



DET KONGELIGE
OLJE- OG ENERGIDEPARTEMENT

EFTA Surveillance Authority
Rue Belliard 35
1040 Brussels
Belgia

Deres ref
Dec. No: 242/11/COL

Vår ref
08/00263-28

Dato
3.11.2011

Response of the Norwegian Government to Reasoned Opinion of The EFTA Surveillance Authority concerning Directive 2002/91/EC on the energy performance of buildings

Reference is made to Reasoned Opinion of the EFTA Surveillance Authority (hereafter "the Authority") of 18 July 2011. The Authority extended the time-limit for response to to 3 November 2011. The response of the Norwegian Government is enclosed.

For the sake of good order the Norwegian authorities inform about the copy right pertaining to Standard Online AS 10/2011 regarding Appendix 4A to the enclosed response from the Norwegian Government: NS 3031:2007 Beregning av bygningers energiytelse - Metode og data/ Calculation of energy performance of buildings - Method and data .

Yours sincerely,

Toril J. Svaan (e.f.)
Deputy Director General

Peter F. Brown
Adviser

Copy:
Attorney General of Norway



**DET KONGELIGE
OLJE- OG ENERGIDEPARTEMENT**

EFTA Surveillance Authority
Rue Belliard 35
1040 Brussels
Belgia

Deres ref
Case No: 67792

Vår ref
08/00263-26

Dato
2.11.2011

**RESPONSE OF THE NORWEGIAN GOVERNMENT TO THE AUTHORITY'S
REASONED OPINION CONCERNING DIRECTIVE 2002/91/EC ON THE
ENERGY PERFORMANCE OF BUILDINGS**

1. INTRODUCTION

Reference is made to the Reasoned Opinion 18 July 2011 delivered by the EFTA Surveillance Authority ("the Authority") in Case No 67792 concerning allegations of noncompliance with Articles 4(3), 7, 8, 9, 10 and 15(1) of Directive 2002/91/EC of 16 December 2002 on the energy performance of buildings ("the Directive").

The Authority maintains that the Kingdom of Norway has failed to correctly implement the said provisions of the Directive by maintaining in force Section 8-2 of the Act of 29 June 1990 No 50 concerning generation, conversion, transmission, trading, distribution and use of energy ("The 1990 Energy Act"); and Sections 5, 9(a), (d), (e) and (f), 11 (b), 12, 13, 14, 15 (3), 16 and 17 (2) of the Regulation 18 December 2009 No 1665 concerning the energy performance of buildings and energy assessment of technical installations ("the EPB Regulation").¹ The Authority has therefore required Norway to adopt measures necessary to comply with its Reasoned Opinion within two months.

¹ In its final review and conclusion on p. 13, the Authority also mentions section 8 among the various provisions of the EPB-regulation that constitute the grounds for considering Norwegian implementation of the Directive to be incorrect. Since section 8 of the EPB regulation is not mentioned in the Authority's assessment of the shortcomings of the EPB regulation in this respect, see Reasoned Opinion pp. 3-13, the Norwegian Authorities consider the reference to the EPB-regulation section 8 to be included in the

The Norwegian Government disagrees with the Authority's conclusion that it has failed to implement Article 10 of the Directive 2002/91/EC regarding the web-based NVE Energy Certificate System ("ECS"); see *Section 2* below. The Government further informs the Authority of its implementation of the Authority's recommendations concerning Articles 4(3), 7, 8, 9, 10 (with regard to inspection of technical systems) and 15 (1); see further *Section 3*.

2. THE WEB-BASED ENERGY CERTIFICATION SERVICE COMPLIES WITH ARTICLE 10 OF THE DIRECTIVE

2.1 Introduction: the ECS system as such satisfies the independence and expertise requirements

Reference is made to section 1.3, p. 7 of the Authority's Reasoned Opinion 18 July 2011. The Authority considers that, "*by allowing self-certification of buildings, and, for existing residential buildings, certification by non-experts*" (p. 10), Norway is in breach of Article 10 of the Directive. The Authority considers that the web-based NVE Energy Certification System does not satisfy the provision's independence and expertise requirements.

The Norwegian Government does not agree with the Authority's assessment. In *section 2.2* below, core aspects of the web-based service are explained: acknowledgment of the facts of the matter is in the opinion of the Government essential for the assessment of compliance with Article 10 of the Directive. Certain other facts are commented upon in *section 2.3*. The Government submits in *section 2.4* the details of its view that the ECS in fact complies fully with the independence and expertise requirements of Article 10 of the Directive.

It must be noted already at the outset that the Government considers the independence and expertise requirements to be satisfied *by the certification system as such*; the situation of the individual user of the web-based ECS is not the central issue with regard to the question of satisfaction of the requirements of Article 10 of the Directive. As will be explained below in *sections 2.2.1* and *2.2.2*, the Norwegian authorities consider the system as being comprised of the highly qualified engineers, economists, data analysts and other professionals who have designed and operate the advanced ESC system. Thus, the Government cannot agree with the Authority's assumption of the facts when the Authority argues in its Reasoned Opinion that "*the owner himself or his employees ... carry out the certification*" (p. 8); that the system allows for "*self-certification*" (pp. 8-9);

Authority's review inadvertently. This conclusion is supported by fact that the Norwegian Authorities are not able to see in which way section 8 of the EPB-regulation does not comply with the requirements of the Directive.

and that the system is based on the premise that the owner personally “holds the required qualifications” (p. 8).

2.2 Core features of the web-based Energy Certification Service

The Government makes reference to the Ministry of Petroleum and Energy’s letter to the Authority 20 December 2010, where the main features of the web-based Energy Certification Service were outlined. The Government would like to expand in the following on its account of the content and functioning of the web-based service; see *sections 2.2.1 and 2.2.2*.

2.2.1 The web-based registration service: a step-by-step explanation

The Ministry of Petroleum and Energy in collaboration with the Norwegian Water Resources and Energy Directorate (“NVE”) has prepared a step-by-step account of the functioning of the web-based service, which includes print-outs of the most central online stages of the ECS web service. The account is enclosed herewith.

Appendix 1: The Energy Certification System, Step by Step.

The functioning of the service may be summarized as follows:

Mode of access to the service:

Users of the Energy Certification System log in through the web portal MinID, which allows the user to be uniquely identified. MinID is an electronic login system to secure a range of internet services in the Norwegian public sector. Communication using MinID is encrypted to secure information from unauthorized usage. For further information on the MinID system see the following:

Appendix 2: Print-out of online description of the MinID system by the Agency for Public Management and eGovernment (Difi) dated 25 May 2011 (accessed online 26 October 2011).

Appendix 3: Print-out of article on MinID on www.wikipedia.org (accessed online 26 October 2011).

The registration process:

The user upon successful login will enter the welcome screen, in which the user is given guidance and information on how to use the service. For each question posed by the web-based service to the user it is possible to click on the “?” icon for guidance on how to enter correct data.

If the user has need for assistance in regards to the registration process, he or she may contact *Enova Svarer*. The state enterprise Enova has been responsible for providing a nationwide informational and advisory service on energy improvements since Enova’s

establishment in 2001. *Enova Svarer* (Enova Answers) is an informational and advisory service which provides free guidance for individuals and professionals by telephone, e-mail and internet chat. When Enova purchased the service through a public procurement process in 2009, Enova included an option to also provide informational and advisory services for NVE's Energy Certification Scheme. The contract was won by Enerconsult, a consultancy company located in Narvik, in cooperation with Norconsult as a subcontractor. The contract specifies the competencies of the employees working with the scheme, including education as an engineer or graduate engineer. The service is divided into two different markets: home owners and the professional market of non residential house owners, advisers etc. *Enova Svarer* has organized a bank of information to ensure quality and consistency in their answering practice.

With the introduction of the Energy Certification System, NVE purchases informational and advisory services from *Enova Svarer* on a per-inquiry basis. The use of the *Enova Svarer* system is a key part of ensuring that the ECS system may be used by individuals for certification of their dwelling. If a non-professional user of ECS desires more information than is provided in the system, the user may contact *Enova Svarer* for cost-free guidance. This cooperation also ensures a seamless service covering energy certification, practical issues on registration in ECS, advice on measures for improvements of energy performance, and information on opportunities for financial support. From 1 July 2010 to 31 June 2011, 11 066 inquiries regarding the ECS had been answered by *Enova Svarer*.

After the login process, the user is requested to fill out his or her contact information; the name of the municipality in which the user's buildings or dwellings are located; and whether the user is to be regarded as a professional or not.

The user next is requested to choose which building to certify. In the event that the user is registered in the national buildings register as the owner of a building, the building in question will show up automatically, as the ECS is directly linked with the national buildings register. This is the official land register of Norway, with its legal basis in Act of 17 June 2005, no. 101.² The purpose of the register is to ensure notoriety in transactions regarding real property, see sections 1 and 4 of the Act, and section 10 of Regulation of 11 March 1995 no. 875.³ The competent registrar is the Norwegian Mapping Authority,⁴ see section 1 of Act of 7 June 1935 no. 2.⁵ The service's direct linkage to the national buildings register allows for the unique identification of the building or dwelling to be certified. The user may also search for other buildings to enter information into ECS for certification on behalf of the owner.

The non-professional user is provided with two alternative certification choices:

² <http://www.lovddata.no/all/hl-20050617-101.html#4>

³ <http://www.lovddata.no/for/sf/md/xd-19951103-0875.html>

⁴ http://www.statkart.no/eng/Norwegian_Mapping_Authority/

⁵ <http://www.lovddata.no/all/hl-19350607-002.html>

- 1) Simple Registration or
- 2) Detailed Registration.

Professional users have two additional choices:

3) A professional may use his own external calculation software if the chosen system can calculate the energy performance of a building according to *NS 3031: 2007 Calculation of energy performance of buildings. Method and data*. NS 3031: 2007 is a standard issued by Standards Norway (Standard Norge), and it is largely based on the European standard EN ISO 13790, developed for the EPBD. Standards Norway is the Norwegian member of CEN and ISO, and issues NS standards based on national, European and international standards. The calculation of energy performance with external software is allowed if the software is validated according to this standard, and can transfer the necessary data to the ECS.

4) A professional may also use ECS to register data for calculation according to NS 3031: 2007. The professional may then enter all values which are necessary for the calculation. The professional may be assisted by indicatory values provided by the system based on so-called libraries (more on libraries below).

Appendix 4 A: Copy of NS 3031: 2007 Calculation of energy performance of buildings. Method and data

Simple Registration allows a homeowner to fulfil his or her duty to have an energy certificate, based on more easily accessible information on his or her dwelling. Users are informed that Simple Certification is suitable only for buildings which have not undergone any energy performance improvements since construction. Also, if the user wishes to add more information, the system encourages the user to opt for the detailed registration. The user is informed that Detailed Registration is suitable for buildings and dwellings which have undergone energy performance improvements, and that this mode of registration allows more information to be entered.

Alternative 1: Simple registration: In the event that the user chooses simple registration, he or she must enter information about the dwelling. The obligatory information on this page includes: building category, building type, year of construction, material of construction, and space area.

On the next page, the user is requested to fill out more information about the dwelling. The information requested by the system is based on the answers the user has filled out in the previous stage.

If the user has indicated that the dwelling is a single-family home, the system requires information about the number of floors in the dwelling and what kind of space is

adjacent to the bottom floor in the dwelling (heated basement part of the dwelling, unheated basement part of the dwelling, heated basement not part of the dwelling, etc.) The information requested varies according to the indicated building type. For example, if the user has indicated that the dwelling is an apartment, the system requests information on where the apartment is situated in the building, i.e. whether it is in a bottom, middle or top floor, and how many heated floors the specific apartment comprises.

The system then requests information about the heating and ventilation systems in the dwelling.

The system next performs a check to ensure that there are no missing or contradicting data. In the next stage, the ECS performs calculations of the energy performance of the building in accordance with the rules set out in NS 3031: 2007, based on the entered information and corresponding library values (see further below).

The user then confirms the information and receives an energy certificate as a pdf file. This is an official certificate available for print or download. The certificate and the entered information are stored in the ECS database for future use and verification.

Alternative 2: Detailed Registration: A homeowner (or a professional) may use the Detailed Registration for obtaining an energy certificate for a dwelling. The Detailed Registration is designed in a flexible manner, and the user may enter information about the characteristics of his or her residence with a customizable degree of detail. The information requested is in most cases observable or measureable by a non-professional user. Examples include window area, number of window glass layers, wall length, shape and height, heating system, and type of foundation. The entered information is translated into energy characteristics through the libraries in the ECS, and these determine the values entered into the energy performance calculation.

For example, it is easy to observe layers of glass in a window and the year of production. The system of libraries includes information about the so-called U-values⁶ of different types of windows. When a user enters information about windows, the system finds correct U-values for use in the energy performance calculation.

If a homeowner does not enter detailed information with regard to certain characteristics of his or her residence, typical values for the building type are entered from the library and used in the calculation, based on the energy requirements from the building's construction year. It is important to observe that the "default values" are deliberately chosen to be conservative values: the user will not have an incentive to choose default values.

⁶ U-values describe how well a building element conducts heat. See <http://en.wikipedia.org/wiki/U-value#U-value> for more information.

The initial information entered in the first screen is the same as in Simple Registration. The obligatory information for this page includes: building category, building type, year of construction, material of construction, and space area.

The user is then requested to specify the shape of the building envelope, for each floor. Furthermore, the user must specify the North-South orientation of the building. Based on the shape and orientation, the user is requested to enter the measurements of each wall and the average height of each room. The user is furthermore requested to specify whether there is unheated space in each floor.

The user may choose to specify details on the construction of the walls, insulation, and windows. If the user does not fill in these details, the ECS will fill in details from the libraries based on equivalent buildings.

If the user has chosen to specify details about the windows, he or she must submit data regarding windows on each floor and wall. The user has a choice of filling out type of window, year of production, or U-value. The user then specifies the window area on each wall. If a user lacks information about the window, he or she may allow the ECS to choose details from the libraries. Similarly, each wall can be divided into zones and specified according to building year or thickness of insulation.

The user may choose to enter details on each outer door. The user then specifies the number of doors and the type of each door.

The user may then choose to enter details on the construction of the roof. The user consequently specifies roof type and thickness of insulation.

The next information the user can provide is the type of on flooring in each floor. The user specifies if the flooring is divided into different areas with diverse qualities, and whether the floor is uniform. The adjacent areas of each floor may then be specified.

If a pressure test has been performed in the dwelling, the test results may be entered. Only buildings and dwellings which have been pressure-tested may achieve the energy grade A. The owner must be able to document this result on demand.

The user may choose to enter information about local solar radiation and wind conditions either for the building as a whole or for individual building elements. Furthermore, the user may choose to specify the geological ground conditions.

The system then requests information about the technical systems such as heating and ventilation. In addition to the information requested under Simple Registration, Detailed Registration includes the option of submitting additional information about the systems.

The user may choose to fill out details on the heating system, including type of thermostat, if the heating system is used for space and/or hot water heating, age of the system, in addition to details on maintenance.

For the certification of dwellings it is optional for the user to enter information about the actual energy usage of the last three years. The user may then enter information concerning actual annual use of each energy carrier. Data for each energy carrier is then converted to kWh and printed as supplementary information on the certificate. In the next stage, the ECS performs validation of input data and calculations of the energy performance of the building based on the entered information, the corresponding library values, and according to the rules in the standard NS 3031: 2007.

The user is presented with a summary of the entered data. The user next confirms the information and receives an energy certificate as a pdf file. This is an official certificate which is available for print or download. The certificate and the entered information are stored in the ECS database for future use and verification.

Issuing of the certificate. Energy Label Grades:

The main indicator of the energy performance of a building is the Energy Label on the energy certificate. The Energy Label has two dimensions, the Energy Grade and the Heating Grade. The Energy Grade is an indicator with an A to G scale. This scale reflects the estimated level of delivered energy required to meet the different needs associated with standardised use – regardless of the number of individuals living on the premises. The Energy Grade takes into account space heating, hot water heating, cooling, ventilation and lighting. The Heating Grade is an indicator with a five step scale with colouring from green to red, and reflects a building/dwelling's possibilities for heating and hot water, i.e. heat pump, solar energy, bio energy fossil fuels or electricity.

The energy certificate includes a list of recommendations for improvement of the dwelling's energy performance, which are based on the information entered in the certification process. The certificate also provides information on how to contact *Enova Svarer*, for further advice or counselling on improvements of energy performance.

2.2.2 Information about the libraries of values for the pre-processing of data in the web-based service

A prerequisite for the ECS system allowing home owners to register their building or apartment is the pre-processing of relevant data. The ECS identifies associated parameters to be used in its energy calculation that are based on the user's input of data found in documents regarding, typically, valuation of buildings in connection with sales or rental processes, in terms of variables such as year of construction, building type, floor area etc.

The parameters are picked from a system of libraries. Acknowledging that the non-professional user may be in need of assistance with regard to correct technical values

needed for calculation, the user is guided through a registration process in which he or she can choose a proper degree of detail according to the complexity of the building and its possible deviation from standard building practice.

The ECS pre-processing being a translation of common building parameters to a set of parameters needed for the energy calculation, the system imposes a constraint on non-professional users' capability to manipulate relevant data. Any asserted improvement of the building is registered in the database, and the most important ones are printed in the certificate to allow verification by buyers or tenants of the building.

The libraries used by the system were independently developed by the reputed consultant firm Multiconsult ASA following a public tender process. Multiconsult was entrusted to produce libraries of data to be used for energy certification, having regard to inter alia the following guiding criteria:

- Values should be based on common Norwegian building practice over the last century. The periods are defined to a large extent according to the development of energy requirements in the building codes. Important milestones have been 1920, 1940, 1954, 1969, 1979, 1987, 1997 and 2009. Values should as far as possible be based on practice according to historical building codes and the acknowledged Building Research Design Guides, which are published over a 50-year period by SINTEF Building and Infrastructure⁷. If needed these values should be adjusted to correspond with acknowledged general practice and not a theoretical target which may diverge from practice.
- Simple registration should be based on a simplified building model. Values should represent the typical buildings from the various periods. Values should preferably be conservative side, encouraging the users to register more details, an incentive to improve the score in the energy certificate.

It should be observed that Multiconsult is an experienced consulting group with wide competence in relation to building practices and the development of new technologies. The libraries used in the ECS are open for comments and proposal for improvements. The library values are also to be revised continually based on new knowledge and new requirements.

Multiconsult prepared, as a result of the outcome of the public tender, a comprehensive memorandum to the NVE on the library values used in the web-based service. Although written in Norwegian, the memorandum is enclosed herewith to show the high level expertise reflected in the web-based certification system. The Authority is especially encouraged to take note of the information provided in section 2.1 of the memorandum,

⁷ Sintef Byggforsk: <http://www.sintef.no/home/Building-and-Infrastructure/This-is-SINTEF-Building-and-Infrastructure/>

in which it is stated that Multiconsult based its Memorandum on various objective research data from acknowledged research organisations, inter alia SINTEF Building Research Design Guides, the Norwegian Standard NS 3031:2007⁸, other national and international standards, as well as experience data from documented sources. The Building Research Design Guides has a unique position in Norway as reference for the whole building industry as to how details in the building process should be handled.

Appendix 4 B: Multiconsult: “Biblioteker til energimerkeordningen. Oversikt over biblioteker”, memorandum as of 14 October 2009.

Please also find examples of core libraries used in the system (in Norwegian only):

Appendix 5: Library on building constructions – walls (1): Simple registration based on year of construction.

Appendix 6: Library on building constructions – walls (2): Detailed registration including mode of construction

Appendix 7: Library on building constructions – windows (1): Simple registration based on year of construction.

Appendix 8: Library on building constructions – windows (2): Detailed registration based on mode of construction.

Appendix 9: Library on ventilation systems and temperature efficiency.

Further, the following charts (in English) provide an overview of how the libraries are used in the system.

Appendix 10: Print-out of foils illustrating the role of libraries in the system.

2.3 Other observations on relevant facts

The Government would also like to submit its views on other facts of relevance for the Authority’s assessment of Norway’s compliance with Article 10 of the Directive.

2.3.1 The Authority’s use of sources as evidence of Norway’s views on conformity with the Directive

The Government refers to p. 10 of the Authority’s Reasoned Opinion 18 July 2011, in which the Authority cites statements made by “*senior representative from NVE in the press*” as well as statements made in relation to the Concerted Action EPBD as of April 2011, as evidence of Norwegian authorities’ views on the extent to which the web-based certification system is to satisfy the criteria set forth in Directive 2002/91/EC.

The Government would like to make the following observations. Firstly, the statements found in the Concerted Action document reflect opinions on policy ideals; they do not by the same token indicate Norwegian authorities’ official view of compatibility with the legal requirements set out in Article 10 of the Directive; nor shall they be understood as

⁸ <http://www.standard.no/en/About-us/Standards-Norway/>

acknowledgments of Norway's official view on its compliance with the EEA Agreement and its various parts. The official view of the Kingdom of Norway is found in the Government's correspondence with the Authority; that includes the present written response.

Secondly, the Government observes that the Authority seems to regard statements made by employees of the NVE in an article published in the magazine for member organisations of the Norwegian Facility Administration Association (Norges Bygg- og Eiendomsforening). The Government is not familiar with any international rules of attribution that equates statements of individual public officials found in articles published in unofficial membership journals with the official views of public authorities on the same authorities' compliance with international legal norms.

2.3.2 Sanctions following the registration of incorrect data in the web-based system
The Norwegian legal system provides for legal sanctions in cases in which the owner of a building, in spite of the mechanisms set in the system to avoid fraud, see *sections 2.2.1* and *2.2.2* above, succeeds in furnishing the ESC with incorrect data. This could lead to procurement of misleading certificates. The Government would like to direct the Authority's attention to the following sanctions, which in the opinion of the Government amplifies the system's compliance with the independence and expertise requirements of Article 10 of the Directive:

The imposition of fines by the NVE for entering incorrect data:

Firstly, the 2009 EPD Regulation in section 21 states as follows⁹:

Ved overtredelse av bestemmelsene i § 4 til § 8 og § 12 til § 17 kan NVE ilegge overtredelsesgebyr i medhold av energiloven § 10-7.

In English this may be translated as follows:

In case of violation of the provisions in sections 4 to 8 and sections 12 to 17 the NVE may issue an infringement penalty in accordance with the Energy Act section 10-7.

Section 10-7 of the 1990 Energy Act provides¹⁰:

§ 10-7. (Overtredelsesgebyr)

Departementet kan ilegge overtredelsesgebyr til den som forsettlig eller uaktsomt overtrer eller medvirker til overtredelse av:

⁹ <http://www.lovdatab.no/for/sf/oe/xe-20091218-1665.html>

¹⁰ http://www.lovdatab.no/cgi-wift/wiftldles?doc=/app/gratis/www/docroot/all/nl-19900629-050.html&emne=energilov*&&

1. kapittel 3-9, § 10-1 annet og tredje ledd første punktum eller § 10-2, samt pålegg gitt i medhold av disse bestemmelsene når det i pålegget er særskilt bestemt at overtredelse kan medføre overtredelsesgebyr.
2. forskrifter eller konsesjonsvilkår gitt i medhold av bestemmelser som nevnt i nr. 1, § 10-1 sjette ledd og § 10-6, samt pålegg gitt i medhold av disse, når det er særskilt bestemt at overtredelse kan medføre overtredelsesgebyr.

Ilagt gebyr er tvangsgrunnlag for utlegg. Krav på gebyr innkreves av Statens innkrevingsssentral. Innkrevingsssentralen kan inndrive kravet ved trekk i lønn og andre lignende ytelser etter reglene i dekningsloven § 2-7. Innkrevingsssentralen kan også inndrive kravet ved å stifte utleggs pant for kravet dersom pantretten kan gis rettsvern ved registrering i et register eller ved underretning til tredjeperson, jf. panteloven kapittel 5, og utleggsforretningen kan holdes på Innkrevingsssentralens kontor etter tvangsfullbyrdelsesloven § 7-9 første ledd.

This may be translated as follows:

§ 10-7. (Infringement penalty)

The Ministry may issue infringement penalty to whom deliberately or negligently violates or contributes to violation of:

1. *Chapter 3-9, section 10-1 second and third paragraph, first sentence or section 10-2, including impositions issued on basis of these provisions, when the imposition explicitly orders that violation may entail infringement penalty.*
2. *Regulations or license terms issued in accordance with the provisions mentioned in no. 1, section 10-1, sixth paragraph and section 10-6, including impositions issued on basis of these provisions, when the imposition explicitly orders that violation may entail infringement penalty.*

Fined penalty is basis for enforcement of distraint. Claim for infringement penalty is collected by the Norwegian National Collection Agency. The Agency may collect the claim by deduction of the salary or other similar payments in accordance with the rules in Creditors Recovery Act, section 2-7. The Agency may also collect the claim by charge created by distress mortgage if the mortgage is given legal protection by registering in a register or by information to a third party, ref. law of mortgage chapter 15, and the distraint may take place in the premises of the Collection Agency in accordance with Act on compulsory accomplishment, section 7-9, first paragraph.

It should be observed that section 12 of the EPD Regulation provides certain minimum requirements for the registration of an energy certificate. The provision thus states:

Eier av bolig eller bygning plikter å sørge for at nødvendig og korrekt informasjon blir registrert i energimerkesystemet slik at energiattest kan utstedes av NVE.

Registrering gjøres av eieren selv eller den eieren gir fullmakt.

For yrkesbygg og nye boliger og bygninger som omfattes av § 5 til § 8 gjelder kompetansekravene som stilles i § 18 for gjennomføring av registreringen.

This may be translated as follows:

The owner of dwelling or building is obliged to provide for that necessary and correct information is registered in the energy certificate system, so that an energy certificate may be issued by the NVE.

The registration is done by the owner or by power of attorney.

For non-residential buildings and new dwellings comprised by sections 5 to 8 applies the competence requirements set in section 18 for carrying out the registration.

The NVE has the authority to impose fines on individuals who enter incorrect data in the ECS, see section 21 of the EPBD regulation.

Contract law based sanctions in instances of sale or other forms of transfer of rights:

Secondly, according to Norwegian contract law, the buyer is entitled to make use of a series of sanctions in case the building bought is not in accordance with the expectations following the purchase agreement, see Act of July 3 1992 no 93 of realization of real estate (Realization of Real Estate Act).¹¹ Fraud by part of the seller consisting in deliberately entering wrong data to the ECS may result in the issuing of a falsely high grade on the energy label in the energy certificate. This mismatch between expectation of the energy efficiency of the building and an actual lower efficiency level, will entitle the buyer to assert, inter alia, reduction in the payment, compensation, correction of the energy efficiency level of the building on the expense of the seller, or the buyer may withhold part of the payment for the property, see Realization of Real Estate Act sections 4-10, 4-12, 4-14 and 4-15.

2.3.3 The approach to the implementation of the Directive in EU Member States

The Norwegian Government considers it a relevant fact for the Authority's assessment of compliance with Article 10 of the Directive how certain EU Member States have implemented the Directive.

To the knowledge of the Norwegian Government, as many as 16 EU Member States have been subject to the Commission's assessment of compliance with the Directive.¹² Denmark and Germany are not among those States having received either a formal

¹¹ <http://www.lovdatab.no/all/hl-19920703-093.html#map003>

¹² See details at http://ec.europa.eu/energy/infringements/proceedings/efficiency_en.htm.

notice or a reasoned opinion due to lack of transposition or incorporation of the Directive. The Norwegian Government submits that the arrangements in these States may be presumed by the Commission to comply with the Directive. It is important to observe that these States have adopted simplified schemes regarding certification. Their simplification concerns in particular the challenge of certifying existing residential buildings. The Authority is encouraged to take cognizance of the following facts:

In *Denmark*, all houses constructed within the last 25 years may get an energy certificate without a prior on site visits by an expert. It suffices that the owner declares that no important modifications to the building have been undertaken. Reference is made to section 7 of the Danish EPBD implementation regulation. Reference is made to section 4 of the Danish regulation.¹³

Germany has adopted a system with a whole range of energy performance certificates, the cheapest option of which is a simplified registration process based on input of data provided by the owner.¹⁴

2.3.4 Towards simplified procedures in the EPBD recast

Article 11(7) of the recast directive on the energy performance of buildings (2010/31/EU of 19 May 2010) provides for a simplification of the requirements for issuing an energy certificate.¹⁵ On certain conditions, an energy certificate may be issued for a building based on the data of a building of “similar design and size”:

Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.

The Government considers that this evolvement of standards echoes societal and other needs for simplified measures in order to secure that the EPBD Directive’s overall aims are reached effectively. The recast should be regarded as an expression of what is viable also with regard to the implementation of the 2002 Directive.

2.3.5 The future potential of an internet-based certification scheme

¹³ <http://www.ens.dk/da-dk/info/nyheder/nyhedsarkiv/2011/sider/20110201nyebekendtgorelserenergibesparelserbygninger.aspx>; see also: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135640>

¹⁴ Energy performance Certificates across Europe. From design to implementation, Buildings Performance Institute Europe, 2010. (http://dl.dropbox.com/u/4399528/BPIE/BPIE_EPC_report_2010.pdf)

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0013:0035:EN:PDF>

Online certification procedures represent an innovative implementation of Article 10 of the Directive; it is a solution for the future. In Commission Communication COM/2011/0109 final Energy Efficiency Plan 2011, under the heading “*Empowering consumers with new technology*”, the Commission in the third paragraph states the following:

... New services will emerge around the development of smart grids, permitting ESCOs and ICT providers to offer services to consumers for tracking their energy consumption at frequent intervals (through channels like the internet or mobile phones) and making it possible for energy bills to indicate consumption for individual appliances.

It is possible to imagine a wide range of positive energy efficiency effects of having the certification procedure through the internet. This connection is facilitated much by the fact that the data in connection with each building is stored and available through internet. The future possibilities of connecting energy efficiency schemes to the ECS, promoting the objectives of the EPBD, must be said to represent arguments for considering the ECS scheme to be in compliance with the EPBD.

In this respect, it may be illustrative to draw the attention of the Authority to an Energy Efficiency Calculator, under development in a joint project by NVE and Enova, as a further informational instrument based on the ECS. The Calculator will be available on the web, and will allow the home owners to take the result from an official or imaginary certificate to see how different measures to improve the dwelling’s energy performance will affect the Energy Label. The user may evaluate the effect of, for instance changing to high-performance windows or to certain types of heat pumps.

2.4 The web-based service complies with Article 10 of the Directive

The Norwegian Government submits that the web-based service, as detailed above, fully complies with Article 10 of the Directive. The Government disagrees with the Authority’s conclusion as well as the mode of reasoning upon which it is based.

2.4.1 The wording of Article 10 of the Directive

The Government at the outset observes that the wording of Article 10 represents the starting point for the assessment as to whether the Norwegian ECS satisfies the independence and expertise requirements set forth. The provision states as follows:

Article 10. Independent experts

Member States shall ensure that the certification of buildings, the drafting of the accompanying recommendations and the inspection of boilers and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts, whether operating as sole traders or employed by public or private enterprise bodies. [emphases added]

With regard to the provision's wording, the Authority argues in its Reasoned Opinion (at p. 8) that

... if Directive 2002/91/EC had intended to allow self-audit and self-certification of energy performance of buildings, it would have provided so explicitly, or, at the very least, not required the certification to be "carried out in an independent manner".

The Government disagrees with the Authority's approach. What Article 10 requires is that the "*certification of buildings*" is "*carried out in an independent manner*" and that this "*certification*" should be undertaken by "*qualified ... experts*". Had the directive intended it to be a requirement that the procurement of data on the basis of which the certificate is issued must be undertaken by on-site visits by individuals other than the owner personally, it would have provided so in explicit terms. Contrary to what the Authority suggests, Article 10 of the Directive merely requires the process of certification to be independently and expertly secured ("*in an independent manner ... by qualified ... experts*"). As long as the system itself is based on expertise and its independence is secured, such as in the web-based system, Article 10 cannot be understood so as to preclude the possibility of the individual owner to provide input of verifiable data.

The Government in other words submits that the web-based system set up by Section 12 of the EPBD Regulation lies safely within the textual boundaries referring to the requirements of independence and expertise in Article 10 of the Directive. With regard to the independence and expertise of the system and the certification process, the Government makes reference to the detailed account of the content and functioning of the web-based service above in *sections 2.2.1 and 2.2.2*.

2.4.2 The Objectives of Article 10 of the Directive: Credibility and quality

The Authority draws in its Reasoned Opinion on the objectives of Article 10 in support of its view that Norway has not satisfied the independence and expertise requirements. The Authority argues that independence "*contribute to the credibility and quality of ... a certification scheme*" (p. 8). Further, the Authority seems to suggest that the expertise requirement serve the purpose of procuring "*more accurate, more reliable and better quality certificates*" (p. 10). The Government is not in disagreement with these general observations. As stated above in *section 2.1*, the Government is of the firm opinion that the system as such represents the requisite independence and expertise, and that the system as described above unquestionably serves as means to meet the objectives of credibility and quality.

Moreover, the Government would like to point out that the web-based solution as described above was chosen exactly for the purpose of assuring independence and reliability. As stated in the preparatory works to the amendment to the 1990 Energy Act implementing the Directive in section 3.1.3 (pp. 11-12 of Ot. prp. nr. 24 (2008-2009) *Om*

lov om endringer i lov 29. juni 1990 nr. 50 om produksjon, omforming, overføring, omsetning, fordeling og bruk av energi m.m. (energiloven):

3.1.3 WEB-verktøyet

Departementet ønsker at beregningene av bygningers og boligers energitilstand skal skje slik at energiattestene er mest mulig sammenlignbare og at vurderingene, inkludert karakteren, gir tillit i markedet. Beregningene av bygningenes energitilstand vil i all hovedsak skje i tråd med den nye standarden NS 3031 «Beregning av bygningers energiytelse. Metode og data», og på den måten sikre at de samme prinsipper for beregning brukes for forskjellige bygninger, og at grunnlaget for energimerkingen og vurderingen av byggeforskriftenes energikrav langt på vei er det samme. Et felles webverktøy vil også sikre at utstedelsen av energiattester skjer fra ett sted og at de lagres i en felles database. [emphasis added]

This translates as follows in English:

3.1.3 The WEB-tool

The Ministry wishes that the calculations of energy conditions of the buildings and dwellings shall be carried out in such a way that the certificates are to the most possible extent comparable and that the assessments, including the label grade, give rise to reliability in the market. The calculations of the energy condition of buildings will mainly be carried out in accordance with the new standard NS 3031 "Calculation of the energy performance of buildings. Methods and data", and in this way ensure that the same principles for calculation are used for different buildings, and that the basis for the energy certification and assessment of the energy requirements in the buildings regulations to the most possible extent are the same. One common web tool will also ensure that the certificates are issued from the same place, and that they are saved in a common database. [emphasis added]

The preparatory works in question are enclosed in their entirety for the Authority's information.

Appendix 11: Copy of Ot. prp. nr. 24 (2008-2009).

A system based on numerous different experts' deliberations and assessments will inevitably give rise to the possibility of different ways of weighting different data and terms that form the basis for the final energy certificate. For the Norwegian authorities it has been a core consideration to ensure the same weighting and assessment of data to achieve predictability and notoriety in the ECS. The ECS makes it possible to see how the different data have influenced on the final energy performance grade of the building. It must be said to be obvious that such notoriety and predictability in the assessment is not possible to obtain when numerous different physical professionals issue certificates according to their own personal assessment and deliberation. The lack

of quality and reliability that this may entail for energy certificates has been approached as a problem that must be handled in the EU, see Commission staff working document *Accompanying document to the proposal for a recast of the energy performance of buildings directive – Summary of the impact assessment*.¹⁶ The Commission states the following concerning the lack of quality of some energy certificates in a system based on certification by numerous on-site visiting professionals:

B: Energy performance certificates

The certificates, which are already mandatory under the current EPBD, can be a powerful tool to create a demand-driven market for energy efficient buildings, as they allow economic agents to estimate costs in relation to energy consumption and efficiency. However, in practice some certificates issued are not of satisfactory quality, or they are not systematically made available during property transactions. These significantly restrict the real impact of the certificates. [emphasis added]

Option B1: Quality and compliance requirements for certificates. It is proposed that a requirement for random sampling checks of the certificate's quality and the compliance with the building energy codes is carried out by public authorities or accredited institutions. This would ensure that the information in the certificates is of good quality and reliable ...

The weaknesses of the present regimes for issuing certificates of energy performance of buildings constitute part of the background for the enactment of Article 18, cf. Annex II to the Directive 2010/31/EU of 19 May 2010 (EPBD recast)¹⁷:

*Article 18 **Independent control system***

Member States shall ensure that independent control systems for energy performance certificates and reports on the inspection of heating and air-conditioning systems are established in accordance with Annex II. Member States may establish separate systems for the control of energy performance certificates and for the control of reports on the inspection of heating and air-conditioning systems. ...

ANNEX II

Independent control systems for energy performance certificates and inspection reports

¹⁶ {COM (2008)780 final} {SEC (2008)2864} / * SEC2008/2865*/, Page 5, Section B, Option B1 (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2865:FIN:EN:PDF>).

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0013:0035:EN:PDF>

1. *The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the energy performance certificates issued annually and subject those certificates to verification.*

The verification shall be based on the options indicated below or on equivalent measures:

(a) validity check of the input data of the building used to issue the energy performance certificate and the results stated in the certificate;

(b) check of the input data and verification of the results of the energy performance certificate, including the recommendations made;

(c) full check of the input data of the building used to issue the energy performance certificate, full verification of the results stated in the certificate, including the recommendations made, and on-site visit of the building, if possible, to check correspondence between specifications given in the energy performance certificate and the building certified.

2. *The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the inspection reports issued annually and subject those reports to verification.*

The ECS solution adopted by Norwegian authorities abates some of the weaknesses of the present Directive regime as addressed by the Commission. The web-based ECS system ensures that the energy certificates – because of the data generating process – within the Norwegian system are subject to the same assessments and deliberations, and thus all are of the same high quality, and comparable. The possibility of comparing certificates issued must be regarded as a viable means to ensure reliability.

The Norwegian authorities would also like to draw attention to the following statements in the report “*Energy performance Certificates across Europe. From design to implementation, Buildings Performance Institute Europe, 2010*”¹⁸ page 14.:

“From the above, it is clear that the assessment process can be improved in terms of its reproducibility by simplifying the data acquisition and subsequently increasing the number of default values required for the calculation. “

This, seen in connection with the built-in mechanism in the ECS to reduce the possibility of input of contradicting data, see section 2.2.1 above, entails that the Norwegian ECS in total must be said to ensure credibility and quality, and thus be in accordance with the objectives of the article 10 of the Directive.

¹⁸ (http://dl.dropbox.com/u/4399528/BPIE/BPIE_EPC_report_2010.pdf)

2.4.3 The objectives of the Directive: Improvement of energy performance and cost-effectiveness

The Government further submits that Section 12 of the EBPD Regulation also serves important objectives of the Directive as a whole. This strengthens the Government's interpretation of the requirements of Article 10 of the Directive and its conclusion that the solution adopted conforms to the said provision. It should be noted that Article 1, first paragraph of the Directive states as follows:

Article 1 Objective

The objective of this Directive is to promote the improvement of the energy performance of buildings within the Community, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness. [Emphases added]

The Government also makes reference to recital (9) of the EPB Directive, which explicitly addresses cost-effectiveness:

The measures further to improve the energy performance of buildings should take into account climatic and local conditions as well as indoor climate environment and cost-effectiveness ... [Emphases added]

The clause on objectives of the Directive thus identifies “*improvement of ... energy performance*” and “*cost-effectiveness*” as important aims. Article 10 and its independence and expertise requirements must be interpreted in light of these overall objectives. That cost-effectiveness is a core principle underlying the energy performance directive is also confirmed by Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources (“the Renewables Directive”); see recital (17) of the preamble to that directive, which states:

The improvement of energy efficiency is a key objective of the Community, and the aim is to achieve a 20 % improvement in energy efficiency by 2020. That aim, together with existing and future legislation including Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ..., Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products ..., and Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services ..., has a critical role to play in ensuring that the climate and energy objectives are being achieved at least cost, and can also provide new opportunities for the European Union's economy. Energy efficiency and energy saving policies are some of the most effective methods by which Member States can increase the percentage share of energy from renewable sources, and Member States will

thus more easily achieve the overall national and transport targets for energy from renewable sources laid down by this Directive

The Government considers it an established fact that the ECS scheme promotes energy efficiency in a cost-effective manner. Cost-effectiveness of the system was an important consideration in the political deliberations regarding how the certification of buildings under the EBPD was to be carried out in Norway. Cost-effectiveness was therefore central in the process of developing the ECS; see the preparatory works to the amendment of the Energy Act; Ot. prp. nr. 24 (2008-2009), in section 3.1.3.:

... Et annet viktig mål for web-verktøyet er å gjøre det mulig for både lekfolk og eksperter å gjennomføre energimerking uten store kostnader. Eierne vil selv stå som ansvarlig for de data som rapporteres inn i systemet og vil i prosessen bekrefte at opplysningene er riktige.

This may be translated as follows:

An other important objective for the web tool is to make it possible for both laity people and experts to carry out an energy certification without great expenses. The owner will be responsible for the data reported into the system, and will through the process confirm that the information is correct.

Considerable resources have been allocated to developing the ECS system. The external development and consultant costs over the period 2005-2011 amount to NOK 34.9 million. The main development work commenced in 2008 after initial specifications. In addition NVE has invested considerable internal resources in the development, estimated to NOK 5 million. The system development contract with Avenir (later EDB Ergo Group) runs from February 2008 and constitutes the bulk of the external costs. The main part of ECS development took place in 2008 and 2009. Since 2010 NVE has a contract of maintenance with an option of further development. Considerable development has taken place in 2010 and takes place also in 2011. In 2011, NVE's budget for development, operation, information, and personnel in relation to the ECS amounts to NOK 14 million.

The fact that the system is free of charge for users is an important factor explaining why the certification system has been a success. The scheme entered into force 1 July 2010. After the first year of operation the NVE registered that approximately 100 000 certificates were issued.¹⁹ This clearly suggest that a significant proportion of dwelling transfers were carried out based inter alia on the information found in an energy certificate.

¹⁹ <http://www.energimerking.no/no/Nyheter-om-Energimerking/Suksess-for-energimerking/>

2.4.4 The objectives of the Directive: addressing crucial environmental and climate change concerns

It should further be observed that improved energy performance is not an aim in itself: it serves the greater purpose of addressing crucial environmental and climate change concerns. As stated in the preamble of the EPB Directive:

Article 6 of the Treaty [establishing the European Community] requires environmental protection requirements to be integrated into the definitions and implementation of Community policy and actions. (recital (1))

The natural resources, to the prudent and rational utilization of which Article 174 of the Treaty refers, include oil products, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions. (recital (2))

Increased energy efficiency constitutes an important part of the package of policies and measures needed to comply with the Kyoto Protocol and should appear in any policy package to meet further commitments. (recital (3))

The Directive's requirements must without doubt be interpreted having regard to the extent to which the national implementation of the Directive is conducive of securing these overall objectives. The Government is of the firm belief that the web-based ECS system is well-suited and tailored, by virtue of its simplicity and user-friendliness, to enhance awareness in the public at large of the need of improved energy performance of buildings. Moreover, the high level of expertise of the system as such ensures and furthers the reliability of certificates and contributes in that respect to meet the overall objectives.

3. IMPLEMENTATION OF ARTICLES 4(3), 7, 8, 9, 10 (WITH REGARDS TO INSPECTIONS OF TECHNICAL SYSTEMS), AND 15(1) OF THE DIRECTIVE IN ACCORDANCE WITH THE AUTHORITY'S RECOMMENDATIONS

3.1 Introduction

The Government makes reference to sections 1.1 and 1.2 of the Authority's Reasoned Opinion, whereby the Authority finds that "by limiting the obligation for energy performance to voluntary sales, Norway is in breach of Article 7 of Directive 2002/91/EC" (p. 5). The Authority further concludes that "by excluding from the obligation of energy performance certification small units within a building, Norway is in breach of Articles 4(3) and 7(1)" of the Directive (p. 6). Moreover, the Authority notes that Norway has agreed that Sections 9(d), 9(e) and 9(f) of the EPB Regulation are not in compliance with Articles 4(3) and 7 of the Directive and that amendments will be adopted (p. 6); and, finally, that Norway "has indicated that it will consider amending Section 11 [of the

EPB Regulation] for it to comply with [Article 7(2)] of Directive 2002/91/EC” with regard to the content of the energy performance certificate for new buildings (p. 7).

3.2 The proposed amendment to the Energy Act of 29 June 1990 No 50

The Government informs the Authority that amendments of the Energy Act were proposed on 6 May 2011 through Prop. 112 L (2010-2011). The proposed amendment relevant in regards to the Reasoned Opinion is an amendment of Section 8-2. The proposition entails a deletion of the provision which limits obligatory certification to voluntary sales, thus allowing the Regulation to include all types of realization of buildings in EPB § 5.

Appendix 12: Copy of Prop. 112 L (2010-2011)

3.3 The adopted amendments to Regulation 18 December 2009 No 1665

The Government informs the Authority that amendments to the EPB Regulation will be adopted to comply fully with the Authority’s assessments as referred to in section 3.1 above. The proposed amendments which are relevant in regards to the Reasoned Opinion are as follows:

- § 5: all types of realization of buildings, including forced sales, are comprised by the obligation to acquire an energy certificate.
- § 9, first paragraph, section (a): separate household units that are not free-standing and whose available area is less than 50 sq. metres are to be encompassed by the obligation of acquiring an energy certificate.
- § 9, first paragraph, new section (d): in order to exempt buildings from the obligation to acquire an energy certificate deemed protected due to environmental, architectural or historical concerns, the household or the building must in an unacceptable way be subject to modifications in the event of accomplishment of energy requirement. Household buildings or non-residential buildings which have not been subject to a decision of protection, are imposed to acquire an energy certificate. § 9, first paragraph, section (e) deleted.
- § 9, first paragraph, section (f) and new section (g): only outbuildings in agriculture areas with a low energy need for heating and management to be exempted from the obligation to acquire an energy certificate. Industrial installations and repair shops are treated correspondingly.
- § 11, first paragraph, section (b): the certificate for new households shall include recommendation lists for cost optimum and cost effective improvements, save in cases where there is no reasonable potential for such improvement compared to the actual energy requirements.
- § 13: energy inspection of technical installations shall not longer be tied to space limits in preference to effect limits. The building is only exempted from the obligation to have an inspection if it has been decided that the building shall be demolished.

- § 16: this provision (regarding one-time inspection of older heating installations) will be subject to the same amendments as those concerning § 13.
- §§ 15, third paragraph and 17, second paragraph: energy inspection and registration must be carried out by an independent physical person.

In addition to the amendments which are mentioned above, the EPB Regulation § 14 will be amended such that inspections of technical systems include an assessment of efficiency and sizing are required in the regulation.

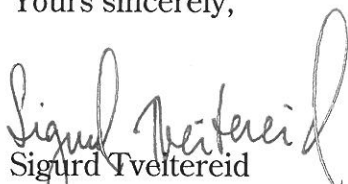
The amendments to the EPB Regulation will be adopted in December 2011 and enter into force on 31 December 2011. Please note that the adoption of the proposed amendment of § 4 in the Regulation is dependent on the Storting's adoption of the proposed amendment of the Energy Act.

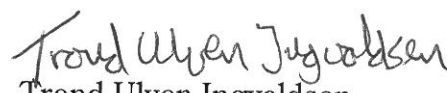
Appendix 13: Copy of proposed amendments to the EPB Regulation

4. CONCLUDING OBSERVATIONS

Having regard to its observations in section 2 above, the Government respectfully requests the Authority to find that the web-based Energy Certification Service complies with Article 10 of Directive 2002/91/EC of 16 December 2002. The Government further requests the Authority to appreciate that by the adoption of the amendments of Regulation 18 December 2009 No 1665 concerning the energy performance of buildings and energy assessment of technical installations described in Section 3 above, the Kingdom of Norway will comply with Articles 4(3), 7, 8, 9, 10 (with regards to inspections of technical systems) and 15(1) of the Directive.

Yours sincerely,


Sigurd Tveltereid
Director General


Trond Ulven Ingvaldsen
Deputy Director General

Appendices