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⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 549/2010

of 23 June 2010

amending and correcting Regulation (EU) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43(a), (d), and (j), in conjunction with Article 4 thereof,

Whereas:

- (1) Article 12(2) of Regulation (EC) No 1234/2007 provides that the Commission, without the assistance of the Committee referred to in Article 195(1) of that Regulation, is to close public intervention for beef, where over a representative period, the conditions provided for in Article 12(1)(c) of that Regulation are no longer fulfilled. It is necessary to set the representative period for the closing of public intervention for beef through a tendering procedure and, therefore, to reflect this power of the Commission in Article 16 of Commission Regulation (EU) No 1272/2009 ⁽²⁾.
- (2) In Article 29(2) of Regulation (EU) No 1272/2009, differing and erroneous provisions have been adopted in the different language versions as regards the rules to be applied when the storage place indicated by the offerer or tenderer is changed by the intervention agency. As a consequence, it is necessary to clarify that in that case the additional transport costs shall be borne by the intervention agencies, except for the first 20 km, and to add that where Article 38(3) applies, the reduction shall not exceed the transport costs beyond 100 km.
- (3) Part IX of Annex III to Regulation (EU) No 1272/2009 lays down provisions related to cartons for the packaging of beef bought into intervention. It is necessary to adapt

the sealing requirements provided for in point 6 in order to align them to the requirements in Section I of Annex II to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽³⁾.

- (4) At the occasion of this amendment of Regulation (EU) No 1272/2009 it is appropriate to correct an omission in Article 25 of that Regulation.
- (5) Regulation (EU) No 1272/2009 should therefore be amended and corrected accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1272/2009 is amended as follows:

1. In Article 16(2), point (b) is replaced by the following:

‘(b) the tendering procedure for buying-in beef by category and Member State, or region thereof, on the basis of the two most recent weekly market prices recorded, in accordance with Article 12(1)(c) of Regulation (EC) No 1234/2007. That tendering procedure shall be closed by the Commission, in accordance with the same procedure, by category and Member State, or region thereof, on the basis of the most recent weekly market prices recorded.’
2. In the first subparagraph of Article 16(6), the introductory phrase is replaced by the following:

‘For the purposes of Article 12(1)(c), Article 12(2) and Article 18(3)(b) of Regulation (EC) No 1234/2007, the following rules shall apply:’

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.⁽²⁾ OJ L 349, 29.12.2009, p. 1.⁽³⁾ OJ L 139, 30.4.2004, p. 55.

3. In Article 25, the first paragraph is replaced by the following:

‘After having checked the admissibility of the offer or tender as referred to in Article 11(1) and after having notified in accordance with Article 20(3), the intervention agency shall issue a delivery order, without prejudice to the measures adopted in accordance with Articles 14(1) and 19(1). The delivery order shall be dated and numbered and shall show:

- (a) the quantity to be delivered;
- (b) the final date for delivery of the products;
- (c) the storage place to which the products shall be delivered;
- (d) the price at which the offer or tender is accepted.’

4. In Article 29, paragraph 2 is replaced by the following:

‘2. If the storage place indicated by the offerer or tenderer is changed by the intervention agency, in accordance with Article 26(1), the additional transport costs, except for the first 20 km, shall be borne by the intervention agency. However, the transport costs over 100 km shall still be borne totally by the intervention agency. This paragraph shall not apply in case of application of Article 31(2).’

5. In Article 38(3), point (a) is replaced by the following:

‘(a) the transport costs between the actual place of takeover designated by the intervention agency and the storage place referred to in Article 10(1)(a)(iv) where the products should have been delivered at the lowest cost, but not exceeding the 100 km limit referred to in Article 29(1); and’

6. In Part IX of Annex III, point 6 is replaced by the following:

‘6. Cartons must be sealed:

- (a) by means of the mark applied in accordance with Section I of Annex II to Regulation (EC) No 853/2004; and
- (b) by intervention agency labels bearing a serial number on both ends of the carton affixed in such a way that they are destroyed when the carton is opened.’

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply:

- (a) from 1 July 2010 for beef and veal, butter, skimmed milk powder and cereals; and
- (b) from 1 September 2010 for rice.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2010.

For the Commission
The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 550/2010

of 23 June 2010

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 1

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008 ⁽²⁾ certain international accounting standards and interpretations that were in existence at 15 October 2008 were adopted.
- (2) On 23 July 2009, the International Accounting Standards Board (IASB) published Amendments to International Financial Reporting Standard (IFRS) 1 *First-time adoption of international financial reporting standards*, hereinafter 'amendments to IFRS 1'. According to the amendments to IFRS 1 entities with oil and gas activities transitioning to IFRSs are allowed to use carrying amounts for oil and gas assets determined under their previous accounting rules. Those entities that decide to use that exemption should be required to measure decommissioning, restoration and similar liabilities relating to oil and gas assets in accordance with IAS 37 *Provisions, contingent liabilities and contingent assets* and to recognise the liability against retained earnings. The amendments to IFRS 1 also concern reassessment of lease determination.
- (3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendments to IFRS 1 meet the technical criteria for adoption set out in Article 3(2)

of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions ⁽³⁾, the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

- (4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008, International Financial Reporting Standard 1 *First-time adoption of international financial reporting standards* is amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments to IFRS 1, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 December 2009.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2010.

For the Commission
The President

José Manuel BARROSO

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 320, 29.11.2008, p. 1.

⁽³⁾ OJ L 199, 21.7.2006, p. 33.

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRS 1	Amendments to IFRS 1 Additional Exemptions for First-time Adopters
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Amendments to IFRS 1***First-time Adoption of International Financial Reporting Standards***

A heading and paragraphs 31A and 39A are added.

PRESENTATION AND DISCLOSURE**Explanation of transition to IFRSs***Use of deemed cost for oil and gas assets*

- 31A If an entity uses the exemption in paragraph D8A(b) for oil and gas assets, it shall disclose that fact and the basis on which carrying amounts determined under previous GAAP were allocated.

EFFECTIVE DATE

- 39A *Additional Exemptions for First-time Adopters* (Amendments to IFRS 1), issued in July 2009, added paragraphs 31A, D8A, D9A and D21A and amended paragraph D1(c), (d) and (l). An entity shall apply those amendments for annual periods beginning on or after 1 January 2010. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact.

EXEMPTIONS FROM OTHER IFRSS

In Appendix D paragraph D1(c), (d) and (l) and a heading are amended. Paragraphs D8A, D9A and D21A are added.

- D1 An entity may elect to use one or more of the following exemptions:

(a) ...

(c) deemed cost (paragraphs D5–D8A);

(d) leases (paragraphs D9 and D9A);

(e) ...

(l) decommissioning liabilities included in the cost of property, plant and equipment (paragraphs D21 and D21A);

(m) ...

Deemed cost

- D8A Under some national accounting requirements exploration and development costs for oil and gas properties in the development or production phases are accounted for in cost centres that include all properties in a large geographical area. A first-time adopter using such accounting under previous GAAP may elect to measure oil and gas assets at the date of transition to IFRSs on the following basis:

- (a) exploration and evaluation assets at the amount determined under the entity's previous GAAP; and
- (b) assets in the development or production phases at the amount determined for the cost centre under the entity's previous GAAP. The entity shall allocate this amount to the cost centre's underlying assets pro rata using reserve volumes or reserve values as of that date.

The entity shall test exploration and evaluation assets and assets in the development and production phases for impairment at the date of transition to IFRSs in accordance with IFRS 6 *Exploration for and Evaluation of Mineral Resources* or IAS 36 respectively and, if necessary, reduce the amount determined in accordance with (a) or (b) above. For the purposes of this paragraph, oil and gas assets comprise only those assets used in the exploration, evaluation, development or production of oil and gas.

Leases

- D9A If a first-time adopter made the same determination of whether an arrangement contained a lease in accordance with previous GAAP as that required by IFRIC 4 but at a date other than that required by IFRIC 4, the first-time adopter need not reassess that determination when it adopts IFRSs. For an entity to have made the same determination of whether the arrangement contained a lease in accordance with previous GAAP, that determination would have to have given the same outcome as that resulting from applying IAS 17 *Leases* and IFRIC 4.

Decommissioning liabilities included in the cost of property, plant and equipment

D21A An entity that uses the exemption in paragraph D8A(b) (for oil and gas assets in the development or production phases accounted for in cost centres that include all properties in a large geographical area under previous GAAP) shall, instead of applying paragraph D21 or IFRIC 1:

- (a) measure decommissioning, restoration and similar liabilities as at the date of transition to IFRSs in accordance with IAS 37; and
 - (b) recognise directly in retained earnings any difference between that amount and the carrying amount of those liabilities at the date of transition to IFRSs determined under the entity's previous GAAP
-

COMMISSION REGULATION (EU) No 551/2010**of 23 June 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 June 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*⁽¹⁾ OJ L 299, 16.11.2007, p. 1.⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	44,4
	MK	41,0
	TR	59,4
	ZZ	48,3
0707 00 05	MK	36,4
	TR	117,9
	ZZ	77,2
0709 90 70	TR	102,5
	ZZ	102,5
0805 50 10	AR	92,5
	BR	112,1
	TR	97,3
	ZA	104,2
	ZZ	101,5
0808 10 80	AR	98,5
	BR	85,1
	CA	68,4
	CL	99,7
	CN	46,9
	NZ	119,5
	US	154,2
	UY	160,6
	ZA	100,0
	ZZ	103,7
0809 10 00	TR	233,1
	US	396,9
	ZZ	315,0
0809 20 95	SY	178,6
	TR	302,4
	US	700,6
	ZZ	393,9
0809 30	TR	149,8
	ZZ	149,8
0809 40 05	AU	185,7
	EG	218,2
	IL	235,2
	US	373,2
	ZZ	253,1

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EU) No 552/2010**of 23 June 2010****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 545/2010 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 June 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 253, 25.9.2009, p. 3.

⁽⁴⁾ OJ L 155, 22.6.2010, p. 31.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 24 June 2010

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	40,91	0,00
1701 11 90 ⁽¹⁾	40,91	2,63
1701 12 10 ⁽¹⁾	40,91	0,00
1701 12 90 ⁽¹⁾	40,91	2,33
1701 91 00 ⁽²⁾	42,37	4,76
1701 99 10 ⁽²⁾	42,37	1,63
1701 99 90 ⁽²⁾	42,37	1,63
1702 90 95 ⁽³⁾	0,42	0,27

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

COMMISSION REGULATION (EU) No 553/2010**of 23 June 2010****on the allocation of import rights for applications lodged for the period 1 July 2010 to 30 June 2011 under the tariff quota opened by Regulation (EC) No 431/2008 for frozen meat of bovine animals**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 431/2008 of 19 May 2008 opening and providing for the administration of an import tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by

CN code 0206 29 91 ⁽³⁾ opens an import tariff quota for beef and veal products.

- (2) The applications for import rights lodged for the period 1 July 2010 to 30 June 2011 relate to quantities exceeding those available. The extent to which import rights may be allocated should therefore be determined and an allocation coefficient laid down to be applied to the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import right applications covered by the quota with the serial number 09.4003 have been lodged for the period 1 July 2010 to 30 June 2011 under Regulation (EC) No 431/2008 shall be multiplied by an allocation coefficient of 24,413883 %.

Article 2

This Regulation shall enter into force on 24 June 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 130, 20.5.2008, p. 3.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 492/09/COL

of 2 December 2009

Complaint by Norsk Lotteridrift ASA against alleged State aid in favour of Norsk Tipping AS (NORWAY)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 thereof and Protocol 26,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ⁽⁵⁾,

WHEREAS:

By letter dated 22 October 2004 (Event No 296715), the Authority asked the complainant to provide some additional information on certain specific points.

By letter dated 15 November 2004 (Event No 299345), the complainant provided the Authority with its answers to the questions raised.

By letter dated 8 December 2004 (Event No 300861), the Authority provided the Norwegian authorities with a copy of the complaint and asked them to submit comments and additional information.

By letter dated 10 February 2005 (Event No 308469), the Norwegian authorities provided the Authority with their comments and additional information.

There was no exchange of correspondence after that date.

I. FACTS**1. Procedure**

On 12 October 2004, the Authority received a complaint by Norsk Lotteridrift ASA concerning alleged State aid in favour of Norsk Tipping AS (Event No 295765).

By letter dated 12 March 2008 (Event No 469510), the lawyer representing the complainant informed the Authority that Norsk Lotteridrift ASA was dissolved and no longer wished to pursue the complaint, which was consequently withdrawn.

⁽¹⁾ Hereinafter referred to as 'the Authority'.

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽³⁾ Hereinafter referred to as 'the Surveillance and Court Agreement'.

⁽⁴⁾ Hereinafter referred to as 'Protocol 3'.

⁽⁵⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 1 (hereinafter referred to as the State Aid Guidelines). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

2. Grounds of the complaint

Norsk Lotteridrift ASA was the largest company in Norway operating so called Amusement With Price machines (gaming machines, hereafter referred to as 'AWP'). Norsk Tipping AS is Norway's largest gaming company and wholly owned by the Norwegian State. Until 2003, Norsk Tipping AS was not operating on the market of AWP machines.

In June 2003, legislation was passed giving Norsk Tipping AS an exclusive right to operate such machines. As from 1 January 2006, Norsk Tipping AS would be the only company operating AWP machines in Norway.

During the transitional period from June 2003 to 1 January 2006, Norsk Tipping AS started introducing its first AWP machines while the existing operators were forced to withdraw from the market as the authorisations to operate such machines were progressively expiring. During the transitional period, Norsk Lotteridrift ASA and Norsk Tipping AS were therefore competing on the same market. Presently, Norsk Tipping AS enjoys an exclusive right to operate AWP in Norway ⁽¹⁾.

Norsk Lotteridrift ASA complained that, in a situation where Norsk Tipping AS was competing with other operators of AWP machines, two measures in favour of Norsk Tipping AS distorted competition and affected trade between the Contracting Parties.

The complainant referred to the two following elements:

- firstly, Norsk Tipping AS did not pay corporate tax whereas the private operators were subject to the tax (2.1),
- secondly, the complainant argued that Norsk Tipping AS enjoyed much more flexibility in determining what revenues to donate to charities as it paid its contributions to charity from its net surplus, whereas private operators had to pay 40 % of the income of each machine to charity (2.2).

2.1. Exemption to pay corporate tax

Section 2-30(g) No 3 (previously No 5) of the Tax Act No 14 of 26 March 1999 provides that Norsk Tipping AS was exempted from corporate tax. This provision must be read in conjunction with Act No 103 of 28 August 1992 relating to Money Games (hereinafter ‘the Money Games Act’) which provided that Norsk Tipping AS was obliged to pay all its profits after allocation to reserves for the investment fund ⁽²⁾.

The complainant — which was subject to the obligation to pay corporate tax — argued that the possibility for Norsk Tipping AS to benefit from such an exemption constituted State aid.

2.2. Possibility for Norsk Tipping AS to determine its own profits

Regulation No 960 of 22 September 2000 regarding permission to set up AWP machines provided that such

permissions would be granted on the following conditions: a minimum of 40 % of the surplus from each machines was to be paid to charity, a maximum of 20 % was paid to the owner of the premises where the machines are placed and a maximum of 40 % was kept by the operator. This regulation did not apply to Norsk Tipping AS ⁽³⁾.

The activities of Norsk Tipping AS were regulated by the Money Games Act which provided that Norsk Tipping AS’ profit, after allocations to reserves, must be paid to charities.

The complainant argued that Norsk Tipping AS benefited from a much greater flexibility than its competitors. Indeed, it argued that ‘it is a total different matter to pay parts of the net surplus from the combined activities of a company to charities, as compared to paying a fixed percentage of the surplus from each machine to charities regardless of the general profitability of the company’. Norsk Lotteridrift ASA considered that Norsk Tipping AS benefited from a greater flexibility when determining its budget and especially when deciding to make necessary investments in a situation where new investments were needed. The legislation did not contain any limitations as to the size of the reserves for the investment fund or any minimum requirement as to the level of the payments to be made to charities. Norsk Tipping AS had the option to make the necessary allocations to reserves for such investments while the competitors such as Lotteridrift ASA had less possibilities.

The complainant argued that such a benefit constituted aid within the meaning of Article 61 EEA.

II. ASSESSMENT

1. The presence of State aid

Article 61(1) EEA reads as follows:

‘Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.’

In its assessment of the complaint, the Authority will examine successively the two grounds of the complaint.

⁽¹⁾ The introduction of the exclusive rights was upheld by the EFTA Court in Case E-1/06 *EFTA Surveillance Authority v Norway* [2007] EFTA Ct. Rep. 20.

⁽²⁾ The purpose of the investment is to secure that the company’s needs for investment can be met by the necessary capital.

⁽³⁾ The Regulation has been substantially changed since the complaint was lodged, however, for present purposes the Authority does not consider it necessary to describe those changes.

2. Exemption to pay corporate tax

The measure must be granted by the State or through state resources.

The Authority takes the view that through the grant of the exemption, the Norwegian State renounced tax revenue which it would normally have received. The absence of these funds represented a burden on state resources from charges that are normally borne from the budgets of undertakings⁽¹⁾. A loss of tax revenue is equivalent to the consumption of State resources in the form of fiscal expenditure⁽²⁾. The Authority therefore considers that the fact that Norsk Tipping AS is exempted from income tax at the outset involved the consumption of state resources.

The measure must moreover be selective in that it favours 'certain undertakings or the production of certain goods'. In order to determine whether a measure is selective, the Authority will examine whether, within the context of a particular legal system, the measure constitutes an advantage for the undertaking in comparison with other undertakings which are in a comparable legal and factual situation. In this regard it is necessary first to identify the common or normal regime under the applicable tax system which constitutes the reference framework.

The Authority considers that the reference framework for assessing selectivity is the Norwegian Tax Act from which Norsk Tipping AS enjoys an explicit exemption in section 2.30(g) No 3 of the Norwegian Tax Act.

It is in relation to the common or 'normal' tax regime that the Authority must, secondly, assess and determine whether the advantage granted by the tax measure at issue may be selective by demonstrating that the measure derogates from that common regime inasmuch as the measure differentiates between economic operators who, in light of the objective assigned to the tax system of the EFTA State concerned, are in a comparable factual and legal situation.

The Authority considers, *prima facie*, that the tax exemption appears selective as Norsk Tipping is individually exempted.

As mentioned above, Norsk Tipping AS, indeed the gaming sector as such, is subject to special regulatory regimes in Norway. There are restrictions in place both with regard to who is permitted to offer gaming services, the performance of the services as such and finally the use of revenue generated

from gaming. Indeed, no other operator is now allowed to offer similar games as Norsk Tipping AS since it enjoys exclusive rights to operate a number of different money games. Such regulatory restrictions, both with regard to market access and the performance of the services have been accepted by both the Court of Justice and the EFTA Court on the basis of moral, religious and cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with gaming⁽³⁾.

Prior to the introduction of the exclusive rights regime for AWP, the complainant, Norsk Lotteridrift ASA and other private operators of gaming machines operated on the market and were subject to regular income tax in addition to the special regulatory AWP regime according to which they could retain up to 40 % of the machine surplus⁽⁴⁾.

Providers of other gaming services, such as Norsk Rikstoto which organises horse race betting and charitable organisations, which organise different types of lotteries are subject to other regulatory regimes. A common denominator for these other gaming providers, is that in principle, all the revenues generated from the gaming services shall be channelled to specific charitable causes. Thus, the former AWP business was unique in the sense that it allowed private operators to keep profits generated from money games.

The profits of Norsk Tipping AS are by law clawed away and earmarked for sports, cultural and, since 2006, also for humanitarian and social beneficial causes, cf. Section 10 of the Gambling Act No 103 of 28 August 1992 (*lov om pengespill*). Thus, for Norsk Tipping AS, the exemption from ordinary income tax is replaced by a different form of 'taxation'.

Consequently, while Norsk Tipping is exempted from income tax its profits are subject to another form of imposition and as a result the company cannot retain them. The Authority takes the view, in the circumstances of this case, that the difference of treatment of Norsk Tipping is justified by the reasons relating to the logic of the system of redistribution of profits from the state monopoly gaming company.

Accordingly, based on the special nature and regulation of gaming services, the Authority considers that Norsk Tipping AS is not in a comparable factual and legal situation with that of undertakings subject to ordinary income tax, neither the former private operators of gaming machines nor other types of commercial undertakings. Thus, the exemption from ordinary income tax for Norsk Tipping AS does not constitute State aid within the meaning of Article 61 EEA.

⁽¹⁾ Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 26.

⁽²⁾ See, *inter alia*, Section 3(3) of the State Aid Guidelines on the application of State aid rules to measures relating to direct business taxation.

⁽³⁾ See Case E-1/06 *EFTA Surveillance Authority v Norway*, cited above, paragraph 29 with further references.

⁽⁴⁾ The additional 60 % were divided between the charity and the owner of the premises, see facts part above.

3. Possibility for Norsk Tipping AS to determine its own profits

The second issue raised in the complaint was that Norsk Tipping AS benefited from more freedom with regard to its profits than the private AWP operators. While the private operator had to pay 40 % of the AWP surplus to charity, Norsk Tipping AS had to pay all its profits to charity. The amount of those profits however depended largely on Norsk Tipping AS' decision to set aside money for the investment fund or in general how it spent the money. The complainant thus argued that private operators did not have this possibility as their share to charity was based on a non flexible approach.

The Authority cannot see that state resources within the meaning of Article 61(1) of the EEA Agreement are involved. In line with the findings of the Court of Justice in *Preussen Elektra* ⁽¹⁾, the Authority considers the obligation to set aside certain revenues for charity purposes to be a state intervention stemming from the Norwegian Regulation on instructions for the reserves of Norsk Tipping AS No 797 of 8 June 1998, but without leading to foregone revenues by the State ⁽²⁾. Furthermore, the same considerations with regard to selectivity, including the non-comparability of private gaming machine operators and Norsk Tipping AS discussed above would apply in this context.

4. Conclusion

On the basis of the above, the Authority considers that the exemption from ordinary income taxation for Norsk Tipping AS and its possibility to determine its own profit do not

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

HAS ADOPTED THIS DECISION:

Article 1

The tax exemption for Norsk Tipping AS laid down in section 2.30(g) No 3 of the Norwegian Tax Act and the possibility for Norsk Tipping AS to determine its own profit do 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 text is authentic.

Done at Brussels, 2 December 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján A. STEFÁNSSON
College Member

⁽¹⁾ Case C-379/98 *Preussen Elektra v Schleswig* [2001] ECR I-2099, paragraphs 54-67.

⁽²⁾ The legal basis for that Regulation is Section 10 of the Gambling Act.

EFTA SURVEILLANCE AUTHORITY DECISION

No 02/10/COL

of 5 January 2010

concerning the status of Norway with regard to infectious haematopoietic necrosis and viral haemorrhagic septicaemia and repealing the EFTA Surveillance Authority Decision No 302/08/COL of 21 May 2008

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD to the Agreement on the European Economic Area, in particular Article 109 and Protocol 1 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 5(2)(d) and Protocol 1 thereof,

HAVING REGARD to the Act referred to at point 4.1.5a of Chapter I of Annex I to the EEA Agreement,

Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals ⁽¹⁾,

as adapted by way of Protocol 1 to the EEA Agreement, in particular Article 50 of that Act,

Whereas:

By letter dated 3 May 1994 Norway submitted the appropriate justifications for granting, as far as infectious haematopoietic necrosis (IHN) and viral haemorrhagic septicaemia (VHS) are concerned, the status of approved zone to its territory, as well as the national rules ensuring compliance with the conditions to be respected for maintenance of the approved status.

By Decision of the Authority No 71/94/COL Norway was recognised as approved continental and coastal zone for fish with regard to IHN and VHS. Following notification of an outbreak of VHS in Møre og Romsdal County in Norway, on 26 November 2007, Decision No 71/94/COL, as last amended by the EFTA Surveillance Authority Decision No 244/02/COL, was repealed by Decision No 302/08/COL, which established that the parts of Norway referred to in the Annex to that Decision were recognised as approved continental zone and as approved coastal zone for fish with regard to IHN and VHS.

On 11 July 2008, an outbreak of VHS was confirmed in the coastal areas of Storfjorden in Norway. The competent authority in Norway has informed the Authority of the measures taken to eliminate the disease and to prevent its spread.

The Authority has assessed the information submitted to it by the competent authority in Norway and it appears, at this stage, that the measures taken are appropriate. Moreover, the

Authority has discussed the matter with the European Commission and no changes have occurred in Norway with regards to IHN.

It is the opinion of the Authority that Norway, with the exception of the areas referred to in the Annex, should still be recognised as approved continental zone and approved coastal zone for fish with regard to IHN and VHS.

The measures provided for in this Decision are in accordance with the opinion of the EFTA Veterinary Committee assisting the EFTA Surveillance Authority,

HAS ADOPTED THIS DECISION:

Article 1

Norway, with the exception of the areas referred to in the Annex, is recognised as approved continental zone and as approved coastal zone for fish with regard to IHN and VHS.

Article 2

The EFTA Surveillance Authority Decision No 302/08/COL of 21 May 2008 concerning the status of Norway with regard to infectious haematopoietic necrosis and viral haemorrhagic septicaemia is hereby repealed.

Article 3

This Decision shall enter into force on 5 January 2010.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English version is authentic.

Done at Brussels, 5 January 2010.

For the EFTA Surveillance Authority

Kurt JÄGER
College Member

Xavier LEWIS
Director

⁽¹⁾ OJ L 328, 24.11.2006, p. 14.

ANNEX

IHN

Norway, with the exception of the Norwegian part of the catchment areas of Grense Jacobselv and Pasvik river and the rivers in between and the associated coastal region.

VHS

Norway, with the exception of:

1. The Norwegian part of the catchment areas of Grense Jacobselv and Pasvik river and the rivers in between and the associated coastal region.
 2. Norway, with the exception of the coastal areas of Storfjorden (in the municipalities of Ørskog, Sykkylven, Stordal, Stranda and Norddal) delimited in the west by a line drawn between Røneset in Sykkylven municipality and Giljeneset in Ørskog municipality. East of the line of the entire fjord is excepted including the tidal line, landbased aquaculture farms that utilise seawater in the production and the landbases and quays of aquaculture farms in the fjord. The parts of water catchment areas that have its estuary in the containment area and that have upward migration of anadromous fish, and any cultivation installation in the anadromous part of the water catchment are also excepted from recognition as approved zone.
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