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EFTA SURVEILLANCE AUTHORITY DECISION
of 31 May 2002
regarding the prolongation of supplementary insurance cover for third-party damage due to acts of war and terrorism ('war insurance') in support of Norwegian airline companies and airports (covering the period from 24 October 2001 until 31 May 2002)
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area[1], in particular to Articles 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice[2], in particular to Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid[3],

WHEREAS:

I. FACTS

Procedure

It should be recalled that by Decision of 30 October 2001 (Dec. No. 315/01/COL), the Authority approved the temporary provision of 'war insurance' by the Norwegian State to Norwegian airline companies and certain airports.[4]

[1] Hereinafter referred to as the 'EEA Agreement'.
[2] Hereinafter referred to as the 'Surveillance and Court Agreement'.
[3] 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 EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 370/01/COL of 28 November 2001, not yet published; hereafter referred to as the 'Authority's State Aid Guidelines'.
[4] Published in OJ C 364, 20.12.2001 and the EEA Supplement to the Official Journal of the EC No 62, 20.12.2001.

This decision concerned the provision of ‘war insurance’ for a period of one month, from 24 September 2001 until 24 October 2001.

In the following, the Norwegian Government informed the Authority of further prolongations as well as the conditions applicable under the insurance contracts offered to Norwegian airlines and airports. This information was provided in the letters from the Norwegian Ministry of Transport and Communications dated 30 October 2001, received and registered by the Authority on 5 November 2001 (Doc. No. 01-8693-A), 23 November 2001, received and registered by the Authority on 29 November 2001 (Doc. No. 01-9583-A), a letter from the Ministry of Trade and Industry dated 19 December 2001, received and registered by the Authority on 3 January 2002 (Doc. No. 02-37-A), and letters from the Ministry of Transport and Communications dated 28 January 2002, received and registered by the Authority on 31 January 2002 (Doc. No. 02-856-A), 3 April 2002, received and registered by the Authority on 9 April 2002 (Doc. No. 02-2574-A), and 26 April 2002, received and registered by the Authority on 3 May 2002 (Doc. No.02-3356-A). In these letters, the Norwegian Government informed the Authority that the ‘war insurance’ scheme would be prolonged covering the period from 24 October 2001 to 31 May 2002.

By letters dated 14 November 2001 (Doc. No. 01-9006-D), 21 December 2001 (Doc. No. 01-10360-D), 12 February 2002 (Doc. No. 02-1198-D), 27 March 2002 (Doc. No. 02-2232-D) and 16 May 2002 (Doc. No. 02-3660-D), the Authority acknowledged receipt of these letters.

The Norwegian authorities provided additional information by letter from the Ministry of Transport and Communications dated 7 February 2002 (Doc. No. 02-1111-A), received and registered by the Authority on 11 February 2002 (Doc. No. 02-1116-A). Additional information was requested by the Authority, in particular regarding the premium payments and the remuneration for the insurance company administering the ‘war insurance’ scheme on behalf of the Norwegian State, by letter dated 12 February 2002. Only part of the requested information was submitted by the Norwegian Government by letter from the Ministry of Trade and Industry dated 20 March 2002, received as fax and registered on that same day (Doc. No. 02-2068-A).

By letter dated 27 March 2002 (Doc. No. 02-2232-D), the Authority requested the Norwegian Government to submit additional information enabling the Authority to assess the remuneration granted by the Norwegian State to Gjensidige NOR for the administration of the ‘war insurance’ scheme. The Norwegian Government provided only part of the information in the letter from the Ministry of Transport and Communications dated 18 April 2002, received and registered by the Authority on 24 April 2002 (Doc. No.02-3088-A). By letter from the Ministry of Transport and Communications dated 13 May 2002, received by fax and registered by the Authority on 14 May 2002 (Doc. No. 02-3612-A) as well as a further fax from the Ministry of

Transport and Communications dated 16 May 2002, received by fax and registered by the Authority on that same day (Doc. No. 02-3689-A), the Norwegian Government submitted additional information as regards the premium income. It also informed the Authority that it had been agreed to retroactively reduce the remuneration offered to Gjensidige NOR to 7.5% of premium income as from 25 October 2001 (until 30 January 2002).

Description of Aid Measures

Period from 24 October 2001 until 24 November 2001

As regards the prolongation of 'war insurance' offered by the Norwegian State for the period from 24 October 2001 until 24 November 2001, the Norwegian Government has informed the Authority of the following:

By letter of 24 October 2001, the Ministry of Transport and Communications informed the airline companies and airports covered by the initial 'war insurance' of the prolongation of a further month.

On 26 October 2001, the Norwegian Parliament adopted the prolongation of the temporary insurance scheme until 23 November 2001 at 23:59.

The prolongation was subject to the following conditions: The Ministry reserved its right to increase the premium, or alter the scope of the cover or its conditions, during the insurance period, e.g. increase the excess level of the insurance policies. (The State provides insurance only for damages exceeding ceilings set by commercial insurers.) The Government further stated that it would terminate its insurance scheme if a satisfactory commercial private market was established during the insurance period. According to information from Gjensidige NOR, the aviation insurance companies offered insurance with coverage up to USD 150 million for airplanes and helicopters and up to USD 50 million for airports.

Based on these conditions, and by letter dated 26 October 2001, the Ministry offered airline companies and airports a renewal of 'war insurance'. In this letter, the airline companies and Oslo airport were informed that the excess level and the premiums would be raised as from 4 November 2001. According to information submitted by the Norwegian Government, of the initially 8 airline and helicopter companies and the 2 airports, only 5 air carriers and one airport (Oslo Gardermoen) have accepted the offer for prolonged insurance cover under changed conditions. Other operators did not renew the 'war insurance' because insurance offered by the private insurance market was apparently regarded as adequate.

Under the renewed contracts, the excess level was raised to USD 150 million for airplanes and helicopters (from previously USD 50 million and USD 10 million respectively) and USD 50 million for airports (from previously USD 10 million).

Furthermore, the premiums were raised for air carriers and airports as follows:

- Air carriers: For the gap between USD 150 million and USD 1 billion a premium of USD 0.35 per passenger per flight has to be paid. For the cover above USD 1 billion up to a ceiling of USD 1.75 billion, an additional premium of USD 0.35 has to be paid. In any event, there is a minimum premium set at USD 1000 per aircraft;
- Airports: The premium to be paid by airports is set at 33,33% of additional premiums charged for the primary USD 50 million in respect of AVN52C pro rata for one month[5].

This means that after the initial first month, 'war insurance' offered by the Norwegian State was prolonged until 24 November 2001, with the new conditions coming into effect as from 4 November 2001. The premiums were due at 24 November 2001. According to information from the Norwegian Government, as from 4 November 2001, no Norwegian air carrier had insurance cover exceeding USD 1 billion.

Period from 24 November 2001 until 31 December 2001

As regards the further prolongation of the 'war insurance' provided by the Norwegian State until 31 December 2001, the Norwegian Government informed the Authority that there were still no clear signs that a sufficient commercial market would be established in the period prior to 31 December 2001. Consequently, the Norwegian Parliament authorised a prolongation of the insurance measures until 31 December 2001 and for an additional one month after 31 December 2001 if there would be an extraordinary need to continue the Governmental insurance scheme (Government's proposal of 16 November 2001, *St.prp. nr. 27 (2001-2002)* and Parliament's decision of 22 November 2001).

For the period from 24 November 2001 until 31 December 2001, the Norwegian Government offered airline companies and Oslo Airport 'war insurance' under the same conditions as previously. The prolongation was given on the condition that the Ministry may increase the premiums – or alter the scope of the cover or its conditions, during the insurance period. After having given the companies concerned written notice, the Ministry changed the premium for air carriers with effect from 20 December 2001 as follows:

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[5] According to the Norwegian authorities, this premium level corresponds approximately to the premium level required under the Commission's guidelines for renewal of the temporary Government insurance schemes adopted on 23 October 2001. AVN52C is the designation of the relevant commercial insurance policies.

In excess of USD 150 million, a premium of USD 0.45 per passenger per flight has to be paid for coverage up to USD 750 million. An additional premium of USD 0.25 per passenger per flight has to be paid for coverage up to USD 1 billion.

Only 4 of the initially 8 and later 5 airline companies (i.e. SAS, Braathens ASA, Widerøe's Flyveselskap ASA and Norwegian Air Shuttle) and Oslo Airport have accepted these changed conditions. According to the Norwegian authorities, after 20 December 2001, no air carrier has taken insurance in excess of USD 750 million.

As regards 'war insurance' offered to airports, the conditions remained unaltered.

Period from 1 January 2002 until 31 January 2002

In line with the Norwegian Parliament's authorisation, the Norwegian Government prolonged the duration of the 'war insurance' scheme for another 30 days with effect from 1 January 2002. The conditions remained, in principle, the same as those applicable in the previous contract period, subject to possible amendments by the Norwegian State (no such amendments were, however, introduced during this contract period).

The same operators that had benefited from the 'war insurance' scheme in the preceding month had asked for an extension until 31 January 2002.

Period from 1 February until 31 March 2002

Based on the ECOFIN and the EC Transport Council's conclusions of 4 and 7 December 2001 respectively, and the Norwegian Parliament's authorisation (cf. Parliamentary Bill No. 38 (2001-2002) adopted on 24 January 2002), the Norwegian Government decided to extend the 'war insurance' scheme until 31 March 2002. As before, the prolongation offered to air carriers and to the Oslo airport was subject to the Norwegian Government's right to increase the premiums or to limit the coverage. It was recalled that the Governmental 'war insurance' scheme would be wound up if a satisfactory commercial market was established during the period.

The conditions for 'war insurance' offered to airlines were identical to those in the previous period. As regards 'war insurance' offered to Oslo airport, the Norwegian Government informed the Authority that – as before – the government only covered the gap between the commercial cover (up to USD 50 million) and the level of cover Oslo airport enjoyed prior to 11 September 2001. The premium was, as from 31 January 2002, changed and now represented 33% of the new commercial premium.[6]

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[6] According to the Norwegian authorities, this change would bring the premium level in line with the Commission guidelines.

All air carriers and Oslo airport were informed by letter dated 25 January 2002 that the premiums could be increased in light of developments at EU level.

Period from 1 April until 31 May 2002

Based on the EC Transport Council's conclusions of 25/26 March 2002 and in line with the authorisation granted by the Norwegian Parliament (cf. Proposal of the Norwegian Government, Bill No. 38 (2001-2002) adopted by the Norwegian Parliament on 24 January 2002, see above), the Norwegian Government prolonged the 'war insurance' scheme from 1 April to 31 April 2002 and again from 1 May 2002 to 31 May 2002

The conditions under which 'war insurance' cover was offered to airline companies and Oslo airport remained the same.

Administration of the Governmental 'war insurance' scheme

The 'war insurance' scheme is administered by a Norwegian insurance company, Gjensidige NOR.

The premiums to be paid by air carriers and Oslo airport shall be collected by Gjensidige NOR and transferred to the Norwegian State.

Initially, Gjensidige NOR was allowed to deduct 15% of the gross premium income before transferring the premium income received from holders of State-provided supplementary insurance to the State. As from 1 February 2002, the Norwegian Government had reduced the remuneration to 7.5%. However, in light of the reduction in remuneration in other EC countries (in particular Sweden and Denmark) from 15% of premium income for the first month of operation of the 'war insurance' scheme to 7.5 % for the following months, the Norwegian Government revised the conditions in the agreement with Gjensidige NOR in May 2002 and retroactively reduced the remuneration for the months starting 25 October 2001 until 30 January 2002 to 7.5% of premium income. The excess amount will be repaid by the insurance company.[7]

According to the Norwegian Government, the required premiums were paid by operators and finally transferred, via Gjensidige NOR, to the responsible Ministry. For the period 23 September 2001 until 31 March 2002, the average monthly premium income received by the Norwegian State (after deduction of a certain percentage of the premium income as remuneration for Gjensidige NOR) amounted to approximately USD 700 000 (approximately 767 000 €). Based on the amended conditions for remuneration of Gjensidige NOR, the insurance company is entitled to receive for the operation of the 'war insurance scheme' on behalf of the Norwegian

[7] The excess amount was calculated by the insurance company as amounting to USD 120 894, approximately 130 000 €.

State on average approximately 50 000 USD (approximately 55 000 €) per month since 25 October 2001.

Outlook for the future

It should finally be mentioned that the Parliamentary Bill No. 38, as approved by the Norwegian Parliament on 24 January 2002, authorised the Norwegian Government to prolong the insurance scheme for one additional month at a time until 31 December 2002. In this respect, the Norwegian Government has assured the Authority that any possible prolongation going beyond 31 May 2002 would be in line with EU guidelines.

II. APPRECIATION

State aid within the meaning of Article 61(1) of the EEA Agreement and procedural requirements pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement

By virtue of Article 61 (1) of the EEA 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 the Contracting Parties, be incompatible with the functioning of this Agreement*."

Aid to airline companies and Oslo airport

Given that the Norwegian State provides supplementary insurance under insurance contracts concluded between the Government on the one hand and airline companies and Oslo airport on the other, the insurance is granted directly by the State.

The provision of supplementary insurance cover confers an advantage on the air carriers and Oslo airport as, in their absence they would not have had sufficient insurance cover to operate. The existence of an obligation to pay a premium does not take away the advantage which airline companies and Oslo airport, benefiting from this supplementary insurance coverage, enjoy since the amount charged is still below the premiums at which comparable war insurance is offered by private insurance companies.[8]

The measures in question allow air carriers established in Norway or operating in Norway with aircraft licensed in Norway to continue their business activities with full insurance coverage, which would otherwise not have been the case. The possibility to continue operations and thus generate income may place the beneficiaries of State

[8] The premium level required by the private insurance market is about USD 3 per passenger.

insurance in a better position than companies established or operating elsewhere within the EEA. The measures thus strengthen the financial position of air carriers operating in a liberalised market[9], and hence distort or threaten to distort competition and affect trade between the Contracting Parties.

With respect to Oslo airport, the Authority takes the view that it cannot be excluded that this airport is to a certain extent in competition with other airports within the EEA. In addition, the insurance offered to Oslo airport at Gardermoen includes, as “additional assured”, companies carrying out economic activities subject to trade within the EEA. Therefore, the financial advantage linked to the insurance coverage of the airport and certain related services is liable to distort competition and affect trade.

In light of the above considerations, the Authority concluded that the provision of temporary and supplementary insurance to airlines and Oslo airport constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

Possible aid to Gjensidige NOR

As regards the payment of 7.5% of premium income to the insurance company, Gjensidige NOR, for the administration of the insurance scheme on behalf of the State, the Authority examined whether this payment offered the company an advantage it would not have enjoyed in the normal course of business.

In its decision of 31 October 2001, the Authority stated in this respect: “*The cancellation and the only partial replacement of existing insurance cover by the commercial insurance market following the events of 11 September 2001 required the adoption of immediate measures, including the award of a contract to Gjensidige NOR for the administration of the State-provided insurance scheme and are thus regarded to fulfil the conditions of Article 11 (3)(d) of the above-mentioned Directive.*[10]

Given the extreme urgency of the matter, the Authority regards the allowance offered to Gjensidige NOR for the administration of the State-provided insurance scheme in accordance with the terms and conditions laid down in the agreement concluded between this company and the State as remuneration for services rendered to the State.

[9] See “Third Package” of liberalisation measures in the aviation sector, Acts referred to in points 66b, 64a and 65 of Annex XIII to the EEA Agreement: EC Council Regulations 2407/92 on licensing of air carriers, 2408/92 on access for Community air carriers to intra-Community air routes and 2409/92 on fares and rates for air services.

[10] Council Directive 92/50/EEC of 18 June 1992, relating to the coordination of procedures for the award of public service contracts. (Footnote added here).

In light of the above, the Authority concluded that the remuneration for services rendered by Gjensidige NOR under the agreement concluded with the Norwegian State regarding the administration of the State-provided insurance scheme can be regarded as not containing aid. ...”

The Authority, however, stressed that its assessment regarding the first month of operation would not prejudge the Authority’s assessment of any measures the Norwegian Government intended to adopt regarding a possible continuation of the insurance scheme. Against this background, the Authority asked the Norwegian Government to justify the level of remuneration offered to Gjensidige NOR.

In assessing whether the level of remuneration granted to Gjensidige NOR for the period after the first month could be regarded as corresponding to market conditions and thus not constituting aid, the Authority sought to ensure a level playing field within the EEA. In this context, the Authority has taken note of the EC Commission’s decision approving the measures adopted by the Danish Government with respect to the administration of the ‘war insurance’ scheme (State aid cases NN 146/2001 and NN 161/2001 – Denmark[11]).

In this context, the Commission stated, “…*the Nordic Insurance Group only benefits from a cost-based remuneration of its services and simply receives payment for services rendered. In this respect, the Commission recalls that for the second month, <u>the remuneration is set at a level</u>* [Note: remuneration set at 7.5% of premium income] *<u>that corresponds to market conditions for insurance administration</u>* (underlined here). *In addition, the slightly higher amount for the first month may be justified due to the initial additional costs incurred by the group for establishing the administration of the guarantees. Accordingly, the payment that the Nordic Insurance group receives for administering the scheme does not constitute State aid within the meaning of Article 87.1 of the EC Treaty.*”

The Authority takes note of the retroactive amendment to the agreement between the Norwegian State and Gjensidige NOR, which implies that as from 25 October 2001, the insurance company is entitled to receive 7.5% of premium income. This means that the excess amount (i.e. difference between 15% of premium income and 7.5% of premium income received by Gjensidige NOR for the period of 25 October 2001 until 31 January 2002) will be repaid by the insurance company to the Norwegian State.

Given the level of remuneration in other EC Member States, as well as the Commission’s conclusion that the level of remuneration set at 7.5% corresponded to market conditions, the Authority can, therefore, conclude that the payment which Gjensidige NOR received for the administration of the ‘war insurance’ scheme for the

[11] Available on the Internet (in Danish only):
http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transport/nn146-01.pdf

period of 25 October 2001 until 31 May 2002 does not constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

The Authority would, however, like to stress that this conclusion does not prejudge the Authority's assessment in possible future cases involving payments to the insurance company under a contract for the possible further prolongation of the 'war insurance' scheme beyond May 2002.

Notification requirement and stand still obligation

Pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, "[*t*]*he 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*".

Since the Norwegian Government put the measures into effect before the Authority had given its approval, the aid must be regarded as 'unlawful on procedural grounds' within the meaning of Chapter 6 of the Authority's State Aid Guidelines.

Compatibility of Aid Measures

Introductory remarks

On 10 October 2001, the EC Commission adopted a Communication concerning "*The repercussions of the terrorist attacks in the United States on the air transport industry*"[12], in which it explained, *inter alia*, its approach regarding State aid for airline companies related to temporary insurance problems.

As regards, in particular, the necessity for State intervention and the level of insurance premiums to be paid by those benefiting from the 'war insurance' offered by the EC Member States, the Commission has issued "*Guidelines for renewal of the temporary Government insurance schemes for the airline industry established after the 11 September 2001*". These guidelines, which were adopted after a meeting of the ad hoc insurance group (representatives of the Commission and EC Member States) on 23 October 2001, laid down the criteria which have to be fulfilled by the 'war insurance' measures adopted by the EC Member States in order to be regarded as compatible with the EC Treaty, and in particular Article 87 (2)(b) thereof.

At a meeting of the ad hoc insurance group on 21 November 2001, it was decided by the Members of the group to continue applying the criteria laid down in these guidelines as regards possible prolongations until the end of 2001.

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[12] COM (2001) 574 final, 10.10.2001.

Furthermore, at a meeting of the EC Transport Council on 6 and 7 December 2001, the EC Ministers noted that "… *the Member States wish to allow those not in a position to return to normal operation of the market to maintain the current arrangements until the end of March.*" Furthermore and as regards the respect of State aid rules, the Conclusions state "*[w]ithin the ad hoc Group, the Commission will continue to monitor the arrangements put in place to guarantee that premiums return to a market situation. It will have to continue to check on notification by the Member States in order to ensure that Community rules on State aid are respected*."

On 18 January 2002, the ad hoc insurance group had a meeting on the continuation of 'war insurance' offered by the EC Member States from 1 January 2002 until the end of March 2002. At that meeting, it was decided to amend the previous guidelines as regards the level of premium for the so-called first layer: as from 1 February 2002 the premium level for the first layer (insurance cover from USD 50 million to USD 150 million) would be raised from USD 0.35 to USD 0.40 per passenger. At the next meeting of the ad hoc insurance group on 15 February 2002, it was decided not to amend the guidelines for the remaining period until the end of March 2002.

In the conclusions of the EC Transport Council of 25/26 March 2002, the "*Council took note of recent developments concerning the question of air-carrier insurance, as well as the guidelines which the Commission proposes to follow in the context of its responsibilities for monitoring State aid. In view of the decision by the Government of the United States to extend its risk-cover guarantee for a further sixty days, the Commission announced its intention of continuing to authorise the aid notified to it by Member States on the existing terms and for the same period as that envisaged by the United States*…"

Against this background, the Authority assessed the prolongation of 'war insurance' offered by the EFTA States covering the period from 24 October 2001 until 31 May 2002 in line with the guidelines adopted by the Commission on 23 October 2001, while taking into account the conclusions of the EC Transport Council as well as the conclusions of the ad hoc insurance group.

Assessment of the aid measure under Article 61 (2)(b) of the EEA Agreement

By virtue of Article 61 (2) (b) of the EEA Agreement, "*aid to make good the damage caused by natural disasters or exceptional occurrences*" shall be compatible with the functioning of this Agreement.

Such aid is deemed compatible with the functioning of the EEA Agreement to the extent that it merely re-establishes the pre-existing competitive position of undertakings affected by exceptional occurrences (i.e. the cancellation of insurance cover for third party damages due to acts of war and terrorism following the terrorist attacks of 11 September 2001). In order for the Authority to verify that the measures taken by the Norwegian Government do not go beyond what is necessary to re-establish the conditions under which airline companies and airports operated before the events of 11 September 2001, i.e. to maintain satisfactory insurance coverage, and that the measures are proportional with respect to this objective, the Authority has taken into account the criteria established in the Commission's communication of 10 October 2001 as well as those contained in the Commission's guidelines issued on 23 October 2001.

'War insurance' for airline companies

As regards 'war insurance' offered to airline companies, the Commission guidelines referred to above lay down the following requirements:

"*As stated in the previous conclusions of the Ad-Hoc Group's discussions and the Council Conclusions, the coverage of government schemes should fill the gap between cover for third party war and terrorist risks that is now provided to airlines by commercial insurers and the level of such cover previously purchased before 11 September.*

Member States may begin their schemes at any point from $50 million upwards, taking as high a figure above that point as possible to encourage commercial insurers back into the market. On no account should the schemes offer airlines cover below the level of $50 million since this amount is clearly available in the market.

If a Member State government chooses to offer its airlines cover for the layer between $50 million and $150 million, it should charge a premium of not less than $0.35 per passenger;

If a Member State government chooses to offer its airlines cover for the layer between $150 million and $1 billion, it should charge a premium of not less than $0.35 per passenger;

If a Member State government chooses to offer airlines cover above $1 billion, it should charge a premium of not less than $0.25 per passenger."

The 'war insurance' offered by the Norwegian State to Norwegian airline companies is in line with the above requirements. In this respect, it is recalled that the conditions laid down in the insurance policies issued by Gjensidige NOR on behalf of the Norwegian State refer explicitly to the conditions and limits of the insurance policies in force before the events of 17 September 2001 (date at which the commercial insurance companies sent the written notice of cancellation). Furthermore, the Authority observes that the excess levels set and the premiums charged by the

Norwegian Government are in line with the minimum premiums/excess levels required under the guidelines. The Authority would like to stress in this respect, that the Norwegian 'war insurance' measures have, as from 4 November 2001, introduced higher excess levels as required under the guidelines (i.e. USD 150 million instead of USD 50 million), while setting the premiums at USD 0.35 per passenger for the layer of insurance cover between USD 150 million and USD 1 billion. The premium level was further increased with effect from 20 December 2001 even above the level of premiums required under the guidelines (i.e. in excess of USD 150 million a premium of USD 0.45 per passenger per flight has to be paid for a coverage up to USD 750 million plus an additional premium of USD 0.25 per passenger per flight has to be paid for coverage up to USD 1 billion).

The Authority has verified that the premium required was actually paid by airlines and airports.

The Authority has therefore concluded that the prolongation of the Governmental 'war insurance' offered to airline companies, covering the period from 24 October 2001 until 31 May 2001, is in line with the Commission's guidelines adopted on 23 October 2001. The Authority also observes that the Norwegian Government increased the premiums for the first layer from USD 0.35 to USD 0.45 per passenger already as from 20 December 2001, i.e. before the date at which such an increase had been proposed by the ad hoc insurance group.

'War insurance' for airports

As regards 'war insurance' offered to airports and other service suppliers, the Commission guidelines referred to above lay down the following requirements:

"*In the total absence of commercial insurance cover for third party war and terrorist risks for airports and service suppliers, governments should provide these operators with third party cover up to the levels enjoyed prior to 11 September. The premium charged should be not less than the equivalent of 50% of the premium paid before 11 September by the insured for its total third party insurance cover.*

Where the commercial market is supplying airports and service suppliers with limited cover, government schemes may cover the gap between that commercial cover and the level of cover enjoyed prior to 11 September. The premium for this cover should be equivalent to at least 33% of the new commercial premium charged for these risks by the commercial insurer."

The level of premiums for airports was, as from 4 November 2001, set at a level of 33,33% of additional premiums charged for the primary USD 50 million insurance cover under the AVN52C pro rata per month. As from 31 January 2002, the level of premium was changed to 33% of the new commercial premium. According to the Norwegian authorities, the premium level set from 4 November 2001 until 31 January 2002, corresponded approximately to the premium level required under the guidelines. Based on the figures regarding premiums paid by Oslo airport, which were submitted by the Norwegian Government, the Authority has verified that the amount of premiums paid for the period starting 4 November 2001 until the end of January 2002 were on average similar to the premiums paid by Oslo airport as from 1 February 2002. In light of these circumstances, the Authority has concluded that the requirement laid down in the above guidelines is fulfilled.

Final remarks and conclusions

Finally, the Authority also observes that the Norwegian Government respected the principle of necessity and proportionality insomuch as it offered monthly renewal of the ‘war insurance’ contract, subject to possible developments in the insurance market. It is also noted that the insurance cover was reduced over the period since 24 October 2001, while premiums were raised.

In light of all the above considerations, the Authority has concluded that the prolongation of the aid measures from 25 October 2001 until 31 May 2002 are, by virtue of Article 61 (2)(b) of the EEA Agreement and in light of the criteria established by the EC Commission with respect to the application of Article 87 (2)(b) EC Treaty, compatible with the functioning of the EEA Agreement.

The Authority reminds the Norwegian Government that any prolongation of the scheme beyond 31 May 2002 needs to be notified to the Authority in advance, pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

HAS ADOPTED THIS DECISION:

The Authority has decided not to raise objections to the prolongation of ‘war insurance’ provided by the Norwegian State to Norwegian airline companies and airports covering the period from 24 October 2001 until 31 May 2002.

Done at Brussels, 31 May 2002.

For the EFTA Surveillance Authority

Einar M. Bull	Hannes Hafstein
President	College Member