

PART VIII – TEMPORARY RULES REGARDING THE FINANCIAL CRISIS

TEMPORARY FRAMEWORK FOR STATE AID MEASURES TO SUPPORT ACCESS TO FINANCE IN THE CURRENT FINANCIAL AND ECONOMIC CRISIS

1. THE FINANCIAL AND ECONOMIC CRISIS, ITS IMPACT ON THE REAL ECONOMY AND THE NEED FOR TEMPORARY MEASURES

1.1. The financial and economic crisis and its impact on the real economy

Since the beginning of the global financial and economic crisis in the autumn of 2008, the EFTA Surveillance Authority (“the Authority”) has adopted a number of Guidelines which provide detailed guidance on the criteria for the compatibility of EFTA States' support to banks and non-financial firms with the requirements of Article 61(3)(b) of the EEA Agreement. In particular, the Chapter of the Guidelines - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis¹ (the Temporary Framework) was adopted on 29 January 2009.²

The financial and economic crisis caused a serious downturn of the real economy, hitting households, business and jobs. Expectations on growth rapidly dropped and both trade and investments were quickly scaled down. Banks had, on the one hand, to deleverage and absorb losses and, on the other hand, to re-price risks, thereby becoming more risk-adverse. Even creditworthy businesses faced sudden problems in gaining access to finance.³

The Temporary Framework was intended to provide EFTA States with the possibility to adopt additional state aid measures aimed at facilitating companies' access to finance and at the same time encouraging companies to continue investing in the future during these exceptional circumstances. The Temporary Framework is due to expire on 31 December 2010. By adopting a single framework applicable to all EFTA States, the Authority encouraged a coordinated action to ensure transparency and a level playing field for firms and EFTA States.

The Temporary Framework was amended in April 2009.⁴

¹ 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. The Guidelines were last amended on 17.12.2008 (“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/>

² Decision 28/09/COL of 29.1.2009.

³ See European Commission, Economic and Financial Affairs: *Interim Forecast 2010*, as well as IMF: *World Economic Outlook*, October 2010; See also ECB: *The Euro Area Bank Lending Survey*, October 2010 and ECB: *Survey on the access to finance of SMEs in the Euro area*, March to September 2010.

⁴ Decision 190/09/COL of 22.4.2009.

1.2. Use of the Temporary Framework and the need to amend certain measures and to replace it

Since its adoption, EFTA States have made use of the possibilities under the Temporary Framework. Evidence collected shows that it constituted a useful additional instrument to secure credit flows to firms in times of crisis.

The European Commission (“the Commission”) carried out a first evaluation of the Temporary Framework in October 2009, with a view to deciding whether it was necessary to maintain it after 31 December 2009. On 17 March 2010, a second public questionnaire was launched focusing on the impact of the Temporary Framework and its effectiveness in the reactivation of access to finance.

In deciding on “the phasing-out” of the measures currently set out in the Temporary Framework, consideration should be given to the following factors: on the one hand, the evolution of the economic situation and the capacity of financial institutions and markets to supply adequate funds to the creditworthy corporate sector; on the other hand, the appropriateness of the Temporary Framework as an instrument to sustain the economic recovery in the longer term and its effects on competition between firms and across the EEA area.

The economic recovery, which has slowly taken hold since the beginning of 2010, has been proceeding at a somewhat faster pace than expected earlier this year. While recovery is still fragile and uneven across the EEA, some EU Member States are showing modest or even more robust growth rates. In addition, despite some pockets of vulnerability, in broad terms the health of the banking sector has improved compared with the situation one year ago. Lending activity to the private sector appears to have turned positive in line with past patterns. As the economic recovery gains firmer ground and concerns about fiscal sustainability are addressed, financial market conditions should continue to gradually improve and provide support to the recovery. However, the uncertainty about the developments in particular market segments and countries remain.⁵ The future evolution of financing remains therefore uncertain and the risk persists that the banking system may not be ready to sustain the recovery when credit demand picks up unless banks fully address their restructuring needs.

In view of high volatility of financial markets and the uncertainty about the economic outlook, the prolongation of certain measures currently set out in the Temporary Framework until 31 December 2011, targeted at facilitating companies' access to finance is justified by market conditions. This is also the case for temporary aid for the production of green products considering that firms are still finding it difficult to gain access to finance for the production of more environmentally friendly products due to the financial and economic crisis.

However, the continued availability of aid measures pursuant to Article 61(3)(b) Agreement on the European Economic Area (EEA Agreement) in the face of exceptional market conditions should not obstruct the process of disengagement from temporary extraordinary support measures. With regard to the banking sector, the Economic and Financial Affairs Council of 2 December 2009 concluded on the necessity to design a strategy for the phasing out of support measures which should

⁵ See also European Commission, Economic and Financial Affairs: *Autumn Forecast 2010* (29.11.2010).

be transparent and duly coordinated among EU Member States to avoid negative spill-over effects. Consequently, the Commission already implemented the first step of a gradual exit process for banks in 2010.⁶

For the Temporary Framework measures, no such steps have yet been undertaken. Therefore, the Authority considers that a limited prolongation of certain measures currently set out in the Temporary Framework, accompanied by the introduction of stricter conditions on the prolonged measures, constitutes a central element of a gradual return to normal state aid rules, while limiting their impact on competition. In particular, by decreasing the applicable reductions and by introducing stricter conditions for large companies in comparison to those for SMEs.

Moreover, aid measures should be targeted to investments which contribute to a long term sustainable economy by providing support to viable firms. Even in periods of financial and economic crisis, a necessary restructuring of ailing firms should take place in order to put them on a sound footing in the long term. This is essential in order not to delay the necessary restructuring of the economy and thus deepen the recession and its long term effects. Therefore, in the future, firms in economic difficulty should not benefit from the Temporary Framework measures.

The provision of a compatible limited amount of aid was introduced in the Temporary Framework as an extraordinary measure to provide EFTA States with an additional instrument during the time when the financial and economic crisis hit hardest even if it was not targeted to any particular objective. It is important to indicate that this measure falls within the scope of Article 61(3) EEA since it exceeds the threshold of EUR 200 000 per company indicated in the *de minimis* Regulation as adapted to the EEA Agreement.⁷

In the entire period of application of the Temporary Framework, this measure has been used by most EU Member States (23 schemes in 23 EU Member States). However, only a very small percentage of the funds allocated by the EU Member States and approved by the Commission under this measure have been actually paid out (around 7%). Furthermore, the bulk of aid disbursed under this measure is concentrated in one EU Member State, Germany (over 78% of the funds granted), while EU Member States like Italy or the United Kingdom have respectively spent 8% and 1,1% of the total expenditure on this measure.⁸

It follows, therefore, that, if this measure might have been useful as a short-term instrument when the uncertainty of the economic outlook was at the highest, it has also given rise to disparities in the internal market. The Authority therefore believes that, in the context of a phasing-out strategy, it should return to state aid measures

⁶ Since 1.7.2010, the Commission has applied tighter conditions for the compatibility of government guarantees under Article 107(3)(b) TFEU. See Directorate General Competition Commission Staff Working Document of 30.4.2010: *The application of State aid rules to Government Guarantee schemes covering bank debt to be issued after 30.6. 2010*.

⁷ Commission Regulation (EC) No 1998/2006 of 15.12.2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 376, 28.12.2006, p.5) incorporated into the EEA Agreement at point 1 ea of Annex XV to the Agreement by decision No 29/2007 (OJ L 209, 9.8.2007, p. 52, and EEA Supplement No 38, 9.8.2007, p. 34), e.i.f 28.4.2007.

⁸ Based on data submitted by the EU Member States in reply to the Commission's questionnaire on the application of the Temporary Framework, public consultation held between 18.3.2010 to 26.4.2010. No reply was given by Portugal and Slovakia and no data were submitted by France as regards this measure.

which are less distortive and more growth-oriented, in particular by requesting a counterpart from the beneficiaries which aims at a particular common interest objective. Hence, the Authority considers that the compatible limited amount of aid measure should not be continued after 31 December 2010. This will be without prejudice to applications made before the end of that year on the basis of schemes approved by the Authority, which still need to be processed after that date.

The temporary adaptations of the Guidelines on state aid to promote risk capital investments in small and medium-sized enterprises (the “Risk Capital Guidelines”) gave a positive signal to EFTA States and market participants. Data suggest that the financial and economic crisis has left an impact on venture capital markets and that the upper boundary of the SME equity gap has grown. The Authority therefore considers that the increased maximum permitted tranches of finance per SME over a period of twelve months can be applied also outside the context of the financial and economic crisis. The Authority will amend accordingly the Risk Capital Guidelines based on Article 61(3)(c) EEA.

Finally, concerning access to trade financing instruments, it appears from the data available and the information submitted by the EU Member States, that market conditions have been slowly improving; nevertheless, companies still find it difficult to find coverage from private insurers in many sectors and many EU Member States. Consequently, the procedural simplification introduced by the Temporary Framework on the Guidelines on short-term export credit insurance is still justified during 2011.

As certain measures set out in the Temporary Framework have already been amended and now need to be further amended to suit the current economic situation, in the interests of clarity, it is appropriate to replace the existing Temporary Framework by this Chapter of the Guidelines.

2. APPLICABILITY OF ARTICLE 61(3)(B)

2.1. General principles

Pursuant to Article 61(3)(b) EEA the Authority may declare compatible with the functioning of the EEA Agreement, aid “*to remedy a serious disturbance in the economy of an EC Member State or an EFTA State*”. The General Court ruled that the disturbance must affect the whole of the economy of the EU Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to interpret strictly any derogating provision such as Article 107(3)(b) TFEU.⁹

This strict interpretation has been consistently applied by the Commission¹⁰ in its decision-making.

⁹ Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission* [1999] ECR II-3663, paragraph 167.

¹⁰ Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 *et seq.*; and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/2007 *Northern Rock* (OJ C 43, 16.2.2008, p. 1),

In this context, the Authority considers that, beyond emergency support for the financial system, the current global crisis may still require exceptional policy responses. As all EFTA States are affected by this crisis, albeit in different ways and to different degrees, and given the current degree of integration of both national EEA economies and financial markets, together with their current fragility, there is an increased risk of serious spillovers of an individual crisis into the general system. Therefore, the availability of the recourse to Article 61(3)(b) EEA should remain a possibility for the EFTA States when duly justified.

In light of the seriousness of the current financial and economic crisis and its impact on the overall economy of the EFTA States, the Authority considers that certain categories of state aid may be justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the internal market on the basis of Article 61(3)(b) EEA.

Therefore, EFTA States must show that the state aid measures notified to the Authority under this framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the EFTA State concerned and that all the conditions are fully respected.

2.2. Compatible limited amount of aid

The Authority will consider such state aid compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) EEA Agreement, provided that all the following conditions are met:

- (a) the beneficiary has submitted a complete application no later than 31 December 2010 under a national aid scheme approved by the Authority in accordance with the Temporary Framework;
- (b) the aid does not exceed a cash grant of EUR 500 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge; where aid is awarded in a form other than a grant, the aid amount is the gross grant equivalent of the aid;
- (c) the aid is granted in the form of a scheme;
- (d) the aid is granted to firms which were not in difficulty¹¹ on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis;
- (e) the aid scheme does not apply to firms active in the fisheries sector;
- (f) the aid is not export aid or aid favouring domestic over imported products;
- (g) the aid scheme may apply as such to undertakings active in the processing and marketing of agricultural products¹² unless the aid is conditional on being

Commission Decision in Case NN 25/08 *Rescue aid to Risikoabschirmung WestLB* (OJ C 189, 26.7.2008, p. 3) and Commission Decision of 4.6.2008 in State aid C 9/08 *SachsenLB* (OJ L 104, 24.4.2009, p. 34).

¹¹ For large companies, see point 2.1 of the Guidelines on state aid for restructuring firms in difficulty. For SMEs, see Article 1(7) of the definition of the GBER.

partly or entirely passed on to primary producers. Where the aid is granted to undertakings active in the primary production of agricultural products (either directly or passed on from undertakings processing and marketing agricultural products), the cash grant (or gross grant equivalent) does not exceed EUR 15 000 per undertaking; aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market; aid to undertakings active in the processing and marketing of agricultural products is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

- (h) the EFTA State obtains a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid and aid pursuant to this measure received during the current fiscal year and checks that the aid will not raise the total amount of aid received by the undertaking during the period from 1 January 2008 to 31 December 2011, to a level above the ceiling of EUR 500 000;
- (i) the aid is granted no later than 31 December 2011;
- (j) the national aid scheme authorising the grant of the aid after 31 December 2010 is notified by the EFTA State and authorised by the Authority pursuant to Article 2, Section II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

2.3. Aid in the form of guarantees

In order further to encourage access to finance and to reduce the current high risk aversion on the part of banks, subsidised loan guarantees for a limited period can be an appropriate and well targeted solution to give firms easier access to finance.

The Authority will consider such state aid compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) EEA, provided that all the following conditions are met:

- (a) for SMEs, EFTA States grant a reduction of up to 15% of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions set out in the Annex;
- (b) for large companies, EFTA States may calculate the annual premium for new guarantees on the basis of the safe-harbour provisions set out in the Annex;

¹² For the state aid provisions in Article 61 to 63 of the EEA Agreement to apply, state aid must be granted to undertakings involved in the production of goods which fall within the product scope of the EEA Agreement. Article 8(3) of the Agreement provides that “*unless otherwise specified, the provisions of this Agreement shall apply only to: (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2; (b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol*”. Agricultural products, in so far as they do not fall under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System or are specified in Protocol 3, fall outside the scope of application of the EEA Agreement.

- (c) when the aid element in guarantee schemes is calculated through methodologies already accepted by the Authority following their notification under a regulation incorporated into the EEA Agreement in the field of state aid¹³, EFTA States may also grant a similar reduction of up to 15% of the annual premium to be paid for new guarantees for SMEs;
- (d) the maximum loan does not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2010. In the case of companies created on or after 1 January 2010, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; for investment loans, EFTA States may choose to calculate the maximum loan on the basis of the annual EU 27 average labour costs¹⁴;
- (e) guarantees are granted until 31 December 2011 at the latest;
- (f) the guarantee does not exceed 80% of the loan for the duration of the loan;
- (g) for SMEs, the guarantee may relate to both investment and working capital loans; for large companies, the guarantee may relate to investment loans only;
- (h) the reduction of the guarantee premium for SMEs is applied during a maximum period of two years following the granting of the guarantee. If the duration of the underlying loan exceeds two years, EFTA States may apply for an additional maximum period of eight years the safe-harbour premiums set out in the Annex without reduction; for large companies, EFTA States may apply the safe-harbour provisions set out in the Annex for a maximum period of 10 years;
- (i) firms in difficulty¹⁵ are excluded from the scope of application of the measure.

2.4. Aid in the form of subsidised interest rate

Companies may have difficulties in finding finance in the current market circumstances. Therefore the Authority will accept that public or private loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period from 1 January 2007 to 30 June 2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Guidelines on the revision of the method for setting the reference and discount rates.

¹³ Such as Commission Regulation (EC) No 800/2008 of 6.8.2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3), incorporated into the EEA Agreement at point lj of Annex XV to the Agreement by Decision No 120/2008 of 7.11.2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008), Commission Regulation (EC) No 1628/2006 of 24.10.2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29), incorporated into the EEA Agreement at point li of Annex XV of the Agreement by Decision No 157/2006 (OJ L 89, 29.3.2007, p.33 and EEA Supplement No 15, 29.3.2007, p. 26) provided that the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake.

¹⁴ Source: Eurostat. Last information available EU 27 2007. Monthly labour costs: EUR 3 028.

¹⁵ See footnote 11.

The aid element contained in the difference between this interest rate and the reference rate defined by the Guidelines on the revision of the method for setting the reference and discount rates will be considered, on a temporary basis, to be compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) EEA, provided that all the following conditions are met:

- (a) this method applies to all contracts concluded on 31 December 2011 at the latest; it may cover loans of any duration; the reduced interest rates may be applied for interest payments until 31 December 2013¹⁶; an interest rate at least equal to the rate defined in the reference and discount rate Guidelines must apply to loans after that date;
- (b) for SMEs, the reduced interest rates may relate to both investment and working capital loans; for large companies, it may relate to investment loans only;
- (c) firms in difficulty¹⁷ are excluded from the scope of application of the measure.

2.5. Aid for the production of green products

Because of the current financial and economic crisis, companies are also finding it more difficult to gain access to finance for the production of more environmentally friendly products. Aid in the form of guarantees may not be sufficient to finance costly projects aimed at increasing environmental protection by adapting earlier to future standards not yet in force or by going beyond such standards.

The Authority considers that environmental goals should remain a priority despite the financial and economic crisis. The production of more environmentally friendly, including resource and energy-efficient, products, is in line with the Europe 2020 Strategy, is in the EEA's interest and it is important that the crisis should not impede that objective.

Therefore, additional measures in the form of subsidised loans could encourage the production of "green products". However, subsidised loans may cause serious distortions of competition and should be strictly limited to specific situations and targeted investment.

The Authority considers that, for a limited period, EFTA States should be given the possibility of granting aid in the form of an interest-rate reduction.

On the basis of Article 61(3)(b) EEA, the Authority will consider compatible with the functioning of the EEA Agreement any interest-rate subsidy for investment loans, provided that all the following conditions are met:

- (a) the aid relates to investment loans for financing projects consisting of the production of new products which significantly improve environmental protection¹⁸;

¹⁶ EFTA States who want to use this facility have to publish the daily overnight rates online and have to make them available to the Authority.

¹⁷ See footnote 11.

¹⁸ As defined in point 70.1 of section 2.2 (definitions) of the Guidelines on state aid for environmental protection (OJ C 82, 1.4.2008, p. 1).

- (b) the aid is necessary for launching a new project; in the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project;
- (c) the aid is granted only for projects consisting of the production of products involving early adaptation to or going beyond future Union product standards¹⁹ which increase the level of environmental protection and are not yet in force;
- (d) for products involving early adaptation to or going beyond future Union environmental standards, the investment starts on 31 December 2011 at the latest with the objective of putting the product on the market at least two years before the standard enters into force;
- (e) loans may cover the costs of investment in tangible and intangible assets²⁰ with the exception of loans for investments which account for production capacities of more than 3% on product markets²¹ where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the EEA's GDP over the same five year reference period;
- (f) the loans are granted on 31 December 2011 at the latest;
- (g) for the calculation of the aid, the starting point should be the individual rate of the beneficiary as calculated on the basis of the methodology contained in point 2.3 of this Chapter of the Guidelines. On the basis of that methodology, the company may benefit from an interest-rate reduction of:
 - 15% for large companies;
 - 25% for SMEs;
- (h) the subsidised interest rate applies during a maximum period of two years following the granting of loan;
- (i) the reduction in the interest rate may be applied to loans granted by the State or public finance institutions and to loans granted by private financial institutions. Non-discrimination between public and private entities should be ensured;
- (j) firms in difficulty²² are excluded from the scope of application of the measure;
- (k) EFTA States ensure that the aid is not directly or indirectly transferred to financial entities.

¹⁹ Future Union product standard means a mandatory Union standard setting environmental levels to be attained for products sold in the Union which has been adopted but is not yet in force.

²⁰ As defined in point 70 of the Community guidelines on State aid for environmental protection.

²¹ As defined in point 58 of the Guidelines on national regional aid for 2007-2013.

²² See footnote 11.

2.6. Cumulation

The aid ceilings fixed under this Chapter of the Guidelines will be applied regardless of whether the support for the aided project is financed entirely from state resources or partly financed by the EEA.

The temporary aid measures provided for by this Chapter of the Guidelines may not be cumulated with aid falling within the scope of the *de minimis* Regulation for the same eligible costs.

The temporary aid measures may be cumulated with other compatible aid or with other forms of EEA financing provided that the maximum aid intensities indicated in the relevant guidelines or block exemptions Regulations are respected.

In case of co-financing with the EU Structural Funds and other EU financing instruments, the applicable rules must be respected.

3. SIMPLIFICATION MEASURES

3.1. Short-term export credit insurance

The Guidelines on short-term export-credit insurance²³ stipulate that marketable risks cannot be covered by export-credit insurance with the support of EFTA States. Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to these Guidelines, with a maximum risk period of less than two years. Risks concerning debtors established in the EFTA States and eight further members of the Organisation for Economic Co-operation and Development are considered marketable.

The Authority considers that, as a consequence of the current financial and economic crisis, a lack of insurance or reinsurance capacity does not exist in every EFTA State, but it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable.

Section 4, paras. 9 and 10 of the Guidelines states that: “...*In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question.*”

Any EFTA State intending to use the escape clause should immediately notify the EFTA Surveillance Authority of its draft decision. That notification should contain a market report demonstrating the unavailability of cover for the risks in the private insurance market by producing evidence thereof from two large, well-known international private export-credit insurers as well as a national credit insurer, thus justifying the use of the escape clause. Alternatively, evidence of unavailability of cover in the private insurance market may possibly be demonstrated by means of a

²³ <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

market report by an independent consultant which the Authority considers reliable and impartial. The notification should, moreover, contain a description of the conditions which the public or publicly supported export-credit insurer intends to apply in respect of such risks.

Within two months of the receipt of such notification, the Authority will examine whether the use of the escape clause is in conformity with the above conditions and compatible with the EEA Agreement.

If the Authority finds that the conditions for the use of the escape clause are fulfilled, its decision on compatibility is limited to two years from the date of the decision, provided that the market conditions justifying the use of the escape clause do not change during that period.

Furthermore, the Authority may, in consultation with the EFTA States, revise the conditions for the use of the escape clause; it may also decide to discontinue it or replace it with another appropriate system.”

Those provisions, applicable to large companies and SMEs, are an appropriate instrument in the current economic situation if EFTA States consider that cover is unavailable on the private insurance market for certain marketable credit risks and/or for certain buyers of risk protection.

In this context, in order to speed up the procedure for EFTA States, the Authority considers that, until 31 December 2011, EFTA States may demonstrate the lack of a market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause will in any case be considered justified if:

- (a) a large well-known international private export credits insurer and a national credit insurer produce evidence of the unavailability of such cover; or
- (b) at least four well-established exporters in the EFTA State produce evidence of refusal of cover from insurers for specific operations.

The Authority, in close cooperation with the EFTA States concerned, will ensure swift adoption of decisions concerning the application of the escape clause.

4. MONITORING AND REPORTING

Decision No. 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement laying down detailed rules for the application of Article 1 of Part I of Protocol 3 to the Surveillance and Court Agreement requires EFTA States to submit annual reports to the Authority.

EFTA States must ensure that detailed records regarding the granting of aid provided for by these Guidelines are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for a period of 10 years and be provided to the Authority upon request.

In addition, a report on the measures put in place on the basis of these Guidelines should be provided to the Authority by the EFTA States by 15 September 2011 at the latest.

The Authority may request additional information regarding the aid granted, to check whether the conditions laid down in the Authority decision approving the aid measure have been met.

5. FINAL PROVISIONS

These Guidelines apply from 1 January 2011 to 31 December 2011.

It is justified by the current exceptional and transitory financing problems related to the banking crisis. After consulting EFTA States, the Authority may review it before 31 December 2011 on the basis of important competition policy or economic considerations. Where this would be helpful, the Authority may also provide further clarifications of its approach to particular issues.

These Guidelines shall not apply to the following aid:

- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Authority decision declaring an aid illegal and incompatible with the internal market;
- (b) *ad hoc* aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Authority decision declaring an aid illegal and incompatible with the internal market.

In accordance with the Guidelines on the determination of the applicable rules for the assessment of unlawful State aid²⁴, the Authority will apply the following in respect of non-notified aid:

- (a) this Chapter of the Guidelines, if the aid was granted after 1 January 2011;
- (b) the guidelines applicable when the aid was granted in all other cases.

²⁴ OJ C 119, 22.5.2002, p. 22.

ANNEX

Safe-harbour premiums - Temporary Framework in basis points*			
Rating category (Standard & Poor's)	Collateralisation		
	High	Normal	Low
AAA	40	40	40
AA+	40	40	40
AA			
AA-			
A+	40	55	55
A			
A-			
BBB+	55	80	80
BBB			
BBB-			
BB+	80	200	200
BB			
BB-	200	380	380
B+			
B	200	380	630
B-			
CCC and below	380	630	980

* For companies which do not have a credit history or a rating based on a balance sheet approach (such as certain special purpose companies or start-up companies), EFTA States may grant a reduction of up to 15% on the specific safe-harbour premium set at 3,8 % in the Guidelines on state guarantees²⁵. However, the premium can never be lower than the premium which would be applicable to the parent company or companies.

²⁵ <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>