

Case No: 67933
Event No: 625764
Dec No: 090/12/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 15 March 2012
On the sale of certain buildings at the Inner Camp at Haslemoen Leir
(Norway)

The EFTA Surveillance Authority (“the Authority”),

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

HAVING REGARD to 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 provisions¹,

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

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 OJ C 325 of 2.12.2010, page 12.

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.

2. Haslemoen Leir

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 buildings⁴ 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 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%).

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

⁴ Event # 428521, # 557187.

⁵ Events # 458897, # 458902, # 458903 (the first Agdestein report).

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.

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 million¹⁰ 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 million¹¹ + 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

⁷ Event # 428521, Enclosure 16 (The Alhaug/Bakke report).

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

⁹ Event # 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.

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 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 (Rådmanden) 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,

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”.

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 buildings¹⁶ 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 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).

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.

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

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 # 581797.

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.
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 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

²¹ See Paragraph 8 above.

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.

²² *“Vi tror at markedet ved et samlet kjøp av fire forsåvidt ulike virksomhetsomr vil legge inn en prisreduksjon for bl.a risiko og høyere driftskostn. 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 leiområdet, 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. til fra kr 58 mill til 46 mill.”*

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.

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.

²³ See Paragraph 8 above.

²⁴ See footnote 4.

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:

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

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.

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
<u>Sum</u>	<u>NOK 23.840.000</u>

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% rebate²⁶ 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.

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.

²⁶ See Paragraph 8 above.

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 law²⁷ 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 questions 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

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

aid recipient, according to the national company register in Norway²⁸, 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 functioning 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

²⁸ <http://www.brreg.no>.

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

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, 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

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.

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

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.

Decision made in Brussels, on 15 March 2012.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Sverrir Haukur Gunnlaugsson
College Member