the website of the European Reference Laboratory for the residues of veterinary medicines and contaminants in food of animal origin for residues listed in Annex I, Group A (5) and Group B (2)(a), (b), (e) to Council Directive 96/23/EC⁽¹⁾, at <http://fis-vl.bund.de/Public/irc/fis-vl/Home/main>

II. DURATION OF COORDINATED CONTROL PLAN

The coordinated control plan should be carried out for a period of one month starting from the date of adoption of this Recommendation or at the latest by 1 March 2013.

III. REPORTING OF RESULTS

1. Competent authorities should report the summary of the following information for each of the actions referred to in Section I of this Annex:

- (a) number of samples taken, per category of products;
- (b) the method(s) used for the analysis and the type of analysis performed;
- (c) number of positive findings;
- (d) follow-up controls performed with respect to positive findings in products referred to in point A under Action 1 in cases where the detected presence of horsemeat exceeds 1 %;
- (e) follow-up controls performed with respect to positive findings in products in point A under Action 2;
- (f) results of follow-up controls;
- (g) with respect to positive findings in products referred to in point A under Action 2, the country where the animal concerned was certified for slaughter.

The report should be communicated to the Commission within 15 days from the end of the one-month period referred to in Section II.

The report should be presented in accordance with the format to be provided by the Commission.

2. Competent authorities should immediately report to the Commission any positive results of the official controls carried out with respect to Actions 1 and 2 mentioned in Section I through the Rapid Alert System for Food and Feed.

3. Competent authorities should also report to the Commission the results of any own checks carried out at their request by food business operators. Such information should be accompanied by the details referred to in point 1 and presented in accordance with the format to be provided by the Commission.

⁽¹⁾ OJ L 125, 23.5.1996, p. 10.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 90/12/COL

of 15 March 2012

on the sale of certain buildings at the Inner Camp at Haslemoen Leir (Norway)

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY"),

2. HASLEMOEN LEIR

Having regard to the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Article 61 and Protocol 26,

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

Having regard to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(2) of Part I and Articles 7(5) and 14 of Part II,

Having called on interested parties to submit their comments pursuant to those provisions⁽¹⁾,

Whereas:

I. FACTS

1. PROCEDURE

- (1) On the basis of a complaint and various exchange of letters (Event Nos. 427226, 422506, 449988, 428521 and 458787), the Authority, by letter dated 24 March 2010 (Event No 549786), informed the Norwegian authorities that it had initiated the procedure laid down in Article 1(2) of Part I of Protocol 3 in respect of the sale of certain buildings at the Inner camp at Haslemoen Leir.
- (2) The Authority's Decision No 96/10/COL of 24 March 2010 to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto⁽²⁾. The Norwegian authorities submitted their comments by letter dated 12 May 2010 and also by letter dated 19 November 2010 (Event No 557187 and Event No 581797). There were no comments from third parties.

- (3) In 2001 the Norwegian Parliament (Stortinget) decided that military properties that were no longer used for military purposes should be sold at market value⁽³⁾. The municipalities concerned were given a right of first refusal.
 - (4) One of the properties for sale was the military camp Haslemoen Leir located in the municipality of Våler in the county of Hedmark, in which military activities ceased on 30 June 2003. The Norwegian State initiated a sales process in October 2004, which led to the subsequent acquisition of the entire military camp by Våler Municipality for the price of NOK 46 million by a contract dated 16 April 2005.
 - (5) Haslemoen Leir was an army base since the 1950s and is composed of the following: (i) forest areas; (ii) cultivated area; (iii) housing area (also referred to as Storskjæret); and (iv) an area called the Inner Camp.
 - (6) The entire Inner Camp covers approximately 300 000 m² with 44 buildings⁽⁴⁾ of more than 42 000 m². The buildings include *inter alia* barracks and service buildings for army activities such as kitchen facilities, movie theatre, officer's mess, school and education facilities, training and mobilisation sections, storage buildings and garages. Some of the old buildings are renovated and the military camp was, until it was closed, well preserved.
- 2.1. The sale of Haslemoen Leir from the Norwegian State to Våler municipality**
- (7) When Haslemoen Leir was put on the market for sale in 2004, the Norwegian State commissioned an independent expert valuer, Agdestein Takst & Eiendomsrådgivning, to undertake a valuation of Haslemoen Leir⁽⁵⁾. The Agdestein report dated 22 December 2004 (the first

⁽¹⁾ Decision No 96/10/COL with regard to the sale of certain buildings at the Inner Camp at Haslemoen Leir, published in OJ C 325 of 2.12.2010, page 12 and in EEA Supplement No 66 of 2.12.2010, page 1.

⁽²⁾ See footnote 1.

⁽³⁾ <http://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=21519>. See also Royal resolution of 19.12.1997 ("Avhendingsinstruksen").

⁽⁴⁾ Event Nos 428521 and 557187.

⁽⁵⁾ Event Nos 458897, 458902 and 458903 (the first Agdestein report).

Agdestein report) concluded that the “investor value”⁽⁶⁾ of the Inner Camp, including the 44 buildings, was NOK 39 million if the buildings would be sold separately. If the Inner Camp would be sold as one unit the report held the “investor value” to be NOK 29 million. The report contained individual value assessments of most of the 44 buildings, including specifications and short descriptions of each of the buildings and their technical condition.

- (8) The NOK 10 million rebate is in subsequent reports and correspondence referred to as the 30 % rebate (or the approximately 30 % rebate). But the rebate which was granted for acquiring the Inner Camp as one unit is in fact closer to 25,64 % (NOK 10 million deduction of NOK 39 million = 25,641025 %).

- (9) The purchaser, Våler Municipality, engaged the independent valuers Erik Alhaug and Trond Bakke to assess the value of the Inner Camp and the housing area called Storskjæret. Their evaluation was also based on a sale of the Inner Camp as one unit. They calculated the investor value, i.e. expected market value based on future rental income from the buildings. The report was relatively short, 4 pages and was not based on any physical inspection of the buildings but relied on existing reports and evaluations. The report took into account the necessary costs to upgrade the buildings to functional objects for rent. The report assumed that it would take time to rent out all the buildings given the geographic location of the buildings and limited population in Våler municipality. Some of the buildings were already rented out but on short term basis. The report moreover emphasised that several of the buildings including the barracks should be condemned as they were in technically poor condition. As also many of the other buildings required significant refurbishment the report concluded that the likely future rental income would not even cover normal maintenance and operating costs. Mr Alhaug and Mr Bakke's conclusion, dated 18 January 2005 (the Alhaug/Bakke report)⁽⁷⁾ was therefore that the Inner Camp valued as one unit on the basis of future rental income was 0⁽⁸⁾.

- (10) In order to reconcile the findings in the first Agdestein report and the Alhaug/Bakke report and to reach a correct market price, the Norwegian State requested Agdestein Takst & Eiendomsrådgivning to make a second valuation report based on the two diverging value assessments. In the mandate laid down for this new assessment, Agdestein was requested to submit a “bridge value” of Haslemoen Leir. The bridge value

report of 3 March 2005 (the second Agdestein report)⁽⁹⁾ explained that such a bridge value was just one of several approaches in order to find the value and that, alternatively, a neutral third party could have considered the estimated values in the two existing assessments. Based on the bridge value of the two prior assessments and with adjustments for some factual errors in the previous assessments, the market value of Haslemoen Leir was estimated at NOK 58 million. However, the report anticipated that the market value of the military camp would be reduced by an additional NOK 12 million⁽¹⁰⁾ if the whole camp, i.e. the four different areas, would be sold together.

- (11) As for the more specific value assessment of the Inner Camp, the bridge value was at the outset set at 14,5 million (NOK 29 million⁽¹¹⁾ + 0, divided by two)⁽¹²⁾. This value was however adjusted upwards with NOK 1 million based on two additional adjustments, namely the value of the barracks and the value of some undeveloped land where future planning regulation was uncertain. Thus, the adjusted bridge value of the Inner Camp sold as one unit was NOK 15,5 million.

- (12) On the basis of the second Agdestein report the municipality took over the Haslemoen Leir 1 June 2005 for a price of NOK 46 million. Thus, the municipality was granted the two discounts mentioned above, the “approximately 30 % discount”⁽¹³⁾ for acquiring the Inner Camp as one unit and the additional 20 % “quantity discount” for acquiring the whole Haslemoen Leir.

2.2. The sale by Våler municipality of parts of the Inner Camp to Haslemoen AS

- (13) Våler Municipality had made it clear that it would sell Haslemoen Leir to the buyer that would develop the area in an appropriate manner and generate as many new jobs as possible. It has explained that while several parties took an interest in some of the buildings in the Inner Camp, it wanted to find a buyer that would ensure a uniform development and optimal utilisation of the Inner Camp.

- (14) In order to meet the municipality's requirement, three different parties that each had shown an interest in parts of the Inner Camp, established a new company

⁽⁶⁾ According to the report, the “investor value” is the expected market value for an investor intending to rent out the buildings for remuneration. The “investor value” is also lower than the “user value”, which represents the market value for a purchaser intending to use the buildings for its own use. Both types of values are given in the report.

⁽⁷⁾ Event No 428521, Enclosure 16 (The Alhaug/Bakke report).

⁽⁸⁾ The value for the Storskjæret area was assessed at NOK 12 million.

⁽⁹⁾ Event No 428521, Enclosure 3 (the second Agdestein report).

⁽¹⁰⁾ 20 % discount.

⁽¹¹⁾ NOK 29 million was the value of the Inner Camp according to the first Agdestein report and included a discount of NOK 10 million provided that the Inner Camp was sold as one unit.

⁽¹²⁾ In addition to assessing the bridge value of the Inner Camp at 14,5 million, Storskjæret's bridge value was assessed at NOK 13,5 million, the cultivated area at NOK 8,3 million and the forest area at NOK 25,2 million. Due to errors in previous assessments, the total sum for Haslemoen Leir at NOK 61,5 million was adjusted down to NOK 58 million including the rebate for acquiring the Inner Camp as one unit.

⁽¹³⁾ See paragraph 8 above.

called Haslemoen AS⁽¹⁴⁾. This company expressed its intention of utilizing the property for accommodation activities as well as for different cultural and sporting activities and events. Target groups were the army, security services providers and the car industry.

- (15) On 27 February 2006, the Municipal Council (Kommunestyret) approved the sale of 29 of the 44 buildings in the Inner Camp area to Haslemoen AS for a total sum of NOK 4 million. The buildings covered by the sale include accommodation buildings and barracks, mess halls for officers and soldiers with kitchen facilities, auditorium, movie theatre, school building, central heating, office building, a hospital ward and several garages.
- (16) It transpires from the preparatory documents to the Municipal Council meeting on 27 February 2006, that there was doubt about the value of the property and whether the sales price could entail state aid. The documents refer to a letter from a lawyer in the Norwegian Association of Local and Regional authorities (KS) received the same day. The letter mentioned the EEA state aid rules and that a sale below market value could entail state aid. The letter moreover referred to that two bids, including the one from Haslemoen AS, covering most of the buildings of the Inner Camp, together were at NOK 6 million. After recalling the Authority's guidelines for sale of land and the methods described therein to exclude state aid, the lawyer referred to the second Agdestein report in which the value of the Inner Camp at the outset was set at NOK 14,5 million. Compared to the bid at NOK 6 million the lawyer stated that to accept the bids received would entail a considerable risk of a sale below market value and thereby a breach of the state aid rules. On that basis the lawyer recommended that a new value assessment should be carried out and that the Council should wait with adopting a decision to sell until such reassessment had been carried out.
- (17) On that basis the Chief municipal executive (Rådmannen) recommended to the Council to postpone the matter and await further clarifications. The proposal was rejected by the majority of the Council (13 against 6), which approved the sale but stated that a proper risk assessment of potential competition concerns should be collected from the lawyers of the KS. The Council moreover empowered the Executive committee of the Municipality (Formannskapet) to assess the risk⁽¹⁵⁾.
- (18) The Authority has not been provided with such subsequent risk assessments as the Council prescribed. However, the municipality has explained that the property valuer Mr Bakke, who carried out a value assessment on behalf of the municipality when the property was purchased from the Norwegian State in 2005, also assisted the municipality in the sales process with Haslemoen AS in 2006. Although no specific

valuation was carried out of the 29 buildings, the municipality has put forward two sales price assessments by Mr. Bakke, both dated 2 May 2006.

- (19) The calculations of 2 May 2006, which will be described in more detail below, have been submitted in order to demonstrate that the municipality sold the 29 buildings for a price above its own primary cost. However, it is not clear to the Authority whether these calculations were presented to and considered by the municipality before the contract was finally signed. The municipality has in the correspondence with the Authority indicated that the assessments were taken into account before the sales agreement was formally approved. However, there are no references to such assessments in any of the transcripts or preparatory documents from meetings of the municipal council or the municipal executive committee, which, as mentioned above, was empowered to assess the risk of potential competition concerns.
- (20) In the first of the two sales price assessments of 2 May 2006, it was estimated that the amount that was initially paid by the municipality for acquiring the Inner Camp in 2005, was NOK 12,4 million. The starting point for the assessment was the second Agdestein report, in which the value of the Inner Camp was estimated at NOK 15,5 million, see Paragraph 11 above. From that amount, NOK 3,1 million was deducted. That deduction was for the rebate of approximately 20 % given to the municipality for acquiring the entire Haslemoen Leir as one entity, see Paragraphs 10 and 12 above. Based on this, the assessment concluded that NOK 12,4 million represented an "average" value of the Inner Camp.
- (21) The second assessment dated the same day, 2 May 2006, contains a calculation of the value of the buildings in the Inner Camp, including the 29 buildings subject to the contract with Haslemoen AS. The calculation was not based on a value assessment of the buildings as such but the calculation applied instead the primary cost of the Inner Camp at NOK 12,4 million as a starting point, before deducting the estimated value of the buildings in the Inner Camp that were *not* sold to Haslemoen AS.
- (22) Firstly, the calculation estimated that the total value of 5 buildings⁽¹⁶⁾ that remained in Våler Municipality's ownership was approximately NOK 3,67 million. This value was partly based on the bridge value (or 50 %) of the values established by the first Agdestein Report, see Paragraph 11 above. For two of the buildings the calculation instead applied more recent and higher individual value assessments. This concerned building No 3 (gym building) and No 45 (a combined building with storage rooms, offices and workshop). In the first Agdestein report building No 45 was assessed to have a value of NOK 1,9 million⁽¹⁷⁾. Thus, the bridge value was NOK 950 000. However, the newer value assessment

⁽¹⁴⁾ The shareholders in the company were International Training Centre (48 %), Haslemoen Kultur og Aktivitetssenter (48 %) and Norsk Trafikksenter (4 %).

⁽¹⁵⁾ It should in particular assess whether the risk was "moderate".

⁽¹⁶⁾ Buildings No 3, 32, 34, 44 and 45.

⁽¹⁷⁾ In the first Agdestein report the NOK 1,9 million also included two garages, buildings No 6 and 8.

of building No 45 that the calculation referred to had estimated the value at NOK 3 million. The 4 other buildings that the municipality kept (Building No 32, 34, 44 and 3) were valued at NOK 662 500. Thus, the total value of the municipality's 5 buildings was set at NOK 3 662 500 (= approximately 3,67 million).

- (23) The next deduction in the calculation concerned 11 other buildings at the Inner Camp for which the calculation referred to an offer from Norsk Trafikksenter dated 26 April 2006 of NOK 5 million ⁽¹⁸⁾.
- (24) By adding the contract price of NOK 4 million for the 29 buildings in the contract with Haslemoen AS, Mr. Bakke estimated a total sales value of the Inner Camp of NOK 12,67 million (3,67 + 5 + 4 = 12,67).
- (25) The contract between the municipality and Haslemoen AS was signed on 22 May 2006.

3. COMMENTS BY THE NORWEGIAN AUTHORITIES

- (26) In its opening decision of 24 March 2010 the Authority expressed its doubts as to whether the price of NOK 4 million that Haslemoen AS paid for acquiring the 29 buildings from Våler Municipality represented the market value, and therefore whether the sale was concluded in accordance with the market investor principle. The Norwegian authorities have in response to the opening decision forwarded two letters from Våler Municipality ⁽¹⁹⁾.

Våler Municipality has acknowledged that it did not apply one of the methods in the Authority's sale of land guidelines to determine market price in order to exclude the presence of state aid but that such is not tantamount to the fact that state aid was involved. The municipality has explained that "when selling the buildings, the municipalities was eager to establish new activity in the camp area. Thus in establishing the price of the buildings, the municipality looked more to the buyers promised plans for establishing jobs than on the principles that were used for establishing the price when buying" ⁽²⁰⁾.

- (27) The municipality referred moreover to the opening decision in which the Authority explained that to the extent a preceding sales process has determined the market value, a public authority may use its primary cost as an indication of the market value unless a significant period of time has elapsed since the acquisition. The municipality noted that the Authority emphasised the uncertainty inherent in the type of land

in question, a former military camp in a remote location. According to the municipality it must be correct to consider the total purchase price of NOK 46 million, based on the bridge value – including rebate – assessment, as the market value for the military camp and that the bridge value of the Inner Camp at NOK 12,4 million was the market value for the 44 buildings located there.

- (28) In order to establish the primary cost for the municipality for the 29 buildings in question, the municipality considers that it was correct to deduct the value of the other properties within the Inner Camp which were not subject to the sales agreement. Thus, starting with the NOK 12,4 million that the municipality paid for the 44 buildings a year before, and by deducting the value of the properties which are not subject to the sales agreement, it is in the view of the municipality possible to conclude that NOK 4 million was the market price for the 29 buildings in question. In order to support this conclusion the municipality has referred to the calculations of 2 May 2006 by Mr Bakke, described above. The municipality has in the correspondence with the Authority noted that the bridge value of the Inner Camp should be set at NOK 12,4 million and that "*the value of the properties not covered by the contract represents a value above the value of the entire Inner Camp.*" The Authority assumes that the municipality by this statement meant to note that the sales values of all the different buildings in the Inner Camp, as calculated by Mr. Bakke, exceeded the municipality's alleged primary cost of NOK 12,4 million.

- (29) As regards the value of the other buildings in the Inner Camp that were not sold to Haslemoen AS, the municipality has also submitted a valuation report of 15 March 2006, made by Mr. Erik Alhaug, that concerned mostly the same buildings as Norsk Trafikksenter made a bid for (No 28, 35, 36, 37, 38, 39, 46, 47, 50 and 94). The report assessed the total value of these 10 buildings at NOK 5,5 million if sold as one unit – and NOK 6,65 million if sold separately.

- (30) Thus, on the basis of these calculations and assessments the municipality has submitted that that the price of NOK 4 million for 29 buildings sold to Haslemoen AS corresponded to the market value. The total value of the Inner Camp was therefore: NOK 3,67 million (the value of the buildings the municipality intended to keep) plus NOK 5 million (the offer from Norsk Trafikksenter or alternatively NOK 5,5 million as estimated by the later value assessment) plus NOK 4 million (the price for the 29 buildings to Haslemoen AS) = NOK 12,67 million which exceeds the municipality's primary cost of NOK 12,4 million.

- (31) The municipality also recalls that the sales contract between Våler Municipality and Haslemoen AS contains elements that have a price reducing effect. The municipality refers to the obligation imposed on the buyer to rent out the purchased school building for a period of one year for free and that none of the valuations takes into account possible pollution in the ground.

⁽¹⁸⁾ The Authority has not been provided with documentation for that offer. However, the municipality has explained that it was a verbal offer of NOK 5 million for 11 of the buildings in the Inner Camp (No 28, 35, 36, 37, 38, 39, 41, 46, 47, 50 and 93). The same buildings would according to the bridge value assessment have a value of NOK 3,7 million.

⁽¹⁹⁾ No comments were received from third parties.

⁽²⁰⁾ Event No 581797.

- (32) Finally, the municipality submits that it was correct to transfer to Haslemoen AS both rebates the municipality was granted when it acquired the military camp from the State. While the municipality in this regard understands the doubt the Authority expressed in its opening decision, it has explained that although only a part of the 44 buildings of the Inner Camp was sold, the sales contract between Våler Municipality and Haslemoen AS is based on the assumption that the buyer would develop and operate the entire Inner Camp as well as the areas outside as one unit together with Våler Municipality. The sales price of NOK 4 million to Haslemoen AS reflects this assumption. This is also the reason why the 30 % rebate for the Inner Camp sold as one unit plus an additional 20 % rebate for the entire Haslemoen Leir should be applied when reaching the final price. The latter rebate cannot be understood as an en bloc rebate that would not be applicable if the buyer did not buy the whole camp. The municipality has stressed that it endeavoured to handle the sale in a manner that would not raise problems with regard to the EEA state aid rules.

II. ASSESSMENT

4. THE PRESENCE OF STATE AID

Article 61(1) of the EEA Agreement

- (33) Article 61(1) EEA 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.”

- (34) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement the sale must confer an economic advantage on the beneficiary. If the transaction was carried out in accordance with the market economy investor principle, i.e. if the municipality sold the land at its market value and the conditions of the transaction would have been acceptable for a private seller, the transaction would not involve state aid.

The Authority's guidelines – primary cost

- (35) The Authority's State Aid Guidelines on state aid elements in sales of land and buildings by public authorities, explain how the Authority applies the state aid rules when assessing the sale of public land and buildings. Section 2.1 describes a sale through an unconditional bidding procedure. Section 2.2 describes a sale on the basis of an independent expert evaluation. These two procedures allow EFTA States to handle sales of land and buildings in a way that normally precludes state aid. As mentioned above, none of these two procedures were followed when Våler Municipality sold the 29 buildings to Haslemoen AS.
- (36) Section 2.2 d) of the Guidelines stipulates that *the primary cost to the public authorities of acquiring land or buildings is*

an indicator for the market value unless a significant period of time has elapsed since the municipality's purchase. The market value should not be set below the primary cost during the first three years after acquisition. It goes without saying that the primary cost as an indicator for market value for the next three years is only applicable to the extent the land or buildings were acquired at market value in the first place.

- (37) Hence, although the 29 buildings in questions were sold to Haslemoen AS less than a year after the municipality acquired Haslemoen Leir from the State, two questions arise. First whether the preceding sale of Haslemoen Leir from the Norwegian State to Våler Municipality was carried out on market terms. Second, provided that this was the case, whether Våler Municipality subsequently sold the relevant parts of the Inner Camp to Haslemoen AS for a price corresponding at least to its primary cost.

4.1. Whether the municipality acquired Haslemoen Leir on market terms

- (38) As described above, there was considerable uncertainty about the market value of Haslemoen Leir in the negotiations between the State and Våler Municipality, in particular with regard to the value of the Inner Camp. The first Agdestein report estimated the investor value of the Inner Camp at NOK 39 million (or NOK 29 million if sold as one unit) and the user value at NOK 44 million, and the assessment by Alhaug/Bakke estimated the investor value of all the buildings there at NOK 0.
- (39) In the view of the Authority, prior value assessments of this type of land, a former military camp with old, but relatively well preserved buildings, both residential housing and other buildings, located in a remote area, will always involve considerable uncertainty. However, the big gap in the assessments in this case may also be due to different assumptions with regard to future use, including whether the buildings would be kept for rental purposes or sold, either separately or in one go. As illustrated by the first Agdestein report such variations may have considerable impact. To the Authority it is somewhat difficult to understand that the parties to the transaction did not ensure a better alignment of the underlying assumptions for the valuations before the assessments were finalised.
- (40) This is all the more so since they, shortly after having discovered their very different assessments on the value, agreed to reconcile their different starting points by simply meeting halfway. The application of a method as the described, to determine the true market value of a huge and special property such as Haslemoen Leir, appears questionable. A more adequate procedure would in the view of the Authority have been to appoint new experts or at least reconcile the assessments in terms of assessing comparable future use of the camp and a more detailed assessment of the factors that provided for the huge gap in the first place. In this regard the Authority recalls that the Norwegian

Parliament (Stortinget) had decided that the former military camps should be sold at market value, see above at Paragraph 3.

- (41) Also later value assessments of parts of the Inner Camp made available to the Authority during the investigation seem to operate with higher values on buildings in the Inner Camp than what followed from the halfway settlement, see Paragraphs 22 and 29 above.
- (42) Viewed in isolation, as a transaction between public bodies, such a procedure may not be a cause for concern. However, when the buyer, as in this case, never intended to keep the properties, but rather foresaw a resale to private entities soon thereafter, the question of market value becomes more imminent. In particular when the buyer would not carry out a new value assessment but rather sell the property on for the same or even a lower price to a preselected buyer.
- (43) The fact remains nevertheless that the state sold the military camp to Våler Municipality on the basis of an independent expert valuation, namely the second Agdestein report. Admittedly, the method relied on in this assessment, the so-called "bridge value" was no more than a simple calculation where the value of the two former assessments were added and then divided by 2. Such a method should hardly require external expertise, and the calculation in itself does not appear more convincing from the mere fact that it is made by an independent expert. The report is also quite short, just over one page, and appears viewed in isolation to be of a quite approximate nature.
- (44) However, the report must be viewed in the light of the two former value assessments that are more detailed and thorough, in particular the first Agdestein report that contained individual assessments of all the buildings in the Inner Camp. The Authority has moreover noted that certain amendments and adjustments were also made to the prior assessments in the second Agdestein report. This indicates that the renewed assessment was of a somewhat more detailed nature than a simple halfway calculation. Finally, the Authority notes that the report, despite its statement about the existence of other methods to determine the value, did not contest that the bridge value was representative for the market value.
- (45) Thus, in light of the considerable uncertainty inherent in a value assessment of a former military camp comprising various areas and types of buildings, located in a remote area with a relatively scarce population, the Authority, while in doubt, concludes that the Haslemoen Leir was sold from the state to Våler Municipality at market value.
- (46) The next question is therefore whether the municipality in its subsequent sale of parts of the Inner Camp to Haslemoen AS sold at a price at least corresponding to its primary cost.

4.2. Whether the price for the 29 buildings corresponded to the primary cost

- (47) The assessment of whether the sales price for the 29 buildings corresponded to the primary cost appears complicated since it was never made explicitly clear in the agreement between the state and the municipality what the latter paid for the different buildings in the Inner Camp. Instead it paid a fixed sum of NOK 15,5 million, which included "an approximate 30 %" ⁽²¹⁾ rebate for acquiring the whole Inner Camp. In the end the municipality received an additional 20 % rebate for acquiring all four areas of the military camp.
- (48) One may envisage different methods to try to establish how much the municipality actually paid for the relevant 29 buildings of the Inner Camp, for instance based on the number of buildings or value, compared with the total number of buildings or total value. However, as described above, it is not clear to the Authority whether the municipality, before selling to Haslemoen AS, actually made any such calculations in order to determine its primary cost for the 29 buildings in question. The Authority has not received any contemporary documentation that such calculations were made during the course of the negotiations or later when the sale was put up for approval by the Municipal Council.
- (49) The municipality has during the administrative procedure referred to different considerations and objectives such as creation of new employment possibilities and the future development of the Inner Camp as a whole for the benefit of the local community. While such considerations do not necessarily conflict with a sale at market value, they neither, as such, support that the basic starting point was a sale without state aid elements. The municipality has moreover, in response to the Authority's specific question, admitted that it cannot today document what the real value of the properties in question were at the time they were sold.
- (50) The way the sale was handled by the Municipal Council also adds to the uncertainty about possible state aid. As described above, the municipality did neither arrange for an open tender nor arrange for an independent expert to make an assessment of the buildings it sold. Later, the advice it received from its external legal advisor in KS and its own Chief Executive to postpone the sale and clarify the value, were not followed. While the Council approved the sale on the conditions that a risk assessment of potential competition problems should be made by KS and submitted to the Executive committee, the Authority has not received any further information about these subsequent risk assessments.
- (51) The municipality has put forward two calculations dated 2 May 2006, from the municipality's external property valuer, see description above in Paragraphs 20 and 21. The municipality has submitted that the first assessment demonstrates that the primary cost for the municipality

⁽²¹⁾ See paragraph 8 above.

for acquiring the Inner Camp was NOK 12,4 million. The second is said to show that the value of the other buildings in the Inner Camp that were not sold to Haslemoen AS had an estimated value of approximately NOK 3,67 and 5 million respectively. Deducted from the primary cost of 12,4 million these assessments show, according to the municipality, that the primary cost for the 29 buildings in question was not more than NOK 4 million.

- (52) The Authority does not share the view that these calculations demonstrate that the buildings at issue were sold at market value. It disputes both the starting point regarding the primary cost of the Inner Camp as well as the method of deducting assumed value of other buildings in order to determine the “rest” primary cost.

The 20 % rebate

- (53) As regards the starting point, the calculations refers to the value of the Inner Camp as established in the second Agdestein report at NOK 15,5 million. Then the 20 % rebate that the municipality was granted for acquiring the whole military camp was deducted so as to find an Inner Camp value of NOK 12,4 million.

- (54) The basis for this discount is explained in the second Agdestein report:

“We believe that the market with a joint purchase of four such different activity areas, would include a price reduction for amongst other things risk and higher operating costs. However, the buyer would quickly be able to “turn around” after the acquisition and sell for instance the farm land or the forest separately, which point in the opposite direction. There is already included approximately 30 % “quantity discount” in the value assessments for both the housing and Inner Camp areas, due to the collective sale of each of these objects. We believe in an additional value reduction in the area of 20 % (– 12 mill) in the case of a joint sale of the whole camp in one go, i.e. to from NOK 58 mill to NOK 46 mill.”⁽²²⁾

- (55) Thus, the 20 % discount was specifically linked to the fact that the municipality bought the whole military camp, i.e. all four areas mentioned above in Paragraph 5.
- (56) The mentioned assessment of 2 May 2006 does not contain any reasoning as to why the market would require a similar rebate in case a part of one of the four areas was up for sale. To justify the rebates to Haslemoen AS the municipality has referred to that the

sales contract between Våler Municipality and Haslemoen AS was based on the assumption that the buyer would develop and operate the entire Inner Camp as well as the areas outside as one unit together with Våler Municipality. This was according to the municipality the reason that both rebates, the 30 % rebate for the Inner Camp sold as one unit and the additional 20 % rebate for the entire Haslemoen Leir were given to Haslemoen AS.

- (57) While limitations on the future use of a property may represent a value reducing factor, the Authority is not aware of any such limitations in the present case that would warrant the considerable rebates. There appears to be no provision in the sales contract or any other contemporary documentation submitted to the Authority that reflects such or other special obligations on the buyer to manage the properties in cooperation with the municipality.

- (58) As mentioned above, the notion that a resale for at least primary cost may exclude state aid rests on the condition that the land or buildings were acquired at market value in the first place. When a public authority, as in the present case, bought something more than the property it resold, and in that connection was granted significant quantity rebates, it cannot as such be presumed that the same rebates are warranted in the resale. Instead, this will have to depend on an assessment of whether the market would have priced in the same rebates also for the second and more limited transaction.

- (59) In the present case that seems unlikely already for the reason that both of the rebates were given as quantity rebates, specifically based on the fact that the buyer acquired the whole area in question. Indeed, such a double discount seems to be excluded in the present case already for the reason that the so called 30 % discount was granted for the acquisition of the Inner Camp as such. Thus, the additional discount of 20 % must be linked to the fact that the buyer, the municipality, in addition also bought other areas. This seems also to be the very basis for the rebate as explained in second Agdestein report quoted above. On that basis, and in the absence of any contemporary assessment to the opposite, the Authority must conclude that there was no basis for assuming that the market would have priced in an additional 20 % discount when only parts of the Inner Camp was for sale.

The 30 % rebate⁽²³⁾

- (60) Turning to the so called 30 % rebate, the Authority recalls that the second Agdestein report made it clear that the Inner Camp value of NOK 15,5 million included the NOK 10 million rebate and that it was an estimate of what the market would require for acquiring the Inner Camp as a whole, i.e. all 44 buildings. It is therefore necessary to assess whether the municipality could grant a similar rebate to Haslemoen AS when it acquired parts of the Inner Camp.

⁽²²⁾ “Vi tror at markedet ved et samlet kjøp av fire forsåvidt ulike virksomhetssområder vil legge inn en prisreduksjon for bl.a risiko og høyere driftskostnader. Imidlertid vil kjøper fort kunne “snu seg rundt” etter kjøpet og selge f.eks. jorda eller skogen videre enkeltvis, som taler motsatt vei. Det ligger allerede inne ca. 30 % “kvantumsrabatt” i takstene for både bolig og leirområdet, pga samlet salg av hver av disse takstobjekt. Vi tror på en ytterligere verdireduksjon på 20 % (– kr12 mill) ved samlet salg av hele leiren under ett, dvs fra kr 58 mill til 46 mill.”

⁽²³⁾ See paragraph 8 above.

- (61) Measured in number of buildings, the sale included 29 out of 44 buildings ⁽²⁴⁾, i.e. approximately 2/3 of the buildings. This could indicate a basis for a quantity rebate. Measured in value, the municipality's own calculations suggests that the 29 buildings represented a considerably smaller share of the total value of the Inner Camp than the remaining buildings. A value of NOK 4 million to the 29 buildings in question represents just under 1/3 of the total value compared with the NOK 3,67 million for the buildings kept by the municipality and the NOK 5 million for the 11 remaining buildings.
- (62) It is supported by the various valuation reports submitted in this case, mentioned above at Paragraphs 7 and 10, that the selling of several buildings en bloc has a price reducing effect. In addition to the two Agdestein reports, also the valuation of 15 March 2006 mentioned above at Paragraph 29 of 10 different buildings at the Inner Camp indicated that a rebate between "15-20 %" should be applicable in the event of a one unit sale of those 10 buildings.
- (63) The Authority therefore considers that some quantity rebate would have been in accordance with the market terms. In this case, whether the rebate would have been 15, 20 or 25 %, is difficult to determine due to the lack of contemporary assessments and documentation. All things considered and with reference to the assessment mentioned above of 10 other buildings in the Inner Camp and a likely quantity rebate of 15–20 %, the Authority, while in doubt, finds that an approximately similar quantity rebate as the one the municipality was granted, i.e. 25,64 %, could have been given to someone buying as much as 29 of the 44 buildings in the Inner Camp.

Whether primary cost could be established by deducting value of other buildings

- (64) The next question is whether the primary cost of the 29 buildings in question can be determined by deducting from the Inner Camp the value of the buildings that were not sold to Haslemoen AS.
- (65) The described method basically entailed that no detailed assessment was made of the 29 buildings in question because there were indications that other parts of the Inner Camp were of a sufficiently high value to ensure that the overall value corresponded to the municipality's alleged primary cost for the Inner Camp. This method appears uncertain and random due to the fact that the 3 different groups of buildings all were assessed according to different methods. In short, the bridge value report was used to establish the starting point, the NOK 12,4 million primary cost value of the Inner Camp as such. In the following assessment of the 3 different groups of buildings, a considerably lower value than the bridge value was put on the 29 buildings at issue and a higher value was put both on the buildings the

municipality kept and the 11 others for which it had later received an offer. The lower value was established on the basis of the negotiated price with Haslemoen AS and the higher values were both established on the basis of subsequent and newer information in the form of value assessments and an offer received.

- (66) This entailed in the view of the Authority the obvious risk that even if the overall starting point of the Inner Camp value had been correct (which it was not, see above), the price for the 29 buildings could be too low because later re-assessments of the other areas had established higher values. Indeed, if anything, the later and higher value assessments in this case should point to little else than that the starting point at NOK 12,4 million was too low.
- (67) Thus, the Authority concludes that the method referred to in the assessment of 2 May 2006 was not suitable to determine the primary cost and thereby the market value of the 29 buildings in question.

How to correctly determine the primary cost of the 29 buildings

- (68) As mentioned above, the assessment of the primary cost of the 29 buildings at issue is complicated by the fact that it was not made clear in the agreement between the state and the municipality what the latter paid for the different buildings in the Inner Camp. Instead it paid a fixed sum of NOK 15,5 million for the whole Inner Camp which included the so called 30 % rebate mentioned above. However, that bridge value was based on the two prior value assessments.
- (69) The first Agdestein report was based on individual assessment of the buildings and is in fact the only contemporary assessment thereof. Since this assessment was the basis for the bridge value which again formed the basis for the actual price paid by the municipality, the Authority considers that the first Agdestein report provides the individual values necessary to accurately establish the primary cost of the 29 buildings in question.
- (70) The sales contract in question comprises the following 29 buildings at the Inner Camp ⁽²⁵⁾: Nos 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, (31.) 33, 92 and 16. The investor values as assessed in the first Agdestein report of these buildings are the following:

⁽²⁵⁾ The Authority remarks that the Norwegian authorities have not explained the fact that the number of buildings listed in the contract is 30 and not 29 as consistently referred to by the Norwegian authorities. However, only 29 of the buildings in the contract are covered in the assessment by Agdestein, while building No 31 (a store shed) is absent. This building is disregarded in the following.

⁽²⁴⁾ See footnote 4.

1. Guard/arrest stall:	NOK	180 000
2. Welfare House, including offices, cafeteria, cinema, chapel etc.	NOK	4 200 000
4. Administration and office Building	NOK	160 000
5. Drill Building	NOK	400 000
6. Garage		
7. Administration and office building	NOK	2 000 000
8. Garage		
9. Hospital Building	NOK	1 200 000
10. Kitchen and canteen building for soldiers personnel	NOK	1 600 000
11. Kitchen and canteen building for officers	NOK	4 300 000
12. Barrack		
13. Barrack, No 12-13 are assessed together	NOK	2 000 000
14. Barrack,		
15. Barrack, No 14-15 are assessed together	NOK	2 000 000
18. Garage,	NOK	150 000
19. Garage,		
20. Garage,		
21. Service garage,		
22. Service garage,		
23. Garage		
24. Gas/petrol station		
25. Garage,		
26. Garage,		
27. Garage, No 19, 20, 21, 22, 25, 26 and 27 are assessed together	NOK	2 700 000
29. Regiment building with education room		
92. Post office, No 29 and 92 are assessed together	NOK	450 000
30. School building,	NOK	1 400 000
31. (Store shed),		
33. KO-building, school building	NOK	400 000
16. Fire/heating house	NOK	700 000
Sum	NOK	23 840 000

(71) The report did not separately assess the value of the individual buildings No 6 and No 8 (garages). Instead, they were assessed together with building No 45 (combined administration building with storage rooms, offices and workshop, not included in the contract with Haslemoen AS) at a total of NOK 1,9 million. Building No 23 and No 24 (garage and gas station) were, in the same manner, assessed together with building No 34 (the camp office building, which was not included in the contract with Haslemoen AS) at a total value of NOK 800 000. The question is therefore whether some of the value put on these collectively assessed buildings should be allocated to the buildings acquired by Haslemoen AS, namely the four garages No 6, 8, 23 and 24. This issue was raised in the Authority's opening decision referred to above, in which the Authority applied the most favourable scenario by disregarding these buildings.

(72) While the Authority has not been presented with any documentation to the effect that the four mentioned garages were worthless, it assumes that they were of limited value since the first Agdestein report chose to

include whatever value they had in the estimates for other buildings. Thus, in the absence of any contemporary documentation to the opposite and on the assumption that the value in any case appeared to be low the Authority will not add any specific value for these four buildings in the assessment of the relevant part of the Inner Camp.

(73) The total value of the 29 buildings in question, as assessed in the first Agdestein report, reaches the sum of NOK 23 840 000. As mentioned above, the municipality was granted the so called 30 % rebate⁽²⁶⁾ on the Inner Camp value in the first Agdestein report. Since the Authority under the circumstances of the present case finds that it was justified to grant a similar rebate to Haslemoen AS, the adjusted value of the 29 buildings as established by this report is (23 840 000 - 25,64 % =) NOK 17 727 424. Applying the bridge value method, the primary cost for the municipality for the 29 buildings in question was NOK 8 863 712.

⁽²⁶⁾ See paragraph 8 above.

(74) Given that the Authority has accepted that the state sold Haslemoen Leir to Våler municipality at market value, it accepts that a sum of NOK 8 863 712 was the municipality's primary cost for the buildings and that this was the necessary indication of the market value.

(75) On that basis it concludes that the sale to Haslemoen AS at NOK 4 million contained state aid amounting to (NOK 8 863 712 - NOK 4 000 000 =) NOK 4 863 712.

(76) The municipality has also submitted that the Authority should take into consideration the price-reducing elements consisting of possible pollution in the ground and the obligation on Haslemoen AS to allow free use of the school building for one year. There has however not been submitted any particular contemporary or subsequently produced documentation concerning these alleged price reducing elements and the impact they allegedly have had on the price.

Pollution in the ground

(77) As regards pollution in the ground the Authority would agree that this could be a rather obvious possibility given that the camp was used for military purposes since the 1950s.

(78) The Authority has in this regard noted that the first Agdestein report specifically mentioned possible pollution in the ground in the Inner Camp related to fuel and oil tanks in the ground. This was however not taken into account in the value assessment. The Alhaug/Bakke value assessment, which estimate the value of the Inner Camp at NOK 0, mentioned both the possibility of pollution in the ground and possible asbestos in the buildings, without making an attempt at specifying possible costs related thereto.

(79) However, the Authority recalls that the reports were used as a basis for the halfway settlement. Thus, any price reducing or negative element in the report must be assumed taken into account by the subsequent halfway settlement. Indeed, the Authority sees no basis for any additional price reduction for any element or circumstance that was known between the parties to the first transaction. This is so since the effect of such measures must be assumed taken into account in the bridge value sales price. A resale at primary cost must be assumed to cover the same price reducing elements.

(80) Finally, the contract between the state and the municipality explicitly referred to the possibility of pollution in the ground and made a reference to *the polluter pays principle* in the Norwegian Pollution act. The subsequent contract between the municipality and Haslemoen AS specifically referred to this obligation and that the seller, i.e. the Norwegian state remained liable for

ground pollution linked to the military activity. For those reasons the Authority sees no basis for any further price reduction on ground of possible pollution.

The use of the school building

(81) As regards the right for the municipality to free use of the school building for one year, the Authority notes that this was a new obligation on the buyer in the sense that no such obligation was already imposed by the state on the municipality. Thus it cannot be as such presumed to be covered by the bridge value price. However, in the absence of any supporting documentation as to the economic impact of this obligation, i.e. the possible loss for Haslemoen AS in not being able to lease out that building for one year, the Authority cannot accept any price reducing effect as such.

(82) The obligation concerned just one of the buildings and it was already taken into account in the price that it would be difficult to lease out all the properties immediately as there was already a surplus of available lease objects in the area. This was emphasised by both value assessments. Moreover, the municipality would cover the share of fixed costs and heating for the building for the same period. Finally, the Authority refers to its assessment above in which it has accepted that the municipality gave the same quantity rebate to Haslemoen AS as it obtained itself for acquiring the whole Inner Camp. Moreover, the Authority did not add any specific value for the four garages sold to Haslemoen AS that were valued together with other buildings at the Inner Camp, which Haslemoen AS did not buy. Thus, the Authority assumes that any possible loss from not being able to lease out the school for a year after the acquisitions should be considered neutralised by these for Haslemoen AS favourable considerations.

Conclusion on the market investor principle

(83) In light of the above, the Authority concludes that the sale of the 29 buildings to Haslemoen AS was not carried out in accordance with the market investor principle. The buildings were sold at a price below market value that entailed state aid of NOK 4 863 712. Consequently, in the following, the Authority will assess whether the sale of the buildings fulfils the additional criteria under Article 61(1) EEA.

4.3. State resources and selective advantage

(84) In order to qualify as state aid, the measure must be granted by the state or through state resources. The concept embraces all levels of the state, including municipalities. As demonstrated above, state resources were involved because Våler Municipality sold the 29 buildings in the Inner Camp at a price substantially below the market price. The transaction provided Haslemoen AS with a selective advantage as it was received on the basis of a contract according to which it was the only beneficiary.

4.4. Distortion of competition and effect on trade between Contracting Parties

- (85) It follows from settled case law⁽²⁷⁾ for the purpose of these provisions the mere fact that aid strengthens a firm's position compared with that of other firms, which are competitors in intra-EEA trade, entails that intra-EEA trade is affected. The Authority recalls that the buildings in question were valued and bought on the basis of the investor value, i.e. the value based on future rental income. Investing in real property for the purposes of leasing out to businesses must as such be considered as an EEA wide economic activity, which in Norway takes place with market participants from many EEA States. As for the specific aid recipient, according to the national company register in Norway⁽²⁸⁾, Haslemoen AS is involved in activities concerning hotels, motels and restaurants⁽²⁹⁾. It operates Haslemoen Hotell at the Inner Camp and rents out buildings for an asylum centre to the Norwegian state. For all these activities Haslemoen AS must be considered to be in competition with similar undertakings in Norway and also in other EEA States. The measure therefore has the effect of distorting competition and affecting trade between Contracting Parties.

4.5. Conclusion on the presence of state aid

- (86) In light of the findings above, the Authority concludes that state aid in the amount of NOK 4 863 713 was involved in the sale of the 29 buildings to Haslemoen AS.

5. PROCEDURAL REQUIREMENTS

- (87) Pursuant to Article 1(3) of Part I of Protocol 3, the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant 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 to the Authority the sale of the 29 buildings by Våler Municipality to Haslemoen AS. The Authority therefore concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

6. COMPATIBILITY OF THE AID

- (88) The Norwegian authorities have not put forward any arguments that the state aid involved in the transaction could be considered as compatible state aid.
- (89) Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the func-

tioning of the EEA Agreement, unless they qualify for a derogation under Article 61(2) or (3) of the EEA Agreement.

- (90) The derogation of Article 61(2) is not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision. Nor does Article 61(3)(a) or Article 61(3)(b) of the EEA Agreement apply to the case at hand. Further, the area where the property is located cannot benefit from any regional aid within the meaning of Article 61(3)(c) of the EEA Agreement.
- (91) The Authority therefore finds that the transaction under assessment cannot be justified under the state aid provisions of the EEA Agreement.

7. RECOVERY

- (92) As the aid at NOK 4 863 713 was granted to Haslemoen AS without being notified to the Authority, it constitutes unlawful aid within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement. It follows from Article 14 of Part II of Protocol 3 to the Surveillance and Court Agreement that the Authority shall decide that unlawful aid which is incompatible with the state aid rules under the EEA Agreement must be recovered from the beneficiaries.
- (93) The Authority is of the opinion that no general principles preclude repayment in the present case. According to settled case-law, abolishing unlawful aid by means of recovery is the logical consequence of a finding that the aid is not lawful. Consequently, the recovery of state aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the EEA Agreement in regard to state aid.
- (94) By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored⁽³⁰⁾. It also follows from that function of repayment of aid that, as a general rule, save in exceptional circumstances, the Authority will not exceed the bounds of its discretion if it requires the EFTA State concerned to recover the sums granted by way of unlawful aid since it is only restoring the previous situation⁽³¹⁾. Moreover, in view of the mandatory nature of the supervision of state aid by the Authority under Protocol 3 of the Surveillance and Court Agreement,

⁽²⁷⁾ See e.g. Case 730/79 *Phillip Morris Holland BV v EC Commission* [1980] ECR 2671, paragraph 11.

⁽²⁸⁾ <http://www.brreg.no>.

⁽²⁹⁾ "Drift av hoteller, pensjonater og moteller med restaurant" (Org nr. 989636073).

⁽³⁰⁾ Case C-350/93 *Commission v Italy* [1995] ECR I-699, paragraph 22.

⁽³¹⁾ Case C-75/97 *Belgium v Commission* [1999] ECR I 3671, paragraph 66, and Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 99.

undertakings to which aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in the provisions of that Protocol⁽³²⁾. There are no exceptional circumstances visible in this case, which would have led to legitimate expectations on the side of the aid beneficiaries.

- (95) The recovery of the unduly granted state aid at NOK 4 863 713 should include compound interest, in line with Article 14 (2) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 9 and 11 of the Authority's Decision 195/04/COL of 14 July 2004.

8. CONCLUSION

- (96) The Authority concludes that the Norwegian authorities have unlawfully implemented the aid in question in breach of Article 1(3) of Part I to Protocol 3.
- (97) The state aid involved in the sale of 29 buildings at the Inner Camp of Haslemoen Leir is not compatible with the functioning of the EEA Agreement for the reasons set out above and should be recovered with effect from the conclusion of sales contract 22 May 2006.

HAS ADOPTED THIS DECISION:

Article 1

The sale of the 29 buildings at the Inner Camp of Haslemoen Leir to Haslemoen AS entails state aid at the amount of NOK 4 863 713 which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The Norwegian authorities shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1.

Article 3

Recovery shall be effected without delay, and in any event within four months from the date of this decision and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of the beneficiary, until the date of its recovery. Interest shall be calculated on the basis of Article 9 of the EFTA Surveillance Authority Decision 195/04/COL.

Article 4

By 15 May 2012, Norway shall inform the Authority of the total amount (principal and recovery interests) to be recovered from the beneficiary as well as of the measures planned or taken to recover the aid.

By 15 July 2012, Norway must have executed the Authority's decision and fully recovered the aid.

Article 5

This Decision is addressed to the Kingdom of Norway.

Article 6

Only the English language version of this decision is authentic.

Done at Brussels, 15 March 2012.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member

⁽³²⁾ Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51.

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