

Case No: 67933
Event No: 474585
Dec. No: 96/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 24 March 2010

to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to the sale of certain buildings at the Inner Camp at Haslemoen Leir

(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹,

HAVING REGARD to the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 thereof,

HAVING REGARD to Article 1(2) of Part I and Articles 4(4) and 6 of Part II of Protocol 3 to the Surveillance and Court Agreement⁴,

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement⁵, and in particular the Chapter on State Aid Elements in Sales of Land and Buildings by Public Authorities thereof,

Whereas:

I. FACTS

1. Procedure

By letter dated 5 February 2007, the Authority received a complaint regarding a sale of land by the Municipality of Våler. The letter was received and registered by the Authority on 22 February 2007 (Event No 427226).

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter referred to as Protocol 3.

⁵ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

By letters dated 25 May 2007 and 14 November 2007 (Event No 422506 and Event No 449988), the Authority requested information from the Norwegian authorities.

By letters dated 6 July 2007 and 21 December 2007 (Event No 428521 and Event No 458787 respectively), the Norwegian authorities replied to the information requests.

Various mail correspondence has also taken place with the complainant.

2. Description of the sale and the contested measure

2.1. Background: the sale of the military camp Haslemoen Leir to the municipality

Following a decision by the Norwegian Parliament, the Norwegian Government was requested to sell military properties that were no longer used for military purposes. The relevant local municipalities were given a right of first refusal to the properties.

The military camp Haslemoen Leir, had been an army base since the 1950s and it is composed of (i) forest areas; (ii) cultivated area; (iii) housing area (Storskjaeret); and (iv) an area called the Inner Camp. Military activities at Haslemoen were terminated on 30 June 2003 and a sales process for the camp was initiated thereafter with Haslemoen Leir being put on the market in October 2004. The property was subsequently sold by the Norwegian State to Våler Municipality by a sales contract dated 16 April 2005. The price paid by Våler Municipality for the entire military camp was 46 million NOK.

Prior to the sale, the value of the camp had been estimated by several asset valuers.

The Norwegian State had commissioned Agdestein Takst & Eiendomsrådgivning to undertake a value assessment of the property and their report was presented on 22 December 2004 (hereinafter the first Agdestein Report). The first Agdestein Report focussed on the part of Haslemoen Leir called Inner Camp and examined each of the 44 buildings on that plot, before concluding that the estimated value of the entire Inner Camp was 39 million NOK. The first Agdestein Report also concluded that the estimated value should be reduced with 10 million NOK to 29 million NOK (i.e. almost 30%), if all buildings were sold as one unit.⁶

Våler Municipality had engaged the asset valuers Mr Alhaug and Mr Bakke to evaluate the buildings in the Inner Camp. Based on the fact that the new owner would assume the risk related to developing the entire property and the refurbishment costs that were necessary for the area, the Alhaug and Bakke Report dated 18 January 2005 (hereinafter the Alhaug and Bakke Report) concluded that the value of the Inner Camp was 0 (zero) NOK.

In order to reconcile the findings in the two valuation reports and reach an estimated sales price, the Norwegian State requested Agdestein Takst & Eiendomsrådgivning to make a second value assessment of the property, taking into account the diverging value assessments. The new assessment is set out in a report dated 3 March 2005 (hereinafter the second Agdestein Report). In this document, a new estimated value (a “bridge value”) of NOK 14.5 million was reached based on the average of the sum of the two separate

⁶ Storskjaeret was valued at 15 million NOK if sold as one unit. The forest and cultivated areas were not valued at this time.

assessments.⁷ The second Agdestein Report thereafter made an upwards adjustment of 1 million NOK, reflecting inter alia the value of undeveloped land and the conditions of the buildings in question, fixing the estimated value at 15.5 million NOK.

An additional reduction of 20% of the estimated value of the property was thereafter made, based on the assumption that all the different areas (i.e. the forest areas, the cultivated area, the housing area, and the Inner Camp) in the Haslemoen Leir would be sold together in one single package. The Inner Camp was valued at 12.4 million NOK ($15.5 - 20\% = 12.4$).

As mentioned above, Våler Municipality paid 46 million NOK for the entire Haslemoen Leir.

2.2. The sale by Våler Municipality of several buildings at the Inner Camp to Haslemoen AS

Våler Municipality had prior to the acquisition of Haslemoen Leir declared that it did not intend to carry out any activities on the military camp itself, but would instead involve external operators to develop the area in an appropriate manner and to generate as many new job opportunities as possible.

2.2.1. The sales process

The Norwegian authorities have explained that several parties showed interest in the different properties at the Inner Camp at Haslemoen Leir when they were put up for sale. However, Våler Municipality wanted to find a buyer that would ensure a uniform development and optimal utilisation of the Inner Camp. It was, according to Våler Municipality, important for the Municipality to sell the Inner Camp as a whole package, even if this would reduce the overall price as the buyer would allegedly take on an increased risk when acquiring the entire property.

Some prospective buyers decided to cooperate and established a new company together named Haslemoen AS. Allegedly, the company was an attractive buyer for Våler Municipality, as it had the intention to use the property for accommodation as well as different cultural and sporting activities and events. Target groups were the army, security services providers, and the car industry.

By a contract dated 22 May 2006, Våler Municipality agreed to sell 29 out of the total 44 buildings in the Inner Camp area at the Haslemoen military camp to the company Haslemoen AS for a total amount of 4 million NOK⁸. The buildings covered by the contract of 22 May 2006 include barracks, mess halls for officers and soldiers with kitchen facilities, auditorium, movie theatre, school building, central heating, garages, office building and a hospital ward.

2.2.2. Assessments

The Norwegian authorities have explained that the asset valuer Mr Bakke, who had previously carried out a value assessment on behalf of the Municipality when the property

⁷ The price estimated at 29 million NOK in the first Agdestein Report was added to the price of 0 NOK in the Alhaug and Bakke Report, and was then divided by two. A new price of 14.5 million NOK for the Inner Camp was thus reached.

⁸ When examining the sales contract and counting the buildings concerned, it is however not entirely clear to the Authority whether the contract covers 29 or 30 buildings.

was purchased from the Norwegian State, assisted the Municipality in the sales process with Haslemoen AS. However, no specific value assessment was carried out of the buildings covered by the contract between Våler Municipality and Haslemoen AS. The Norwegian authorities have explained that the valuations carried out when Våler Municipality initially bought the property were partially used again.

Mr. Bakke made an overview of sales prices dated 2 May 2006, which provides a justification for the purchase price of 4 million NOK. This report explains that the value of the buildings that Våler Municipality will maintain ownership over at the Inner Camp is estimated at 3,6 million NOK. This conclusion is partially based on the individual valuations carried out in the first Agdestein report⁹. Moreover, the report indicates that Våler Municipality received an offer of 5 million NOK presented orally from another buyer for 11 buildings at the Inner Camp¹⁰. Considering that the second Agdestein Report had evaluated all the buildings at the Inner Camp at 12,4 million NOK, Våler Municipality is of the opinion that the sales price of 4 million NOK for the 29 buildings sold to Haslemoen AS corresponds to their market price. It is argued that the total amount for all the buildings is 12.6 million NOK (3,6 + 5 + 4) and this is even more than what Våler Municipality paid for the buildings when they were initially bought from the Norwegian State (i.e. 12.4 million NOK).

3. Comments by the Norwegian authorities

The Norwegian authorities acknowledge that Våler Municipality applied a formal procedure to calculate the price of the buildings that differed slightly from the method described in the Authority's Guidelines in order to exclude the presence of state aid. However, the Norwegian authorities are of the opinion that the sales price of 4 million NOK for the 29 buildings in the Inner Camp represents the market value and the procedure chosen for ensuring this was considered rational and secure.

Moreover, the Norwegian authorities are of the opinion that the sales contract between Våler Municipality and Haslemoen AS contains several elements that have a price reducing effect. One of these elements is an obligation imposed on the buyer to rent out the purchased school building for a period of one year for free.

The Norwegian authorities argue that although only part of the 44 buildings were bought, the sales contract between Våler Municipality and Haslemoen AS is nevertheless 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 Municipality¹¹.

The sales price of 4 million NOK reflects this assumption and this is the reason why the application of a 30% and an additional 20% rebate was justified when reaching the final price.

The Norwegian authorities have stressed that Våler Municipality endeavoured to handle the sale in a manner that would not raise problems with regard to the EEA state aid rules.

⁹ This evaluation was also based on an assessment carried out by Mr Alhaug for the municipality. This assessment does however not appear to be included in the evaluation report, dated 15.3.2006, that has been provided to the Authority.

¹⁰ Details of the terms of this offer or any finalised and signed contract has not been communicated to the Authority.

¹¹ The sales contract relates however only to the purchase of 29 of the 44 buildings at the Inner Camp.

II. ASSESSMENT

1. Assessment of state aid

1.1. State aid within the meaning of Article 61(1) EEA

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.”

Aid falling within this provision is, as a rule, incompatible with the EEA Agreement and hence prohibited, provided that the following four conditions are fulfilled:

1. the aid is granted by “*EC Member States, EFTA States or through state resources in any form whatsoever*”;
2. the aid “*distorts or threatens to distort competition*”;
3. the aid favours “*certain undertakings or the production of certain goods*”; and
4. the aid “*affects trade between the Contracting Parties*”.

The State Aid Guidelines, and its Chapter on State aid elements in sales of land and buildings by public authorities, explains how the Authority interprets and applies the provisions of the EEA Agreement governing state aid when it comes to assessing sale of public land and buildings. Section 2.1 describes a sale through an unconditional bidding procedure, while Section 2.2 describes a sale without an unconditional bidding procedure (by way of an independent expert evaluation). These two procedures allow EFTA States to handle sales of land and buildings in a way that precludes the existence of state aid.

In the case at hand, none of these procedures was followed and therefore it cannot be excluded that state aid was granted in connection with the sale of the 29 buildings from Våler Municipality to Haslemoen AS.

The Authority considers that the sale of the 29 buildings at the Inner Camp could amount to state aid if the sale took place at a price below market value.

1.2. Market investor principle

1.2.1. Introduction

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 the grant of state aid.

1.2.2. Doubts on the value

The Authority notes that no separate valuation of the buildings that were purchased by Haslemoen AS was carried out for the purpose of this sale. Furthermore, no explanation or information has been presented to the Authority as to why the price of 4 million NOK corresponded to market value.

However, the property in question had shortly before been transferred from the Norwegian state to the municipality and in that process no less than 3 different value assessments were collected in order to determine the market value. It follows from the Authority's guidelines on sale of land that, to the extent a preceding sales process has determined the market value, a public authority may use its primary cost as an indication for the market value unless a significant period of time has elapsed between the purchase and the sale of the land¹². This is further explained so that the market value may not be set below the public authority's primary cost during at least three years after the acquisition unless an independent valuer specifically identifies a general decline in market prices.

Thus, in the present case two questions arise. First whether the preceding transaction between the state and Våler Municipality was carried out on market terms. Second, if it did, whether Våler Municipality subsequently sold the property to Haslemoen AS for a price corresponding at least to its primary cost.

As regards the first question the Authority considers that there was great uncertainty about the market value of the properties in question in the negotiations between the state and Våler Municipality. This is illustrated by the gap between the first Agdestein report, which estimated the value of the Inner camp at 39 million NOK (29 million NOK if sold en bloc) and the second assessment by Alhaug and Bakke, which considered the value to be 0.

In the view of the Authority, this gap illustrates the uncertainty inherent in an assessment of this type of land, namely a former military camp with old buildings, both residential housing and other buildings such as a cinema and sports facilities, located in a remote area. Although an alternative could have been to appoint a third, independent expert to review the estimated value, the Government and Våler Municipality agreed to ask the first value assessor to re-examine the conclusions reached under the first Agdestein report. The second Agdestein report estimated a new value for the property based on the average of the sum of the two previous reports ("bridge value") and adjusted it accordingly.

The question arises however whether the municipality sold the 29 buildings in the Inner camp to Haslemoen AS for a price corresponding at least to its primary cost.

The "bridge value" in the second Agdestein Report, adjusted for various reasons, concluded that the value was 12.4 million NOK for all the buildings at the Inner Camp. If one applies the bridge value method to the 29 buildings in question, the value seems to amount to 11 920 000 NOK ($23\ 840\ 000/2$)¹³. This amount is substantially higher than the actual sales price of 4 million NOK. The Norwegian authorities have argued that the price of 4 million NOK paid by Haslemoen AS for the 29 buildings reflects the market value after taking into account (i) the price Våler Municipality initially paid when it purchased the entire Haslemoen Leir, (ii) the value of an oral offer made for some of the remaining buildings in the Inner Camp, and (iii) the estimated value of other buildings in the Inner Camp that Våler Municipality will keep.

¹² Section 2.2.d) of the Authority's Guidelines on sale of land and buildings, "Cost to the Authorities".

¹³ This reflects the sum of the estimated value for the 29 buildings as derived from the first Agdestein Report, divided by two in order to reflect the "bridge value" logic. This is however a conservatively calculated value as some of the estimates in the first Agdestein Report group several buildings together. It is therefore unclear what the estimated value of the individual buildings were. Since not all of these buildings grouped together have been sold by Våler Municipality, the Authority has disregarded the entire estimated value of these buildings grouped together. In this way, the calculated value reflects a conservative interpretation of the most favourable scenario for the Norwegian authorities.

As for the alleged oral offer, the Authority notes that to its knowledge no agreement has been concluded. Moreover, the Authority has not received any documentation for such an offer.

1.2.3. Rebates

Moreover, the Authority notes that the Norwegian Authorities argue that the same rebate which were granted to Våler Municipality when the property was initially bought should be applicable to the sale of the 29 buildings to Haslemoen AS.

First, the Norwegian State granted a 30% rebate to Våler Municipality for acquiring all buildings in the Inner Camp. Based on the information submitted, it is not clear to the Authority why that rebate, which was based on a sale en bloc, should be granted by Våler Municipality when it resold 29 of the 44 buildings to Haslemoen AS.

Second, the additional 20% rebate granted by the Norwegian State to Våler Municipality was based on the acquisition of all properties in the Haslemoen Leir military camp (Inner Camp, forest areas, cultivated areas, etc.). In the opinion of the Authority, this rebate is not applicable to the sale of only some buildings at the Inner Camp of the military camp.

Thus, even if the Authority would accept that a sale of the military camp en bloc would reduce the market value, it is in doubt that similar rebates would reflect market conditions when only parts of the camp were sold.

1.2.4. Conclusion on the market investor principle

In light of all the above, the Authority has doubts as to whether the 4 million NOK that Haslemoen AS paid for acquiring the 29 buildings at the Inner Camp from Våler Municipality represented the market value. Consequently, on the basis of the information provided by the Norwegian authorities, the Authority cannot conclude that the sale of the buildings in question to Haslemoen AS for the sales price of 4 million NOK was carried out in accordance with the market investor principle.

1.3. The presence of state aid

1.3.1. State resources

In order to qualify as state aid, the measure must be granted by the State or through state resources. The concept of the State does not only refer to the central government but embraces all levels of the state administration (including municipalities) as well as public undertakings.

If the municipality sold the buildings below their market price, it would have foregone income. Under this assumption, Haslemoen AS should have paid more for the buildings and therefore there would be a transfer of resources from Våler Municipality. For these reasons, the Authority considers that if the sale did not take place in accordance with conditions acceptable for a private market investor, as set out above, state resources within the meaning of Article 61(1) of the EEA Agreement would be involved.

1.3.2. Favouring certain undertakings or the production of certain goods

Second, the measure must be selective in that it favours “*certain undertakings or the production of certain goods*”.

To constitute state aid, the measure must confer on Haslemoen AS advantages that relieve it of charges that are normally borne from its budget. If the transaction was carried out under favourable terms, in the sense that Haslemoen AS would most likely have had to

pay a higher price for the properties if the sale had been conducted according to the market investor principle, the company would have received an advantage within the meaning of the state aid rules. The Authority considers that if Haslemoen AS was able to buy the property for less than its market value, the difference between the price actually paid and the fair market value would constitute an advantage.

Third, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”. In the case at hand, there is only one possible beneficiary of the measure under assessment, i.e. Haslemoen AS. The measure is thus selective.

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

Finally, to be considered state aid, the measure must distort competition and affect trade between the Contracting Parties. Under settled case law¹⁴ for the purpose of these provisions, the mere fact that an aid strengthens a firm’s position compared with that of other firms, which are competitors in intra-EEA trade, is enough to allow the conclusion to be drawn that intra-EEA trade is affected.

The Authority considers that the real estate market in central eastern Norway is not limited to local undertakings. Haslemoen AS is in competition with similar undertakings in Norway and other EEA States. A sales price below market value favouring Haslemoen AS would distort or threaten to distort competition and affect trade between Contracting Parties. Consequently, the Authority considers that conditions two and four set out in section 4.1 above, are fulfilled.

1.3.4. Conclusion on the presence of state aid

In light of what has been found above, the Authority considers that it cannot be excluded that state aid was involved in the context of the Municipality of Våler’s sale of buildings to Haslemoen AS.

2. Procedural requirements

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 or alter aid. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.

The Norwegian authorities did not notify the sale of certain buildings at the Inner Camp in the Haslemoen Leir to the Authority. The Authority therefore concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

Should aid have been granted regarding the sale of certain buildings at the Inner Camp in Haslemoen Leir, it has to be considered whether such aid could be compatible with the EEA Agreement by virtue of Article 61(3) of the EEA Agreement.

On the basis of the information the Authority has received, Article 61(3)(a)-(c) of the EEA Agreement appears to be inapplicable. In the view of the Authority, the sale is not designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to promote a project of

¹⁴ See e.g. Case C 730/79, *Philip Morris Holland BV v EC Commission*, ECR 1980, p 2671

common European interest or to facilitate the development of certain economic activities or of certain economic areas.

The Authority therefore doubts that the transaction under assessment can be justified under the state aid provisions of the EEA Agreement.

4. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude the possibility that the measure under scrutiny constitute aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts as to whether this measure can be regarded as complying with Article 61(3) of the EEA Agreement. The Authority thus doubts that the above measure is compatible with the functioning of the EEA Agreement.

Consequently, and in accordance with Article 10 in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measure in question is compatible with the functioning of the EEA Agreement.

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

In light of the foregoing consideration, the Authority requires that, within one month of receipt of this decision, the Norwegian authorities provide all documents, information and data needed for assessment of the compatibility of the sale of certain buildings at the Inner Camp at the Haslemoen Leir to Haslemoen AS. It requests the Norwegian authorities to forward a copy of this letter to Haslemoen AS immediately.

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

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 against Norway regarding the sale of certain buildings at the Inner Camp in the Haslemoen Leir.

Article 2

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English version is authentic.

Done at Brussels, 24 March 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Kurt Jaeger
College Member