

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 15 June 2016  
concerning the sale of four properties in Hauskvartalet in Oslo

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

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

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(2) of Part II,

Whereas:

## I. FACTS

### 1 Procedure

- (1) By letter dated 28 September 2015,<sup>1</sup> the Norwegian authorities pre-notified to the Authority a planned sale of four properties in Hauskvartalet, Oslo, from the City of Oslo to a private buyer.
- (2) By letter dated 21 October 2015,<sup>2</sup> the Authority’s Competition and State Aid Directorate responded to the pre-notification and informed the Norwegian authorities of its preliminary view that the planned sale would not involve state aid.
- (3) On 22 April 2016, the Norwegian authorities notified the sale of the four properties to the Authority, for legal certainty.<sup>3</sup>

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<sup>1</sup> Document No 774511.

<sup>2</sup> Document No 776984.

## 2 Description of the measure

### 2.1 Background

- (4) In 2004, the City of Oslo purchased five properties located in a block known as Hauskvaralet in the centre of Oslo. The purchase was motivated by a wish to acquire the property on Hausmannsgate 34–38, where the Hausmania Culture House is located. However, the seller was only prepared to sell the cultural centre on the condition that the City of Oslo also bought the other properties on the block. The City of Oslo therefore became owner of the entire block, with no concrete plan for developing the properties other than that which houses the cultural centre.
- (5) When the City of Oslo purchased the properties in Hauskvartalet they were in an extremely poor state of repair. Still today considerable renovations are needed before they meet the regulatory requirements. Considerable resources will need to be spent for their renovation. The City of Oslo has, however, not allocated any resources for this purpose, and instead wants to sell all the residential properties so that this section of the block can be developed by a private developer in line with the zoning plan (see Section 2.3 of Part I below). In order to achieve an integrated and cohesive development of the neighbourhood, the City of Oslo intends for the properties to be sold together and in their current condition.

### 2.2 Description of the properties included in the proposed transaction

- (6) The proposed transaction includes four properties, all of which are located in Hauskvartalet. The City of Oslo provided the following description of the properties:
- (i) **Hausmanns gate 28–32** (property unit no 208/180) – The property is undeveloped and zoned for buildings for general public use (cultural activities, circus/multi-purpose sports hall).
  - (ii) **Hausmanns gate 40** (property unit no 208/303) – The property comprises an older building of 607 m<sup>2</sup> containing nine dwelling units in addition to a basement and an attic. The apartment building shows signs of considerable deferred maintenance. An unspecified number of people occupy the building and no tenancy agreements exist between the City of Oslo and the building's current occupants. The property is being sold as is, which means that it will not be vacated prior to sale. It will be up to the new owner to decide how to deal with the current occupants. The property is zoned as a building area for residential use and parts of the property are zoned as common areas.
  - (iii) **Hausmanns gate 42** (property unit no 208/304) – The property comprises an older, four-storey building of 858 m<sup>2</sup> containing six dwelling units, commercial premises on the ground floor, a basement and an attic. The building was built around 1880. The building was formerly occupied, but is currently empty, and has been blocked up. The inside of the building is rundown and heavily damaged by fungi and dry rot. The building is included on the City of Oslo's Cultural Heritage Management Office's list of architecturally and culturally valuable buildings. The property is zoned as a special area for conservation, with residential and commercial uses being secondary land-use objectives. The backyard area is zoned as a common area, courtyard, play and public area. Commercial activities may only be located on level 1, and the other floors may therefore only consist of dwellings.

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<sup>3</sup> Document No 801631.

(iv) **Brenneriveien 1** (property unit no 208/60) – The property is an undeveloped plot. A former one-storey storehouse on the north section of the building plot was demolished in 2010. The property is zoned as a building area for residential use and as a common area, courtyard, play area and public area. Almost 75% of the building plot area is designated as outdoor areas for the block's residential properties.

(7) In total, the building plots amount to approximately 2200 m<sup>2</sup>. The properties are located in a neighbourhood undergoing development. Specifically, Hauskvartalet is situated by the Akerselva River, and makes up part of an important chain of cultural institutions that have been established along the river during the past decade, such as the Jacob Church of Culture, the Norwegian Centre for Design and Architecture, Dansens hus and the Vulkan site, which houses a food court, restaurants, hotels and offices.

### 2.3 The zoning plan for Hauskvartalet

(8) Hauskvartalet is regulated by a special zoning plan that includes the four properties for sale as well as the property not included in this sale, which will remain in the ownership of the City of Oslo.

(9) In 2004, the Oslo City Council adopted a resolution to rezone the block, primarily for cultural use, but also for commercial and residential use, based on the principles of ecology and sustainability. On 18 June 2008, the Oslo City Council adopted zoning plan No S-4387 with a view to facilitating an eco-urban cultural quarter.

(10) According to the zoning plan, the area must be treated as a single entity, the objective being to facilitate conservation and development of Hauskvartalet as a vibrant local community and cultural centre with the following objectives:

(i) To facilitate development of an eco-urban cultural quarter, where development is based on Local Agenda 21 principles with a high degree of user involvement.<sup>4</sup> An environmental programme will be prepared in cooperation with Hauskvartalet and its owners.

(ii) To facilitate basic standards and thereby favourable conditions for establishing new art-related activities and dwellings.

(11) The intention behind the zoning plan for the neighbourhood is to generate extensive user involvement in realising the zoning plan, including the objective of achieving environmentally friendly dwellings and cultural activities. The legal obligations for implementing the zoning plan lie with the owners of the properties in the area. The properties are sold subject to the current zoning plan, and the new owner must therefore comply with the zoning plan and its provisions. The zoning provisions thus demand close cooperation and dialogue between the City of Oslo and the owners of the properties.

### 2.4 The role of the Agency for Real Estate and Urban Renewal

(12) The Agency for Real Estate and Urban Renewal is responsible for the development, sale, acquisition, and management of property on behalf of the City of Oslo. The Agency's goal

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<sup>4</sup> Agenda 21 is a non-binding voluntarily implemented action plan of the United Nations with regard to sustainable development. It is a product of the Earth Summit (UN Conference on Environment and Development) held in Rio de Janeiro, Brazil, in 1992. It is an action agenda for the UN, other multilateral organizations, and individual governments around the world that can be executed at local, national, and global levels.

is to achieve economic and social returns on the city's real estate investment portfolio. The sale of property finances the city's investment needs. In terms of urban development, the Agency's goal is to contribute to urban development in accordance with the City of Oslo's municipal master plan and other political resolutions and directives (e.g. the Urban Ecology Programme). Other key tasks include initiating and supporting urban renewal and environmental projects, and ensuring the general upkeep and maintenance of municipal property.

- (13) When municipal property is to be sold, the City of Oslo acts in the same way as private legal entities, *i.e.* the property is put on the market and sold to the highest bidder. The City of Oslo uses standard contracts that have been approved by the Office of the City Advocate. The Agency for Real Estate and Urban Renewal is authorised to sell property up to NOK 15 million. The sale of properties ranging from NOK 15 to 50 million must be approved by the Oslo City Government (*Byrådet*). Sales of property exceeding NOK 50 million or zoned for cultural activities, as in this case, must be approved by Oslo City Council.

## 2.5 The sales procedure

### 2.5.1 Advertisement of the properties and the sales prospectus

- (14) The sale of the properties was advertised in the Norwegian newspaper Aftenposten on 27 November 2014 as well as on 2 and 4 December 2014. Moreover, the sale was advertised and the prospectus made available online on [www.finn.no](http://www.finn.no) and on real estate agents website from 2 December 2014 until the submission deadline for bids on 2 March 2015.
- (15) In addition to the advertising, the real estate agent, Hadrian Eiendom, addressed a broad range of potential buyers and conducted inspections of the properties with interested parties. Hadrian Eiendom registered some 150–160 interested parties, based on advertisements in the media and on parties who were approached directly. All interested parties were briefed on the sale throughout the sales process until the deadline for submission of bids. The information flow was conducted via meetings, inspections, telephone and e-mail correspondence.
- (16) To ensure that the sale was adequately publicised in the market and to give bidders sufficient time to familiarise themselves with the sales process, the terms of the sale and the zoning plans, the deadline for submission of bids was set for 14:00 on 2 March 2015. A comprehensive sales prospectus was prepared and made available to interested parties from the time at which the sale was announced.<sup>5</sup>

### 2.5.2 The independent expert evaluation

- (17) Prior to advertising the properties, a valuation was obtained from an independent property appraiser, *i.e.* BER Verdivurdering AS, a firm of property evaluators. The independent expert estimated the market value of the properties at NOK 18.8 million. The valuation took account of the zoning plan and of the minimum development specifications stipulated in the contract. The full version of the valuation, dated 25 November 2014, was enclosed with the sales prospectus and was thereby disclosed to interested parties and bidders.<sup>6</sup>
- (18) In addition to carrying out the evaluation, BER Verdivurdering prepared a method for performing an economic assessment of bids offering shorter completion times for one or

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<sup>5</sup> Documents No 801616 and 801629.

<sup>6</sup> Document No 801619.

more of the properties and/or a higher BREEAM rating (see paragraph (21) below). The memorandum was disclosed to the bidders in the bidding process.<sup>7</sup>

- (19) At the beginning of the sales process, the real estate agent, Hadrian Eiendom, also assessed the market value of the properties. This evaluation was based on the current situation and on the current zoning provisions that apply to the properties. Hadrian Eiendom estimated that the total value of the three building was NOK 20–23 million.<sup>8</sup>

### 2.5.3 *The seller's conditions – the minimum specifications*

- (20) In order to ensure realistic and satisfactory development in accordance with the adopted zoning plans, one of the conditions for the sale is that the buyer assumes specific obligations for developing the properties, referred to as minimum specifications. The minimum specifications are stipulated in the sales contract and the sales prospectus contained detailed information on how the bidders should document fulfilment. The buyer must commit to the minimum specifications. Failure to satisfy them will be sanctioned.
- (21) The minimum specifications are twofold. First, they concern environmental certification under the BREEAM standard.<sup>9</sup> The City of Oslo's *Urban Ecology Programme 2011–2026*, which outlines the City's environmental policy, explicitly states that urban development in Oslo must be sustainable, and must provide for environmentally friendly building environments and urban spaces. Reductions in energy consumption will also result in considerably lower greenhouse gas emissions.<sup>10</sup> In selling these properties, the City of Oslo thus wants to oblige the new owner to reduce energy consumption and to develop at least one of them as an energy-efficient building exceeding the requirements stated in the zoning plan and technical regulations. Therefore, the sales contract requires the buyer to obtain environmental certification for any new buildings in Brenneriveien 1 and the residential properties' common area under the BREEAM standard.
- (22) Second, the minimum specifications concern completion time. The sales contract stipulates that the properties must be built and developed within 12 years. Given its highly central location in the city, along the Akerselva River cultural axis, the Hauskvartalet block has development potential. Development of the residential properties should considerably improve the neighbourhood and generate synergy effects that will benefit residential, cultural and commercial activities along the river. In addition, the city needs dwellings that provide good living environments in the city centre. It is crucial for the City of Oslo that the buyer starts development without undue delay, and that the City of Oslo may count on all of the properties being developed within the foreseeable future.
- (23) Furthermore, the bidders were invited to and given the opportunity to assume obligations above and beyond these minimum specifications for developing the properties. Provided a bidder could document its ability to assume obligations exceeding the minimum specifications, the value of the obligations stated in the bid would be added to the financial offer.

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<sup>7</sup> Document No 801617.

<sup>8</sup> Document No 801623.

<sup>9</sup> Building Research Establishment Environmental Assessment Method.

<sup>10</sup> Research shows that environmentally-certified buildings on average use 30% less energy than traditional buildings and emit 33% less CO<sub>2</sub>.

#### 2.5.4 Sanctions

- (24) In order to ensure fulfilment of the aforementioned conditions, including the tendered BREEAM rating and completion time frames, sanctions have been included in the sales contract.
- (25) Item 7 of the contract requires the buyer to provide a guarantee at the latest upon takeover of its contractual obligations. The guarantee must be for NOK 10 million and related to fulfilment of certain provisions of the contract, *i.e.* the environmental requirements and the completion time. The contract includes a tiered trigger policy for the guarantee, according to whether a breach is deemed to be material or general in nature.
- (26) In accordance with item 18.2 of the contract, the seller has the right to impose daily fines for non- fulfilment of the completion time frame stated in the bid. A daily fine of NOK 2 000 per property will apply from the day on which the time limit is overrun up to the day on which the completion certificate is issued. If the delay is more than 12 months, or if it is evident that one or more properties will not be built/developed, the seller may demand that the guarantee be triggered, in accordance with item 7 of the sales contract.
- (27) Moreover, the bid must include a comfort letter confirming that the bank, financial institution or parent company will furnish the required on-demand guarantee, framed in accordance with the standard form appended to the contract, from the time the property is taken over.

#### 2.5.5 The bidding process

- (28) There were five bids received by the due date, *i.e.* 2 March 2015. The bids submitted were reviewed, and based on the documentation submitted, an assessment was made of whether the bidders were sufficiently capable of fulfilling the contractual requirements.
- (29) All five bids received offered fulfilment above and beyond the minimum specifications. The review process, however, revealed that all the bids stipulated reservations and that the submitted documentation was inadequate. It was nevertheless decided to proceed with all the bids and negotiation meetings were held with each bidder. In those meetings, information on the bid offering the highest total price was disclosed to the bidders individually, including the financial offer, the BREEAM rating, and the completion time offered in this bid. The seller also clarified to the bidders which reservations and conditions were unacceptable and which documentation was lacking or inadequate.
- (30) The deadline for submitting revised bids was set to 22 April 2015. The bidders were invited to submit improved bids, and were asked to withdraw their reservations and to supplement and/or forward any documentation that was lacking.<sup>11</sup> Furthermore, the bidders were notified of the potential consequences of failing to supplement missing documentation and/or withdraw reservations. As stated in the prospectus, the seller notified the bidders of its rights to accept or reject any revised bid, to hold multiple negotiation rounds, and to enter into direct negotiations with the bidders at any point after the revised bids were submitted. The bidders were also provided with a memorandum prepared by BER Verdivurdering AS explaining how bids offering shorter completion times for one or more properties and/or for BREEAM ratings higher than “pass” would be assessed.<sup>12</sup>

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<sup>11</sup> Document No 801618.

<sup>12</sup> Documents No 801620 and 801632.

- (31) Three revised bids were received by the deadline, the other two bidders declined to continue with the bidding process. The three bids were reviewed and evaluated on the basis of the bid forms and the enclosed documentation. Two of the three bids were rejected, since they *inter alia* had unacceptable reservations, were below market price, did not include the necessary guarantees and did not comply with the requested completion times. Before the rejection of these two bids, each bidder was clearly informed of which documentation was inadequate or missing, and of which reservations were unacceptable.
- (32) On 27 May 2015, the Agency for Real Estate and Urban Renewal accepted the only valid bid, which was the only one made without any reservations and the only one which provided adequate documentation of the proposed BREEAM rating and the completion times. The successful bidder was property development company Urbanium AS. The Agency for Real Estate and Urban Renewal therefore decided to proceed with this bid and not to pursue further negotiations with the other bidders. The financial offer made is NOK 30 million and the value of the proposed completion time frames and the BREEAM rating, which should be added to the financial offer, is equivalent to NOK 5 520 000. The total price of the bid is thus NOK 35 520 000.

### **3 Comments by the City of Oslo**

- (33) According to the City of Oslo, the sales procedure has been conducted in accordance with Chapter 2.1 of the Authority's State Aid Guidelines on state aid elements in sales of land and buildings by public authorities ("the Guidelines").
- (34) The City of Oslo notes that the sale of the properties was duly and thoroughly announced in the Norwegian media and on the website of the real estate agent. The announcement attracted broad, positive attention and considerable interest from the market, and must be regarded as sufficiently well publicised in line with the Guidelines.
- (35) Moreover, according to the City of Oslo, the existence of special obligations (*i.e.* the minimum specifications) was known to all buyers and all buyers were able to both fulfil the special obligations and give the required documentation of how they would fulfil them, irrespective of whether or not they run a business or the nature of their business. Therefore, the offer can be regarded as "unconditional" for the purpose of the bidding procedure, in line with the Guidelines.
- (36) Finally, according to the City of Oslo, the bidding procedure, described in Section 2.5.5 above, sufficiently ensures the sale of the properties to the bidder giving the highest bid. Therefore, the sale has been carried out at market value according to the procedure defined in the Guidelines.
- (37) In light of the above, the City of Oslo submits that the sales procedure has been comparable to an auction and conducted fully in accordance with the procedure set out in Chapter 2.1 of the Guidelines. Consequently, the sale of the four properties in Hauskvartalet does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

## II. ASSESSMENT

### 1 The presence of state aid

- (38) In the following sections, the Authority will assess whether the City of Oslo's sale of the four properties in Hauskvartalet involves state aid within the meaning of Article 61(1) of the EEA Agreement.
- (39) A measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the state or through state resources; (ii) confers an economic advantage on an undertaking; (iii) is selective; and (iv) is liable to distort competition and trade between Contracting Parties.

#### 1.1. State resources

- (40) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute state aid.
- (41) The State, for the purpose of Article 61(1) of the EEA Agreement, covers all bodies of the state administration, from the central government to the city level or the lowest administrative level as well as public undertakings and bodies.<sup>13</sup>
- (42) The four properties were purchased by the City of Oslo in 2004 and thus constitute state resources in this sense. Foregoing any revenue from the City's sale of the properties would therefore constitute a transfer of state resources.

#### 1.2. Advantage

- (43) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking would not have obtained under normal market conditions, thus placing it in a more favourable position than its competitors.
- (44) Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. Economic activities are activities consisting of offering goods or services on a market. The successful bidder and thus the potential buyer of the four properties is Urbanium AS, a property development company focusing on residential development. The company has since its establishment in 2003 built and/or developed around 1 500 residential properties in Oslo and the neighbouring area.<sup>14</sup> Accordingly, any aid involved in the sale of the four properties in Hauskvartalet would be conferred upon an undertaking.
- (45) Furthermore, if the transaction would be carried out on favourable terms, in the sense that Urbanium AS would pay a sales price below market price, the company would receive an advantage within the meaning of the state aid rules.
- (46) The Guidelines give guidance on how the Authority interprets and applies the provisions of the EEA Agreement governing state aid when it comes to assessing sales of public land and buildings. The Guidelines provide for two situations where, if the applicable conditions are met, the price paid for the property will be held to correspond to market value, thereby excluding the foregoing of state resources. Chapter 2.1 describes a sale through an unconditional bidding procedure, comparable to an auction, accepting the best or only bid. Chapter 2.2 describes a sale by way of an independent expert valuation. These

<sup>13</sup> Judgment in *Germany v Commission*, Case 248/84, EU:C:1987:437, paragraph 17.

<sup>14</sup> [http://www.urbanium.no/index\\_web.html](http://www.urbanium.no/index_web.html).

procedures allow the EFTA States to handle sales of land and buildings in a way that automatically precludes the existence of state aid. As previously noted in paragraph (37) above, the City of Oslo maintains that the sales process in question constituted an unconditional bidding procedure and fulfilled the three criteria for such a procedure set out in Chapter 2.1. of the Guidelines.

- (47) The Guidelines provide, first, that the offer has to be sufficiently well published.<sup>15</sup> As described in Section 2.5.1 of Part I above, the sale of the properties was announced in the Norwegian newspaper Aftenposten on 27 November 2014 as well as on 2 and 4 December 2014. Moreover, the sale was advertised and the prospectus made available online on www.finn.no and on real estate agents website from 2 December 2014 until the submission deadline for bids on 2 March 2015. In addition to the advertising, the real estate agent addressed a broad range of potential buyers and conducted inspections of the properties with interested parties. According to the Norwegian authorities some 150–160 interested parties were registered.
- (48) Thus, the offer was sufficiently well-publicised within the meaning of the Guidelines.
- (49) Second, in line with the Guidelines an offer is ‘unconditional’ when any buyer, irrespective of whether or not he runs a business or of the nature of his business, is generally free to acquire the land and buildings and to use it for his own purposes. Urban and regional planning restrictions imposed on the owner pursuant to domestic law on the use of the land and buildings do not affect the unconditional nature of an offer. The bidding procedure did not exclude any buyers on the basis of whether or not they ran a business or the nature of their business. If the sale is conditioned on the future owner assuming special obligations – other than those arising from general domestic law or decisions of the planning authorities or those relating to the general protection and conservation of the environment and to public health – for the benefit of the public authorities or in the general public interest, the offer is ‘unconditional’ only if all potential buyers would have to, and would be able to meet that obligation, irrespective of whether or not they run a business or of the nature of their business. The minimum specifications, described in Section 2.5.3 of Part I above, were made clear to all potential bidders through sales contract and the sales prospectus contained detailed information on how the bidders should document fulfilment. All bidders would in principle be able to meet those obligations, irrespective of whether or not they run a business or of the nature of their business.
- (50) Thus, the sales procedure was unconditional within the meaning of the Guidelines.
- (51) Third, the sale of the properties was organised and conducted as an open bidding round and the seller made it clear in advance how the economic assessment of bids would be conducted. Based on the assessment criteria the Agency for Real Estate and Urban Renewal accepted the valid bid, which was also the only bid made without any reservations and the only bid to include adequate documentation of the proposed BREEAM rating and the completion times.
- (52) Thus, in line with the Guidelines, the eligible offer was accepted.

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<sup>15</sup> According to the guidelines an offer is 'sufficiently well-publicized' when it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate publications and through real-estate agents addressing a broad range of potential buyers, so that it can come to the notice of all potential buyers.

- (53) It follows from the above that the sale of the four properties is in line with Chapter 2.1 the Authority's Guidelines.
- (54) In addition, in line with Chapter 2.2 of the Guidelines, the seller obtained an independent expert evaluation of the properties from a firm of property evaluators, see Section 2.5.2 of Part I above. The independent expert estimated the market value of the properties at NOK 18.8 million. The real estate agent, Hadrian Eiendom, also assessed the market value of the properties and estimated that the total value of the three building at NOK 20–23 million. The final offer received from the potential buyer is considerably higher than both the independent expert valuation and the market value estimated by the real estate agent. This fact further reinforces the conclusion that no state aid is involved in the proposed sale of the four properties in Hauskvartalet.

## 2 Conclusion

- (55) In accordance with the above, the sale of the four properties in Hauskvartalet, *i.e.* property units no 208/180, 208/303, 208/304 and 208/60, by the City of Oslo does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

### *Article 1*

The sale of the four properties in Hauskvartalet, *i.e.* property units no 208/180, 208/303, 208/304 and 208/60, by the City of Oslo does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

### *Article 2*

This Decision is addressed to the Kingdom of Norway.

### *Article 3*

Only the English language version of this decision is authentic.

Done in Brussels, on 15 June 2016

*For the EFTA Surveillance Authority*

Sven Erik Svedman  
*President*

Frank Buechel  
*College Member*

Helga Jónsdóttir  
*College Member*

*This document has been electronically signed by Sven Erik Svedman, Frank Buechel, Helga Jonsdottir on 15/06/2016*