



2025/1950

25.9.2025

EFTA SURVEILLANCE AUTHORITY DECISION No 090/25/COL
of 11 June 2025
on sale of a property in Lørenskog (Norway) [2025/1950]

THE EFTA SURVEILLANCE AUTHORITY ('ESA'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 and 62,

Having regard to Protocol 26 to the EEA Agreement,

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

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3 SCA'), in particular to Articles 7(5), 13(1) and 14 of Part II,

Having called on interested parties to submit their comments ⁽¹⁾, and having regard to their comments,

Whereas:

I. FACTS

1 Procedure

- (1) On 8 August 2022 ⁽²⁾, ESA received a complaint from the Norwegian municipality Lørenskog ('the Municipality') alleging that it had granted unlawful State aid to Masserud Utvikling AS ('Masserud'), since it never received payment from Masserud for the sale of a property in Lørenskog ('the property at issue').
- (2) On 7 September 2022 ⁽³⁾, ESA forwarded the complaint to the Norwegian authorities ⁽⁴⁾. On 4 October 2022 ⁽⁵⁾, the Norwegian authorities requested an extension of the deadline for providing comments until 14 October 2022. ESA approved the extension on the same day. Then, on 17 October 2022 ⁽⁶⁾, the Norwegian authorities sent their initial comments on the complaint.
- (3) By letter dated 14 September 2022 ⁽⁷⁾, Masserud sent its comments on the complaint. By letter of 9 February 2023 ⁽⁸⁾, ESA requested information from the Norwegian authorities. On 7 March 2023 ⁽⁹⁾, ESA received a reply to the request for information from the Norwegian authorities.
- (4) By Decision No 173/23/COL ('the Opening Decision'), ESA initiated the formal investigation procedure ⁽¹⁰⁾. The Opening Decision assessed the sale of the property at issue to Masserud by the Municipality, and the Municipality's subsequent failure to claim payment from Masserud ⁽¹¹⁾. The Norwegian authorities were invited to comment on the Opening Decision by 30 January 2024.

⁽¹⁾ ESA Decision No 173/23/COL, *Sale of property in Lørenskog municipality*.

⁽²⁾ Document Nos 1308444, 1308455, 1308457 and 1308458.

⁽³⁾ Document No 1310604.

⁽⁴⁾ Specifically, to the Ministry of Trade, Industry and Fisheries which represents the official position of Norway in this case.

⁽⁵⁾ Document No 1317746.

⁽⁶⁾ Document No 1321477.

⁽⁷⁾ Document Nos 1327441, 1313013 and 1312674.

⁽⁸⁾ Document No 1327441.

⁽⁹⁾ Documents Nos 1357235 and 1357237.

⁽¹⁰⁾ ESA Decision No 173/23/COL, *Sale of property in Lørenskog municipality*.

⁽¹¹⁾ See Section 4.3 of the Opening Decision.

- (5) By letter dated 26 January 2024 ⁽¹³⁾, the Municipality submitted additional comments ⁽¹³⁾. On 20 February 2024, Masserud submitted a letter with comments ⁽¹⁴⁾ and annexes ⁽¹⁵⁾. By letter dated 26 March 2024, ESA forwarded a non-confidential version of the letter to the Norwegian authorities.
- (6) By letter dated 30 May 2024, after an extension of the deadline approved by ESA, the Norwegian authorities submitted observations on Masserud's comments ⁽¹⁶⁾. No other interested party submitted comments to ESA.
- (7) On 17 October 2024, ESA requested the Norwegian authorities to provide more information ⁽¹⁷⁾. On 13 November 2024 ⁽¹⁸⁾, the Municipality submitted a reply to ESA's request. Furthermore, at the request of the Norwegian authorities, Masserud also submitted the requested information by letter dated 8 November 2024 ⁽¹⁹⁾.
- (8) On 7 February 2025, ESA requested the Norwegian authorities to provide clarity on the actual sale price of the property at issue ⁽²⁰⁾. On 18 February 2025 ⁽²¹⁾, the Norwegian authorities replied to the information request. On 10 February 2025, ESA sent a request for additional information according to Article 6 of the SCA to Masserud ⁽²²⁾. Masserud provided its reply on 10 March 2025 ⁽²³⁾.

2 Description of the measure

2.1 Background

- (9) On 20 January 2014, the Municipality and Glitnegaarden AS, which later became Masserud ⁽²⁴⁾, entered into a development agreement regarding the establishment of new infrastructure and buildings for residential purposes in Lørenskog.
- (10) On 27 January 2014, the Municipality and Masserud entered into a separate agreement concerning the sale to Masserud of the property at issue, consisting of a plot of public land, for NOK 7 709 058 ⁽²⁵⁾. A large part of the property at issue was regulated for residential purposes and the remaining part for access roads and infrastructure. There was no price appraisal of the property by an independent expert before the sale. The purchase price was determined through negotiations between the parties. Relevant transactions and information from real estate agents were also considered.
- (11) Based on the sale agreement, the payment for the property at issue was due two weeks after Masserud received a temporary use permit. On 23 May 2017, the temporary use permit was granted, which meant that payment by Masserud was due on 6 June 2017. However, the Municipality did not send an invoice to Masserud for the payment, and Masserud did not make the payment to the Municipality.
- (12) The Municipality first realised in early 2021 that the payment had never been settled. Subsequently, on 16 March 2021, the Municipality sent Masserud an invoice in the amount of NOK 8 249 339, for the purchase price, as adjusted on the basis of the applicable consumer price index, and costs.

⁽¹³⁾ Document Nos 1432026, 1432028 and 1432030.

⁽¹³⁾ Document No 1432028.

⁽¹⁴⁾ Document No 1437707.

⁽¹⁵⁾ Document Nos 1437708 and 1437709.

⁽¹⁶⁾ Document No 1459860.

⁽¹⁷⁾ Document No 1481533.

⁽¹⁸⁾ Document No 1497575.

⁽¹⁹⁾ Document No 1497569.

⁽²⁰⁾ Document No 1516288.

⁽²¹⁾ Document Nos 1519016, 1519018, 1519022, and 1519020.

⁽²²⁾ Document No 1516536.

⁽²³⁾ Document No 1523662.

⁽²⁴⁾ Glitnegaarden AS was renamed to Masserud Utvikling AS in 2015. For ease of reference, this Decision will refer to Masserud, including for the period preceding the change in name.

⁽²⁵⁾ Document No 1308455.

- (13) After several reminders, Masserud replied on 30 June 2021, stating that the claim was obsolete due to the expiry of the limitation period of three years provided for in Section 2 of the Norwegian Limitation Act ⁽²⁶⁾.
- (14) Later that same year, the Municipality invited Masserud to a meeting to address the matter. During the meeting, which was attended by the owners of Masserud, a number of issues were discussed ⁽²⁷⁾. The meeting mostly concerned certain technical facilities, such as roads, that are covered by the development contract between the parties ⁽²⁸⁾. The Municipality and Masserud did not come to an agreement concerning the payment of the property at issue.

2.2 **Masserud Utvikling AS**

- (15) Masserud is a limited liability company which mainly develops and sells real estate. The company is a wholly-owned subsidiary of Olavsgaard Eiendom AS, which owns around 43 000 m² of commercial properties in Nedre Romerike, in Akershus county, Norway. These commercial properties include hotels (Olavsgaard Hotell and Losby Gods), offices, businesses and apartments.
- (16) Olavsgaard Eiendom AS is part of the real estate group Olavsgaard Gruppen AS, owned by the Fjellheim family. The group is divided into two main business areas: real estate development (Olavsgaard Eiendom AS) and real estate operations (Olavsgaard Drift AS). These two divisions are further subdivided into several smaller companies. According to Masserud, Olavsgaard Gruppen AS's operations primarily take place in Lørenskog municipality.
- (17) The operations consist of developing smaller real estate projects, with the two largest in recent times being Masserud Gaard (66 apartments and 26 row houses in the area of Masserud) and Fjellhamar Torg (145 apartments and some commercial real estate in the area of Fjellhamar). Each development project by Olavsgaard Gruppen AS is managed through a separate single-purpose entity ⁽²⁹⁾. Masserud Gaard, for example, was developed by Masserud. The Fjellheim family holds 100 % of the shares of Masserud through Olavsgaard Gruppen AS.

2.3 **Lørenskog municipality**

- (18) Lørenskog is a Norwegian municipality in Akershus county and is part of the Greater Oslo Region, located just east of Oslo. The municipality is approximately 20 km from Oslo, and Norway's main airport is less than 40 km from Lørenskog.
- (19) Lørenskog has around 46 000 inhabitants ⁽³⁰⁾, and is the fifth-largest municipality in the Oslo region in terms of population ⁽³¹⁾. The population has steadily increased over the years as the area has become a popular place to live for those working in and around Oslo. Additionally, Lørenskog is home to one of the largest university hospitals in Norway, Akershus University Hospital.
- (20) The Municipality has provided information from Hadrian Eiendom AS ⁽³²⁾ ('Hadrian'), a commercial real estate agency based in Oslo, concerning the real estate market in Norway and Lørenskog. According to Hadrian, the share of foreign investment in the Norwegian real estate market is estimated at approximately 20 %, based on an average over the last 5 years ⁽³³⁾.
- (21) According to a survey conducted by Hadrian, the percentage of residential real estate projects owned by foreign investors/companies in Lørenskog is estimated at 7,5 % over the last five years ⁽³⁴⁾.

⁽²⁶⁾ The Norwegian Limitation Act (in Norwegian: *foreldelsesloven*), (LOV-1979-05-18-18).

⁽²⁷⁾ Document No 1312674.

⁽²⁸⁾ Document No 1310226.

⁽²⁹⁾ Document No 1523662.

⁽³⁰⁾ <https://www.lorenskog.kommune.no/om-kommunen/fakta-om-lorenskog-kommune/>.

⁽³¹⁾ <https://www.ssb.no/befolkning/folketall/statistikk/tettsteders-befolkning-og-areal>.

⁽³²⁾ <https://en.hadrian.no/>.

⁽³³⁾ Document Nos 1497565 and 1497567.

⁽³⁴⁾ Ibid.

- (22) According to the Municipality, from 2015 to 2021, interest rates steadily decreased, reaching 0 % for most of 2020 and 2021. This reduction in interest rates led to lower borrowing costs, making financing more affordable. As a result, investment activity also increased, particularly in stable commercial properties like office and retail spaces.
- (23) As demand increased, property prices began to rise as investors sought higher returns compared to low-yielding bonds. This surge in investment also increased property valuations, particularly in Oslo and its surrounding areas, as both local and international investors took advantage of the favourable financing environment. Additionally, the rise in housing prices for end-users boosted both investment and price trends in residential real estate.

3 Grounds for initiating the formal investigation procedure

- (24) In the Opening Decision, ESA's preliminary view was that the sale by the Municipality of the property at issue without claiming the outstanding payment constituted State aid as defined in Article 61(1) of the EEA Agreement.
- (25) Additionally, ESA raised doubts regarding the purchase price, specifically whether the agreed price was below market price, and therefore entailed an advantage in favour of Masserud.
- (26) Furthermore, ESA had doubts as to whether these measures would be compatible with the functioning of the EEA Agreement.
- (27) ESA identified potential compatibility grounds to declare State aid compatible with the functioning of the EEA Agreement, such as Articles 59(2), 61(2) and (3) of the EEA Agreement. However, since the Norwegian authorities did not invoke any of the compatibility grounds, ESA preliminarily concluded that, to the extent the measures constituted State aid, it had doubts about their compatibility with the functioning of the EEA Agreement.

4 Comments to the Opening Decision

4.1 Comments from the Municipality

- (28) Although the Municipality reiterated that the failure to claim the purchase price was not in line with commercial practices, it argued in its comments that the agreed purchase price was based on market terms.
- (29) As noted above in paragraph 10, the purchase price was determined through negotiations between the parties, considering other market transactions and information from real estate agents. On the basis of the negotiations, the purchase price was set at NOK [3 200 - 3 600] per square meter of usable area ('BRA') ⁽³⁵⁾.
- (30) Following the Opening Decision, the Municipality acquired statistical data, produced by Hadrian, on actual property prices in Lørenskog municipality at the time of negotiation and conclusion of the agreement with Masserud. According to this data, the market price of the land in 2013 (i.e. the year preceding the property sale in January 2014) was NOK 3 200 per square meter BRA ⁽³⁶⁾.
- (31) The Municipality therefore argues that the market price for the property at issue was lower than the price agreed upon by the parties, which was NOK [3 200 - 3 600] per square meter BRA.
- (32) Based on the above, the Municipality contends that the agreed purchase price was in line with real market terms.
- (33) The Municipality declares that the purchase price previously stated to ESA included a number of additional components, namely a stamp duty, registration fees and adjustments based on the consumer price index, which should be disregarded. The Municipality confirms that, in accordance with the provisions of the purchase contract and the information outlined in the deed for the property transfer, the purchase price was NOK 7 709 058 ⁽³⁷⁾.

⁽³⁵⁾ BRA is a Norwegian acronym which means 'useful area' (*Bruksareal* in Norwegian).

⁽³⁶⁾ Document No 1538164.

⁽³⁷⁾ See Document No 1519018.

4.2 *Comments from Masserud*

- (34) According to Masserud, the Municipality's failure to collect payment before the limitation period expired does not constitute State aid.
- (35) Masserud argues that the alleged State aid measure arises due to the rules of the Norwegian Limitation Act, rather than any active waiver or deliberate omission by the Municipality to pursue the claim. The obsolescence of the relevant claim is therefore argued to be a direct result of the limitation rules. Therefore, in Masserud's view, the measure is not imputable to the State.
- (36) Masserud contends that ESA's understanding of the Norwegian Limitation Act and its role in ordinary commercial relationships is incorrect. Further, it submits that ESA's application of the market economy operator principle and its expectations of a 'normal prudent and diligent private creditor' in a comparable situation are incorrect.
- (37) According to Masserud, it is not uncommon for a prudent and diligent private creditor to make errors or to be inactive towards a claim. This is, in fact, the very rationale behind the existence of statutes of limitations.
- (38) Masserud contends that the limitation rules balance the interests of the creditor, the debtor, and the public, applying equally to all creditors, whether private or public. Both private and public creditors are encouraged to settle claims within a reasonable timeframe, as failure to do so risks the claim becoming obsolete once the statutory limitation period expires. The limitation rules therefore acknowledge that not all creditors, whether private or public, pursue their claims promptly.
- (39) According to Masserud, the Municipality's failure to collect the claim within the limitation period must therefore be compared to the actions of a normal private creditor.
- (40) Masserud argues that ESA's preliminary assessment would lead to public creditors having recourse to more methods and greater rights to settle their claims than private creditors, which would not be in line with normal market conditions. Masserud therefore asserts that the limitation of the claim is in line with normal market conditions.
- (41) Masserud agrees with the Municipality that the sale agreement was entered into on market terms. The property transaction is based on a square meter price that is comparable to similar property transactions that took place in the same area during the same period.
- (42) Masserud further explains that the sale of the property at issue was not an isolated transaction between the parties. The property at issue was part of two extensive projects undertaken by the Fjellheim family in the municipality during the relevant period.
- (43) In the Masserud-project, the development of public infrastructure was a prerequisite for the sale of the property at issue.
- (44) Finally, Masserud states that any differences in the purchase price stated by the Municipality and Masserud are due to different interpretations of the calculations in the sale agreement.

4.3 *Comments from the Norwegian authorities*

- (45) The Norwegian authorities generally agree with Masserud's comments regarding the interpretation of the Norwegian Limitation Act and maintain that the obsolescence of the claim in question is solely a consequence of the limitation rules. Therefore, it does not constitute State aid under Article 61(1) of the EEA Agreement.
- (46) The general limitation period is three years, meaning that claims for payment become obsolete after three years from the time the creditor first had the right to demand payment. According to the Norwegian authorities, ESA's preliminary assessment would result in public creditors having access to more methods and greater rights to settle their claims than private creditors, which would be inconsistent with normal market conditions.

- (47) The Norwegian authorities further submit that even if an ideal and diligent creditor should have systems in place to prevent claims from becoming time-barred, this is not the relevant comparison in this context. The Municipality's failure to enforce the claim within the limitation period should be assessed in relation to a typical private creditor. Limitation rules acknowledge that not all creditors, whether private or public, pursue their claims promptly. Therefore, even a normal private creditor may sometimes fail to follow up on claims.

II. ASSESSMENT

5 Presence of State aid

- (48) Article 61(1) of the EEA Agreement 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.'
- (49) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (50) In the following sections, ESA will assess whether the two measures, i.e. (i) the agreed purchase price for the property at issue, and (ii) the Municipality's failure to enforce the claim in time, constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

5.1 Presence of State resources and imputability

5.1.1 Introduction

- (51) Pursuant to Article 61(1) of the EEA Agreement, for a measure to constitute State aid, it must be granted by the State or through State resources. The imputability of a measure to the State and the granting of an advantage through State resources are two separate and cumulative conditions. However, these conditions are often assessed together, as both relate to the public origin of the measure in question ⁽³⁸⁾.
- (52) Regarding imputability, it is necessary to examine whether the public authorities were involved in the adoption of that measure ⁽³⁹⁾. The measure is, by definition, imputable to the State if the advantage is granted by a public authority, even if the authority in question enjoys legal autonomy from other public authorities ⁽⁴⁰⁾.
- (53) State resources encompass all resources within the public sector ⁽⁴¹⁾, including those belonging to intra-State entities, such as decentralised, federated, regional, or other bodies. Therefore, for the purpose of the State aid rules, municipal resources are considered as State resources. Any forgoing of resources that the Municipality would have been entitled to would therefore constitute the forgoing of State resources.
- (54) Masserud and the Norwegian authorities have argued that the Municipality's failure to collect payment for the property at issue is not imputable to the State, as it was the Norwegian Limitation Act that led to the granting of the aid, and not an active waiver or conscious omission from the Municipality. The Norwegian authorities therefore argue that the claim became obsolete as a direct consequence of the limitation rules, and that the failure to enforce the claim is therefore not imputable to the State.

⁽³⁸⁾ ESA's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement ('NoA') (OJ L 342, 21.12.2017, p. 35 and EEA Supplement No 82, 21.12.2017, p. 1), para. 38.

⁽³⁹⁾ Judgment of 3 March 2021, *Poste Italiane*, Joined Cases C-434/19 and C-435/19, ECLI:EU:C:2021:162, para. 40.

⁽⁴⁰⁾ NoA, para. 39.

⁽⁴¹⁾ NoA, para. 48.

5.1.2 *State resources*

- (55) ESA considers that the Municipality's failure to collect or enforce the payment in time mitigated a charge that Masserud was meant to pay for the purchase of public land. This inaction produced the same effect as transferring the public land free of charge to Masserud, with the result that the corresponding revenue was forgone by the Municipality and therefore the State. Accordingly, ESA finds that the failure to claim the payment from Masserud was effectively financed through State resources.
- (56) Likewise, if ESA were to find that the agreed purchase price for the property at issue is not in line with market terms, this would be considered as the Municipality having forgone State resources.
- (57) Accordingly, both measures, namely the agreed purchase price and the Municipality's failure to enforce the claim in time, involve State resources.

5.1.3 *Imputability*

- (58) Furthermore, ESA finds that both the conclusion of the sale agreement at the agreed purchase price and the subsequent failure by the Municipality to claim payment of that price are imputable to the State. This is because the Norwegian authorities were involved in the adoption of these measures (see the case law referred to in paragraph 52).
- (59) ESA observes that, according to established case law, State aid is an objective concept. It is the effect of the measure on the undertaking that is relevant, and not the cause or the objective of the State intervention⁽⁴²⁾. A State may grant an advantage not only through positive action, but also by failing to take action in certain circumstances⁽⁴³⁾. As confirmed by case law, a public creditor may grant State aid by failing to exercise the requisite diligence in enforcing its claims against a debtor. In particular, this is the case where the State passively allows debts to be run up over long periods without the slightest prospect of improvement in the debtor's situation⁽⁴⁴⁾, or where the State tolerates persistent non-payment of debt⁽⁴⁵⁾.
- (60) ESA concludes that a State could effectively grant indirect subsidies by failing to act, such as by allowing claims to expire, as in the present case. In such cases, the effect of the aid granted would be no less real than if the State had actively provided it.
- (61) In this regard, ESA emphasises that State aid rules are intended to ensure thorough scrutiny of all forms of aid, whether active or passive, to prevent distortion of competition in the EEA⁽⁴⁶⁾. Therefore, if States were exempt from accountability for passive or unintended actions, this could create a significant loophole. In such a scenario, a State, municipality or public entity could confer advantages to specific beneficiaries through omission or inaction and thereby circumvent the State aid rules. This would undermine the objectives of State aid control, enabling the State to support certain economic actors without subjecting such measures to the necessary scrutiny or notification procedures. Ultimately, this would erode the safeguards that ensure fair competition within the EEA.

5.1.4 *Conclusion*

- (62) Based on the foregoing, ESA finds that both measures under consideration, i.e. the conclusion of the sale agreement for the property at issue at the agreed purchase price and the subsequent failure by the Municipality to claim payment of that price, are financed through State resources, as they result in forgone State revenue. Furthermore, these measures are directly imputable to the State, as they result from the decisions and inaction of the Municipality.

⁽⁴²⁾ NoA, para. 67.

⁽⁴³⁾ Judgment of 12 October 2000, *Spain v Commission*, Case C-480/98, ECLI:EU:C:2000:559, para. 19.

⁽⁴⁴⁾ Judgment of 15 December 2021, *Oltchim v Commission*, Case T-565/19, ECLI:EU:T:2021:904, paras. 253-255 and 263.

⁽⁴⁵⁾ Judgment of 12 September 2007, *Olympiaki Aeroporia Ypiresies v Commission*, Case T-68/03, ECLI:EU:T:2007:253, paras. 293-294, 414, 434 and 474-475.

⁽⁴⁶⁾ Article 61(1) of the EEA Agreement generally prohibits State aid unless exceptionally justified.

5.2 **Selectivity**

- (63) A measure is selective within the meaning of Article 61(1) of the EEA Agreement if it favours ‘certain undertakings or the production of certain goods’. Not all measures that favour economic operators fall under the notion of aid, only those that grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors ⁽⁴⁷⁾.
- (64) The sale agreement concerns a specific undertaking, Masserud. Moreover, due to the Municipality’s failure to claim payment of the purchase price, Masserud is favoured over other undertakings. Under normal conditions, purchasers of municipal properties would be required to pay the purchase price. The Municipality’s failure to collect the purchase price within the limitation period therefore benefits Masserud over other operators in a similar situation.
- (65) ESA therefore concludes that both measures under consideration benefit a single undertaking, Masserud, and are therefore selective.

5.3 **Conferring an advantage on an undertaking**

5.3.1 *Introduction*

- (66) 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, that is to say, in the absence of State intervention ⁽⁴⁸⁾. As previously noted, only the effect of a measure on the undertaking is relevant, not the cause nor the objective of the State intervention ⁽⁴⁹⁾.
- (67) The beneficiary of both measures under consideration is Masserud. Masserud carries out an economic activity, namely developing and selling real estate. It is therefore an undertaking.
- (68) In the Opening Decision, ESA preliminarily concluded that the measure appeared to confer an advantage on Masserud. ESA found that the advantage may have been twofold, potentially stemming: (i) from the purchase price being below market value, and (ii) from the non-payment of the purchase price (due to the non-enforcement of the claim by the Municipality). Accordingly, ESA will, in the subsequent assessment, first consider whether the purchase price was in line with market terms or whether it itself conferred an advantage in favour of Masserud, and second, whether the non-payment of the purchase price provided an advantage to Masserud.

5.3.2 *Purchase price*

- (69) In the Opening Decision, ESA had doubts as to whether the purchase price may have been below market price and therefore entailed an advantage in favour of Masserud ⁽⁵⁰⁾.
- (70) ESA observes that both the Municipality and Masserud submit that the sale agreement was market conform. Furthermore, based on the information provided by Masserud and the Municipality, there is no dispute between the parties related to the amount of the purchase price.
- (71) ESA notes that economic transactions carried out by public bodies do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions ⁽⁵¹⁾. In order to make this assessment, a concept known as the ‘market economy operator principle’ has been developed by the EEA courts.

⁽⁴⁷⁾ NoA, para. 117.

⁽⁴⁸⁾ Judgment of 11 July 1996, *Syndicat français de l'Express international (SFEI) and others v La Poste and others*, Case C-39/94, ECLI:EU:C:1996:285, para. 60; judgment of 29 April 1999, *Spain v Commission*, Case C-342/96, ECLI:EU:C:1999:210, para. 41; judgment of 16 May 2002, *France v Commission (Stardust Marine)*, Case C-482/99, ECLI:EU:C:2002:294, para. 69.

⁽⁴⁹⁾ Judgment of 2 July 1974, *Italy v Commission*, Case 173/73, ECLI:EU:C:1974:71, para. 13. See also NoA, para. 67, and judgment of 12 October 2000, *Spain v Commission*, Case C-480/98, ECLI:EU:C:2000:559, para. 16, and the case law cited.

⁽⁵⁰⁾ See para. 41 of the Opening Decision.

⁽⁵¹⁾ NoA, para. 74.

- (72) The decisive element of the market economy operator test is whether the public bodies acted in the same manner a market economy operator would have in a similar situation. Whether a State intervention is in line with market conditions must be assessed on an *ex-ante* basis, taking into account the information available at the time the intervention was decided upon ⁽⁵²⁾.
- (73) According to established case law, various methods can be used to determine the market price, including selling to the highest bidder or obtaining an expert report. However, it cannot be excluded that other methods could also produce the same result ⁽⁵³⁾. Additionally, when the valuation is carried out *ex post*, the assessment must reflect the market value of the land at the time of the transaction ⁽⁵⁴⁾.
- (74) In the assessment, ESA must determine whether the alleged aid beneficiary could have obtained a comparable advantage from a prudent and diligent private operator under normal market conditions. If ESA cannot show that the beneficiary would manifestly not have received such an advantage, it must conclude that the transaction was made on market terms ⁽⁵⁵⁾. Furthermore, ESA can only conclude that an advantage has been conferred if it can demonstrate, based on this assessment, that the beneficiary would manifestly not have obtained a comparable advantage from a prudent and diligent private operator in a situation that is as alike as possible and acting under normal market conditions ⁽⁵⁶⁾.
- (75) In the present case, it is for ESA to carry out an overall assessment, taking into account all relevant evidence in the case enabling it to determine whether Masserud would manifestly not have obtained a comparable price for the land from a comparable private operator ⁽⁵⁷⁾.
- (76) ESA notes that there was no appraisal of the property by an independent expert before the parties agreed to the sale. However, according to both Masserud and the Municipality, the price was determined after negotiations between the parties on the basis of other transactions in the market and information from real estate agents, see paragraph 10.
- (77) As noted above in paragraph 73, the Municipality was not precluded from basing the price on a comparison with similar property transactions, provided that it made it possible to calculate the market value of the property concerned ⁽⁵⁸⁾.
- (78) Moreover, ESA notes that the Municipality has submitted *ex-post* statistical data on actual property prices in Lørenskog municipality at the time of negotiation and conclusion of the agreement with Masserud, see paragraphs 30 to 31. According to this data provided by the Municipality, the market price of the property at issue was NOK 3 200 per square meter BRA, while the price charged by the Municipality was NOK [3 200 - 3 600] per square meter BRA.
- (79) ESA considers that the submitted data supports the Municipality's and Masserud's claim that the sale price was in line with the market value of the land at the time of the transaction.
- (80) In view of the above, ESA concludes that the available evidence does not establish that a prudent and diligent private operator, acting under normal market conditions, would not have entered into a sale agreement similar to the one entered into by the Municipality in a comparable situation. As ESA is unable to demonstrate that the sale agreement between the Municipality and Masserud conferred a manifest advantage on Masserud, ESA is bound to consider the sale agreement to be on market terms.

⁽⁵²⁾ NoA, para. 78.

⁽⁵³⁾ Judgment of 19 October 2023, *TS and HI v Ministar na zemedelieto, hranite i gorite*, Case C-325/22, ECLI:EU:C:2023:793, para. 53.

⁽⁵⁴⁾ *Ibid*, para. 52.

⁽⁵⁵⁾ Judgment of 17 November 2022, *Volotea and easyJet Airline v Commission*, Joined Cases C-331/20 P and C-343/20 P, ECLI:EU:C:2022:886, para 113. See also the judgment of the EFTA Court of 21 March 2024, *Eviny v EFTA Surveillance Authority*, Case E-10/22, paras. 61 and 64.

⁽⁵⁶⁾ *Ibid*.

⁽⁵⁷⁾ Judgment of 26 March 2020, *Larko v Commission*, Case C-244/18 P, ECLI:EU:C:2020:238, para. 29 and the case law stated therein.

⁽⁵⁸⁾ Judgment of 19 October 2023, *TS and HI v Ministar na zemedelieto, hranite i gorite*, Case C-325/22, ECLI:EU:C:2023:793, para. 56.

- (81) Consequently, ESA finds that the purchase price agreed for the property at issue as part of the sale agreement did not confer a manifest advantage on Masserud.

5.3.3 *The non-enforcement of the claim*

- (82) As stated above in paragraph 66, the State aid rules do not distinguish between measures of State intervention by reference to their causes or aims but define them in relation to their effects. Therefore, even if the measure is a result of the Norwegian Limitation Act, it can effectively provide an advantage, as it would relieve the concerned undertaking from a charge it would ordinarily be required to pay.
- (83) ESA considers that the measure has provided Masserud with additional liquidity in the amount of NOK 7 709 058. This resulted from Masserud being relieved from the obligation to pay the agreed purchase price, thereby effectively acquiring the property at issue free of charge. It is manifest that Masserud would not have been in a position to enter into a similar transaction under normal market conditions.
- (84) Therefore, ESA finds that the Municipality's failure to enforce the claim in time conferred an economic advantage on Masserud, which it would manifestly not have obtained under normal market conditions.
- (85) Both Masserud and the Norwegian authorities have argued that the Municipality must be compared to a 'normal private creditor' that may sometimes fail to follow up on claims.
- (86) In this regard, ESA considers that, as far as non-recovered public debts are concerned, the measure of the public bodies must be compared to that of a private creditor that is seeking to obtain payment of sums owed to it by a debtor. The EEA courts have developed the 'private creditor test', comparing the behaviour of a public creditor to that of a hypothetical private creditor in a similar situation ⁽⁵⁹⁾. While the private creditor test is often applied to assess the conduct of a public authority in relation to a debtor that is in financial difficulty, ESA considers the test to be relevant in relation to debtors more generally.
- (87) ESA notes that the private creditor test is an assessment made based on all information liable to have a significant influence on the decision-making process of a normally prudent and diligent private creditor, who is in a situation as close as possible to that of the public creditor and is seeking to recover sums due to it by a debtor ⁽⁶⁰⁾.
- (88) A prudent and diligent private creditor in a situation comparable to that of the Municipality would be expected to enforce its claim for payment in a timely manner. The decisive factor in the application of the private creditor test is whether the measure in question satisfies an economic rationality test, so that a private creditor, seeking to maximise its chances of recovering its claim or, at least, most of that claim, might also agree to take such a measure ⁽⁶¹⁾. More specifically, where a public authority fails to act with the requisite diligence in enforcing its claims against a debtor, for example, by allowing debts to be run up over long periods without the slightest prospect of improvement or by tolerating persistent non-payment, such conduct is not line with that of a prudent and diligent private creditor (see paragraph 59 above).
- (89) Against this background, ESA considers that failing to enforce the claim of NOK 7 709 058 over several years is not a behaviour expected of a prudent and diligent private creditor. The Municipality has not submitted any information to explain its inaction towards its claim or for the delayed reaction. Consequently, ESA cannot find that the Municipality acted as a prudent and diligent creditor comparable to a private creditor.

⁽⁵⁹⁾ NoA, para. 74.

⁽⁶⁰⁾ Judgment of 24 January 2013, *Frucona Košice v Commission*, Case C-73/11 P, ECLI:EU:C:2013:32, para. 78, and judgment of 21 March 2013, *Commission v Bucek Automotive*, Case C-405/11 P, ECLI:EU:C:2013:186, para. 54.

⁽⁶¹⁾ Judgment of 13 December 2018, *AlzChem v Commission*, Case T-284/15, ECLI:EU:T:2018:950, para. 63.

- (90) ESA takes note of the argument by Masserud and the Norwegian authorities that recognising a time-barred claim by a public authority as State aid would deviate from normal market conditions, as it would grant an unfair advantage to public entities over private entities. However, ESA considers that this argument mischaracterises the EEA State aid regime. A finding of State aid requires that all the conditions of Article 61(1) of the EEA Agreement are satisfied. If that is the case and the aid measure is found to be incompatible with the functioning of the EEA Agreement, the obligation to recover unlawful and incompatible aid arises directly from EEA law, independent of national rules on nullity, prescription, or limitation periods ⁽⁶²⁾.
- (91) Consequently, the finding of State aid arising from an advantage granted through the State's inaction, namely, allowing an existing claim to become unenforceable due to the expiry of national limitation periods, does not constitute a special legal privilege for public authorities. It rather reflects the obligations arising directly under the EEA State aid rules and their function in preserving the integrity of the internal market. To characterise this outcome as a form of enhanced recourse for public bodies is to misconstrue the nature of the legal obligation imposed under the EEA Agreement.
- (92) Based on the above considerations, ESA finds that the Municipality's failure to claim the payment for the property at issue in time and thereby granting the property free of charge constitutes an advantage within the meaning of Article 61(1) of the EEA Agreement.

5.4 ***Effect on trade and distortion of competition***

5.4.1 *Overview*

- (93) Public support to undertakings is prohibited under Article 61(1) of the EEA Agreement only insofar as it threatens to distort competition and affects trade between Contracting Parties.

5.4.2 *Distortion of competition*

- (94) Regarding the distortion of competition, it should be noted that, in principle, aid intended to relieve an undertaking of costs it would normally incur in its day-to-day operations or normal activities distorts competition ⁽⁶³⁾. Moreover, a distortion of competition is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽⁶⁴⁾.
- (95) ESA notes that the real estate market in Norway is liberalised. There are several real estate developers active in the market for residential development in Norway, also in Lørenskog. According to the information provided by the Municipality, some of the real estate developers active in Lørenskog are also owned by foreign investors, see paragraphs 20 and 21.
- (96) ESA further observes that Lørenskog is a growing municipality with substantial real estate development. The potential penetration of foreign investors in the real estate investment market in a growing municipality, close to the capital, is therefore not excluded. The measure is therefore liable to distort competition.

⁽⁶²⁾ Judgment of the EFTA Court of 10 May 2011, *The Principality of Liechtenstein and others v EFTA Surveillance Authority*, Joined Cases E-4/10, E-6/10 and E-7/10, para. 141.

⁽⁶³⁾ Judgment of 30 April 2019, *Union des Ports de France v Commission* ('*Union des ports de France*'), Case T-747/17, ECLI:EU:T:2019:271, para. 96.

⁽⁶⁴⁾ NoA, para. 187.

5.4.3 *Effect on intra-EEA trade*

- (97) In that respect, the EEA courts have ruled that ‘where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[EEA] trade, the latter must be regarded as affected by the aid’ ⁽⁶⁵⁾.
- (98) Public support can be considered capable of having an effect on intra-EEA trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other EEA States to enter the market by maintaining or increasing local supply ⁽⁶⁶⁾, or to exercise their right of establishment.
- (99) It is settled case law that ESA is not required to carry out an economic analysis of the actual situation on the relevant markets, or to investigate in detail the impact of the measure on the competitive position of the beneficiary and its competitors ⁽⁶⁷⁾. Nevertheless, an effect on intra-EEA trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between Contracting Parties, based on the foreseeable effects of the measure ⁽⁶⁸⁾.
- (100) Furthermore, there is no threshold or percentage below which it may be considered that trade between Contracting Parties is not affected. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Contracting Parties is affected ⁽⁶⁹⁾.
- (101) ESA notes that the effect on trade cannot be merely hypothetical or presumed. However, ESA is not required to perform an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between the Contracting Parties ⁽⁷⁰⁾. However, it must be established why the measure is liable to have more than a marginal effect on trade between EEA States, based on the foreseeable effects of the measure at the time it was effectuated ⁽⁷¹⁾.
- (102) In that respect, ESA and the European Commission (‘the Commission’) have in a number of decisions considered that certain activities and measures, in view of their specific circumstances, had a purely local impact and consequently no effect on trade between EEA States ⁽⁷²⁾. In those cases, ESA and the Commission found in particular: (i) that the beneficiary supplied goods or services to a limited area within an EEA State and was unlikely to attract customers from other EEA States; and (ii) that it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment ⁽⁷³⁾. A measure is considered not to be liable to affect intra-EEA trade if these two criteria are met.

⁽⁶⁵⁾ NoA, para. 190, and judgment of 14 January 2015, *Eventech v The Parking Adjudicator*, Case C-518/13, ECLI:EU:C:2015:9, para. 66; judgment of 8 May 2013, *Libert and others v Gouvernement flamand*, Joined Cases C-197/11 and C-203/11, ECLI:EU:C:2013:288, para. 77; judgment of 4 April 2001, *Friulia Venezia Giulia*, Case T-288/97, ECLI:EU:T:2001:115, para. 41.

⁽⁶⁶⁾ NoA, para. 191. See also *Union des ports de France*, para. 93. See also judgment of 8 May 2013, *Libert and others v Gouvernement flamand*, Joined Cases C-197/11 and C-203/11, ECLI:EU:C:2013:288, paras. 70-72 and 78-79 (in a case concerning subsidies granted to operators in the property sector).

⁽⁶⁷⁾ NoA, para. 194.

⁽⁶⁸⁾ NoA, para. 195.

⁽⁶⁹⁾ *Union des ports de France*, para. 94. See also judgment of 3 March 2005, *Heiser*, Case C-172/03, ECLI:EU:C:2005:130, paras. 32-33 and 35 (in relation to an adjustment of tax deductions granted to medical practitioners specialising in dentistry).

⁽⁷⁰⁾ Judgment of 15 June 2010, *Mediaset v Commission*, Case T-177/07, ECLI:EU:T:2010:233, paras. 145-146, confirmed on appeal by the judgment of 28 July 2011, *Mediaset v Commission*, Case C-403/10 P, ECLI:EU:C:2011:533.

⁽⁷¹⁾ Judgment of 14 May 2019, *Marinvest and Porting v Commission*, Case T-728/17, ECLI:EU:T:2019:325, para. 106; and judgment of 19 October 2022, *Interessengemeinschaft der Hoteliers und Gastronomen Region 10 e. V. (Ighoga Region 10)*, Case T-582/20, ECLI:EU:T:2022:648, paras. 143 and 169-170.

⁽⁷²⁾ ESA Decision No 459/12/COL, *Bømlabadet Bygg AS*, paras. 31 and 48; ESA Decision No 020/19/COL, *Leangbukten Båttforenings Andelslag*, paras. 29 and 41. Commission Decisions N 258/2000, *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; N 458/2004 *Editorial Andaluza Holding*, OJ C 131, 28.5.2005, p. 12; SA.33243, *Jornal de Madeira*, OJ C 131, 28.5.2005, p. 12 and SA.34576, *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1.

⁽⁷³⁾ NoA, para. 196.

- (103) ESA notes that Masserud argues that the company is a single-purpose entity which has only been involved in the development of the residential area Masserud Gaard, in the municipality of Lørenskog. Since the company's activities are limited to one project, which is, moreover, of smaller size (66 apartments and 26 row houses), Masserud argues that it has no significant market share locally, and a mere marginal presence regionally and nationally.
- (104) In this regard, ESA observes that, as noted in paragraph 100 above, neither the relatively small amount of aid nor the relatively small size of the undertaking which receives it excludes as such the possibility that trade between Contracting Parties is affected.
- (105) Moreover, ESA recalls that Masserud is wholly owned by the real estate group Olavsgaard Gruppen AS. As noted in paragraph 15 above, Olavsgaard Gruppen AS owns around 43 000 m² of commercial properties located in Akershus county, which includes commercial properties (Olavsgaard Hotel and Losby Gods), offices, businesses and apartments. The considerable number of investments made by the real estate group indicates that Olavsgaard Gruppen AS has an established market presence in Akershus county.
- (106) Each development project by Olavsgaard Gruppen AS is managed through a separate single-purpose entity, with Masserud established as a separate legal entity for the development of a single project, Masserud Gaard, see paragraph 16. ESA also notes that the owners of Masserud participated in discussions and meetings with the Municipality when Masserud declared the claim for payment of the property at issue to be obsolete. During these meetings, the owners of Masserud also raised unresolved issues related to other projects carried out by the group (14). These interactions indicate that Masserud is part of the broader corporate structure of Olavsgaard Gruppen AS, which has a significant market presence in a sector exposed to competition ⁽⁷⁴⁾.
- (107) In addition, ESA considers that even if Masserud supplies services in a limited area in Norway (i.e. Akershus county), it operates in a market that has the potential to attract foreign customers. ESA notes that the real estate market in Oslo and its surrounding areas is highly active, with frequent transactions, which was particularly the case at the time of the transaction. As explained by the Municipality, between 2015 and 2021, there was an increase in investment activity in this area, especially in stable commercial properties and in residential real estate, see paragraph 22.
- (108) This further indicates that there was increased demand in areas like Lørenskog, the fifth largest municipality in the Oslo region, which has experienced steady population growth (see Section 2.3). In ESA's assessment, this demand was likely driven not only by the local population but also by entities seeking to invest in or relocate to Lørenskog.
- (109) In light of the attractiveness of the real estate market in Lørenskog, with its proximity to Oslo and Norway's main airport, ESA considers it likely that Masserud may attract customers from other EEA States as well.
- (110) As for the effect on the conditions of cross-border investment or establishment, ESA observes that Masserud is engaged in the development and operation of both commercial and residential real estate. ESA notes that Masserud is wholly owned by the real estate group Olavsgaard Gruppen AS, which has an established presence on the market, owning approximately 43 000 m² of commercial properties in Akershus county.
- (111) Contrary to cases where the Commission and ESA concluded that there was no effect on trade, ESA considers that Masserud has an established position on the market at issue which is not negligible.
- (112) In this regard, ESA also observes that there is international investment and ownership in the Norwegian real estate market. This is particularly the case in Oslo and the surrounding areas, including Akershus. Moreover, according to the statistics provided by the Municipality, there are other developers with foreign ownership active in the same market as Masserud, see paragraph 21 above. The measure has therefore granted Masserud an economic advantage, which could increase its market presence to the detriment of potential foreign investors.

⁽⁷⁴⁾ Judgment of 12 September 2007, *Commission v Italy*, Joined Cases T-239/04 and T-323/04, ECLI:EU:T:2007:260, para. 68.

- (113) Considering the above, ESA finds that that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment.
- (114) ESA therefore finds that the property transfer in question affects the conditions of cross-border investment and establishment to more than a marginal extent and consequently affects trade between Contracting Parties.

5.5 Conclusion

- (115) In light of the above, ESA concludes that State aid in the amount of NOK 7 709 058 was involved in the property sale to Masserud. Specifically, ESA finds that while the conclusion of the sale agreement for the property at issue at the agreed purchase price does not constitute State aid, the Municipality's subsequent failure to enforce its claim under that agreement does amount to State aid within the meaning of Article 61(1) of the EEA Agreement.

6 Procedural requirements

- (116) Pursuant to Article 1(3) of Part I of Protocol 3 SCA: 'The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.'
- (117) The Norwegian authorities failed to notify the measure to ESA, and so did not respect their obligations under Article 1(3) of Part I of Protocol 3 SCA. The aid is therefore unlawful pursuant to Article 1(3) of Part I of Protocol 3 SCA.

7 Compatibility of the aid

- (118) It follows from Article 61(1) of the EEA Agreement that, unless provided otherwise, State aid measures are incompatible with the functioning of the Agreement. The Norwegian authorities have not put forward any arguments to the effect that the concerned measures amount to compatible aid.
- (119) The derogation under Article 61(2) of the EEA Agreement is inapplicable as the aid is not furthering any of the aims listed in this provision. For the same reason, Article 61(3)(a) and Article 61(3)(b) of the EEA Agreement do not apply to the case at hand.
- (120) With regard to Article 61(3)(c), ESA notes that the measure found to constitute State aid in Section 5 above involves the transfer of public property free of charge. However, there appear to be no specific economic activities that the compensation was intended to induce. It follows from settled case law that aid that improves the financial situation of the beneficiary, without being necessary to achieve the objectives specified in Article 61(3) of the EEA Agreement, cannot be considered compatible with the EEA Agreement ⁽⁷⁵⁾. Therefore, as the transfer of the property was not necessary to induce any specific economic activities, it is incompatible with Article 61(3)(c) of the EEA Agreement.
- (121) As for the derogation in Article 59(2) of the EEA Agreement, ESA observes that Masserud does not have a public service obligation to discharge with respect to the concerned services. Since the compensation is not granted in respect of an undertaking entrusted with a service of general economic interest, the derogation in Article 59(2) of the EEA Agreement is not applicable.
- (122) On the basis of these considerations, ESA finds that the sale by the Municipality of the property at issue without claiming the purchase price in time cannot be declared compatible with the functioning of the EEA Agreement.

8 Conclusion

- (123) On the basis of the foregoing assessment, ESA concludes that the Norwegian authorities have unlawfully implemented the aid in question in breach of Article 1(3) of Part I of Protocol 3 SCA. The aid is not compatible with the functioning of the EEA Agreement.

⁽⁷⁵⁾ Judgment of 15 April 2008, *Nuova Agricast Srl v Ministero delle Attività Produttive*, Case C-390/06, ECLI:EU:C:2008:224, para. 68 and the case law cited.

9 **Recovery**

- (124) The EFTA Court has held that the obligation to abolish incompatible aid is designed to re-establish the previously existing situation ⁽⁷⁶⁾. That objective is attained once the recipient has repaid the amounts granted by way of unlawful and incompatible aid, thereby forfeiting the advantage it enjoyed over its competitors ⁽⁷⁷⁾.
- (125) Part II of Protocol 3 SCA contains detailed rules on recovery. In keeping with case law, its Article 14 establishes an obligation on ESA to order recovery of unlawful and incompatible aid unless this would be contrary to a general principle of EEA law. It also provides that the State concerned shall take all necessary measures to recover unlawful aid that is found to be incompatible.
- (126) ESA takes the view that no general principles preclude repayment in the present case. According to settled case law, abolishing unlawful aid by means of recovery is the logical consequence of a finding that the aid is not lawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the EEA Agreement in regard to State aid.
- (127) As a general rule, and save in exceptional circumstances, ESA will not exceed the bounds of its discretion if it requires the EFTA State concerned to recover the sums granted by way of unlawful aid since it is only restoring the previous situation ⁽⁷⁸⁾. Moreover, in view of the mandatory nature of the supervision of State aid by ESA under Protocol 3 SCA, undertakings to which aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in the provisions of that Protocol ⁽⁷⁹⁾. There are no exceptional circumstances apparent in this case which could have led to legitimate expectations on the side of the aid beneficiary.
- (128) ESA notes that, pursuant to Article 15 of Part II of Protocol 3 SCA, ESA's power to recover State aid is subject to a limitation period of ten years. Although national limitation rules generally apply when national authorities recover unlawful aid on their own initiative ⁽⁸⁰⁾, this does not prevent the aid being recovered at a later stage pursuant to a decision adopted by ESA. Accordingly, even if a national limitation period has expired in the present case, ESA can still examine the lawfulness of the measure and order recovery, within the ten-year period set out by Article 15 of Part II of Protocol 3 SCA ⁽⁸¹⁾.
- (129) ESA further notes that, pursuant to Article 15(2) of Part II of Protocol 3 SCA, the limitation period is interrupted by any action taken by ESA with regard to the unlawful aid. In this regard, ESA observes that it forwarded the complaint to the Norwegian authorities for comments on 7 September 2022, thereby effectively interrupting the limitation period. As a result, the ten-year limitation period has not expired in this case, and ESA retains the power to order recovery of the unlawful aid.
- (130) Pursuant to Article 14(2) of Part II of Protocol 3 SCA, the recoverable aid shall include interest calculated from the date on which the aid was at the disposal of the beneficiary until the date of its recovery. In this case, ESA considers that the aid was put at Masserud's disposal at the time when the Municipality's claim became obsolete pursuant to the Norwegian Limitation Act, since this resulted in the Municipality's definitive failure to enforce its claim. As provided in Article 14(3) of Part II of Protocol 3 SCA, recovery shall further be effected without delay and in accordance with the applicable procedures under national law. Those national procedures must allow the immediate and effective execution of the recovery decision.

⁽⁷⁶⁾ Judgment of the EFTA Court of 10 May 2011, *The Principality of Liechtenstein and others v EFTA Surveillance Authority*, Joined Cases E-4/10, E-6/10 and E-7/10, paras. 141-142; judgment of the EFTA Court of 8 October 2012, *Hurtigruten ASA v EFTA Surveillance Authority*, Joined Cases E-10/11 and E-11/11, para. 286.

⁽⁷⁷⁾ Judgment of 17 June 1999, *Belgium v Commission*, Case C-75/97, ECLI:EU:C:1999:311, paras. 64-65; EFTA Court Judgment of 21 July 2005, *Fesil and Finnjord, PIL and others and Norway v EFTA Surveillance Authority*, Joined Cases E-5/04, E-6/04 and E-7/04, para. 178; and judgment of 7 March 2002, *Italy v Commission*, Case C-310/99, ECLI:EU:C:2002:143, para. 98.

⁽⁷⁸⁾ Judgment of 17 June 1999, *Belgium v Commission*, Case C-75/97, ECLI:EU:C:1999:311, para. 66, and judgment of 7 March 2002, *Italy v Commission*, Case C-310/99, ECLI:EU:C:2002:143, para. 99.

⁽⁷⁹⁾ Judgment of 14 January 1997, *Spain v Commission*, Case C-169/95, ECLI:EU:C:1997:10, para. 51.

⁽⁸⁰⁾ Judgment of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, Case C-387/17, ECLI:EU:C:2019:51, para. 61.

⁽⁸¹⁾ Judgment of 30 April 2020, *Nelson Antunes da Cunha*, Case C-627/18, ECLI:EU:C:2020:321, paras. 50 and 55.

- (131) Additional implementing provisions concerning recovery are included in ESA Decision No 195/04/COL⁽⁸²⁾. ESA has also issued Guidelines on the recovery of unlawful and incompatible aid⁽⁸³⁾.
- (132) The recovery of the unlawful and incompatible State aid of NOK 7 709 058 should include compound interest from the date the unlawful aid was put at the disposal of the beneficiary in accordance with Article 14(2) of Part II of Protocol 3 SCA and Articles 9 and 11 of ESA Decision No 195/04/COL⁽⁸⁴⁾.
- (133) On the basis of the foregoing assessment, and in line with the above provisions on the recovery of unlawful and incompatible aid, ESA has therefore adopted this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The conclusion in January 2014 of the sale agreement for the property at issue at the agreed purchase price does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The granting of the public land free of charge to Masserud Utvikling AS, resulting from Lørenskog Municipality's failure to enforce its claim under the sale agreement entered into in January 2014 with Masserud Utvikling AS, entails unlawful State aid amounting to NOK 7 709 058 which is incompatible with the functioning of the EEA Agreement.

Article 3

The Kingdom of Norway shall take all necessary measures to recover from Masserud Utvikling AS the aid referred to in Article 2 and unlawfully made available to it, deducting any repayment already made.

Article 4

Recovery shall be effected without delay, and in any event by 11 October 2025; and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision.

The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of Masserud Utvikling AS until the date of its recovery.

Interest shall be calculated on the basis of Article 9 of ESA Decision No 195/04/COL⁽⁸⁵⁾.

⁽⁸²⁾ ESA Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, OJ L 139, 25.5.2006, p. 37, and EEA Supplement No 26/2006, 25.5.2006, p. 1, as amended by ESA Decision No 319/05/COL of 15 December 2005 (OJ L 113, 27.4.2006, p. 24), ESA Decision 387/06/COL of 13 December 2006 (OJ L 148, 11.6.2009, p. 35), ESA Decision 789/08/COL of 17 December 2008 (OJ L 340, 22.12.2010, p. 1) and ESA Decision 108/17/COL of 4 July 2017.

⁽⁸³⁾ ESA Decision No 788/08/COL of 17 December 2008 amending, for the sixty-seventh time, the procedural and substantive rules in the field of State aid by introducing a new chapter on recovery of unlawful and incompatible State aid (OJ L 105, 21.4.2011, p. 32), and EEA Supplement No 23/2011, 21.4.2011, p. 1. The Guidelines correspond to the Commission Notice Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (OJ C 272, 15.11.2007, p. 4).

⁽⁸⁴⁾ ESA Decision No 195/04/COL, as amended, see footnote 82.

⁽⁸⁵⁾ ESA Decision No 195/04/COL, as amended, see footnote 82.

Article 5

By 11 August 2025, the Kingdom of Norway shall inform the EFTA Surveillance Authority of the total amount (principal and recovery interest) to be recovered from Masserud Utvikling AS as well as of the measures planned or taken to recover the aid.

By 11 October 2025, the Kingdom of Norway must have executed ESA's decision and fully recovered the aid.

Article 6

This Decision is addressed to the Kingdom of Norway.

Article 7

Only the English language version of this decision is authentic.

Done in Brussels, 11 June 2025.

For the EFTA Surveillance Authority,

Arne RØKSUND
President
Responsible College Member

Stefan BARRIGA
College Member

Árni Páll ÁRNASON
College Member

Melpo-Menie JOSÉPHIDÈS
Countersigning as Director,
Legal and Executive Affairs