Brussels, 16 April 2008
Case No: 55862
Event No: 446431
Dec. No: 222/08/COL

EFTA SURVEILLANCE AUTHORITY

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Norway's breach of Article 14 EEA by introducing and maintaining into force a base-tax on non-refillable beverage packaging

EFTA SURVEILLANCE AUTHORITY

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Norway's breach of Article 14 EEA by introducing and maintaining into force a base-tax on non-refillable beverage packaging

1. Introduction

By a letter dated 25 June 2004, the EFTA Surveillance Authority (hereafter referred to as "the Authority") informed the Norwegian Government that it had received a complaint against Norway regarding the base tax on non-refillable beverage packaging.

The case was discussed at the Package meeting in Oslo on 22-23 September 2004. On 12 October 2004, the Authority sent a follow-up letter to the Package meeting. Norway subsequently answered in a letter dated 10 November 2004 (your ref. 98/7892 SA HEH).

Further discussions took place at the Package meeting in Oslo on 9-10 November 2005. The Authority addressed the case in the follow-up letter to the Package meeting dated 25 November 2005, and Norway subsequently answered in a letter dated 16 January 2006 (your ref. 98/7892 SA HEH/rla).

By a letter dated 27 February 2006 (Event No. 315541), the Authority's Internal Market Affairs Directorate expressed the preliminary view that the base tax is construed in such a manner as to discriminate against imported beverages and to afford protection to domestically produced beverages and is therefore contrary to Article 14 EEA. The response of the Norwegian Government was received by the Authority on 31 May 2006 (your ref. 98/7892 SA FR/rla) and further discussions took place at the Package meeting in Oslo on 15-16 November 2006.

As the Authority was not convinced by arguments put forward by the Norwegian Government, a letter of formal notice was issued on 13 June 2007 (Event No. 387263). The Norwegian Government answered by a letter dated 13 September 2007 (your ref. 98/7892 SL FR/KR). Further discussions took place at the Package meeting in Oslo on 15-16 November 2007.

2. Relevant national law

The Norwegian system for taxation of beverage packaging is based on Regulation of 11 December 2001 No. 1451 on Special Duties (*Forskrift om særavgifter*), hereafter referred to as "Regulation on Special Duties". The system consists of two elements: First, a general environmental tax (*miljøavgift*) applicable, in principle, to all beverage packaging (Section 3-5-1a), and secondly, a so-called base tax (*grunnavgift*) imposed on non-refillable beverage packaging only (Section 3-5-1b).

According to Section 3-5-1b of the Regulation on Special Duties, non-refillable packaging means "*packaging which cannot be reused in its original form*". Hence cans, drink cartons and non-refillable plastic bottles (NR-Pet) which are not reusable in their original form are subject to base tax, whereas refillable beverage packaging (Ref-Pet), i.e. glass and plastic bottles registered in a reuse system, are not.

The rates of the general environmental tax and the base tax are set yearly in the Parliamentary decision regarding special duties to the Treasury (*Stortingets vedtak om særavgifter til statskassen for budsjetterminen 2008*).

The rate of the general environmental tax applicable to all beverage packaging is variable depending on the type of the material used for packaging, the liquid content of the beverage, and the degree of return of the packaging. Due to the very high return rate of refillable plastic bottles, such bottles are *de facto* not subject to environmental tax,[1] In contrast, based on the latest return rates of non-refillable plastic bottles and cans, non-refillable plastic bottles are currently subject to environmental tax of 0,51 NOK and cans to environmental tax of 0,37 NOK.

The base tax applicable to non-refillable beverage packaging is a fixed tax set currently at 0,97 NOK per unit.

The combined effect of the two taxes is set out in the following table:

	Ref-Pet	*Nr-Pet*	*Cans*
Environmental tax	**0**	0,51 NOK	0,37 NOK
Base tax	**-**	0,97 NOK	0,97 NOK
Total	**0**	1,48 NOK	1,34 NOK

In Sections 2 and 3 of the Parliamentary decision regarding duties on beverage packaging for the budget year 2008 (*Stortingets vedtak 28. november 2007 om avgifter på drikkevareemballasje for budsjettåret 2008*), certain exemptions from the base tax have been provided. First, beverage packaging with a cubic content of at least four litres is exempted from the base tax. Secondly, non-refillable packaging containing certain types of drinks, such as e.g. milk and chocolate drinks, are exempted from the base tax.

The base tax was introduced in 1994 for environmental reasons, more specifically in order to reduce littering caused by non-refillable beverage packaging. At the time, there was no return system for non-refillable beverage packaging in place in Norway. With the establishment of Norsk Resirk[2] in 1999, a return system for non-refillable beverage packaging was introduced. Consequently, both refillable and non-refillable beverage packaging units are now returnable in Norway. Even though the return systems for Ref-Pets and NR-Pets are administered by two different actors, this has no practical implication for consumers: Reverse vending machines accept both type of beverage packaging and the outlets with no reverse vending machines are obliged by Norwegian law to accept also non-refillable beverage packaging. The mandatory deposit payable by consumers is the same irrespective of the type (refillable or non-refillable) of packaging. Upon return, the deposit paid at the time of purchase is reimbursed to the consumer.

Any importer and domestic producer can take part in the Norwegian return system for non-refillable beverage packaging. Furthermore, there are no restrictions in place regarding the type of packaging that can be included in the system as long as the packaging has been registered with Norsk Resirk.[3] According to the information available to the Authority, nearly 100% of the cans marketed and sold in Norway, including

[1] Beverage packaging is exempted from the environmental tax when the return rate exceeds 95%.
[2] Norsk Resirk is a non-profit organisation administering the collection and recycling of non-refillable beverage packaging.
[3] http://www.resirk.no/sw205.asp.

imported cans, are included in the return system. For NR-Pets, the corresponding participation rate is estimated to be 94 %.[4]

Recent environmental assessment studies indicate that the two systems for beverage packaging, refillable plastic bottles and non-refillable recyclable bottles, are essentially equal in terms of environmental impact.[5] Indeed, on the basis that the base tax could no longer be regarded as an environmentally motivated tax, the previous Norwegian Government proposed to the Parliament that the special tax on beverage packaging be terminated with effect from 1 July 2004. The Parliament, however, decided to maintain the tax. Also, the Parliament decided against the Government's proposal and maintained the base tax for budget year 2005. However, with the Parliamentary adoption of the revised state budget for year 2005, the base tax was abolished in respect of *non-refillable plastic bottles* but remained in force for cans. The proposal of the previous Government for the state budget for year 2006 included a proposal to abolish the base tax in respect of both non-refillable plastic bottles and cans. However, the present Government proposed, and the Parliament decided, to reintroduce the base tax on non-refillable plastic bottles and to maintain the tax on cans. Also, the budgets for years 2007 and 2008 included the base tax on both non-refillable plastic bottles and cans.

For practical reasons, beverages (whether soft drinks, water or beer) imported into Norway from the other EEA States are packed in non-refillable packaging. Indeed, according to the information provided by the Government of Norway by letters dated 10 November 2004 and 16 January 2006, *all* imported beverages are packed in non-refillable packaging and thus subject to the base tax, whereas more than 90% of domestically produced soft drinks and water are packed in refillable bottles and are therefore *not* subject to the base tax.[6] In contrast, domestic production of beer in cans amounted to 38% (subject to base tax) and 40.6% in refillable bottles (not subject to base tax) in 2005.

3. Relevant EEA law

The aim of Article 14 EEA is to ensure the free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminates against products from other Member States.[7] The provision aims at guaranteeing the complete neutrality of internal taxation as regards competition between domestic and imported products. Accordingly, internal taxation of discriminatory nature is prohibited by the first paragraph of Article 14 EEA. In other words, a system of taxation may be considered compatible with the first paragraph of Article 14 EEA only if it is such as to exclude any possibility of imported products being taxed more heavily than similar domestic products.

---

[4] Report by the Norwegian Competition Authority, *Konkurransemessig vurdering av ordninger for produkt-gjenvinning*, page 95, available at http://www.konkurransetilsynet.no/archive/internett/publikasjoner/skriftserien/04_01_retur.pdf

[5] E.g. Environmental Assessment of Non-Refillable-Recyclable and Refillable PET Bottles Used as Packaging for Drinks in Norway, OR 40.03, Fredrikstad, June 2003, Stiftelsen Østfoldforskning (STØ).

[6] Note that the figure is based on the statistics of the Norwegian Brewers and Soft Drinks Producers (now Norwegian Brewers) concerning year 2003. According to the Norwegian Government, more recent figures are not available regarding soft drinks and water due to the fact that Norwegian Brewers today only represents the brewing industry

[7] Case C-290/05 *Ákos Nádasi* v *Vám- és Pénzügyörség Észak-Alföldi Regionális Parancsnoksága*, judgement delivered on 5 October 2006, not yet reported, at paragraph 45.

The second paragraph of Article 14 prohibits internal taxation of such a nature as to afford indirect protection to domestic products which, without being similar to imported products, are nevertheless in competition with such products.

The Court of Justice of the European Communities (hereafter "Court of Justice") has recognised that the Member States may lay down differing tax arrangements, even for similar products, on the basis of objective criteria such as the conditions of production and the raw materials used. Such differentiation is, however, only compatible with Community law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, with regard to imports from other Member States or any form of protection of competing domestic products.[8]

It follows from the case law of the EFTA Court and of the Court of Justice that a tax that applies in theory equally to imported and domestic goods may nevertheless be considered as having a protective effect if the higher tax applies *de facto* exclusively or mostly to imported goods and if it has the effect of reducing potential consumption of imported products to the advantage of competing *domestic* products.[9]

Unlike other provisions of the EEA Agreement regarding the free movement of goods, Article 14 EEA does not provide for any possible justification to the discrimination it prohibits. As the Court of Justice held in Case C-375/95, the pursuit of environmental objectives such as discouraging old, dangerous and polluting vehicles from being put into circulation "*does not relieve a Member State from its duty to observe the rule of non-discrimination laid down in Article 95 [now Article 90] of the Treaty*". Hence, a system of taxation can only be considered compatible with Article 90 EC (identical to Article 14 EEA) if it is proved to be so structured as to exclude any possibility of imported products being taxed more heavily than domestic products so that it cannot in any event have discriminatory effect.[10]

Also, as Advocate General Sharpston recently held:

> "*[T]he purpose of Article 90 of EC Treaty is to prohibit any internal taxation which, all other things being equal, burdens products from other Member States more heavily than similar domestic products. A tax does not escape that prohibition simply because, in addition to its fundamental purpose of raising revenue, it seeks to favour environmentally-friendly products or habits. On the contrary, if it pursues such an aim, it must do so in a manner which does not burden domestic products less than those imported from other Member States*".[11]

---

[8] Case 243/84 *John Walker & Sons Ltd & Ministeriet for Skatter og Afgifter* [1986] ECR 875.

[9] See Case E-1/01 *Einarsson,* cited above, paragraph 31; books in foreign languages, that were subject to the higher VAT rate, were chiefly imports; see also case C-421/97 *Yves Tarantik* [1999] ECR 1367; the tax was established on the basis of objective criteria (fiscal horsepower) of the cars but the higher rate applied *de facto* exclusively to imported cars.

[10] Case 375/95 *Commission of the European Communities v Hellenic Republic* [1997] ECR I-5981, at paragraphs 28 and 29.

[11] Opinion of Advocate General Sharpston delivered on 13 July 2006, Case C-290/05 *Ákos Nádasi v Vám- és Pénzügyörség Észak-Alföldi Regionális Parancsnoksága*, cited above. See the similar but not as explicit argument in the judgment itself in the same case of 5 October 2006, not yet reported, at paragraphs 51-52.

4. The Authority's Assessment

4.1. Similarity or competitive relationship between imported and domestic soft drinks and water

The base tax is a tax on packaging which has a direct impact on the market of beverages contained in these packaging. Therefore, the Authority will in the following address whether imported and domestically produced soft drinks packed in refillable and non-refillable packaging on the one side and water packed in refillable or non-refillable packaging on the other side are similar or competing products.

The similarity of products must be assessed not according to whether they are strictly identical but according to whether their use is similar and comparable. Hence, in order to determine whether two categories of beverages are similar, it is necessary, first, to consider certain objective characteristics and, secondly, to consider whether or not both categories of beverages are capable of meeting the same needs from the point of view of consumers. On the basis of this rule, the Court of Justice has for instance considered that wine made from grapes and wine made from other fruits are similar products.[12]

In view of the Authority, water, whether still, sparkling, mineral or spring water, shares sufficient common characteristics to form an alternative choice for consumers. The broad category of soft drinks encompasses beverages that share common characteristics and meet the same needs from the point of view of consumers.

The Authority also finds that the use of different type of beverage packaging, whether refillable or not, is similar or at least comparable. Some refillable and non refillable packaging is made of the same materials (plastic). Furthermore, in view of the Authority, the different type of packaging is capable of meeting the same needs from the point of view of consumers. In actual fact, most consumers would not even be aware of the difference between the refillable and non-refillable packaging. Therefore, the Authority takes the view that domestically produced and imported water packed in refillable or non-refillable containers shall be considered as similar products. Besides, domestically produced and imported soft drinks packed in refillable and in non-refillable containers shall also be considered as similar products.

In any event, even if the similarity between imported and domestic soft drinks and imported and domestic water was contested, it is common ground that these products are at least competing with beverages of the same categories because they meet the same needs from the point of view of consumers.

The Authority is therefore of the opinion that carbonated soft drinks packed in refillable bottles, non-refillable bottles and cans are similar or at least competing with each other irrespective of the type of packaging used. Similarly, water packed in refillable bottles, non-refillable bottles and cans are similar or at least competing with each other irrespective of the type of packaging used.

4.2. The discriminatory and protectionist effect of the base tax

The Authority considers that the base tax appears to be *de facto* discriminatory with regard to imported soft drinks and water.

---

[12] Case 106/84 *Commission* v *Kingdom of Denmark* [1986]ECR 00833, at paragraph 16.

The base tax applies without distinction to "*engangsemballasje*", that is so-called "*single use*" *or* "*non-refillable*" beverage packaging, irrespective of the origin of the product. However, whereas more than 90% of domestically produced carbonated soft drinks and water are packed in refillable beverage packaging, imported carbonated soft drinks and water are imported into Norway in non-refillable beverage packaging, mainly due to reasons relating to transportation costs. All imported beverages are thus subject to the base tax whereas domestic production of soft drinks and water falls outside the scope of the tax as those are sold in refillable packaging. It therefore appears that the Norwegian base tax is *de facto* discriminatory on imported beverages.

In the response to the letter of formal notice dated 13 September 2007, the Norwegian Government alleged that "*due to the fact that there are no updated statistic on the sale of soft drinks and carbonated water available, we cannot be sure that the statistics from 2003 give a correct picture of the current situation*". The Authority takes the view that in the absence of updated statistics, one shall rely on the available statistics which clearly demonstrate that the base tax applies *de facto* nearly exclusively to imported soft drinks and water.

As already mentioned, it is settled case-law of the EFTA Court and the Court of Justice that a system of taxation may be considered compatible with Article 90 EC or Article 14 EEA only if it is such as to exclude any possibility of imported products being taxed more heavily than similar domestic products.[13]

The Norwegian Government, in its replies to the letter of formal notice, asserts that the "*Court of Justice has confirmed that the fact that imported products are more frequently subject to a higher tax than similar domestic products does not automatically imply that there is illegal discrimination (...), as long as this is an "accidental consequence" of a differentiation which is based on objective reasons*." The Norwegian Government refers in this respect to the judgement of the Court of Justice in case 140/79 *Chemial Farmaceutici*.[14]

The Authority considers that this is a very isolated ruling of the Court of Justice which is based on the particular circumstances of the case. It is very clear from paragraph 18 of the judgement that it applies only "*where, by the reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production*" of the type of alcohol subject to the heavier taxation. Since this judgement, dating from 1981, the Court of Justice has constantly held that Article 90 EC is infringed where a tax applies *de facto* exclusively or mainly to imported products, even if this occurs "*only in certain cases*".[15]

Besides, the criterion on which the base tax is based is biased toward imported products. Indeed, as already mentioned, nearly all foreign beverages are packed in non-refillable containers because transporting the containers back to the country of origin for reuse would entail high additional costs. This is particularly obvious with regard to mineral water. Producers of natural mineral water, a large proportion of whom are established in other EEA States, who sell their products in Norway far from the spring, bear additional costs when they use reusable packaging. It is apparent on reading Article 3 of Directive 80/777 of 15 July 1980 on the approximation of the laws of the Member States relating to

[13] Case C-228/98 *Dounias* [2000] ECR I-577, at paragraph 41 and the case-law cited therein.
[14] Case 140/79 *Chemial Farmaceutici* [1981] ECR 00001.
[15] Case C-375/95 *Commission v Greece* [1997] ECR I-5981, at paragraph 20, and the case-law cited therein, and Case E-1/01 *Einarsson*, cited above, paragraph 31.

the exploitation and marketing of natural mineral waters,[16] in conjunction with Annex II thereto, that natural mineral water must be bottled at source, so that if the water's packaging is to be reused it must be transported to the spring.[17]

Finally, the taxation scheme lacks consistency. Certain types of non-refillable beverage packaging are exempted from the base tax in Norway on the basis of the liquid contents of the packaging, e.g. milk and milk products. In addition, non-refillable beverage packaging with a cubic content of at least four litres is exempted from the tax. On the basis of information available to the Authority, these types of products are almost exclusively domestically produced.

It is therefore clear that the Norwegian taxation system is not such as to exclude any possibility of imported soft drinks and water being taxed more heavily than domestic products which may be regarded as similar. Therefore, it is the opinion of the Authority that the tax is contrary to Article 14 EEA without there being any scope for Norway to justify the differential treatment.

Even if it was demonstrated that domestically produced soft drinks packed in refillable packaging were not similar to imported soft drinks packed in non-refillable packaging, but were merely competing products, the Authority would consider that the base tax would infringe Article 14 paragraph 2 in so far as it has a protectionist effect. Indeed, the base tax applicable to non-refillable beverage packaging is a fixed tax set currently at 0,97 NOK per unit. This amount is not negligible and might clearly influence consumer preference. The same arguments apply to water.

4.3. The absence of any justification under Article 14 EEA

As already mentioned, Article 14 EEA does not provide for any possible justification to the discrimination it prohibits. Indeed, there is no provision equivalent to Article 13 EEA. Furthermore, neither the Court of Justice nor the EFTA Court, have recognised that mandatory requirements could justify an infringement of Article 90 EC/14 EEA.

The Norwegian Government, nevertheless, deems the differential tax treatment of refillable and non-refillable beverage packaging to be justified for reasons relating to protection of the environment, and because it is in conformity with EEA environmental law. In the following, the Authority will address these arguments and show that they could not make the system compatible with the EEA Agreement even if one were to accept that a discriminatory measure could be justified under Article 14 EEA.

4.3.1. The alleged compatibility with principles of EEA environmental law

In its response received by the Authority on 13 September 2007, the Norwegian Government argued that the base tax is justified because "*it is a principle in the European Union that reuse and recycling should be considered preferable in terms of environmental impact*". Reference was made to Article 5 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste which provides that "*Member States may encourage reuse systems of packaging, which can be reused in an*

[16] Act referred to at point 26 of Chapter XII of Annex II to the EEA Agreement.
[17] Case C-463/01 *Commission v Germany* [2004] ECR I-5776 at paragraph 61.

environmentally sound manner"[18] and to the judgement of the Court of Justice in case C-309/02 *Radlberger Getrankegesellschaft.*[19]

The Authority notes that the Court of Justice has recalled in the same judgement as well as in its judgement in case C-463/01[20] that "*Directive 94/62 does not establish a hierarchy between the reuse of packaging and the recovery of packaging waste.*" Besides, in accordance with Article 1 of the Directive, the objective of the Directive is, in addition to the prevention or reduction of any impact of packaging waste on the environment, to ensure the functioning of the internal market and to avoid obstacles to trade. Furthermore, as stated in the preamble to the Directive, both reuse and recycling should be considered preferable in terms of environmental protection.

Thus, as the Norwegian Government rightly points out, the Court of Justice has held that "*Article 5 of Directive 94/62 allows the Member States to encourage systems for the reuse of packaging only 'in conformity with the Treaty'.*" Such systems can consequently be assessed on the basis of the EEA Agreement provisions relating to the free movement of goods. In contrast, it does not and could not provide a legal basis for derogation from Article 14 EEA.

Therefore, although the Authority acknowledges that waste prevention is one of the objectives of the Directive and of the general environmental protection policy, it is clear that Article 5 of the Directive does not entitle States to encourage reuse of beverage packaging by introducing or maintaining in force internal taxation which discriminates against imported products. Furthermore, as stated in point 9.1.9 of a Norwegian report on special tax of 22 June 2007 (NOU 2007:8 "*En vurdering av særavgiftene*"), "*I dag foreligger det likevel ingen dokumentasjon som bekrefter at ombruk er mer miljøvennlig enn gjenvinning. Dersom grunnavgiften på engangsemballasje ikke har den ønskede miljøeffekten, bidrar den til en forskjellsbehandling av produsenter som tapper på engangsemballasje og andre produsenter.*"

4.3.2. The lack of environmental ground for the taxation system

The Authority is of the opinion that even if discriminatory taxation infringing Article 14 EEA could be justified on environmental grounds, which is not the case, the Norwegian Government has failed to demonstrate that the contested tax is necessary in order to protect the environment.

As already mentioned in the letter of formal notice, at the time of the adoption of the base tax (January 1994), non-refillable beverage packaging was not part of the return system in place in Norway. Since the establishment of *Norsk Resirk* in 1999, a deposit and return system for both refillable and non-refillable beverage packaging has been in place in Norway. Taking into account that today 92-93 out of 100 cans and 80 out of 100 non-refillable plastic bottles are returned, it no longer appears that the base tax on non-refillable beverage packaging is necessary for reasons relating to littering and waste generation.[21] The Norwegian Government has not contested these figures and presents

[18] Act referred to at point 7 of Chapter XVII of Annex II to the EEA Agreement.
[19] Case C-309/02 *Radlberger Getrankegesellschaft* [2004] ECR.
[20] Case C-463/01 *Commission v Germany*, cited above, at paragraph 40.
[21] This point has also been addressed by the Norwegian Competition Authority which, in a letter to the Ministry of Finance dated 20 April 2005, questions why non-refillable packaging which is recycled is burdened with the same base tax as packaging which is not part of the recycling system. The letter is available at http://www.konkurransetilsynet.no/archive/internett/avgjorelser_uttalelser/arkiv_2005/h2005-427_drikkevare.pdf.

arguments that appear to be very general and based mainly on the so-called waste hierarchy.

Besides, the tax system seems to lack coherence. As already mentioned, certain types of non-refillable beverage packaging are exempted from the base tax in Norway on the basis of the liquid contents of the packaging, e.g. milk and milk products. In addition, non-refillable beverage packaging with a cubic content of at least four litres is exempted from the tax. The Authority cannot see how the effect of the packaging on the environment would be any different depending on the liquid or cubic content of the packaging.

5. Conclusion

It is the view of the Authority that the levying of the base tax on non-refillable beverage packaging in Norway constitutes discriminatory internal taxation as imported beverages are *de facto* taxed more heavily than similar or competing domestic products, and thus, protection is afforded to domestic production of soft drinks and water. As it follows from the case law of the Court of Justice that a pursuit of an environmental objective does not relieve a State from its duty to observe the rule of non-discrimination laid down in Article 14 EEA, the Authority is of the opinion that the Norwegian legislation in question is, in any event, contrary to Article 14 EEA.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Norway the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by maintaining in force the base tax based on Section 3-5-1b of Regulation of 11 December 2001 No. 1451 on Special Duties (as far as it applies to soft drinks and water), Norway has failed to fulfil its obligation arising from Article 14 EEA.

Pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority requires Norway to take the measures necessary to comply with this reasoned opinion within *two months* following notification thereof.

Done at Brussels, 16 April 2008

For the EFTA Surveillance Authority

Kristján Andri Stefánsson
College Member

Niels Fenger
Director