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# EFTA SURVEILLANCE AUTHORITY

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## EFTA SURVEILLANCE AUTHORITY DECISION

OF 13 APRIL 1995

TO OPEN THE FORMAL INVESTIGATION PROCEDURE PROVIDED FOR IN ARTICLE 1(2) OF PROTOCOL 3 OF THE SURVEILLANCE AND COURT AGREEMENT WITH REGARD TO A TAX EXEMPTION FOR GLASS PACKAGING FROM A BASIC TAX ON NON-REUSABLE BEVERAGE PACKAGING (AID NO. 95-002 (NORWAY))

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area<sup>1</sup>, in particular to Protocol 26 and to Articles 61 to 63,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>2</sup>, in particular to Article 1 of Protocol 3 thereof,

WHEREAS:

### I. FACTS

#### 1. The notification

By letter dated 20 January 1995, received by the EFTA Surveillance Authority on the 24 January (ref. 95-512 A), the Norwegian Government notified, in accordance with Article 1(3) of Protocol 3 of the Surveillance and Court Agreement, plans to grant a relief for glass packaging from the basic tax<sup>3</sup> ("grunnavgiften") on non-reusable packaging of beverages. The EFTA Surveillance Authority, by letter of 3 February 1995 (ref. 95-573 D), requested additional information from the Norwegian Government. The requested information was submitted to the Authority by fax (ref. 95-979 A) dated 15 February 1995 and received on 16 February 1995.

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<sup>1</sup> Hereinafter referred to as the EEA Agreement.

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>3</sup> The term basic tax is applied i.a. in order to distinguish this tax from the differentiated environmental tax on recyclable containers.

## **2. The contents and the aim of the aid measure**

The Norwegian Government has proposed to exempt glass containers from an indirect tax on non-reusable beverage packaging. The level of taxation is currently NOK 0.70 per unit of inner packaging. Although the tax exemption will apply equally to all glass containers, both domestically produced and imported, the primary objective of the aid is sectoral, i.e. to ensure continued production at PLM Moss Glassverk A/S. The owner of PLM Moss Glassverk A/S had initially decided to close down production in Norway due to non-profitability.

The profitability of PLM Moss Glassverk A/S has, according to the Norwegian authorities, been severely affected by the structure of environmental taxes in Norway, notably the taxes imposed on beverage packaging. Norwegian taxes on beverage packaging and energy-related taxes are, according to the notification, extraordinary high compared to other EEA countries.

PLM Moss Glassverk A/S is the main user of glass waste collected and processed for recycling and therefore considered by the Norwegian authorities to be a vital part of the Norwegian glass recycling system. It is emphasized by the Norwegian authorities that as the market alternatives for processed glass waste are very limited, the Norwegian glass recycling system will be seriously threatened if the PLM Group effectuates a closing down of PLM Moss Glassverk A/S.

The Norwegian authorities hold that the unforeseen effects for one company of the tax on non-reusable beverage containers and its combined effect with other environmental taxes has made it necessary for the Norwegian Government to counter these effects. The Norwegian Authorities consider that the aid is justified under the exemptions provided for in Article 61(3)(c) of the EEA Agreement with reference to the importance of maintaining glass production in Norway, the related environmental aspects and the effects the eventual closure of the company would have on employment in a region in industrial decline.

## **3. PLM Moss Glassverk A/S and the market for beverage packaging**

### *PLM Moss Glassverk A/S*

PLM Moss Glassverk A/S is the only Norwegian producer of glass packaging. The company's production facilities are located in Moss, the regional administration centre of the county of Østfold, where it is one of the major employers. The company is a subsidiary to the PLM Group, which has similar production facilities in Sweden and other EEA States. The PLM Group acquired Moss Glassverk<sup>4</sup> A/S after the company's default in 1989. However, due to the impact of two environmental taxes on packaging of beverages, other energy/environmental taxation and reduced demand for glass packaging, the Norwegian subsidiary has experienced deficits since 1992. In 1993 the deficit was NOK 10.3 million.

PLM Moss Glassverk A/S employs a work force of 285 persons. The production facilities consist of two melting furnaces and four sets of production machinery which can produce simultaneously along five production lines. The melting furnaces have a wear life of eight years, upon which they must be rebuilt. The wear life of one furnace will expire in the course of 1995, while the wear life of the other will expire in 1996. The PLM Group therefore has

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<sup>4</sup>Established 1898

to make a decision whether (1) to repair the furnace temporarily at the cost of NOK 20 million or (2) to invest in a new melting furnace at the cost of NOK 33 million and make further investment in the coming years.

The first alternative decision would be made under the assumption that production in Norway will be gradually phased out in the period 1995-98 with increased investment and production at the PLM Group's factory in Limmared in Sweden. The second alternative will make it possible to continue production in Norway beyond year 2000. However, a condition set by PLM for choosing the second alternative is that production in Norway can be deemed profitable. According to the Norwegian authorities the second alternative requires a satisfactory demand for one-way glass packaging in Norway which can only be secured by exemption for glass from the basic tax on non-reusable packaging or by other measures with the same effect.<sup>5</sup>

On 5 December 1994 the PLM Group decided, initially, to gradually close down production at PLM Moss Glassverk A/S. The decision was based on the cost disadvantage of production in Norway due to high environmental and energy taxation. However, after consultations between the PLM Group and the Norwegian Government, the PLM Group has agreed to the second alternative referred to above.

#### *Aid to Moss Glassverk A/S*

The Norwegian authorities have estimated the financial advantage to PLM Moss Glassverk A/S of the tax exemption on glass packaging to be NOK 13 million per annum by multiplying the number of non-reusable beverage containers made of glass produced by Moss Glassverk A/S with the tax per item, NOK 0.70.

In 1994 Moss Glassverk A/S benefited from a direct grant of NOK 11 million awarded by the Norwegian Parliament in 1993 under a temporary grant scheme to secure the collection and recycling of glass in Norway.<sup>6</sup> Norsk Glassgjenvinning A/S<sup>7</sup>, the company specializing in collection and processing of glass for reuse as a raw material, benefited from an award of NOK 1 million under the same scheme in 1994. The temporary grant scheme expired on 31 December 1994.

#### *Production statistics for PLM Moss Glassverk A/S*

The production statistics for PLM Moss Glassverk A/S for the period 1990-94 show significant fluctuations both in the value and the physical volume of the company's production. However, an important observation is that the unit value of one-way containers for soft drinks, the company's product category which is expected to be most affected by the exemption from the basic tax, appears to have experienced a considerable decline throughout the period of observation.

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<sup>5</sup> According to point 3 of the additional information supplied by the Norwegian authorities.

<sup>6</sup> Budsjetttinnstilling S II (1993-94), Chapter 1442, post 70

<sup>7</sup> Hereinafter referred to as NGG.

### *Market statistics on beverage packaging in Norway*

The market for beverage packaging cannot be separated from the market for beverages. On the demand side the consumer will normally make a simultaneous choice between different beverages and different choices of packaging. On the supply side, depending on the packaging material, the production of the packaging often takes place simultaneously with production and "bottling" of the beverage. Glass packaging, however, must be produced in a separate process. For this and historic reasons, quantitative information related to glass packaging is more readily available compared to other packaging materials.

The Norwegian authorities have supplied the Authority with broad background material on the Norwegian beverage and packaging market. A complete picture of the market for beverage packaging would require a matrix where each type of beverage is distributed on each category of packaging. Such a set of information is however not available. Tables 1-2 and the production statistics for PLM Moss Glassverk, which have been derived from a broader material, display some of the key characteristics of the Norwegian market in particular when seen in connection with each other.

Table 1 below indicates the basic structure and trends in the market for beverage packaging in Norway. Beer is normally either sold in refillable glass bottles or as draught beer. As concerns non-reusable packaging, the only packaging according to table 1 is metal cans with a share of only 1 % of the beer market. Plastic containers have apparently not entered into the market for beer.

As concerns carbonated soft drinks, it may be seen clearly from table 1 how refillable plastic packaging has taken over this market at the expense of glass bottles. The market share of refillable glass bottles has dropped from 88 % in 1990 to 26 % in 1993, while plastic containers have increased their share from 1 % to 73 % over the same period. As for beer, metal cans hold a market share of 1%. The market shares for glass packaging of juices and other non-carbonated soft drinks appear to be relatively stable although table 1 indicates a slight decrease for glass containers also in this market segment.

Total consumption in Norway in 1990 was 222 mill. litres of beer, 370 mill. litres of carbonated soft drinks and 200 mill. litres of non-carbonated soft drinks<sup>8</sup>.

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<sup>8</sup>Source: PLM Moss Glassverk A/S

**Table 1<sup>9</sup>** Total consumption of beer, carbonated soft drinks and non-carbonated soft drinks according to packaging type in percent.

Packaging/ Beverages	1990			1993		
	Beer	Carb. soft drinks	Non-carb. soft drinks	Beer	Carb. soft drinks	Non-carb. soft drinks
Glass						
- refillable	75	88	-	72	26	-
- one way	-	-	9	-	-	7
PET (plastic)						
- refillable	-	1	-		73	-
- one way	-	10	21			23
Cans	1	1	-	1	1	-
Cartons	-	-	46	-	-	46
Draught	24	-	-	27	-	-
2,5 and 5,0 litre containers	-	-	24		-	24
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

*Trade statistics - glass packaging of beverages*

Table 2 below is derived from statistics<sup>10</sup> published by the Norwegian federation of packaging producers<sup>11</sup>. The HS classification system does not allow a unique identification of export and imports of metal or plastic inner packaging for beverages. Such containers have therefore not been included in Table 2. The table reveals a general increase in the export of glass bottles for alcoholic and non-alcoholic products which can only have been produced at PLM Moss Glassverk A/S. This observation appears to be consistent with a decision of the PLM Group to close down one of its production plants in Sweden (Hammar) and transfer part of the production to Norway after its acquisition of Moss Glassverk A/S. The importation of glass bottles to Norway has also increased over the same period, although the volumes are smaller.

<sup>9</sup>Source: PLM Moss Glassverk A/S

<sup>10</sup>Source: NOS Utenrikshandel

<sup>11</sup>Den Norske Emballasjeforening - Emballasjeindustriens Landsforening (EIL)

**Table 2 Imports and exports of beverage packaging**

HS no.	Description	1990		1991		1993	
		Imports mill.NOK	Exports mill.NOK	Imports mill.NOK	Exports mill.NOK	Imports mill.NOK	Exports mill.NOK
7001.9001	Glass packaging Bottles for beer and mineral water	2.0	23.6	8.1	22.4	7.1	31.5
7001.9002	Bottles for wine, liquor or juice	4.5	0.2	2.9	13.0	2.6	23.7
7001.9005	Other bottles	12.1	9.1	14.4	25.6	17.1	6.7

#### 4. Taxes on beverage packaging

A basic tax ("grunnavgift") on all non-reusable packaging of beverages was introduced 1 January 1994 by Parliamentary decision<sup>12</sup>. The tax is an indirect tax of NOK 0.70 per unit. The tax is not included in the basis for calculation of value added taxes or special duties on beverages. The tax is levied on all non-reusable containers independent of recovery or recycling rates. Non-reusable packaging is defined<sup>13</sup> as all packaging that may not be reused for the same purpose. The basic tax is levied on non-reusable packaging<sup>14</sup> for all beverages except, a) milk and milk products, b) beverages based on coffee, tea, cocoa, chocolate and concentrates of such products and c) products in powder form.

The basic tax is collected<sup>15</sup> at the production or wholesale level in connection with the collection of special duties on beverages as far as this is practicable. For domestically produced glass packaging this means that the basic tax is paid directly by PLM Moss Glassverk A/S, while it for other domestically produced packaging materials is normally paid by the producer of the beverage or at the wholesale level when this is most practicable. According to the Norwegian authorities this tax collection system is characterized by a limited number of collection points.

For imported goods, the basic tax may either be paid by the importer when the goods are cleared by the customs authorities or when they are put into circulation after having been kept in a bonded warehouse. The head of the District Customs Authorities may entitle an importer on certain conditions established by the Customs Directorate to keep the relevant goods in a bonded warehouse or let the goods be transferred to a producer before a duty rectification is carried out. The tax is not levied on packages exported from Norway.

<sup>12</sup>St.prp. nr. 1 (1994-95) Skatter og avgifter til statskassen, Grunnavgift på engangsemballasje for drikkevarer

<sup>13</sup>See para 2 point b) of "Forskrifter om grunnavgift på engangsemballasje for drikkevarer fastsatt av Finansdepartementet 30. desember 1993"

<sup>14</sup>Volume less than 4 litres)

<sup>15</sup>See paragraph 1 of the Regulations on the basic tax on non-reusable containers for beverages of 30 December 1993 referring to Regulations on taxes on carbonated, non-alcoholic beverages stipulated by the Ministry of Finance of 9 July 1987 last amended 19 December 1989 and Regulations on production, importation and taxation of beer of 30 December 1993 last amended 22 December 1994.

The Norwegian Government has established regulations on return systems for beverage<sup>16</sup> packaging.<sup>17</sup> The regulations apply to return systems for packaging used in the distribution of beverages to consumers.

According to paragraph 4 of the regulations referred to above, the individual producers or importers of beverages can establish and administer or join a return system for inner packaging. The State Pollution Control Authorities shall approve the return system. A precondition for approval is that the return system can be expected to achieve a minimum return rate of 25 per cent and that the packaging undergoes environmentally appropriate recycling. A return system based on energy recovery will only be approved in cases where reuse or recycling of the material is not technically, environmentally or economically feasible. Approval may be subject to conditions. The decision on expected return rates serves as the basis for determining the applicable environmental tax on reusable/recyclable beverage packaging.

A differentiated environmental tax levied in principle on all beverage containers<sup>18</sup> was introduced 1 July 1993. The basic tax on non-reusable containers is levied in addition to this tax. The system of differentiated taxation of beverage packaging replaced the former "anti-littering" tax which levied a full tax rate of NOK 3.50<sup>19</sup> per unit on all beverage containers which were not part of a recycling system. Refillables were exempted from taxation. The differentiated environmental tax is collected in accordance with the same principles as the basic tax on non-reusable beverage packaging.

The environmental tax is differentiated according to recycling performance for each type of container. Containers with no recycling or return system or with a very low percentage of recycling or return (less than 25 %) are levied the full tax rate, while containers with a very high percentage recycling or return (more than 95 %) are not taxed at all. The rates for percentages of recycling in the range between 25 and 95 %, are differentiated on a linear scale, i.a. 50 % of the tax rate is paid if the expected rate of return/recycling is 50 %. The full tax rate is currently NOK 3.00 per unit for beer, alcohol (wine and spirits) and carbonated non-alcoholic drink containers; and NOK 0.30 per unit for non-carbonated non-alcoholic drink<sup>20</sup> containers.

##### **5. The Norwegian system for collection and recycling of glass waste**

Also the collection and recycling of glass packaging is based on rules laid down in the regulations on the return system for packaging of beverages of 10 December 1993.

Norsk Glassgjenvinning A/S (NGG), the company specializing in collection and processing of glass for reuse as a raw material is approved as a return system by the State Pollution Control Authority pursuant to the regulation referred to above. The expected return rate for NGG's return system for 1995 is 65 %. In addition, the members of NGG pay a recycling fee

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<sup>16</sup>Beverages are understood to include all liquid beverages, also such beverages that are intended to be diluted, but not to include concentrates in powder form.

<sup>17</sup>Regulations stipulated by the Ministry of Environment on 10 December 1993 pursuant to Act no. 79 of 11 June 1976 relating to Product Control, § 4 cf. Royal Decree of 5 August 1977.

<sup>18</sup>Recycling comprises reuse, recycling of materials and energy conservation according to § 3 of the regulations.

<sup>19</sup>Source: Ministry of Finance

<sup>20</sup>Normally containing juices.

per unit of glass packaging to NGG to cover the cost of the return system. The members of NGG must therefore currently pay the basic tax on non-reusable beverage containers (= NOK 0.70 per unit), 35 % of the environmental tax (= NOK 1.05 per unit) and the recycling fee to NGG.

NGG is not only a return system, but also a company which processes glass waste. NGG buys glass waste from municipalities who collect it separately. NGG then processes the glass waste and sells it as raw material to PLM Moss Glassverk or other companies which use glass as a raw material in the production process. Until the end of 1994, PLM Moss Glassverk was the only buyer of processed glass waste from NGG. NGG has now found certain other buyers for processed glass waste. A project is being launched concerning the potential use of glass waste as a raw material in the production of a special quality concrete ("glass betong"). This project is still in the initial phase and production has not started.

## II. APPRECIATION

The Norwegian Authorities have by the notification of 20 January 1995 fulfilled their obligation under Article 1(3) of Protocol 3 to the Surveillance and Court to notify plans to grant or alter aid.

Since the aid is to be awarded in the form of an exemption from a tax levied by the Norwegian Government it shall be granted by the State through State resources. Although the exemption from the basic tax on non-reusable packaging for beverages will apply equally to both domestic and imported products and not favour the only Norwegian producer of glass packaging, PLM Moss Glassverk A/S vis-à-vis other producers of glass packaging within the EEA, it may still be concluded that the measure constitutes State aid. A relief for glass containers from the basic tax on non-reusable beverage packaging will primarily benefit PLM Moss Glassverk A/S as the dominant producer of glass packaging for the Norwegian market. The company will be relieved from its current obligation to pay the basic tax on its production of non-reusable glass containers for beverages. The remaining economic benefits from the tax relief for glass packaging are likely to be distributed on a wide number of glass packaging producers or other operators in the beverage markets. However, as PLM Moss Glassverk A/S is facing actual and potential competition from close substitutes in other packaging material than glass within the EEA, the aid threatens to distort competition and affect trade within the territory covered by the EEA Agreement. It is therefore concluded that the proposed measure constitutes aid in the meaning of Article 61(1) of the EEA Agreement.

It should therefore be assessed whether any of the derogation clauses under Article 61(2) and (3) of the EEA Agreement are applicable in order that the aid may be exempted from the general prohibition of aid under Article 61(1).

In order to benefit from any of the exemption clauses, the measure must not conflict with other provisions of the EEA Agreement, such as the provisions relating to free movement of goods.



The Norwegian differentiated environmental tax levied on recyclable containers differentiates between containers depending on the degree to which they are recycled. The basic tax penalises the marketing of beverages filled in non-reusable containers irrespective of whether or not the containers are recycled. The statistics available to the Authority do not allow to clearly establish whether the higher tax burden imposed on non-reusable containers such as non-reusable glass and PET bottles and aluminium cans affects primarily non-domestic products and whether the containers which are not subject to the tax, i.e. reusable containers such as reusable glass and PET bottles, are the containers used primarily for domestic products. Nor can it be established from the available information what are the grounds for subjecting recyclable products to the basic tax not levied on reusable products, since that basic tax is levied even when a maximum degree of recycling is achieved and thus under conditions which seem to have the same effect with regard to environmental protection as the use of reusable packages. The tax system is currently examined by the Authority's services in order to determine its compatibility with the EEA provisions, notably its Article 14.

The proposal to exempt glass from the basic tax would, in addition, lead to a different tax burden, as far as the basic tax is concerned, for recyclable glass containers as compared to other recyclable containers such as made of PET or aluminium. That differentiation seems to be motivated by rendering a recycling system for glass viable while recycling of other packaging material is not facilitated by an equivalent exemption from the basic rate. It must therefore be assumed that waiving of the basic tax on recyclable glass containers amounts to different taxation of similar products. Furthermore, it seems from the information to which the Authority has access that some of those products which would continue to be subject to the basic tax, such as aluminium cans, are widely used for non-domestic products, while those products exempt from the tax, be it due to their reusability or because of the exemption of recyclable glass bottles from the basic tax, would be typically used for domestic products. Therefore, since the proposed exemption from the tax would not waive the possible discrimination inherent to the tax but might, on the contrary, potentially lead to additional discrimination caused by different taxation of similar products and by promoting domestic products, the Authority cannot, as matters presently stand, approve the scheme.

As regards the applicability of the individual exemption clauses in other respects, the Authority submits the following:

Article 61(2)(a) provides that aid having a social character, granted to individual consumers, shall be compatible with the functioning of the EEA Agreement, provided that such aid is granted without discrimination related to the origin of the products concerned. However, as the tax exemption does not have a social objective and it is in principle not awarded to favour individual consumers but rather a particular enterprise, this provision is not applicable. Article 61(2)(b), which relates to remedies for damage caused by natural disasters or exceptional occurrences, is clearly irrelevant for the case at hand, and the same is true for Article 61(2)(c), which concerns aid for certain areas of the Federal Republic of Germany.

Article 61(3) provides four distinct exemption clauses (a - d) under which aid may be considered compatible with the functioning of the Agreement. Of these Article 61(3)(b) relates to "aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State" and Article 61(3)(d) concerns "such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII" of the EEA Agreement. Neither of these provisions are relevant in the present case. This leaves Articles 61(3)(a) and (c) as the only possible exemption clauses.

It is clear from the examination carried out by the Authority in relation to its Decision of 16 November 1994<sup>21</sup> on the map of assisted areas in Norway, that the County of Østfold, where PLM Moss Glassverk is located does not qualify for regional aid under Article 61(3)(a) as "*an area where the standard of living is abnormally low or where there is serious underemployment*", nor is the County of Østfold included in the map of assisted areas eligible for regional aid under Article 61(3)(c). Concerning the regional dimension of the aid, the Norwegian authorities point to the particular difficulties experienced by the County of Østfold as an area in industrial decline. However, the Norwegian authorities have not proposed to amend the Norwegian map of assisted areas eligible for regional aid under Article 61(3)(c) i.a. by including the County of Østfold, nor is the aid granted under a general system of regional aid. It is therefore not relevant to apply the derogation under Article 61(3)(c) as aid to "*facilitate the development ... of certain economic areas, where such aid does not affect trading conditions to an extent contrary to the common interest*". .

Taking into account the financial difficulties experienced by the PLM Moss Glassverk A/S it might have been relevant to examine the aid under Article 61(3)(c) "*as aid to facilitate the development of certain economic activities... where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" with reference to the rules on aid for rescue and restructuring firms in difficulty, as laid down in Chapter 16<sup>22</sup> of the Procedural and Substantive Rules in the Field of State Aid,<sup>23</sup> adopted by the EFTA Surveillance Authority on 19 January 1994. Although the notification points at certain circumstances which might have been taken into account in relation to State aid for rescuing firms in difficulty and helping them to restructure, the notification does not point at the need for rescue aid to temporarily maintain the financial position of the company nor does the notification refer to any restructuring plan to restore the company's long-term viability or other general conditions for approval according to the rules on aid for rescue and restructuring of firms in difficulty laid down in Chapter 16 of the State Aid Guidelines.

The notification refers primarily to the financial impact on the company of the two taxes on beverage packaging and other environmental taxation. The notification also emphasizes the company's role in the Norwegian system for recycling glass waste. It is therefore considered relevant to examine the aid proposal with regard to the derogation under Article 61(3)(c) in connection in particular with the rules on aid for environmental protection as set out in Chapter 15 of the State Aid Guidelines.

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<sup>21</sup>OJ C 14/4, 19 January 1995, Aid no. 94-045 Map of assisted areas for Norway

<sup>22</sup>Corresponding to the Community Guidelines on State aid for rescue and restructuring firms in difficulty, adopted on 27 July 1994 (OJ C 368, 23 December 1994). Chapter 16 of the State Aid Guidelines was amended by EFTA Surveillance Authority Decision of 19 October 1994.

<sup>23</sup> hereinafter referred to as the State Aid Guidelines.

The aid would primarily improve the financial performance of PLM Moss Glassverk A/S and/or allow the company to hold a higher market share in the packaging market. The aid would not be linked to initial investment, job creation or any other project limited in time, and would, thus, constitute operating aid.

According to paragraph 15.4.3.(1) of the State Aid Guidelines, the EFTA Surveillance Authority will normally not approve operating aid which relieves firms of costs resulting from the pollution or nuisance they cause. However, the Authority may make an exception to this principle in certain well-defined circumstances. The EC Commission has done so in the fields of waste management and relief from environmental taxes<sup>24</sup>. Such cases are assessed on their merits and in the light of the strict criteria to be applied in the two fields just mentioned. These are that the aid must only compensate for extra production costs by comparison with traditional costs, and should be temporary and in principle degressive, so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly. Furthermore, the aid must not conflict with other provisions of the EEA Agreement and in particular those relating to the free movement of goods and services.

However, for the reasons stated above, it cannot at present be established that the aid proposed by the Norwegian authorities would be compatible with the rules on free movement of goods.

Moreover, according to paragraph 15.4.3.(3) temporary relief from new environmental taxes may be authorized where it is necessary to offset losses in competitiveness, particularly at the international level.

The present tax from which an exemption is proposed seems to have been intended to reduce the use of non-reusable beverage packages for environmental reasons. An inevitable consequence of this is that the producers and importers of such packages will suffer from the tax. It also appears that Moss Glassverk should be able to at least partly compensate for losses in the non-reusable packages market by increased demand in the reusable packages market. Furthermore, the tax on non-reusable glass packages applies to all such packages whether produced by Moss Glassverk or imported to Norway. On the other hand, the tax is not levied on the glass packages exported from Norway. Therefore, the international competitiveness of the production by Moss Glassverk is not affected by the tax on non-reusable glass packages. Moreover, the aid would not be temporary because it is to be granted for an indefinite period of time. Consequently, the requirements for granting a relief from environmental taxes as laid down in paragraph 15.4.3.(3) of the State Aid guidelines, would not seem to be met.

For the reasons stated above, the aid proposal gives rise to doubts as to its compatibility with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement. The Surveillance Authority is therefore obliged to initiate the procedure provided for in Article 1 (2) of Protocol 3 of the Surveillance and Court Agreement in respect of the scheme

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<sup>24</sup>The Commission has authorized operating aid in the form of exemptions from environmental taxes or in the form of direct grants to production based on recycled products. Reference may be given to; case no. N 684/93 Denmark - System for the collection and disposal of used tyres and case no. N 509/92 The Netherlands- Environmental tax measures (exemption from taxes on extraction of ground water) It has also authorized exemptions from CO<sub>2</sub> taxes for Denmark (Case no. 4/92 CO<sub>2</sub> tax and energy conservation measures) and the Netherlands

in question. Norway must not put its proposed measures into effect until this procedure has resulted in a final decision.

**HAS ADOPTED THIS DECISION:**

1. The EFTA Surveillance Authority has decided to open the procedure provided for in Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement with regard to the notified aid to PLM Moss Glassverk A/S in the form of an exemption for glass packaging from the basic tax on non-reusable beverage packaging (Aid No. 95-002).
2. The Norwegian Government is informed by means of a copy of this decision, whereby the Norwegian Government is invited to submit its comments within a period of one month from the notification of the letter, and to provide the Authority with all the information needed for examining the case.
3. The EC Commission is informed, in accordance with Protocol 27(d), by a copy of the decision.
4. Other EFTA States parties to the EEA Agreement, EC Member States, the EC Commission and interested parties are informed by the publication of the attached notice in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto, inviting them to submit comments within one month from the date of the publication.

Done at Brussels, 13 April 1995.

For the EFTA Surveillance Authority

  
Knut Almestad  
President

  
Pekka Säilä  
College Member