DET KONGELIGE
FINANSDEPARTEMENT

Ot.prp. nr. 84

(2001-2002)

Om lov om endringer i petroleumsskatteloven

Tilråding fra Finansdepartementet av 27. mai 2002,
godkjent i statsråd samme dag.
(Regjeringen Bondevik II)

1 Innledning og sammendrag

Departementet legger med dette frem forslag til endringer i lov om skattlegging av undersjøiske petroleumsforekomster m.v. av 13. juni 1975 nr. 35 (petroleumsskatteloven). Det foreslås en geografisk begrensning i virkeområdet for § 3 bokstav b første avsnitt tredje punktum, som innebærer at avskrivningsreglene for investeringer knyttet til nytt storskala LNG-anlegg bare vil få anvendelse når slikt anlegg ligger innenfor et nærmere definert geografisk område. Dette området foreslås tilpasset det høyest prioriterte området i gjeldende forskrift om avgrensning av geografisk virkeområde for distriktspolitiske virkemidler (knyttet til regionalt støttekart for Norge som EFTAs overvåkingsorgan (ESA) har godkjent). Det foreslås at det kvalifiserende nedkjølingsanlegget for gassen må ligge enten i Finnmark eller i kommunene Kåfjord, Skjervøy, Nordreisa eller Kvænangen i Troms for at investeringene skal kunne avskrives over tre år.

Avskrivningsreglene vil dermed fortsatt få anvendelse for Snøhvit-utbyggingen, der det planlagte LNG-anlegget skal bygges på Melkøya i Hammerfest kommune i Finnmark.

EFTAs overvåkingsorgan (ESA) har uttalt at videreføring av den någjeldende lovbestemmelsen vil føre til åpning av en formell undersøkelsesprosedyre med sikte på å avgjøre om den gjeldende lovregel er uforenlig med EØS-avtalens bestemmelser om statsstøtte. En slik undersøkelsesprosedyre før ESA avklarer sitt endelige standpunkt vil ta tid, i det minste fra seks til åtte måneder. Slik departementet forstår situasjonen er det fare for at den vedtatte utbyggingen av Snøhvit-feltet ikke vil bli gjennomført med en slik forsinkelse.

Det er departementets syn at de gjeldende avskrivningsreglene for LNG-baserte gassfeltutbygginger ikke innebærer statsstøtte etter EØS-avtalens artikkel 61 (1). Samtidig mener departementet at betingelsene er til stede for at dette skattetiltak i forhold til Snøhvit-utbyggingen uansett kan godkjennes på grunnlag av EØS-avtalens unntaksregler for regionalstøtte. Finansministeren har i møte med ESA 16. mai 2002 varslet at departementet vil fremme forslag for Stortinget om å begrense det geografiske virkeområdet for avskrivningsreglene som nevnt ovenfor. Etter departementets vurdering gir en slik løsning grunnlag for å anta at en forsinkende formell undersøkelsesprosedyre da kan unngås. Spørsmålet om lovligheten av eventuell støtte etter EØS-avtalen kan følgelig begrenses til en prøving av om betingelsene etter unntaksreglene er oppfylt. Avskrivningsreglene, med den begrensning i det geografiske virkeområdet som nå foreslås, vil bli notifisert til ESA med sikte på godkjenning etter unntaksreglene for regionalstøtte etter EØS avtalens artikkel 61 (3) c. Dette vil legge til rette for en rask avklaring.

2 Bakgrunnen for lovforslaget

2.1 Gjeldende regler

Ordningen med høyere avskrivningssats for investeringer i driftsmidler knyttet til utbygging av gassfelt basert på bygging av nytt storskala nedkjølingsanlegg for gassen (LNG), ble innført ved lov 21. desember 2001 nr. 111, jf. Ot.prp. nr. 16 og Innst. O. nr. 2 (2001-2002). Proposisjonen ble fremmet av Regjeringen Stoltenberg på bakgrunn av den planlagte utbyggingen av Snøhvitfeltet. Lovendringen ble utformet som en generell lovregel for investeringer som tilfredsstiller kravet om tilknytning til nytt storskala LNG-anlegg. Det fremgår av proposisjonen at en slik lovregel var vurdert til ikke å stride mot EØS-avtalens statsstøttebestemmelser. På denne bakgrunn ble avskrivningsreglene ikke notifisert til EFTAs overvåkingsorgan (ESA) som mulig statsstøtte.

Ved brev av 11. desember 2001 klaget Miljøstiftelsen Bellona saken inn for ESA, og ba om at det gjøres en nærmere vurdering av forholdet til EØS-avtalens regler om statsstøtte, jf. avtalens artikkel 61 (1). ESA har på denne bakgrunn igangsatt en foreløpig undersøkelse som vil munne ut i en beslutning om enten å finne de forhold som er påklaget forenlig med EØS-avtalen, eller å igangsette en formell undersøkelsesprosedyre. ESA har orientert Finansdepartementet om at den foreløpige vurdering er at gjeldende avskrivningsregler for LNG-baserte gassfeltutbygginger innebærer statsstøtte etter EØS-avtalens artikkel 61 (1) og ikke kan unntas etter artikkel 61 (3). Det vil derfor måtte åpnes formell undersøkelsesprosedyre hvis ikke lovreglene endres.

2.2 Korrespondansen med EFTAs overvåkingsorgan (ESA)

Ved brev av 20. desember 2001 ba ESA på bakgrunn av den mottatte klage fra Miljøstiftelsen Bellona om en redegjørelse, med all relevant informasjon og dokumentasjon, som er nødvendig for å vurdere om det ville foreligge elementer av statsstøtte i forbindelse med Snøhvit/LNG-prosjektet. Det ble særlig bedt om begrunnelsen for utsagnet i Ot.prp. nr. 16 (2001-2002) om at «Endringene er vurdert og funnet å være i samsvar med statsstøttereglene i EØS-avtalen».

Brevet ble besvart ved Finansdepartementets brev av 8. februar 2002 til overvåkingsorganet. Kopi av brevet er inntatt som vedlegg 1 til proposisjonen. I brevet fastholder og begrunner departementet standpunktet om at de vedtatte avskrivningsreglene for LNG-baserte gassfeltutbygginger ikke innebærer statsstøtte etter EØS-avtalens artikkel 61 (1). På bakgrunn av Bellonas klage ble det også gitt en redegjørelse for petroleumsskattelovens regler om og praksis for grensedragningen mellom land- og sokkelskatteregimet der gass føres til land i rørledning for prosessering eller videre behandling ved landterminal.

Ved brev av 18. mars 2002 til norske myndigheter meddeler ESA at endringen i petroleumsskatteloven, etter overvåkingsorganets foreløpige vurdering, kan inneholde statsstøtte i den nevnte artikkelens forstand. Overvåkings-

organet ber om nærmere opplysninger og beregninger som viser den økonomiske betydning av de endrede regler i forhold til Snøhvit-prosjektet, herunder betydningen av og begrunnelsen for å la LNG-anlegget på Melkøya omfattes av petroleumsskatteregimet. ESA viser videre til EØS-avtalens regler om unntak for regionalstøtte, som på nærmere vilkår kan komme til anvendelse for det tilfelle at et skatterettslig tiltak innebærer statsstøtte etter hovedbestemmelsen i artikkel 61. Norske myndigheter inviteres til å fremlegge opplysninger og kommentarer til dette, som kan gi overvåkingsorganet grunnlag for å vurdere om unntaksbestemmelsene kan komme til anvendelse. Det uttales videre at overvåkingsorganet vil åpne formell undersøkelsesprosedyre uten nærmere varsel dersom norske myndigheter ikke svarer innenfor en nærmere angitt frist.

Overvåkingsorganets brev besvares av Nærings- og handelsdepartementet i brev av 19. april 2002. Kopi av brevet følger som vedlegg 2 til proposisjonen. Brevet besvarer ESAs spørsmål og anmodning om tilleggsopplysninger angående avskrivningsreglene og LNG-anleggets forhold til petroleumsskatteregimet, og inneholder dessuten argumentasjon som understøtter standpunktet om at det ikke foreligger statsstøtte etter EØS-avtalens artikkel 61 (1). I tillegg fremlegges opplysninger og anførsler med sikte på at overvåkingsorganet også vurderer anvendelse av avtalens unntaksregler om regionalstøtte i forhold til Snøhvit-prosjektet. På subsidiært grunnlag anfører departementet at alle kriterier for anvendelsen av EØS-avtalens artikkel 61 (3) c er oppfylt, og at den skattemessige behandling som loven og myndighetene legger opp til overfor Snøhvit-prosjektet, derfor er forenlig med EØS-avtalen.

Etter at blant annet Snøhvit-saken var diskutert på fast kontaktmøte mellom ESA og norske myndigheter den 24. april 2002, fant myndighetene behov for å gi overvåkingsorganet ytterligere utfyllende opplysninger om investeringene i og sysselsettingsvirkningene av Snøhvit-prosjektet fordelt på de aktuelle år, med henvisning til EØS-avtalens artikkel 61 (3) c og ESAs retningslinjer for regionalstøtte. Dette ble meddelt i brev av 30. april 2002 fra Nærings- og handelsdepartementet til ESA, som følger som vedlegg 3 til proposisjonen. I brevet ble det også redegjort for den avgjørende betydning en rask avklaring av saken har for realiseringen av Snøhvit-utbyggingen. Rettighetshaverne har opplyst i brev av 23. april 2002 til Nærings- og handelsdepartementet at de etter vanskelige forhandlinger har oppnådd utsettelse til 31. mai 2002 med å løfte de endelige forbehold overfor gasskjøperne i salgskontraktene som er en forutsetning for utbyggingen av Snøhvit. Ifølge rettighetshaverne kan fortsatt uklarhet om de skattemessige rammebetingelser etter denne datoen føre til at det kommersielle grunnlaget for prosjektet bortfaller.

2.3 Møtet mellom finansministeren og ESA 16. mai 2002

Under finansministerens møte med ESA i Brussel 16. mai 2002 ble det meddelt at avskrivningsreglene for LNG-baserte gassfeltutbygginger i petroleumsskatteloven § 3 b, etter ESAs vurderinger så langt, innebærer statsstøtte etter EØS-avtalens artikkel 61 (1). Med uendrede skatteregler vil overvåkingsorganet åpne formell undersøkelsesprosedyre med sikte på en endelig behandling og avgjørelse av dette spørsmålet. Fra ESAs side ble det redegjort for ulike

statsstøtteregler, blant annet hvilke muligheter som finnes for at statsstøtte kan anses forenlig med EØS-avtalen. I den forbindelse ble det vist til ESAs tidligere avgjørelse om godkjenning av et regionalt støttekart for Norge.

Finansministeren tok ESAs meddelelse til etterretning og varslet at det ville bli fremmet et lovforslag for Stortinget der det geografiske virkeområdet for avskrivningsreglene avgrenses i samsvar med virkeområdet for reglene om regional støtte.

3 EØS-avtalens regler om tillatt statsstøtte

3.1 EØS-avtalens regler om statsstøtte

EØS-avtalen art. 61 (1) oppstiller et generelt forbud mot konkurransevridende offentlig støtte. EØS-avtalens art. 61 (3) åpner imidlertid for at det kan gis unntak fra forbudet, dersom støtten har til formål å lette utviklingen av enkelte næringsgrener eller på enkelte økonomiske områder. ESA har fastlagt hvordan de vil anvende unntaket gjennom ikke-bindende retningslinjer. Relevant i denne sammenheng er retningslinjene for regionalstøtte, herunder regionalstøtte for store regionale investeringsprosjekter. Retningslinjene setter som vilkår at positive effekter for den aktuelle regionen kan påvises.

Regionalstøtte skal bidra til å sikre bosettingen, verdiskapingen og levedyktige lokalsamfunn over hele landet, og spesielt bidra til å legge til rette for varige og lønnsomme arbeidsplasser i geografiske områder med svakere vekstkraft. Norge har fått ESAs godkjennelse for et regionalpolitisk virkeområde, dvs. et område for støtte som kan godkjennes i henhold til EØS-avtalens bestemmelser og retningslinjer for regionalstøtte. Området er delt inn i tre soner med stigende maksimalgrenser for støtteintensitet. Svalbard, Finnmark og deler av Nord-Troms ligger i sone A, der det tillates en maksimal støtteintensitet for investeringsstøtte på 25 pst. Den geografiske avgrensningen av lovforslaget er begrenset slik at den samsvarer med sone A i regionalstøttekartet med unntak av Svalbard, jf. omtalen i avsnitt 4 og ESAs beslutning 327/99 av 16. desember 1999 om godkjenning av regionalt støttekart for Norge.

3.2 Økonomisk fordel av redusert avskrivningstid (støtteintensitet)

I det følgende redegjøres det generelt for den økonomiske fordelen for skattyter av å endre avskrivningsperioden innenfor petroleumsskattesystemet. Forslaget til skatteendring for storskala LNG-anlegg innenfor det aktuelle geografiske området innebærer at det gis raskere skattemessige avskrivning for driftsmidler der formålet i henhold til godkjent plan etter petroleumsloven er produksjon og rørledningstransport av gass som skal nedkjøles til flytende form. Avskrivningsperioden for denne type anlegg, i det geografisk avgrensede området, settes til 3 år, mens den generelle avskrivningsperioden i petroleumsskatteloven er 6 år.

Det er departementets syn at de gjeldende avskrivningsreglene for LNG-baserte gassfeltutbygginger ikke innebærer statsstøtte etter EØS-avtalens artikkel 61 (1), jf. Ot. prp. nr. 16 (2001-2002). Samtidig mener departementet at betingelsene er til stede for at avskrivningsreglene uansett kan godkjennes på grunnlag av EØS-avtalens unntaksregler for regionalstøtte for slike utbygginger som ligger innenfor det geografisk avgrensede området. Regelverket for regionalstøtte gir anvisninger på bl.a. maksimale støttegrenser for investeringer. Siden ESA vil vurdere tiltaket ut fra EØS-avtalens unntaksregler for regionalstøtte, har departementet beregnet støtteintensiteten for tiltaket, dvs. virkningen av tiltaket i pst. av investeringens størrelse.

En høyere avskrivningssats (kortere avskrivningsperiode) innebærer at selskapenes skattemessige fradrag kommer tidligere enn de ellers ville ha gjort. Investeringene avskrives imidlertid med hele beløpet uavhengig av avskrivningsperiode. Lettelsen er derfor i sin helhet knyttet til en nåverdigevinst ved at fradragene kommer tidligere. Den økte avskrivningssatsen (reduserte avskrivningsperioden) er direkte knyttet til investeringene. For alle prosjekter som eventuelt vil bli omfattet av tiltaket, vil den direkte økonomiske gevinsten av hurtigere avskrivninger være den samme målt i prosent av investeringene.

Ved en investering på for eksempel 10 mrd. kroner blir de årlige avskrivningene 3,33 mrd. kroner i 3 år for LNG-anlegg i det geografisk avgrensede området. Avskrivningene i det ordinære petroleumsskatteregimet ville vært på 1,67 mrd. kroner hvert år i 6 år. Den skattemessige fradragsverdien av avskrivningene er den marginale skattesatsen på 78 pst. multiplisert med avskrivningene. Nåverdien av de skattemessige fradragene blir 7,12 mrd. kroner ved 3 års avskrivninger og 6,67 mrd. kroner ved 6 års avskrivninger. Det er brukt en nominell diskonteringsrente på 4,68 pst. etter skatt (svarende til en rente på 6,5 pst. før skatt). Differansen mellom nåverdiene blir 0,45 mrd. kroner eller om lag 4,5 pst. av investeringen på 10 mrd. kroner. I Ot.prp. nr. 16 (2001-2002) ble det anslått at den økonomiske fordelen utgjorde noe i overkant av 4 pst. av investeringene. Forskjellen i beregningene skyldes i sin helhet at det i denne proposisjonen er lagt til grunn en diskonteringsrente på 4,68 pst. etter skatt, mens det i Ot.prp. nr. 16 (2001-2002) ble benyttet en diskonteringsrente på 4 pst. Endringen av diskonteringsrente må ses i sammenheng med en viss økning i det langsiktige rentenivået.

Prosjekter av denne størrelsesorden har investeringer over flere år. Den økonomiske fordelen av kortere avskrivningstid vil være uavhengig av profilen på investeringene. Fordelen målt i nåverdi vil uansett være om lag 4,5 pst. av nåverdien av investeringene. Det følger av at fordelen ved hver årgang av investeringer er om lag 4,5 pst. av investeringsbeløpet.

I eksemplene ovenfor er det lagt til grunn en nominell diskonteringsrente på 4,68 pst. etter skatt. En økning av diskonteringsrenten vil øke verdien av en redusert avskrivningsperiode. Med en svært høy diskonteringsrente på f.eks. 10 pst., vil den direkte verdien av en kortere avskrivningsperiode likevel ikke utgjøre mer enn om lag 8 pst. av investeringsbeløpet.

Hvilken diskonteringsrente som skal legges til grunn ved nåverdiberegninger, avhenger av risikoen knyttet til den aktuelle kontantstrømmen. I dette tilfellet er det den skattemessige verdien av avskrivningene som skal verdsettes. Reglene om rentetillegg ved framføring av underskudd og overføring av gjenstående underskudd ved realisasjon av virksomheten og fusjon, jf. petroleumsskatteloven § 3 c, gjør at den skattemessige verdien er tilnærmet sikker etter at investeringene er gjennomført uavhengig av om de aktuelle selskapene er i skatteposisjon eller ikke. Det er derfor mest korrekt å benytte en tilnærmet risikofri diskonteringsrente ved nåverdiberegningene. Beregningene viser den økonomiske fordelen både for selskaper i skatteposisjon og selskaper utenfor skatteposisjon. Departementet har lagt til grunn en nominell diskonteringsrente etter skatt på 4,68 pst. i beregningene.

Ovenfor er den direkte virkningen av hurtigere avskrivninger omtalt. En kortere avskrivningstid for driftsmidlene vil imidlertid også ha betydning for hvor store renteutgifter oljeselskapene kan få fradrag for innenfor begrensningsregelen i petroleumsskattelovens § 3 h. Regelen sier at fradrag for renteutgifter skal avkortes dersom gjelden utgjør mer enn 80 pst. av selskapets balanse. Kortere avskrivningstid fører til at differansen mellom skattemessige og regnskapsmessige avskrivninger øker. Denne differansen gir opphav til en utsatt skatteforpliktelse i regnskapet som i forhold til begrensningsregelen i sin helhet defineres som gjeld.

Når utsatt skatt forpliktelsen øker, vil muligheten til å ha rentebærende gjeld innenfor begrensningsregelen reduseres. «Gjeldskapasiteten», og dermed rentefradraget mot særskatten, vil bli redusert. Med en reduksjon av avskrivningstiden fra 6 til 3 år, vil rentefradraget begrenses hvert år fremover i 6 år. Denne effekten fører til at den samlede virkningen av redusert avskrivningstid blir mindre enn den direkte virkningen som er omtalt ovenfor. Ved en diskonteringsrente på 4,68 pst. blir den samlede virkningen av kortere avskrivningstid på om lag 1,4 pst. av investeringen for selskaper som har maksimal gjeldsandel uten å få avkortet gjeldsrenter etter petroleumsskatteloven § 3 h.

På samme måte som for den direkte virkningen av redusert avskrivningstid, vil virkningen av redusert rentefradrag isolert sett være uavhengig av investeringsbeløp og investeringsprofil. Verdien av redusert rentefradrag vil være en tilnærmet sikker størrelse, og det vil derfor på samme måte som for avskrivninger være korrekt å benytte en tilnærmet risikofri diskonteringsrente.

For enkelte selskaper med høy andel ikke-rentebærende gjeld kan forskjellen mellom den direkte virkningen (bruttovirkningen) av kortere avskrivningstid og nettovirkningen være noe mindre. Dette skyldes at det for slike selskaper kan være lønnsomt å øke gjeldsandelen utover 80 pst. selv om selskapene blir avkortet for økte gjeldsrenter.

4 Departementets vurderinger og forslag

Det vises til omtalen foran av bakgrunnen for lovforslaget, herunder om finansministerens møte med ESA 16. mai 2002. Departementet ser det av hensyn til Snøhvit-utbyggingen som svært viktig at det blir truffet en avgjørelse så snart som mulig i spørsmålet om petroleumsskattelovens avskrivningsregler er forenlig med EØS-avtalen. En slik avklaring kan skje på grunnlag av EØS-avtalens regler om regionalstøtte, herunder regionalstøtte for store regionale investeringsprosjekter.

Slik departementet forstår den aktuelle situasjonen, vil en rask avklaring av dette spørsmål vanskeliggjøres av at det åpnes formell undersøkelsesprosedyre knyttet til avskrivningsbestemmelsen for LNG-baserte gassfeltutbygginger i petroleumsskatteloven slik bestemmelsen nå er utformet uten geografisk begrensning. Departementet finner det lite hensiktsmessig at det åpnes en formell prosedyre om lovligheten av en slik generell ordning, når dette bare kan ha betydning for eventuelle fremtidige LNG-baserte prosjekter utenfor et distriktspolitisk prioritert område. Det må antas særlig å være i de nordligste områder av norsk kontinentalsokkel der avstandene til markedet og eksisterende infrastruktur i form av rørledninger er størst, at det i dagens situasjon er aktuelt å bygge ut gassfelt basert på kostnadskrevende LNG-anlegg.

Departementet deler ikke den vurdering som ESA nå har gitt uttrykk for, om at gjeldende petroleumsskattelov inneholder elementer av statsstøtte som ikke er forenlig med EØS-avtalen. Det må imidlertid legges til grunn at det vil bli åpnet formell undersøkelsesprosedyre om spørsmålet dersom det geografiske virkeområdet for avskrivningsbestemmelsen ikke begrenses slik at det blir samsvar med virkeområdet for EØS-avtalens unntaksregler for regionalstøtte. De sterke hensyn knyttet til å få en rask avklaring av de skattemessige rammebetingelser for Snøhvit tilsier at det bør foretas en slik lovendring.

Når det gjelder den nærmere begrensning av det geografiske virkeområdet for bestemmelsen i petroleumsskatteloven § 3 b, foreslår departementet at avgrensningen samordnes med Prioriteringsområde A (Sone A) i forskrift om avgrensing av geografisk virkeområde for distriktspolitiske virkemidler, fastsatt ved kgl.res. 7. januar 2000. Det regionalpolitiske området som er fastlagt i forskriften, er godkjent av ESA som område for støtte som kan godkjennes i henhold til EØS-avtalens bestemmelser og retningslinjene for regionalstøtte. Sone A er den delen innenfor det regionalpolitiske området der det kan aksepteres den høyeste støtteintensitet for investeringsstøtte, og omfatter Svalbard, Finnmark fylke og kommunene Kåfjord, Skjervøy, Nordreisa og Kvænangen i Troms fylke.

Etter departementets vurdering vil bare en avgrensning til dette høyest prioriterte området for regionalstøtte gi grunnlag for å anta at en modifisert utforming av avskrivningsregelen raskt kan bli godkjent i henhold til EØS-avtalens artikkel 61 (3)c. Det har sammenheng med at et større virkeområde kan gjøre det vanskeligere og mer tidkrevende for ESA å forsikre seg om at alle vilkår for regionalstøtte da vil være oppfylt for alle (tenkelige) berettigede

prosjekter innenfor det større området. Departementet finner imidlertid at virkeområdet for avskrivningsbestemmelsen for LNG-baserte gassfeltutbygginger kan gjøres snevrere enn Sone A ved at Svalbard utelates. Det kan ikke anses som aktuelt at et eventuelt fremtidig LNG-anlegg på Svalbard, ved ilandføring av gass dit, vil bli omfattet av og beskattet i henhold til gjeldende skatteregime i petroleumsskatteloven. Departementet anser også at den aktuelle anvendelsen av ordningen vil være dekket med en slik avgrensning.

På denne bakgrunn foreslår departementet at det foretas en tilføyelse i petroleumsskatteloven § 3 b første avsnitt tredje punktum, som begrenser anvendelsesområdet for bestemmelsen til tilfeller der det aktuelle storskala LNG-anlegget ligger i Finnmark fylke eller kommunene Kåfjord, Skjervøy, Nordreisa og Kvænangen i Troms fylke. Det vises til lovutkastet.

Avskrivningsreglene, med en slik begrensning i det geografiske virkeområdet, vil bli notifisert til ESA med sikte på godkjenning etter unntaksreglene for regionalstøtte etter EØS-avtalens artikkel 61 (3) c. Å søke godkjenning av ordningen på dette grunnlaget forutsetter ikke at departementet oppgir sitt standpunkt om at gjeldende lov er forenlig med EØS-avtalen.

Departementet foreslår at endringen trer i kraft straks med virkning fra og med inntektsåret 2001. Dette er det samme ikrafttredelsestidspunkt som ved vedtakelsen av lovbestemmelsen da den ble innført i 2001. Siden spørsmålet om forenligheten med EØS-avtalen er omstridt, bør bestemmelsens nye avgrensning gjelde for hele virkeperioden. Det antas ikke å ha noen praktisk betydning for noen skattepliktig at endringen av bestemmelsen gis tilbakevirkende kraft, i det det ikke kan ses å foreligge noen investering i inntektsåret 2001 knyttet til prosjekt utenfor det nye anvendelsesområdet som kvalifiserer for avskrivning etter bestemmelsen.

5 Økonomiske og administrative konsekvenser av lovforslaget

Forslaget innebærer at den skattemessige avskrivningssatsen for investeringer i forbindelse med produksjon og rørledningstransport av gass som skal nedkjøles til flytende form dobles fra $16\,^{2}/_{3}$ pst. til $33\,^{1}/_{3}$ pst. Dette innebærer at investeringene i forbindelse med produksjon og rørledningstransport av gass som skal nedkjøles til flytende form, blir nedskrevet over 3 år i stedet for 6 år etter de ordinære reglene i petroleumsskatteloven. Endringen i avskrivningstiden vil gi lavere skatteinntekter for staten de tre første årene og tilsvarende høyere de tre neste årene. Dette innebærer et nåverditap for staten og en tilsvarende gevinst for selskapene. Det vises til avsnitt 3.2 for en nærmere redegjørelse.

Forslaget antas ikke å få vesentlige administrative konsekvenser.

Finansdepartementet

t i l r å r :

At Deres Majestet godkjenner og skriver under et framlagt forslag til proposisjon til Stortinget om lov om endringer i petroleumsskatteloven.

Vi HARALD, Norges Konge,

s t a d f e s t e r:

Stortinget blir bedt om å gjøre vedtak til lov om endringer i petroleumsskatteloven i samsvar med et vedlagt forslag.

Forslag til lov om endringer i petroleumsskatteloven

I

I lov 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumsforekomster m.v. (petroleumsskatteloven) gjøres følgende endringer:

§ 3 bokstav b første avsnitt tredje punktum skal lyde:

Utgifter til erverv av driftsmidler som nevnt i foregående punktum kan kreves avskrevet med inntil 33 $^{1}/_{3}$ pst. pr. år fra og med det år utgiften er pådratt, når formålet i henhold til godkjent plan for utbygging og drift og særskilt tillatelse til anlegg og drift etter petroleumsloven er produksjon, rørledningstransport og behandling av gass som skal nedkjøles til flytende form i nytt storskala nedkjølingsanlegg *som ligger i Finnmark fylke eller i kommunene Kåfjord, Skjervøy, Nordreisa eller Kvænangen i Troms fylke.*

II

Endringene under I trer i kraft straks med virkning fra og med inntektsåret 2001.

Vedlegg 1

Brev av 8. februar 2002 fra Finansdepartementet til EFTAs overvåkingsorgan (ESA)

EFTA Surveillance Authority
Rue de Tréves 74
B-1040 Brussels

State Aid (SAM 020.500.041): Complaint on «Special rate of depreciation for production facilities and pipeline installations for gas connected to large-scale cooling installations (LNG)» - Request for information

Dear Sir/Madam

1 Introduction

Reference is made to the letter of 20 December 2001 from the EFTA Surveillance Authority (the ESA) to the Norwegian Mission to the EU, wherein Norwegian authorities are requested to forward all relevant information on «Special rate of depreciation for production facilities and pipeline installations for gas connected to large-scale cooling installations (LNG)» which may elucidate the relationship to the State Aid provisions of the EEA Agreement. It is further requested that the information submitted should in particular substantiate why the Norwegian authorities find that the amendments to the Petroleum Tax Act are in accordance with the State Aid provisions of the EEA Agreement.

The reply deadline is 8 February 2002.

The following discussion and the attached documentation will show that the amendments to the legislation do not constitute State Aid pursuant to Art. 61 of the EEA Agreement.

2 Documentation

2.1 Relevant correspondence between the Ministry of Finance and Statoil

Attached are submitted copies of relevant correspondence between the Ministry of Finance and Statoil necessary to assess possible State Aid elements in connection with the Snøhvit/LNG project:

19.06.2000	Letter from Statoil to the Ministry of Finance: Snøhvit LNG - preparation of the tax regime for LNG production, Annex 1
16.08.2000	Letter from Statoil to the Ministry of Finance: Snøhvit LNG - tax regime, Annex 2
05.12.2000	Letter from Statoil to the Ministry of Finance: Snøhvit LNG - tax regime/tariff structure, Annex 3
25.01.2001	Letter from the Ministry of Finance to Statoil: Tax treatment of planned gas installation at Melkøya, Annex 4

23.03.2001	Letter from Statoil to the Ministry of Finance: Tax regime/tariff structure, Annex 5. Sections 2 to 4 of the letter have been removed. These sections relate to the tariff regime and contain details on trade secrets. The tariff regime is not of relevance to an assessment of whether the amendments to the legislation constitute unlawful State Aid.
22.04.2001	Letter from Statoil to the Ministry of Finance - Snøhvit LNG, Annex 6 (The date on the letter, 22.03.2001, is due to a clerical error)
19.06.2001	Letter from the Ministry of Finance to Statoil: Tax treatment of planned gas installation at Melkøya - the Snøhvit project, Annex 7
08.06.2001	Letter from Statoil to the Ministry of Finance: Tax treatment of planned gas installation at Melkøya - the Snøhvit project, Annex 8. Section 2 of the letter has been removed. This section relates to the tariff regime and contains details on trade secrets. The tariff regime is not of relevance to an assessment of whether the amendments to the legislation constitute unlawful State Aid.
02.07.2001	Letter from the Ministry of Finance to Statoil: Taxation framework for a pipeline for bringing ashore gas from the Snøhvit field, Annex 9
13.09.2001	Letter from the Ministry of Finance to Statoil, the Norwegian Oil Industry Association and the Petroleum Tax Office: Proposal for amendments to the Petroleum Tax Act - depreciation of production facilities and pipeline installations for gas connected to large-scale cooling installations (LNG), Annex 10
	Reference has been made in the attached correspondence to the following letter, which has not been attached:
29.12.2000	Letter from Statoil to the Ministry of Finance - the Snøhvit LNG tariff regime. The letter only addresses the tariffs, and is of no relevance to this case.

The letter of 08.06.2001 from Statoil refers to a letter of 01.06.2001. This date must reflect a clerical error. No letter has been sent from the Ministry to Statoil on the said date.

2.2 Statutory text and preparatory works respecting Section 3, litra b, third sentence of the Petroleum Tax Act

English translations of the following are attached:

Proposition to the Odelsting; Proposition No. 16 to the Odelsting (2001-2002), Annex 11

Recommendation of the Standing Committee on Finance to the Odelsting; Recommendation No. 2 to the Odelsting (2001-2002), Annex 12

The resolution of the Odelsting; Resolution No. 2 of the Odelsting (2001-2002), Annex 13

3 Relevant main features of the Norwegian tax system

3.1 General taxation act

The Act on taxation of wealth and income (the Tax Act) of 26 March 1999 No. 4 provides the legal authority for taxation of individuals and corporations. The Storting determines the rates of taxation on an annual basis. Corporate profits are taxed at a rate of 28 percent. Tangible operating assets are depreciated in

accordance with the declining balance method, cf. Section 14-40 onwards of the Tax Act. Upon implementation of the 1992 tax reform it was determined that the rates of depreciation should to the extent possible reflect the actual reduction of the financial value of the operating assets. Operating assets are divided into depreciation groups. The rate of depreciation applicable to 2002 varies from 30 percent of the remaining balance for office equipment down to 2 percent for commercial buildings. The rate of depreciation applicable to plant and equipment is 4 percent of the remaining balance, cf. Section 14-43 of the Tax Act.

3.2 The Petroleum Tax Act

The Petroleum Tax Act sets out a tax regime that is specially adapted to income from extraction and transportation by pipeline on the Norwegian continental shelf, including pipeline systems for bringing petroleum ashore and onshore receiving facilities. This petroleum tax regime differs from the general corporate tax regime in a number of respects, but is based on, and supplemented by, the general provisions of the tax legislation.

Petroleum exploration in the Norwegian sector of the continental shelf commenced in the mid-1960s. The first Petroleum Tax Act was the Act of 11 June 1965 nr. 3. The purpose of the Act was primarily to provide an incentive for promoting exploration activity on the Norwegian continental shelf through reduced rates of taxation, and to ensure Norwegian taxation of foreign corporations involved in petroleum activities within this area.

Upon extraction of petroleum being initiated in the early 1970s, there arose a need for more comprehensive tax regulation of petroleum activities. The potential for exceptional profitability within this industry suggested that the average rate of taxation applicable to extraction of petroleum should be higher than that applicable under the ordinary tax system pursuant to the then Tax Act of 18 August 1911 No. 8 and special acts, in order to access a significant part of the economic rent.

The current Act on the taxation of sub-sea petroleum deposits was adopted on 13 June 1975 No. 35 (the Petroleum Tax Act). The Petroleum Tax Act contributes to apportioning the «excess profits» of the petroleum industry between the State and the licensees. The Petroleum Tax Act sets out special provisions applicable to an industry that would otherwise be excessively profitable, and as such it contributes to channelling economic rent to the State. The special tax has a central position amongst the special provisions. Income from extraction activities and transportation of petroleum by pipeline is subject to a special tax at a rate of 50 percent in addition to the general corporate tax rate of 28 percent. Furthermore, the Petroleum Tax Act sets out special depreciation provisions and provisions on uplift shielding part of the income from the special tax. The Petroleum Tax Act also contains special provisions on the calculation of income, including the use of norm prices for purposes of tax assessment. The special provisions on the taxation of income are not discussed in the following.

The system of the Petroleum Tax Act is based on overall taxation of the net income of the extraction and pipeline activities of the companies, and not on taxation on a field-by-field basis.

3.2.1 Rates of taxation

Profits from extraction income are subject to corporate tax on ordinary income at a rate of 28 percent and special tax at a rate of 50 percent on net income adjusted for uplift, i.e. a total rate of 78 percent.

3.2.2 Depreciation

Operating assets employed in extraction and pipeline activities do not qualify for depreciation deductions pursuant to Sections 14-30 to 14-48 of the Tax Act. Pursuant to Section 3, litra b, of the Petroleum Tax Act, expenses incurred in acquiring tangible operating assets relating to extraction and pipeline activities may be depreciated at a maximum rate of $16\,^{2}/_{3}$ percent per annum, with the first year of the depreciation period being the year in which such expense was incurred. The rate of depreciation is considerably higher than would be suggested by the reduction in value of the operating assets. Most installations are constructed to remain operational for a significantly longer period of time.

During the period 1975 - 1986 the first year of the depreciation period was the year in which the operating asset was put into «regular use». As far as production installations with related appurtenances are concerned this was deemed to be the time at which regular petroleum production was commenced. Each production installation was deemed to constitute one operating asset. The starting time was aimed at to some extent preventing depreciation with respect to an installation under construction from being deducted against income from fields involved in active production. As of 1987, operating assets may be depreciated starting the year in which the expense was incurred.

Expenses incurred in petroleum deposit exploration, prior to a development decision being made, do not need to be capitalised and can be charged as expenses on an ongoing basis. Exploration expenses are thus not included in the cost price of operating assets to be depreciated pursuant to Section 3, litra b, of the Petroleum Tax Act.

3.2.2.1 The Ekofisk water injection installation

By way of an interim act supplementing the Petroleum Tax Act, in the form of Act No. 76 of 23 December 1983, a special tax regime was put into place for the implementation of assisted extraction of crude oil. The Act was motivated by a decision to inject water into the Ekofisk reservoir to increase the extraction rate. The supplementary production was expected to increase the extraction rate of the Ekofisk field from approximately 20 to approximately 24 percent. The project required installation of a new platform on the field. Equipment for drilling of injection wells, water treatment installations and pumps for the actual injection were to be installed on the platform. The following is excerpted from the preparatory works relating to the Act; Section 2, page 2, of Proposition No. 7 to the Odelsting (1983-84):

> «Amongst the factors contributing to reducing the profitability of the water injection project is that income is generated at a relatively late stage of the lifetime of the project. As the Phillips Group companies already have considerable annual income, it is possible to compensate the late income by permitting the companies to use deductions availa-

> ble in the form of depreciation and uplift at an earlier stage than currently allowed under the Petroleum Tax Act. A reduction of the duration of the depreciation/uplift period and/or a moving forward of the time at which these deductions may be effected will lead to the companies receiving their income somewhat earlier, while the tax payments to the State are somewhat delayed.»

The regime implied that investments in installations involved in the injection project were made deductible in the same tax year as the costs were incurred. On the other hand, the investments only formed the basis for 6 $^{2}/_{3}$ percent uplift annually for 3 years in respect of the calculation of special tax, as against normally 15 years. Uplift was thus reduced from 100 percent of the investment to 20 percent.

3.2.3 Uplift and production allowance

Pursuant to Section 5, fourth paragraph, of the Petroleum Tax Act, uplift is granted against income liable to special tax. Uplift is a «basic allowance» against the basis for special tax, and thus limits the liability for special tax. Uplift implies that the actual duty to make tax payments takes effect at a later stage respecting the special tax than what is the case with respect to other taxes. Under the current rules, uplift equals 5 percent of the cost price of operating assets involved in extraction activity, and is included in the calculation of income liable to special tax for 6 years, commencing in the year in which depreciation of the said operating asset is initiated.

During the period 1975-1980 uplift amounted to 150 percent (10 percent for 15 years), but it was reduced to 100 percent (6 $^{2}/_{3}$ percent for 15 years) during the period 1981-1986. During the period 1975 - 1986 uplift, like depreciation, commenced in the year in which the operating asset was put into regular use. In connection with the revision of the system in 1986, the uplift regime was abolished in respect of investments made in 1987 or later years. A new regime was introduced in 1987 in the form of a production allowance for production from «new» fields. Like uplift, the production allowance offered a deduction in the basis for calculating the special tax. The production allowance was calculated as a percentage of the gross production value of petroleum. The basis for the deduction was the volume of extracted petroleum that had yielded the taxable income in the tax year, valued at the price applied in performing the tax assessment.

The provision on production allowance was abolished and replaced by the current provisions on uplift in 1992. The background to the most recent legislative amendment had to do with both incentives and tax administration. The assessment of the Ministry was that some degree of shielding against the special tax remained desirable.

3.2.4 New depreciation provisions for a new large-scale LNG installation

The Norwegian authorities wish to see the gas resources in the Barents Sea developed. Due to long distances from the existing pipeline infrastructure, LNG technology is the only economically feasible method of exploiting gas resources in the Barents Sea. Development of a large-scale LNG installation is

significantly more expensive than a development based on transportation by pipeline. The structural and factual circumstances encountered in exploiting gas resources in the Barents Sea has lead to an amendment of the Petroleum Tax Act. It applies to all field developments satisfying the requirements of the Act.

Pursuant to Section 3, litra b, second sentence, of the Petroleum Tax Act, operating assets involved in petroleum activities are subject to depreciation at a rate of 16 $^{2}/_{3}$ percent per annum, with the first year of the depreciation period being the year in which such expense was incurred. By way of a new third sentence of Section 3, litra b, of the Petroleum Tax Act the rate of depreciation has been modified respecting expenses incurred in acquiring operating assets involved in extraction activity, provided that the purpose, according to an approved plan for development and operation as well as a special licence for the installation and operation pursuant to the Petroleum Act, is production, transportation by pipeline and processing of gas to be liquefied by cooling in a new large-scale cooling installation. The rate of depreciation is 33 $^{1}/_{3}$ percent.

The Snøhvit field (herein used as a joint term comprising the Snøhvit, Askeladd and Albatross fields) is located in the Barents Sea, a long distance from the markets, and a long distance from existing infrastructure in the form of pipelines for transportation of the gas to the export markets. For this reason it is planned that the gas be brought ashore at Melkøya, via a pipeline, and cooled in a large-scale cooling installation (LNG installation), wherefrom the gas is transported by ship to the markets. The Snøhvit project comprises development of the said fields, a pipeline ashore, as well as a reception installation, a pre-processing installation and an LNG factory, including appurtentant storage and loading facilities, at Melkøya near Hammerfest. The development is to be effected in several phases:

Phase 1 - 2005 - Snøhvit, with onshore compression in 2010
Phase 2 - 2011 - Askeladd
Phase 3 - 2018 - Albatross
Phase 4 - 2021 - Offshore compression

Amending the provisions on uplift was considered as an alternative to amending the depreciation provisions. Advance approval of the tariffs for processing the gas in the LNG installation was also considered. The assessment of the Ministry of Finance was that the Ministry does not have statutory authority to effect such advance approval.

Financial implications of the depreciation regime for large-scale LNG installations

3.3.1 General remarks on investment-based deductions within the petroleum taxation system

The Norwegian petroleum taxation system features investment-based deductions in the form of depreciation and uplift. Furthermore, debt interest may be deducted, also against the special tax, within the limitations set out in the provision on «thin capitalisation», cf. Section 3 h of the Petroleum Tax Act.

Depreciation for tax purposes is often significantly swifter than would be suggested by the reduction in the value of the operating assets, cf. Section 3.2.2. Taken in isolation, this contributes to a reduction in the net present value of the taxes under the petroleum tax regime relative to those under the onshore tax regime. However, despite the accelerated depreciation the average rate of taxation is significantly higher on the continental shelf than onshore. In other words, accelerated depreciation for tax purposes and other investment-based deductions are not sufficient to counterbalance the effect of the special tax.

A higher average tax burden on the continental shelf must be viewed in light of most projects on the continental shelf generating higher returns than onshore projects of corresponding risk. It is an objective to ensure that the largest possible share of this economic rent accrues to the State through the tax system and SDFI (State Direct Financial Interest), while preventing the tax system from contributing to a reduction in the value added originating from the continental shelf. If profitability on the continental shelf had been significantly lower, it would probably not have been particularly desirable to maintain a special rate of taxation at the current level over time. In such a situation it would also be reasonable to assess the system for investment-based deductions (depreciation and uplift) to achieve, amongst other things, a better match between depreciation for tax purposes and reductions in value.

3.3.2 The value of accelerated financial depreciation

Proposition No. 16 to the Odelsting (2001-2002) discusses the financial implications of a shortened period of depreciation in the following manner:

> «The amendment to the period of depreciation will reduce the tax income of the State for the first three years, and increase the tax income correspondingly for the subsequent three years. This implies a loss to the State in terms of net present value, and a corresponding gain to the companies. The amount of such net present value loss depends on the discount rate employed. Based on an almost risk-free discount rate, the net present value loss from the amended depreciation provisions will, if taken in isolation, amount to somewhat in excess of 4 percent of the total investments (measured in net present value terms).»

In the opinion of the Ministry, the discussion of Proposition No. 16 to the Odelsting (2001-2002) correctly reflects the isolated implications of amending the depreciation provisions when the companies in question are fully liable to tax (i.e. are paying both regular tax and special tax). A net present value loss of somewhat in excess of 4 percent of total investments amounts to a net present value loss of approximately NOK 900 million respecting the Snøhvit project.

However, accelerated depreciation does have certain consequences for deductible interest that are of relevance in estimating the overall effects of a shortened period of depreciation for a given implementation of the project. The period of depreciation affects the maximum interest-bearing debt the companies may incur within the scope of Section 3 h of the Petroleum Tax Act (the provision on thin capitalisation). Accelerated depreciation for tax purposes leads to an increased differential between depreciation for accounting purposes and for tax purposes, and thus to increased deferred tax on the liability

side of the balance sheet. Increased deferred tax is regarded as debt in relation to the provisions of Section 3 h, and thus reduces the scope for the companies of incurring interest-bearing debt without being subject to a scaling down of their deductible interest expenditure. A reduction in the deductible interest applicable to income liable to special tax will increase the tax revenue of the State, and will thus to some extent counterbalance the net present value loss resulting from shortened periods of depreciation. The magnitude of this effect will to some extent depend on the balance sheets of the companies in question and how these have adapted to Section 3 h, as well as other assumptions that will have to be made in making the calculation. The combined consequences of a shortened period of depreciation and a reduction in deductible interest can under assumptions deemed by the Ministry to be reasonable be estimated as resulting in an overall net present value loss to the State of approximately 1 percent of overall total investments. The overall effects of a shortened period of depreciation will thus be significantly less than suggested by the analysis performed in isolation.

3.3.3 Total tax payments under different tax regimes

The Ministry of Finance has carried out calculations showing that the overall tax burden applicable to the Snøhvit project is clearly higher under the proposed tax system (the petroleum tax system with a three year period of depreciation), than had the onshore tax system based on ordinary depreciation provisions been applied to the project in its entirety. Based on a nominal discount rate of 10 percent net of tax, the net present value of the tax payments from the Snøhvit project are in the region of NOK 3.3 billion based on petroleum tax and NOK 2.7 billion based on onshore tax. It may be argued that the discount rate should be somewhat lower, particularly under the alternative based on petroleum tax where the risk-free investment-based deductions constitute a larger share than under the alternative based on onshore tax. This would have the effect of increasing the differential between the net present values of tax payments under the two alternatives.

4 Delineation between the offshore tax regime and the onshore tax regime

4.1 Introduction

The Bellona Foundation has in its complaint emphasised that the LNG installation being assigned to the petroleum tax regime by way of an administrative decision may allegedly constitute an illegal benefit. Bellona argues that: ...«Also practice with respect to the gas treatment plants at Kollsnes and Kårstø, that are located onshore, would suggest that the Snøhvit LNG installation should be taxed outside the scope of the Petroleum Tax Act.»

Section 1, first paragraph, litra d, of the Petroleum Tax Act is worded as follows:

> «This Act pertains to taxation of exploration for or extraction of sub-sea petroleum deposits and activities and work related thereto, including transportation by pipeline of extracted petroleum
>
> ...

d) within the realm as far as transportation of petroleum by pipeline from areas mentioned under a), b), or c) are concerned, as well as other activities at reception and loading installations as part of extraction and transportation by pipeline of such petroleum.»

Section 1, third paragraph of the Petroleum Tax Act is worded as follows:

«The Ministry may determine that certain types of activity or work should fall outside the scope of the Act, and may make decisions on more detailed delineation of the tax liability pursuant to the first paragraph, litra d).»

Delineation between the offshore tax regime and the onshore tax regime is effected either by way of an interpretation of Section 1, first paragraph, litra d of the Petroleum Tax Act, or by way of the Ministry of Finance making a decision pursuant to Section 1, third paragraph.

The term pipeline is defined in more detail in the Regulations of 30 April 1993 No. 316 on the taxation of income resulting from extraction and transportation by pipeline of petroleum (the Petroleum Tax Regulations). Section 8 is worded/reads as follows:

«A pipeline within the meaning of the Petroleum Tax Act is an installation for transportation of petroleum from a production installation on the Norwegian continental shelf to shore.

A pipeline also includes onshore receiving facilities, as well as loading installations in connection with the reception. Installations for further processing of petroleum, including refining, are not deemed to constitute part of the pipeline.

The interface between the pipeline and other onshore installations is the measuring station that petroleum passes through after having been subjected to cleaning, stabilisation and temporary storage.»

4.2 The Kårstø installation

In connection with the construction of the pipeline for transporting rich gas from the Statfjord field to Kårstø in Rogaland, the scope of the Petroleum Tax Act was expanded in order that the gas pipeline, including significant parts of the onshore terminal installation, fall within the scope of the Petroleum Tax Act and thus within the special tax regime.

The following is excerpted from Section B of Proposition No. 42 to the Odelsting (1981-82):

«The gas is transported by pipeline from the Statfjord field to Kallstø on Karmøy. The pipeline then runs partly in a ditch, partly over land and partly under water to Kårstø. There the gas is firstly channelled into a reception installation, a plug receptor wherein exudation is effected. The gas is subsequently channelled into a pre-processing unit consisting of a CO2 removal unit, a drying unit and a separation unit. Wet gas (NGL) is separated from dry gas in the separation unit. The wet gas is sent on for fractionation in an NGL installation where the products are ethane, propane, butane and naphtha. These are shipped on. Whether some of the dry gas should be allocated to industrial production is still being evaluated. The remainder will be passed on to Ekofisk on the continental shelf by pipeline, and from there on to Emden. Preprocessing and separation units are required for purposes of the

> throughput of the gas to be returned to the continental shelf. These parts of the installation should fall within the scope of the Petroleum Tax Act. Those parts of the installation effecting the further processing of the wet gas (by way of fractionation thereof), are not required for purposes of throughput and will have to fall outside such scope.»

Proposition No. 102 to the Storting (1980-81) describes the delineation of the term pipeline as follows:

> «Applied to the pipeline planned to Kårstø and then back to Ekofisk, this implies that all installations that are required for the throughput of gas to Ekofisk will fall within the scope of the Petroleum Tax Act. These will include plug receptor, pre-processing and separation units, pumping or compression installations required for pipeline transportation as well as intervening, outgoing and incoming pipelines. Wet gas installations and any other installations in connection with the bringing ashore of gas will be subject to the regular tax provisions applicable to onshore activities in Norway.»

The delineation of the documentation presented to the Storting between the offshore and onshore tax regimes is based on interpretation of the Act as worded following the amendments to the legislation. The wet gas installation (the fractionation activities) are not regarded as transportation of petroleum or other activities at the reception and loading installation, but as further processing, and is subject to the onshore tax regime.

4.3 The Kollsnes installation

The reception installation at Kollsnes, which amongst other things processes the gas from the Troll field falls in its entirety within the scope of the Petroleum Tax Act, and is thus subject to special tax.

The following is excerpted from Section 8.4.1 of Proposition No. 12 to the Odelsting (1991-92):

> «The reception installation at Kollsnes for the gas from the Troll field will in the main serve the same functions as the reception installation at Kårstø. The main difference is that the gas flow from the Troll field is brought ashore without pre-processing, implying that all exudation has to take place at the onshore terminal. There will be no separate processing and fractionation installation for wet gas.
>
> Pursuant to the approved revised plan for development and operation of Troll phase I, the field is to be developed with an offshore well head platform and an onshore processing installation. The production flow is to be passed on unprocessed to Kollsnes in Øygarden by way of two polyphase pipelines, where a processing installation for processing of the gas and separation of natural gas liquids and dry gas as well as a compression installation for export of gas are being constructed.
>
> In the onshore processing unit gas from Troll will be dehydrated in order to extract water and other fluids. The heavier components will be extracted in the form of liquids. The dry gas is subsequently compressed for transportation to the Continent through the pipeline system. Natural gas liquids will be extracted and transported to the purchaser via pipeline or ship. Transportation to the purchaser via pipeline or through a separate installation is being considered.

> Consequently, the processing may in the main be said to comprise the extraction of dry gas and natural gas liquids from the gas, as well as the sending of dry gas that is ready to be sold on to the pipeline system on the continental shelf and the delivery of natural gas liquids for onward transportation and use. On this background it is the opinion of the Ministry that there is a basis for considering the onshore processing installation for such a reception installation connected to a pipeline for bringing ashore gas as falling within the scope of the Petroleum Tax Act pursuant to the Petroleum Tax Act and the regulations appended thereto. If required, the King may pursuant to Section 1, second paragraph of the Petroleum Tax Act, pass more detailed resolutions confirming this. However, the Ministry considers the most appropriate solution to be the expansion of the actual wording of Section 1, first paragraph, litra d, in order that it more explicitly include onshore reception and processing installation constructed as part of the extraction and transportation of petroleum brought ashore from the continental shelf.»

Delineation of the scope of the offshore tax regime as applicable to the Kollsnes installation is thus based on an interpretation of the Act following the amendments to the legislation, cf. Proposition No. 12 to the Odelsting (1991-92).

4.4 The Installation at Melkøya

On 19 June 2001 the Ministry of Finance made a decision on the delineation of the scope for taxation pursuant to the Petroleum Tax Act, cf. copy of the letter of the Ministry, Annex 7. According to the decision the terminal installation at Melkøya would for purposes of taxation be deemed to fall partly within the scope of the Petroleum Tax Acts. The following activities were not to be deemed to fall within the scope of the provisions of the Petroleum Tax Act, but would in all respects be dealt with pursuant to the general provisions of the Tax Act of 26 March 1999 No. 4:

- Removal of CO_2, mercury and water
- Cooling of the gas stream into LNG, including the extraction of LPG
- Storage and loading of prepared LNG and LPG.

In Section 4.2 of Proposition No. 16 to the Odelsting (2001-2002), the Ministry assumed that the licensees would request that said decision be amended, in order that the operating assets in question would fall within the scope of the Petroleum Tax Act by way of being classified amongst the operating assets dedicated to extraction and pipeline transportation. The majority of the Standing Committee on Finance endorsed the assessment of the Ministry of Finance as well as the proposal set out in the Proposition, cf. Section 2 of Recommendation No. 2 to the Odelsting (2001-2002).

Statoil has in a letter of 1 November 2001 on behalf of the Snøhvit field licensees requested that the Ministry make a new decision pursuant to Section 1, third paragraph of the Petroleum Tax Act, whereby it is confirmed that the activities and operating assets relating to the terminal installation at Melkøya, as described in the Plan for Development and Operation/Plan for Installation and Operation submitted to the authorities (the Ministry of Petroleum and Energy) on 25 September 2001, in their entirety fall within the scope of the

provisions of the Petroleum Tax Act. Such a decision has been made by way of a letter to Statoil dated 31 January 2002. The amended decision implies that the LNG-installation is deemed to constitute part of the pipeline transportation system, cf. the delineation of the term pipeline in Section 1, first paragraph, litra d, of the Petroleum Tax Act and Section 8 of the Petroleum Tax Regulations, cf. also the delineation as applied to the Kårstø and Kollsnes installations. The gas is liquefied by cooling, but it remains the same product and no further processing of the gas takes place.

No fractionation of wet gas will take place at the reception installation at Melkøya corresponding to the further processing and production of various heavier gas products as is taking place at Kårstø and being taxed under the onshore tax regime.

In the view of the Ministry of Finance there is nothing extraordinary about the LNG installation being dealt with as forming part of the pipeline in terms of taxation. The Petroleum Tax Act must be deemed to allow both for a solution whereby a decision is made pursuant to Section 1, third paragraph of the Petroleum Tax Act to the effect that the mentioned installation should fall within the scope of the Act, as well as a solution whereby the LNG installation is deemed to fall outside such scope. In any case, taxation of the LNG-installation under the offshore regime represents no deviation from the ongoing tax treatment of the receiving facilities at Kollsnes and Kårstø, as suggested by the letter from Bellona. The background for the Ministry, in connection with the proposal to amend the period of depreciation applicable to production installations and pipeline systems connected to a large-scale LNG installation, proposing a solution whereby the LNG installation at the request of the licensees could fall within the scope of the petroleum tax regime by way of a new decision, was a desire to avoid uncertainty and doubt respecting the tax treatment of the tariffs applicable to the service functions to be performed under the LNG process.

Under the amended decision the income from this part of the activities will also be subject to offshore tax at a rate of 78 percent. The amended decision implies that determination of the processing tariffs applicable to the LNG installation will be of no relevance in terms of taxation, as the entire value chain remains within the scope of the offshore tax regime. The Ministry of Finance is unable to see that a delineation of the scope of the Petroleum Tax Act in respect of the Snøhvit installations which implies that the LNG installations fall within the scope of the special tax regime under the Petroleum Tax Act, should amount to any form of financial benefit suggesting that State Aid is being granted.

5 Summary on the relationship between the amendments to the legislation and the EEA Agreement - the State Aid provisions

The main rule is that the tax systems of the nation states do not fall within the scope of the EEA Agreement. Each State may design its tax system on the basis of a balancing of the tax policy considerations of the State itself. Norway has elected a general tax system whereby corporate profits are subject to a rate of taxation of 28 percent. Furthermore, Norway has elected a tax regime

that on average imposes a heavier tax burden on income accruing from the extraction and transportation by pipeline of petroleum, including onshore receiving facilities that may be deemed to constitute part of pipelines for bringing petroleum ashore, whereby the companies in addition to corporation tax are subjected to a special tax to be paid to the State at a rate of 50 percent. The high rate of taxation within the petroleum sector is to some extent counterbalanced by swifter depreciation and uplift relating to the special tax, cf. Section 3.3.1. The amendment to the depreciation provisions with respect to field developments requiring that the extraction of gas be based on large LNG installations constitutes a modification of the petroleum tax regime as far as such qualified installations are concerned. The amendment to Section 3 b of the Petroleum Tax Act is both formally and de facto of a general nature, and will be applied to all field developments satisfying the requirements of the Act. As far as the Snøhvit project currently being considered is concerned, the overall tax burden will, despite the amended depreciation provisions, be significantly heavier than had the onshore tax regime been applied to the entire project, cf. Section 3.3.3.

The amendments to the legislation make it more feasible to develop gas deposits on the Norwegian continental shelf that are situated a long distance from other infrastructure and a long distance from the markets. In the assessment of the Ministry, such a tax regime applicable to the development of the field and the overall income generated thereby cannot constitute State Aid. It is not desirable to maintain an average level of taxation for such developments that is on par with that applied within the remainder of the petroleum tax regime. An obvious way to address this would be to apply a reduced rate of taxation combined with depreciation that to a greater extent reflected reductions in financial value, cf. Section 3.3.1. The tax treatment of large-scale LNG installations would in such case be more similar to the regular onshore tax provisions. However, such an amendment is difficult to implement within the Norwegian petroleum tax system, which is not field specific, cf. Section 3.2. The taxation framework applicable to developments based on large-scale LNG-installations have thus been amended through a reduction in the period of depreciation, down to three years, while maintaining the high rate of taxation. The fact that it has been decided that the LNG installation, as part of the pipeline system, falls within the scope of the Petroleum Tax Act, and that it is thus subject to the special tax regime, is in keeping with the system of the Petroleum Tax Act. The delineation thereby resulting between the onshore and offshore tax regimes does in the opinion of the Ministry not constitute any element of financial aid, but offers obvious advantages to both the State and the companies in terms of the technicalities of tax assessments, inasmuch as it removes the considerable uncertainty that could otherwise have arisen respecting the tax treatment of the processing charges applicable to the LNG installation.

It will follow from the above that there is a logical tax policy reason for the amendment to Section 3 b of the Petroleum Tax Act, based on the aim of achieving the desired development of the gas resources on the Norwegian continental shelf, in this case through development of the Snøhvit gas field, that will ensure a significant increase in the Norwegian production of gas. This measure will yield higher tax income to the State than if such development had not

taken place. Furthermore, the scope of the reduced tax burden is limited (approximately 1 percent of the amount of investment, cf. Section 3.3.2), and the value of the tax payments is significantly higher than had been the case if taxation had taken place pursuant to the regular onshore tax provisions (cf. Section 3.3.3).

On the above basis the amendments have been assessed and found to be in compliance with the State Aid provisions of the EEA Agreement, cf. Section 4.1 of Proposition No. 16 to the Odelsting (2001-2002).

Vedlegg 2

Brev av 19. april 2002 fra Nærings- og handelsdepartementet til EFTAs overvåkingsorgan (ESA)

EFTA Surveillance Authority
Rue de Trèves 74
B-1040 Brussels
Belgium

State aid - Request for further information - «Særskilt avskrivningssats for produksjonsinnretninger og rørledningsanlegg for gass tilknyttet storskala nedkjølingsanlegg»

Dear Sir/Madam,

Reference is made to the Authority's letter of 18 March 2002 requesting information on «Særskilt avskrivningssats for produksjonsinnretninger og rørledningsanlegg for gass tilknyttet storskala nedkjølingsanlegg (LNG)».

1 Introduction

The Norwegian Government wishes to see the gas resources in the Barents Sea developed. This is due to the Norwegian Government's obligation to manage the petroleum resources on the Norwegian Continental Shelf (NCS) to the benefit of the Norwegian society as a whole, thereby realising the values represented by these resources. The Barents Sea is situated a long distance from the markets, and from existing infrastructure in the form of pipelines for transportation of the gas to the export markets. The exploitation of gas resources in the Barents Sea and other similar areas on the NCS therefore require the application of a new technology not yet applied on the NCS or anywhere else in Europe, i.e. the liquefaction of natural gas. In order to allow these gas resources to be developed, the Government has decided to take the necessary measures to ensure that the LNG technology can be developed in Norway.

The general amendment to Section 3 of the Petroleum Taxation Act (PTA) reflects the low profitability of large- scale LNG projects. The amendment was made to ensure the realisation of the substantial values and tax revenues to the State of gas exploitation projects in areas isolated from the market and pipeline infrastructure, and to stimulate the development of such gas fields through the building of large-scale LNG installations. No large-scale LNG- installations have previously been built in Norway.

Norway's policy to stimulate the development of LNG technology and the development of gas resources in the Barents Sea and other similar areas is fully in line with an energy policy that is generally regarded as beneficial to the European Union and, by the same token, to the EEA. As the Commission of the European Communities (Commission) has stated in its Communication on European energy infrastructure, the supply of LNG is expected to increase the flexibility, supply diversity and liquidity of the gas markets. [1)] As stressed in the action plan for the Northern Dimension in the external and cross-border policies of the European Union [2)] and the preceding Commission Communi-

cation on strengthening the Northern Dimension in European Energy supply, [3] one of the areas to be examined is the potential of the gas resources in the Barents Sea. [4] As a part of two EU-Interreg programmes - Northern Periphery and North Sea - the Northern Maritime Corridor is also focusing on exploitation and on a sustainable transport of oil and gas from the Barents region. [5] Furthermore, the Commission has listed LNG supplies from Norway i.e. from the Snøhvit field in the Barents Sea among the key gas supply projects for Europe. [6]

The Norwegian Government is of the view that the amendment to the PTA does not contain any element of State aid within the meaning of Article 61 (1) of the EEA Agreement («EEA»).

If the Authority should be of the opinion that the amendment to the PTA contains elements of State aid within the meaning of Article 61(1), the Norwegian Government is of the view that the amendment is compatible with the EEA Agreement due to the derogation in Article 61(3)(c) EEA.

2 The economic consequences of the amendment to the PTA

In its letter of 18 March 2002, the Authority has requested information regarding the economic consequences of the amendments to the Petroleum Tax Act for the Snøhvit project. The Authority has requested information concerning the net present value of the project before taxes and the net present value of the taxes under four different alternatives. These alternatives were:

1. Part of the LNG facility is placed under the onshore tax regime, i.e. the delineation alternative decided upon by the Ministry of Finance in its letter to Statoil of 19 June 2001, and the normal (16 $^{2}/_{3}$ per cent) depreciation rates under the PTA apply to the part of the facility regulated by the PTA;
2. The Snøhvit project is in its entirety placed under the PTA and the normal

[1] Communication on European energy infrastructure, COM (2001) 775 final, 20.12.2001. page 13 (English version) See also «Technical Document» to COM(2000)769 Final Green Paper - Towards a European Strategy for the Security of Energy Supply, at page 28: *«Liquefied natural gas (LNG) production is growing, and will increasingly become an attractive alternative to conventional gas due to technological progress exerting downward pressure on the supply costs. LNG is also a means for bringing gas into Europe from more distant gas fields. Increasing the processing capacity of ports around the Union is a potential instrument of improving the security of gas supply.»*See also COM (1999) 571 final, Security of EU Gas Supply, at page 32 and Press Release 2267 from the Energy Council of 30 May 2000, 186, No. 8835/00, endorsing the Commission's policy set out in its Communication on Security of EU Gas Supply.

[2] Opinion of the Economic and Social Committee on the 'Northern Dimension: Action Plan for the orthern Dimension in the external and cross- border policies of the European Union 2000-2003' (2001/C 139/11).

[3] Communication from the Commission - 'Strengthening the Northern dimension of European energy policy' COM (1999) 548 final. See also, Press Release 2230 from the Energy Council of 2 December 1999, 388, No. 13685/99, endorsing the Commission's policy set out in the Communication on the Strengthening of the Nordic Dimension.

[4] See also COM (2001) 775 final, page 13.

[5] The Northern Maritime Corridor is a Norwegian initiative with direct relevance to the European Union's Northern Dimension initiative.

[6] COM (2001) 775 final, Annex IV, page 38.

(16 $^{2}/_{3}$ per cent) depreciation rates apply;
3. Part of the LNG facility is placed under the onshore tax regime (as point 1) and the increased (33 $^{1}/_{3}$ per cent) depreciation rates under the PTA apply to the part of the facility regulated by the PTA;
4. The Snøhvit project is in its entirty placed under the PTA and the increased (33 $^{1}/_{3}$ percent) depreciation rates apply, i.e. the solution decided by the Storting (Parliament).

The Authority furthermore requested a calculation of the alternatives by applying a risk free discount rate, the reference rate used by the Authority of 6,32 per cent and a 10 per cent discount rate.

The Norwegian Interbank Offered Rate (NIBOR) may be used as an indicator of an approximately risk-free interest rate. The 3-month NIBOR rate was 6,32 in January and 6,57 in February while the 12-month rate was 6,24 and 6,69. A reasonable estimate of a nominal risk-free interest rate may therefore be 6,5 per cent (before tax), corresponding to a discount rate of 4,68 per cent after tax. In the calculations below, the before tax rate of 6,5 per cent is used for the net present value of the Snøhvit project before tax, while the after tax rate of 4,68 per cent is used for the net present value of the tax payments. Given the risk in the Snøhvit project a risk free discount rate is clearly unable to give a correct estimate for the value of the project. An approximately risk free discount rate will however be relevant for evaluating the differences in net present value in taxes (and thus net present value after tax) when different depreciation rates apply. The reason for this is that from the time when investments are undertaken, the value of financial depreciation may be viewed as certain in the Norwegian petroleum tax system where, i.a., a financial deficit may be carried forward with interest.

Table 2.1 shows the net present value of the Snøhvit project before tax (including the SDFI [7] share of the project) under the four alternatives requested by the Authority and with alternative nominal discount rates. The net present value before tax will only differ due to various discount rates.

Tabell 5.1: Net present value before tax for Snøhvit in Billion NOK

Nominal discount rate	6,32 %	6,5 %	10,0 %
1	22,34	21,35	7,83
2	22,34	21,35	7,83
3	22,34	21,35	7,83
4	22,34	21,35	7,83

Table 2.2 shows the net present value of taxes for the Snøhvit project under the four alternatives requested by the Authority and with alternative discount rates. In alternatives 1 and 3 where part of the LNG facility is placed under the onshore tax regime, the present value of taxes is critically dependent on the choice of tariffs for the LNG facility. The calculations are based on Statoil»s requested tariffs which would imply a higher surplus in the onshore regime than in the offshore regime and thus lower taxes than in alternatives 2

[7] State Direct Financial Interest.

and 4. It is however uncertain whether these tariffs would have been accepted for tax purposes by the tax authorities. It may also be noted that a lower tariff would tend to equalise the value of taxes independent of the choice of tax regime for the LNG facility. (Reducing the tariffs with approximately 23 per cent would e.g. equalise the net present value of taxes with a discount rate of 9 per cent).

Tabell 5.2: Net present value of taxes in Billion NOK

Nominal discount rate	4,68 %	6,32 %	10,0 %
1	10,23	6,97	2,82
2	15,97	10,65	3,88
3	10,06	6,65	2,30
4	15,72	10,15	3,04

The Authority has also requested information about the net present value of total investments of the Snøhvit project. Table 2.3 shows the net present value of total investments in the Snøhvit project.

Tabell 5.3: Net present value of investments in Billion NOK

Nominal discount rate	SDFI included	Without SDFI
4,68 %	24,9	18,3
6,32 %	22,7	16,9
10,00 %	18,7	14,4

3 The motivation for bringing the large scale LNG facility under the PTA and for the undertakings to request this

According to the decision of 19 June 2001 by the Ministry of Finance the terminal installation at Melkøya would for taxation purposes be deemed to fall partly within the scope of the PTA, and partly within the general provisions of the General Taxation Act (GTA) of 1999.

With the LNG installation partly within the scope of the PTA and partly within in the scope of GTA, there could be a potential for tax disputes regarding the pricing of the functions performed at the LNG facility.

Advance approval of the tariffs for processing gas in the LNG installation at Melkøya was considered at the request of Statoil. The Ministry of Finance however considered that it does not have statutory authority to give such advance approval.

In its letter of 13 September 2001 to the oil companies the Ministry of Finance proposed as an alternative solution to bring the LNG facility under the PTA. The Ministry's motivation for this was to avoid the uncertainties and potential for future tax disputes regarding the LNG tariffs. In the same letter the Ministry also put forward the proposal to accelerate the depreciation rate for installations required for large scale LNG based gas field developments. Since an alternative where the large scale LNG facilities would fall under the PTA would also broaden the depreciation base, the depreciation rate could be at a lower level than was otherwise contemplated for such gas projects.

The letter of 18 March 2002 from the Authority has been forwarded by the Ministry of Trade and Industry to Statoil to comment upon the motivation of the companies to request bringing the LNG facility under the PTA. By letter of 5 April 2002, Statoil has answered as follows:

> «Greenfield LNG projects are comprehensive projects with high upfront investments and thereafter a long production/income generating period of 25 years or more. Such large, long lasting projects are obviously connected with significant risk. One major identified risk element is the fiscal frame conditions. The partners motivation for the request to bring the LNG terminal under the Petroleum Taxation Act was to get predictable frame conditions for the project. This would reduce the significant investment risk of the project.
>
> An integrated project with activities in both the onshore and the offshore tax regime requires principles for allocation of income and deductions in the two regimes. This has been accomplished by fixing tariffs which are charged between the two regimes. However, such a tariff system involves uncertainties and has resulted in major tax disputes with the tax authorities. One such dispute concerning the tax treatment of onshore parts of the Statpipe transportation system has recently been appealed to the Supreme Court.
>
> Thus, a basic condition for the Snøhvit partnership to embark on the project was long term and predictable fiscal frame conditions, particularly with regard to transfer pricing between offshore and onshore parts of the project.
>
> The Ministry of Finance 13 September 2001 presented two alternative amendments to the Petroleum Tax Act to the Oil Industry Association (OLF), the Petroleum Taxation Office and Statoil. The parties were asked to give their comments and recommend one of the alternatives.
>
> One proposal entailed that the LNG terminal would be treated as an onshore activity, and that there would be given a general regulation for a tariff system which would be binding for the taxation. The details of this system were, however, not described. An element in this proposal was that the depreciation rate on the offshore part of the project would be 50 % annually. Even if the Ministry stated that the tariff system would take into account the particular technical and commercial risks of the investments in the LNG terminal, the Snøhvit partners did not find that this proposal gave necessary predictability in respect of the future taxation of the large investments. The Ministry had at an earlier stage stated that it would not be possible for the Ministry to approve a tariff structure with effect for the future taxation of a project.
>
> The other alternative eliminated the risk of disputes on allocation of taxable income between the two tax regimes by including the LNG terminal in the offshore regime. This solution would require a separate resolution on the treatment of the LNG terminal. This resolution was adopted by the Ministry in January 2002. The other element of this alternative was the depreciation rate on the LNG terminal with 33 $^{1}/_{3}$ % annually. The benefit of this solution to the parties was that they would avoid any major tax disputes in the future on the project.
>
> The outcome of the hearing was that the Ministry proposed alternative ii) to the Storting. This proposal involved an annual rate of depreciation of 33 $^{1}/_{3}$ % for large scale LNG facilities. It also implied a revision of a former decision from 19 June 2001 stating that the LNG terminal wax taxed under the General Tax Act. The Ministry of Finan-

> ce states in Ot. prp. nr. 16 (2001-2002) that it assumes that the Snøhvit-partners will request such revised decision. This is supported by the Storting when approving the change in the Petroleum Tax Act. In November 2001 the Snøhvit partners requested a revised decision on the tax treatment of the LNG terminal and in January 2002 the Ministry of Finance made the revised decision that the whole of the Snøhvit project should be taxed under the Petroleum Tax Act. Said revision fulfilled the partnerships requirement with regard to predictable fiscal conditions by removing the exposure of transfer pricing between two taxregimes as an issue.»

4 The amendment to the PTA does not involve State aid within the meaning of Article 61(1) EEA

4.1 Introduction

In its letter of 18 March 2002, the Authority expresses the view that it may be in line with the general principles of the PTA (i.e. within the logic of the system) to place large-scale LNG facilities within the PTA, and that this consequently would not involve State aid. We agree with the Authority's view. The question does arise whether the amendment to the PTA should at all be regarded as State aid within the meaning of Article 61(1) EEA.

Based on a preliminary view, the Authority seems to be of the opinion that the amendment to the PTA - i.e. the depreciation rates applicable to new large-scale LNG facilities - may contain State aid within the meaning of Article 61(1) EEA.

The Government disagrees with the Authority»s preliminary assessment in this regard. Thus, the Government maintains that no State aid within the meaning of Article 61(1) EEA can be found in the amendment to the PTA at issue.

By way of introduction, it must be underlined that the Authority erroneously suggests that the amendment is, in effect, an alleviation of the tax burden of the Snøhvit licensees. Both the terms applied in the Act and the object and purpose of the amendments, clearly show that the amendment introduces a rule of general application, which is applicable to all economic operators that fulfil the criteria set out therein. Furthermore, the rule is not limited in time, i.e. it is not a provisional tax arrangement.

The applicable criteria in the amended PTA Section 3 litra b are objective, and the rule does not leave room for discretionary decisions by the administration as regards future large-scale LNG facilities. Moreover, Norwegian administrative law requires that decisions be made with due consideration of the principles of non-discrimination, objectivity, proportionality and transparency. This limits severely any leeway for discretion in future decisions.

The Authority correctly points out that the amendments to the PTA will not be applicable to field developments involving the construction of LNG installations on a smaller scale. However, LNG installations on a smaller scale do not involve the same infrastructure and are therefore less capital intensive and less technically complex than the large scale LNG facilities.

All the above factors underpin the conclusion that the amendment - even if it was triggered by the Snøhvit project - is of a general nature, i.e. a general

measure. Consequently, it does not favour certain undertakings or the production of certain goods within the meaning of Article 61(1) EEA. In this regard, reference is made to the Government's letter of 8 February 2002.

4.2 The amendment to the PTA does not involve State aid

Even assuming that the amendment to the PTA is an exception to the general tax system, and, in effect, an alleviation of the tax burden for a particular sector, the Government submits that no State aid is involved. The Government»s assessment is based on four lines of arguments. All of these are based on well-established case law.

In order to assess whether the measure involves State aid, the following issues must be considered:

1. Whether any aid is granted through State resources;
2. Whether the measure distorts or threatens to distort competition;
3. Whether the measure may be justified by the nature and general scheme of the system, and;
4. Whether the measure may be justified by rational and acceptable reasons.

These issues, which to a certain extent are inter-related and thus must be read in conjunction, will be addressed in turn in the present submission.

1 Whether any aid is granted through State resources

As a starting point it must be recalled that, according to the case law of the ECJ, a pecuniary advantage is accepted in cases where the Stat's measure amounts to - and is limited to an, in economic terms, rational response to e.g. competition within the market. For instance, when the state as a supplier of energy is acting as an economic operator, and does not forfeit any profit which would normally be earned, a preferential tariff does not involve Sate aid. In Case C-143/99//i Adria Wien-Pipeline GmbH v. Finanzlandesdirektion für Kärnten (not yet reported) (hereinafter//i Adria Wien) the European Court of Justice («ECJ») states:

> «(...) that a tariff charged to a category of undertakings for a source of energy at a lower level than that which would normally have been applied may be regarded as State aid if that tariff, adopted by a body subject to the control and direction of public authorities, is attributable to the Member State concerned and that State, *unlike an ordinary economic operator*, uses its powers to confer a pecuniary advantage on energy consumers *by foregoing the profit which it could normally realise (see, to that effect, Joined Cases 67/85, 68/85 and 70/85 Van der Kooy and Others v Commission [1988] ECR 219, paragraph 28).»* (recital 39, emphasis added). [8)]

It follows *mutis mutandis* that no State aid is involved provided that the measure at issue is confined to fulfilling the State's rational economic interests *qua* owner of the natural resources and *qua* the one to manage the natural resources to the benefit of the Norwegian society as a whole. [8]See also Case C-56/93 *Belgium v. Commission*[1996] ECR I-723, at para 10.

[8)] See also Case C-56/93 *Belgium v. Commission* [1996] ECR I-723, at para 10.

Obviously, it is of utmost importance for the State to develop its natural resources, based on sound economic principles. Only through the exploitation of the natural resources will the State be able to ensure high value creation for the Norwegian society as a whole. This is also reflected in the elected taxation system in Norway. A very significant feature of the system is the link between the State»s ownership of the resources and the special tax for the petroleum and gas sector. This is clearly emphasised by the legislator when passing the PTA in 1975, see Ot.prp. nr 26 (1975-75) page 11:

> «When assessing the share of the production result which should accrue to the Government, it is natural to consider the fact that the petroleum on the Continental Shelf is an exploitation of natural resources belonging to the Norwegian State. As to the question of the exploitation and utilisation of these resources as well as to the forming of a taxation system, one must act in accordance with this fact.»

And, on page 26:

> «It is the Government»s view that a larger part of such extra income than what is stated in current tax regulations should accrue to the Norwegian society. An element in this respect is that income from the exploitation of natural resources belonging to the State is at issue.»

The Standing Committee in the Parliament was of the same opinion; see Innst O nr 60 (1974-75), page 15:

> «The majority refers to the fact that the petroleum resources on the Norwegian Continental Shelf are the joint property of the Norwegian people. It is therefore, according to the majority, not unreasonable that Norway wishes to secure a considerable share of the values created on the Continental Shelf. The major part of the «national income» created on the Norwegian Continental Shelf should, like the «national income» in general, be applied for the benefit of the Norwegian people. According to the majority, it is therefore not unreasonable to implement special measures in order to secure for our country a larger share of the values being created.»

Accordingly, sound resource management requires the State to ensure that non-renewable resources are managed properly in the interest of the Norwegian society as a whole. This requires that resources to be depleted to the fullest extent possible and in the most cost-effective manner with due regard to the environment.

To facilitate exploitation of the resources and to secure for the owner, i.e. for the State, the best part of the values created on the Continental Shelf, have at all times been central objectives of the Norwegian petroleum tax legislation. Thus, the history of the Norwegian petroleum tax legislation shows that considerations related to necessary investment incentives and the «government take» have been of great importance.

It is a fact that offshore exploitation of petroleum is extremely capital intensive. Moreover, it is an indisputable fact that exploitation of LNG is *even* more capital intensive than exploitation of oil, and the transportation of gas through pipelines. This is due to the fact that the transportation of LNG is limited to

ships and requires plants to liquefy the gas at the point of departure and terminals to re-gasify at the delivery points.

It is also an indisputable fact that offshore petroleum exploitation in areas located outside areas where pipeline infrastructure can be established under economically justifiable conditions, is both more capital intensive and technically more complex than traditional offshore exploitation of petroleum. In its Green Paper; «Towards a European strategy for the securing of energy supply» [9] , the Commission thus states on page 45:

> «In the long run the growth in demand and the increase in intra-Community trade produced by the internal market will generate a greater need for transport infrastructure (intra- and trans-European networks, port infrastructure for liquefied natural gas (LNG), for which financing needs to be found. It should be said that the cost of transporting gas differs according to whether it is transported by pipelines or ship (LNG). The transport of gas requires infrastructure that is very difficult to build in both cases. The profitability of these two types of transport depends primarily on distance.»

Being situated far away from the markets, LNG technology is the only way to commercialise the exploitation of gas resources in the Barents Sea region and other similar regions. The amendment to the PTA has been introduced to make the development and exploitation of the gas resources in such areas possible. Thus, the amendment has been triggered by the need to embark on a new phase in the exploitation of the natural resources on the Norwegian Continental Shelf. It was clear that on average the taxability of LNG projects was lower than what is the case for existing projects.

That the different depreciation rates are a consequence of the different burdens of investment is reflected in the Proposition to the Storting for the amendment to the PTA. Ot.prp. nr. 16 (2001-2002), Section 4.1, reads:

> «A development of Snøhvit will open the Barents Sea to petroleum activities. The development *will make it possible to increase the exploitation of the gas resources in the Barents Sea area*. It will have regional effects with regard to jobs, infrastructure and business activities.
>
> Large-scale LNG installations have not previously been built in Norway. The Ministry assumes that large-scale LNG technology will be *most relevant to the development of fields which are situated far from the markets and far from already established gas pipelines.*» (All emphasis added).

The report of the meeting 22 November 2001 of the relevant chamber of the Parliament (Odelstinget) states:

Torbjørn Hansen (The Conservatives, Committee chairperson):

> «The Barents Sea and the Snøhvit field are situated far away from the European gas market. The field is also situated far away from any existing infrastructure (...) LNG is the only realistic way of exploiting the gas resources far north. Even if the enterprise falls within the Petroleum Taxation Act, this is a radically different way of producing gas than what we already have in the North Sea today (...)

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[9] See COM(2000) 769 final.

> The burden of investments as a consequence of the distance to the market and the lack of infrastructure nevertheless *have as a consequence that the taxability is lower than the existing enterprises governed by the general legislation in the Petroleum Taxation Act*». (Emphasis added).

The licensees' commercial assessments in the present case also illustrates the importance of the amendment to the PTA. In a letter from Statoil on behalf of the licensees to the Ministry of Trade and Industry, dated 17 April 2002, the licensees underline that the accelerated deprecation scheme is of crucial importance for the realisation of the Snøhvit project. It follows from the letter that the licensees state that if the LNG terminal had been included in the traditional offshore tax regime, with a maximum depreciation rate of $16\,^{2}/_{3}$ percent per annum, this would have resulted in an effective rate of return of 8,5 percent. This is, according to the licensees, substantially below the demanded profit, and would have resulted in abandonment of the project. The new depreciation provisions for large-scale LNG installations are calculated by the licensee's to result in a possible rate of return of 10,5 percent. According to the licensees, the project is still considered to be of low return, but is under this regime economically feasible. It is «just above the minimum requirement». According to the companies usually require a minimum rate of return at 10 - 14 percent after tax, due to risks involved, long term duration, alternative employment of capital, human resources etc.

Consequently, the amendment to the PTA was thus a necessity to render possible planned exploitation of the gas resources in the Barents Sea area. In this respect, the amendment to the PTA amounts - in economic terms - to nothing more than a rational measure by the State as owner of the resources and within the frames of sound resource management, in order to promote the realisation of projects rendering substantial tax revenues to the State. In addition, the State did not forego any profit as a result of the amendment.

On this basis, the Government submits that the amendment to the PTA - i.e. the introduction of an accelerated depreciation scheme - amounts to nothing more than an «investment» that must be juxtaposed with an investor»s decision to make an investment under normal market conditions. Accordingly, no aid is granted through State resources.

2 Whether the measure distorts or threatens to distort competition

Article 61(1) only applies to aid that «distorts or threatens to distort competition». In order to asses whether that criterion is fulfilled, it is necessary for the Authority to specify the situation in the relevant market. In general, the relevant market for the purposes of establishing that an aid distorts competition contrary to Article 61(1) includes the goods and services supplied or demanded by the favoured undertakings or industries, the goods which derive from these goods and services, and those which compete with them as substitutes.

The Government questions whether the measure taken in this respect distorts or threatens to distort competition. In the Commission»s Statement of Objections («SO») in Case COMP/36.072 (GFU), the Commission held that *«Although transportation in the form of LNG offers somewhat more flexibility, it is at present basically limited to ships, and requires liquefaction plants at the*

point of departure and regasification terminals at the point of arrival, both of which are relatively costly. Therefore, pipeline natural gas and LNGs are in this case not considered to be part of the same product market» (para 1, underlined here) [10)]

It follows from the Commission»s statement that pipeline natural gas and LNG are two different product markets. As the Commission points out, the LNG market consists of (1) liquefaction plants at the point of departure and (2) re-gasification plants at terminals. The Snøhvit field is the only large-scale LNG facility that exists in the EEA. Thus, it seems that the measure does not distort or threaten to distort competition within the relevant market.

3 Whether the measure may be justified by the nature and general scheme of the system

The amendment of the PTA is, furthermore, acceptable on the basis of the general rule recognised by the ECJ and the Authority in its Guidelines on State Aid; the selective nature of a measure may be justified by «the nature or general scheme of the [tax] system.» [11)] If so, the measure is not considered to be aid within the meaning of Article 61(1) EEA. In Italy v. *Commission*, the ECJ held:

> The partial reduction of social charges pertaining to family allowances devolving upon employers in the textile sector is a measure intended partially to exempt undertakings of a particular industrial sector from the financial charges arising from the normal application of the general social security system, without there being *any justification for this exemption on the basis of the nature or general scheme of this system*.» [12)] (emphasis added).

The general rule is reiterated in recital 42 in *Adria Wien:*

> «According to the case-law of the Court, a measure which, although conferring an advantage on its recipient *, is justified by the nature of or general scheme of the system of which it is part* does not fulfil that condition of selectivity.» (emphasis added).

As a starting point, the Government notes that the Guidelines accept that differences in depreciation rates may be justified as a consequence of «the nature or general scheme of the system». According to the Guidelines 17b.3.4(2), *«Differentiation of calculation of asset depreciation (...) methods may be inherent in the tax systems to which they belong.»*

Thus, if the Authority concludes that the accelerated depreciation arrangement should be seen as an alleviation of the special tax burden that applies

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[10)] See also the Merger (Procedure Article 6(1)b) Decision in case IV/M.1573 - Norsk Hydro/Saga, in which the Commission states that NLG (natural liquefied gas) *«(...) constitutes a distinct product market. NLG is a by-product of oil and gas production with higher carbon density than methane. NLG combines ethane, propane, butane and condensate. NLG can be considered as one product market in view of the considerable supply side substitutability»* (recital 11).

[11)] The Authority's Guidelines, at page 104, Section 17.b.3(5).

[12)] Case C-173/73, *Italy v. Commission,* [1974] ECR 709, at recital 15.

to the Norwegian offshore sector, the Government submits that the arrangement is *inherent* in the logic of the general taxation system.

As mentioned above, facilitating exploitation of the resources and securing for the Norwegian society as a whole the best part of the values created on the Continental Shelf, have at all times been central objectives of the petroleum tax legislation. A brief recapitulation of the history of Norwegian petroleum taxation shows that e.g. the depreciation rates are fixed on the basis of the particular requirements of the petroleum sector:

The possibility of recovering petroleum on the Norwegian Continental Shelf led to the Parliament's adoption of a special Petroleum Tax Act on 11 June 1965. In contrast for instance to Great Britain, the legislators decided to let the general provisions governing taxation continue to apply, but with a reduction of up to 9% in certain rates of taxation. The reason the legislators gave for the reduction was that players on the Shelf would also be charged a 10% royalty, in order to secure for the State a share of the gross value of the petroleum recovered. It was therefore necessary to lower the income tax so as to attract investor interest to the Continental Shelf.

In the 1970s, it became clear that it was possible to undertake socio-economically profitable petroleum recovery on the Norwegian Shelf, and in 1975 the Government submitted Proposition no. 26 (1974-75) to the Odelsting, seeking the adoption of a new Petroleum Tax Act. The bill was prompted by the sharp increase in petroleum prices, and the resulting wish on the Government's part to adopt special measures aimed at channelling a larger proportion of the values realised to Norwegian society. The introduction was accordingly proposed of an additional tax on income, on top of the standard income tax. On the other hand, it was a major consideration for the Parliament that petroleum recovery in the North Sea is risky. Drilling in unknown structures costs large sums which are total losses if no commercial finds are made. A development decision places significantly larger amounts at risk. The risks involved in such investments are often considerably higher than risks associated with most other investments in other industries. There is moreover a unique price risk, because the global price level is not related to the level of costs of petroleum recovery in the Middle East or other major producing countries. For these reasons, the tax system would have to allow the players reasonable rewards. In that connection, special rules were adopted providing a depreciation rate of 16 $^{2}/_{3}$ % from and including the year in which the capital equipment was first put to regular use. The depreciation rate was intended to stimulate the initiation of recovery projects on the Shelf. The reason specifically given for the special depreciation rules was according to Ot. prp. no. 26, 1974-75 page 20:

> «In view of the large investments, the special forms of funding, and the large risk connected with petroleum recovery in the North Sea, the Ministry considers it reasonable to allow the enterprises more rapid depreciation than would be indicated by the rules governing ordinary depreciation according to the general tax laws.»

In the mid-1980s, however, in the light of oil price trends, cost developments, and the possibilities of making finds on the Norwegian Shelf, a need became apparent to amend the Petroleum Tax Act. The Government therefore submit-

ted Proposition no. 3 (1986-87) to the Odelsting, the main purpose of which was to propose amendments « *to stimulate exploration and development activities on the Norwegian continental shelf*», see Ot. prp. no. 3 1986-87 page. 4. The main focus was on the depreciation rules, to which amendments were proposed to allow depreciation to begin in the first year of investment. This was designed to improve oil-field finances, especially for fields with long investment periods. The proposal was adopted by the Parliament in Act no. 73 of 19 December 1986.

Summing up, the high depreciation rates in the PTA must be seen in relation to the high tax rates that apply in the sector (the special tax). Furthermore, the depreciation arrangements have been changed historically depending on the perceived profitability of investments.

As mentioned above, the exploitation of natural gas in the Barents Sea region utilising the large-scale LNG technology, is even more capital intensive than exploitation of oil, and of gas shipped through pipelines, because the transportation of LNG is limited to ships and requires plants to liquefy the gas at the point of departure and re-gasification terminals at the reception points. Further, offshore exploitation of oil and gas in areas located outside the range of where the establishment of pipeline infrastructure is economically feasible, is more capital intensive and technologically complex than the traditional offshore exploitation of petroleum. [13)] It was thus clear that the taxability of the LNG enterprises was lower than for existing projects.

Thus, it was in line with the logic of the system to apply different depreciation rates to the enterprises utilising the LNG technology.

4. Whether the measure may be justified by rational and acceptable reasons

The difference in treatment between LNG projects and pipeline gas projects does not in itself constitute an advantage according to Article 61(1). It follows from a recent judgement 22 November 2001 of the ECJ (Case C-53/00, *Ferring SA* v. *Agence centrale des organismes de sécurité sociale* (not yet reported) - a case concerning tax measures:

> «Nevertheless, the fact that undertakings are treated differently does not automatically imply the existence of an advantage for the purposes of Article 92(1) [Article 87(1)] of the Treaty. There is no such advantage where the difference in treatment is justified by reasons relating to the logic of the system.» (recital 17).

In the *Adria Wien-case,* the ECJ held that there was *no reason* that could explain why only undertakings producing goods and not undertakings delivering services benefited from a system of which the energy tax was motivated by ecological considerations, and the rebate of the energy tax was meant to reduce the burden of the tax for energy intensive businesses. The ECJ held that also undertakings supplying services could be major consumers of energy. Furthermore, the ecological considerations could not justify the selective measure since «the ecological considerations underlying the national legislation at issue do not justify treating the consumption of natural gas or electricity by undertakings supplying services differently than the consump-

[13)] See footnote 3 above.

tion of such energy by undertakings manufacturing goods. Energy consumption by each of those sectors is equally damaging to the environment». Since the reasons behind the measure at issue could not justify the differential treatment, the measure could not be justified by «the nature or general scheme of the taxation system». In the *Adria Wien*-case, the ECJ formulates the following test:

> «The only question to be determined is whether, under a particular statutory scheme, a State measure is such as to favour «certain undertakings or the production of certain goods» within the meaning of Article 92(1) of the Treaty *in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measures in question.»* (Recital 41, emphasis added.)

In the opinion of the Government, the amendment of the PTA must be seen as a logical and necessary response to distinct disadvantages pertaining to the LNG based exploitation of natural gas. The amendment did not exceed what was necessary in order to remedy an imbalance between the economic operators, with the effect of promoting competition on the gas market in general. It is clear that undertakings in the LNG sector are in a very different position as compared to other undertakings in the petroleum industry, cf the test formulated in the *Adria Wien*-case.

Large-scale LNG facilities are in a different legal position as compared to the original installations in the petroleum sector for which the PTA was designed. This follows from the fact that such facilities are constructed and operated in a way that place them, for tax purposes, in the borderline between the petroleum tax regime and the ordinary tax regime and is illustrated by the facts of the present case. At the outset, the large-scale LNG facility was regarded as falling outside the scope of the petroleum tax regime. This represented a great uncertainty regarding the allocation of income between the different regimes. By the decision to apply the PTA also to large-scale LNG facilities a greater certainty was achieved.

Furthermore, the great distance from the markets and the need to utilise large scale LNG technology clearly place these projects in a very different factual situation. As stated above, the large scale LNG technology requires additional technical measures as compared to traditional offshore exploitation. Depending on the distance of the gas field from the relevant market, it may not be economically feasible to transport the gas through pipelines. Thus, in addition to the normal offshore investments, the production of LNG requires additional investments by the licensees: Firstly, the LNG plant must be constructed for the cleansing and cooling of the gas to minus 163 degrees Celsius. Secondly, the production of LNG requires a much higher degree of purity/cleansing of CO2 than pipeline gas due to the freezing process. Finally, a disembarkation terminal and specialised storage tanks must be built. Thus, these projects are clearly in an economically disadvantaged position as compared to their competitors in the gas market.

Consequently, these particular circumstances called for special measures in order to create a level playing field. The acceptability of such a measure is *mutis mutandis* recognised in case C-53/00, *Ferring SA* v. *Agence centrale des*

organismes de sécurité sociale (ACOSS) (judgment of 22 November 2001, not yet reported):

> «It is important to note that there are two directly competing medicine distribution channels in France, that of the wholesale distributors and that of the pharmaceutical laboratories which sell directly to pharmacies. *Furthermore, it is common ground that a particular objective of the tax on direct sales is to restore the balance of competition between the two medicine distribution channels,* which, according to the French legislature, had been distorted by the imposition of public service obligations on wholesale distributors alone (...)» (recital 19, emphasis added).

It follows from the judgement that the ECJ was prepared to accept that:

> «provided that the tax on direct sales imposed on pharmaceutical laboratories corresponds to the additional costs actually incurred by wholesale distributors in discharging their public service obligations, not assessing wholesale distributors to the tax may be regarded as compensation for the services they provide and hence not State aid within the meaning of Article 92 of the Treaty.» Moreover, provided there is the necessary equivalence between the exemption and the additional costs incurred, wholesale distributors will not be enjoying any real advantage for the purposes of Article 92(1) of the Treaty because the only effect of the tax will be to put distributors and laboratories *on an equal competitive footing.*» (recital 27, emphasis added). [14)]

It must be underlined that the amendment of the PTA does not distort competition, see point 2 above. On the contrary, the accelerated depreciation scheme was necessary in order to enhance the competition in the gas market (i.e. an increased volume delivered) in compliance with Community objectives, by making it at all possible to exploit the nature gas resources in the Barents Sea region as planned. [15)] In point 5 below, the Government will in more detail discuss the impact of the amendment to the PTA in an EEA context.

It follows from the foregoing that the amendment to the PTA reflects the distinct different characteristics between ordinary gas production and LNG based exploitation. In the view of the Government, it must be accepted that, under such circumstances, particular - and clearly limited - measures are adopted in order to create a level playing field and thus put the operators on an equal competitive footing.

4.3 Conclusion

Based on the above, the Government concludes that the amendment to the PTA does not constitute aid within the meaning of Article 61(1) of the EEA

[14)] Following a discussion of the ICI case in the UK, which concerned a modification to the calculation of the Petroleum Revenue Tax, *Kelyn Bacon* in «State Aids and General Measures», Yearbook of European Law 1997 page 269, concludes: *«Thus, measures which result in discrimination between undertakings, which derogate from the general system, might exceptionally be regarded as general measures where the undertakings have sufficiently different characteristics that different rules are justified.*» (page 305, emphasis added).

[15)] See the references made in footnotes 1 to 4 above.

Agreement. Firstly, it has been established that there has been no transfer of aid through State resources. Secondly, the Government has questioned whether the measure distorts or threatens to distort competition. Thirdly, the depreciation rate at issue must be deemed to be justified by the nature and general scheme of the system. Finally, the amendment is justified by the fact that it applies to undertakings being in a distinct different legal and factual situation as compared to their competitors in the gas market, and, furthermore, that the amendment facilitates competition in compliance with Community objectives by creating a level playing field.

5 The amendment to the PTA is compatible with the Article 61(3)(c) of the EEA Agreement

5.1 Introduction

In its letter of 18 March 2002, the Authority points out that if the amendment of the PTA is regarded to contain elements of State aid this does not necessarily mean that the amendment to the PTA is incompatible with the EEA agreement. Thus, if the Authority deems the amendment to the PTA to constitute aid within the meaning of Article 61(1) EEA, it can nevertheless qualify for one of the derogations from the principle of incompatibility with the functioning of the Agreement provided for in Article 61(3) EEA.

The Authority has requested information demonstrating that the amendment to the PTA is compatible with the EEA Agreement. As demonstrated in section 4 above, the amendment to the PTA does not contain any element of State aid. The following discussion, however, will show that if the Authority deems that the amendment of the PTA amounts to State aid within the meaning of Article 61(1) EEA, it is in any case compatible with EEA Agreement due to the derogation in Article 61(3)(c) EEA.

Article 61(3)(c) EEA states that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the functioning of the EEA Agreement.

The amendment to the PTA will both facilitate the development of certain economic activities and the development of certain economic regions. These issues will be addressed in turn in the present submission.

5.2 Development of certain economic activities

The amendment to the PTA promotes an activity in line with EEA/EU policies. The Commission has stressed that the issue of security of supply will be to ensure that the necessary economic incentives prevail for investments in production and transportation infrastructure to bring the gas to the EU market. [16)] The Commission has underscored the importance of investments incentives:

> «Although gas will have to come from increasingly distant sources, Europe is in a relatively comfortable situation with more than 80 % of the

[16)] COM (2001) 775 final, page 12.

> word's total proven gas reserves within reasonable distance. The security of supply will therefore not be one of availability of reserves. The issue will be to ensure that the necessary economic incentives prevail for investments in production and transportation infrastructure to bring the gas to the EU markets.» [17)]

Indeed, the supply of LNG will increase the flexibility, supply diversity and liquidity of the gas markets. [18)]

The Commission has shown a distinct willingness to apply this exemption to state measures that promote economic activities in line with an articulated Community policy that considers these activities as important to the Community. For instance, in Decision 95/452/EC [19)] the Commission had to consider the application of Article 87(3)(c) of the EC Treaty [20)] to Italian tax concessions for financial undertakings generating profits on business conducted with Eastern Europe. The measure was approved by the Commission:

> «Turning tothe provision in point (c) of Article 92 (3) [ex-Article 87(3) of the EC Treaty] which allows the exemption of aid to develop a particular economic activity of interest to the Community, it has to be recognised that the development of a capital market in the countries of eastern Europe through the mobilisation of private capital is indeed of vital importance to the Community: in fact the Community and its Member States have been sparing no financial effort to provide public funds to make up for the lack of private initiative. *A measure which expressly stimulates private investment is thus very much in line with an important aspect of external relations policy.»* [21)] (emphasis added)

As regards special depreciation schemes in particular, the Commission has authorised pursuant to Article 87(3)(c) EC schemes that were in line with a more general policy of modernisation, maintenance of a strategic capacity and employment within the Community. [22)]

The significance of the development of LNG and of the Barents Sea for the European energy supply is discussed further in point 1 above and point 5.4 below.

This clearly shows that the amendment to the PTA promotes the development of an activity in line with EEA policies.

[17)] COM (2001) 775 final, page 12.

[18)] COM (2001) 775 final, page 13.

[19)] Commission Decision 95/452/EC of 12 April 1995 on State Aid in the Form of Tax Concessions toUndertakings Operating in the Centro di Servizi Finanziari ed Assicurativi di Trieste pursuant to Article 3 of Italian Law N º 19 of 9 January 1991 OJ (1995) L264/30.

[20)] Article 87(3)(c) is the Treaty provision equivalent to Article 61(3)(c) of the EEA Agreement.

[21)] Paragraph 7 of Decision 95/452/EC

[22)] See IP/96/874 concerning an accelerated depreciation scheme in Germany on the building or purchase price of a ship, which was part of the Community policy to encourage Member States to register vessels under the Community flags in the interest of the Europe»s maritime industries.

5.3 Development of certain economic areas

The amendment to the PTA promotes the development of certain economic areas. The Barents Sea is situated a long distance from the markets and from the existing infrastructure in the form of pipelines for transportation of the gas to the export markets. This could be illustrated with the LNG project in the case at hand. The gas from Snøhvit is brought ashore at Melkøya, Hammerfest located in Finnmark. (Zone A in the regional aid area) The alleged aid element in the Amendment to the PTA would therefore as a starting point promote the economic development of an area eligible for regional aid.

As stated in the Authority's Guidelines, State aid intended to promote the economic development of particular areas must be in proportion to, and targeted at, the aims sought to be compatible with the functioning of the EEA Agreement. [23)] The Authority has stressed that the relevant measures must contribute to the regional development and relate to activities having a local impact. The measure must also relate to real regional handicaps.

5.3.1 Local impact

The alleged aid should contribute to regional development and relate to activities having a local impact. [24)] Normally, the establishment of offshore activities does not, to the extent that their effects on the local economy are low, provide satisfactory support for the local economy [25)] . In the present Snøhvit project, however, the regional impact is high.

Most of the cost-intensive investment is located onshore, at Melkøya, Hammerfest located in Finnmark. When the large scale LNG facility is built, all activities connected to the plant would be located onshore. Thus, the construction and use of the facility would have a huge regional impact both in the development stage and in the operational stage.

Development stage

The regional employment effect in West Finnmark during stage one is likely to be 1245 man-labour years distributed through the period 2002-2006. According to the report Samfunsmessige konsekvenser 2001, [26)] 825 of these are likely to be directly employed in production for local suppliers, 65 in production for subcontractors and 355 in activity coming from regional consumption effects.

Operational stage

The operational service of the plant is likely to generate 220 man-labour years, mostly from the local population. Of these 180 are likely to be at the large scale LNG plant at Melkøya, 20 in transport, 18 on the towing vessels and two on the

[23)] Authority's Guidelines, Chapter 17B.4(5).

[24)] Authority's Guidelines, Chapter 17B.4(5).

[25)] Authority's Guidelines, Chapter 17B.4(5).

[26)] Statoil; Samfunnsmessige konsekvenser (april 2001). See also Konsekvensutredning Snøhvit LNG (april 2001).

base. In addition 12-15 man-labour years will be needed in plant maintenance, commercial services, catering etc. Another 100 - 200 man-labour years will be needed by contractors and subcontractors and half of these are likely to be employed locally. Other consumption effects are likely to generate 100-150 man-labour years, mostly in the local population.

All in all the Snøhvit project will probably increase the level of employment in Hammerfest with 350 - 400 jobs during the operation of the plant.

It is important to stimulate the establishment of more enterprises that are future-oriented and competence intensive, increasing the supply of competence jobs. The Snøhvit project will be an important contribution to developing the local and regional job market, especially when it comes to offering job opportunities for well-educated and highly skilled young people.

The regional impact of Snøhvit and the large scale LNG-facility regarding direct and indirect job creation is thus considerable. The difference between the net present value of investments where the whole of Snøhvit is under the PTA ($16\ ^{2}/_{3}$ depreciation rate) and where the whole of Snøhvit is under the PTA ($33\ ^{1}/_{3}$ depreciation rate), using a discount rate of 4,68 per cent, is fairly low (estimated to 250 mill NOK, about 1,4 % of the companies' investment), but just enough to trigger off the initial investment.

5.3.2 Regional handicaps

The objective of the Norwegian regional policy is to maintain the main features of the population settlement pattern and to have equal standards of living throughout the country.

Northern Norway in general and the regions of Finnmark and Northern Troms in particular, are characterised by very sparse population settlement, long distances, a harsh climate, a high level of dependence on the public sector and a narrow industrial base. This is why Finnmark and Northern Troms are given the highest priority in the distribution of regional policy measures - i.e. zone A in the regional aid area.

The regional disadvantages of target zone A, i.e. the zone with highest regional priority, are partly explained by its location in the extreme northern periphery of Norway. Compared to the rest of Europe, the northernmost part of Norway is in an exceptional position because of (the extent of) depopulation, long distances both to the markets and within the region, and very low population density. In addition and, by extension, the region has a worrying age structure, worrying business structure, recruitment problems and high transport costs.

According to the Nordregio Report *Regional Development in the Nordic Countries 2002,*no administrative county in the Nordic Countries has a higher depopulation ratio than Finnmark. [27)] For the period 1995-2000 Finmark's population decreased by 12.3%. Among the ten municipalities with the highest population decrease during the period 1995-2000, four where in the area surrounding Hammerfest (Måsøy - 24.1%, Nordkapp - 21.6%, Kvalsund - 21.3%, Hasvik - 20,5%). The report points out that population settlements, employ-

[27)] Nordregio Report 2002:2 «Regional Development in the Nordic Countries 2002».

ment, commercial activity and innovation is increasingly concentrated in a few towns and cities, while large parts of the Nordic Countries, and mostly in the Northernmost regions, are excluded from this development.

Finnmark is the largest county of Norway, but has the lowest population figure. The population density in Finnmark county is only 1,5 persons per square kilometre. For zone A, also including Northern Troms, the population density is 1,7 persons per square kilometre, while the average for Norway is 14,5 persons per square kilometre.

Relating to the present project, Snøhvit/Melkøya is located a long distance from the markets, and from existing infrastructure in the form of pipelines for transportation of the gas to the export markets. As the Commission, in the Green Paper on security of energy supply, rightly points out, the profitability depends primarily on the distance to the markets. [28)]

5.4 The EEA context

According to Article 61(3) (c) EEA, aid to facilitate the development of certain economic activities or of certain economic areas is considered to be compatible with the functioning of the Agreement where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The measure has to be examined in an EEA context. The Authority must in this respect take account of any negative effects which such measures may have on trade between Contracting Parties. In this context, the energy situation in Europe as such has to be reviewed.

In an EEA context, the Government stresses that the Commission has noted the importance of developing the resources in the Barents Sea:

> «In 1999, Norway had 1.77 trillion cubic metres of proven gas reserves which at current production rates will last 23 years, proven oil reserves at around 11 bn barrels are over half Europe's reserves but at current production rates will last 10 years. *However, there are substantial reserves of oil and gas to be exploited in the Barents Sea. If investment were to pick up, this might also help relieve the prevailing pessimistic outlook.»* [29)] (emphasis added).

As stressed in the action plan [30)] and the preceding Commission Communication on strengthening the Northern Dimension in European Energy supply [31)], one of the areas to be examined is the potential of the gas resources in the

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[28)] *«In the long run the growth in demand and the increase in intra-Community trade produced by the internal market will generate a greater need for transport infrastructure (intra- and trans-European transport networks, port infrastructure for liquefied natural gas (LNG), for which financing still needs to be found. It should be said that the cost of transporting gas differs according to whether it is transported by pipelines or ship (LNG). The transport of gas requires infrastructure that is very difficult to built in both cases. The profitability of these two types of transport depends primarily on distance»* (Green Paper - Towards a European strategy for the security of energy supply COM/2000/0769 final, Part one, II, C, 1,c).

[29)] Green Paper- Towards a European strategy for the security of energy supply COM (2000) 769 final, part one, I, B, 1, c).

[30)] Opinion of the Economic and Social Committee (2001/C 139/11).

Barents Sea. It should also be noted that the Northern Maritime Corridor is focusing on exploitation and on a sustainable transport of oil and gas from the Barents region. The Northern Maritime Corridor is a Norwegian initiative with direct relevance to the European Union's Northern Dimension initiative. [32] In addition, the Commission has listed LNG supplies from Norway i.e. from the Snøhvit field in the Barents Sea among the key gas supply projects for Europe. [33]

As regards the effect of the measure on competition, there are today no other large scale LNG production facilities planned or in operation within the EEA. As stated by the Commission the development of LNG could have a positive effect in an EEA perspective:

> «As regards gas supply, the European Union is geographically well placed, thanks to the existence of gas pipelines, in relation to the export centres of Norway, Russia and Algeria. *LNG supply completes and diversifies the supply of natural gas (...)*» [34] (emphasis added)

As the Commission has stated in the Communication on European energy infrastructure, the supply of LNG is expected to increase the flexibility, supply diversity and liquidity of the gas markets. [35] It is a Community policy to promote the exploitation of gas and to reduce excessive dependency of the EEA on external sources for the supply of gas. [36]

Furthermore, in an environmental perspective the LNG could contribute to reducing the emission of greenhouse gases.

> «Moreover, rising energy consumption leads to higher CO2 emissions. Between 1990 and 2010- the base year of the Kyoto protocol and the middle of its target period (2008-2012), CO2 emissions in the community are projected to grow by 5%, This is much lower than the growth of energy demand due to high shares of natural gas, nuclear and renewables by 2010. Fuel switching from coal to natural gas is expected to continue after 2010 helping to contain CO2 emission.» [37]

The amendment of the PTA is designed to make gas exploration possible in remote areas and thereby bring activity to areas suffering from unemployment

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[31] COM (1999) 548 final.

[32] As a part of two EU-Interreg programmes - Northern Periphery and North Sea - the Northern Maritime Corridor is focusing on exploitation and on a sustainable transport of oil and gas from the Barentsregion. The Northern Maritime Corridor is a Norwegian initiative with direct relevance to the European Union's Northern Dimension initiative. Some initial project developments have already taken place, linked to the EU's North Sea and Northern Periphery Interreg programmes. The Northern Maritime Corridor is a maritime transport concept that aims at connecting the North Sea Basin with the industrial developments and transportation needs of The Barents Euro-Arctic Region. The Northern Maritime Corridor aims at strengthening the maritime dimension in international trade. The Corridor will enhance co-operation between maritime regions in Europe and create important and new business-relations. The projects are expected to be approved by the steering committees 30 April (North Sea) and 17 June (Northern Periphery).

[33] COM (2001) 775 final, Annex IV, page 38.

[34] COM (2000) 769, final, Part one, II, C, 1, c) .

[35] COM (2001) 775, final, page 13.

[36] COM(2000) 769, Part One, II.c.1, at page 41. See also COM(2001) 775 final at pages 12-14.

[37] COM(2000) 769, final, Part three, I, B, 1, b).

and economic stagnation. The amendment of the depreciation rates implies small reductions in tax revenue, as compared to the total costs of the project, and results in a high number of jobs and activities in general to the region.

As stated above, the difference between the net present value of the two depreciation rates is fairly low, estimated to 250 mill NOK, about 1,4 % of the companies' investment, but just sufficient to trigger off the initial investment. By this approach, the Norwegian Government has ensured that the necessary economic incentives prevail for investment in production and transportation infrastructure to bring the gas to the EU markets, in accordance with the stated community policy. [38] The Norwegian Government recalls that the Regulation No 2236/1995 of the European Parliament and the Council, amended by Regulation No 1655/1999 allows a maximum level of possible Community co-financing by 10% of the total investment costs to projects of common interest. [39] The ceiling is proposed raised to 20 %. [40]

6 Conclusion

As demonstrated above, the amendment to the PTA does not contain any element of State aid. If the amendment of the PTA is deemed by the Authority to be within the definition of State aid in article 61(1) EEA, the amendment is considered to meet all the relevant criteria under Article 61 (3)(c) EEA. It is therefore considered to be compatible with the functioning of the EEA Agreement.

Yours sincerely,

[38] COM(2001) 775, final, page 12.

[39] Council Regulation No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans- European networks, amended by Regulation 1655/1999 of 19 July 1999, Article 5(3).

[40] COM 2001 775 final, page 23.

Vedlegg 3

Brev av 30. april 2002 fra Nærings- og handelsdepartementet til EFTAs overvåkingsorgan (ESA)

EFTA Surveillance Authority
Rue de Tréves 74
B-Brussels
Belgium

State aid - additional information - «Særskilt avskrivningssats for produksjonsinnretninger og rørledningsanlegg for gass tilknyttet storskala nedkjølingsanlegg»

Dear Sir/Madam

Reference is made to the Authority's letter of 18 March 2002 requesting information on «Særskilt avskrivningssats for produksjonsinnretninger og rørledningsanlegg for gass tilknyttet storskala nedkjølingsanlegg (LNG)» and the Norwegian Government's letter of 19 April 2002. We hereby submit additional information.

1 Information on the investment stream

Table 3.1 below shows the companies» investment costs for the Snøhvit project each year, measured in constant 2001-prices. The investment costs are split between the companies» and SDFI. The sum of the companies» share of the investments amount to 24 billion NOK, while SDFI's share is 10,3 billion NOK. Total investments, excluding LNG-vessels, are estimated at 34 250 mill. NOK in constant 2001-prices (undiscounted).

Approximately 45 pct. of the total investments will be offshore, 45 pct. will relate to the onshore plant, and 10 pct. pipelines. In addition the investment costs of the LNG-vessels are estimated at 5,4 billion NOK. The LNG-vessels are not affected by the amendment to the Petroleum Tax Act.

Tabell 5.1: Investments. Million NOK. 2001-price

	Total (ex. LNG-vessels)		Offshore installations		Pipelines & umbilical		Onshore plant		LNG vessels	
	Comp.	SDFI	Comp.	SDFI	Comp.	SDFI	Comp.	SDFI	Comp.	SDFI
2001	183	79	35	15	26	11	122	53		
2002	1294	555	85	37	62	26	1147	492	786	337
2003	3342	1432	275	118	199	85	2868	1229	771	330
2004	5727	2455	1031	442	746	320	3950	1693	756	324
2005	5189	2224	1495	641	1082	464	2612	1119	889	381
2006	509	219	94	41	68	29	347	149	581	249
2007	0	0	0							
2008	19	8	19	8						

Tabell 5.1: Investments. Million NOK. 2001-price

2009	357	153	357	153						
2010	1112	476	1112	476						
2011	1700	729	1700	729						
2012	0	0	0							
2013	0	0	0							
2014	0	0	0							
2015	19	8	19	8						
2016	107	46	107	46						
2017	329	141	329	141						
2018	1260	540	1260	540						
2019	886	380	886	380						
2020	1294	555	1294	555						
2021	646	277	646	277						
2022										
2023										
2024										
2025										
2026										
2027										
2028										
2029										
2030										
2031										
Total	23977	10277	10744	4 607	2183	935	11046	4 735	3783	1 621

Table 3.2 shows the operational costs (offshore and onshore) for the Snøhvit project.

Tabell 5.2: Operational costs. Million NOK. 2001-prices

	Companies	SDFI
2001		
2002	9	4
2003	23	10
2004	57	24
2005	87	37
2006	391	167
2007	547	234
2008	485	208
2009	436	187
2010	451	193
2011	519	222

Tabell 5.2: Operational costs. Million NOK. 2001-prices

2012	444	190
2013	477	205
2014	539	231
2015	479	205
2016	483	207
2017	551	236
2018	515	221
2019	534	229
2020	645	277
2021	639	274
2022	656	281
2023	717	307
2024	655	281
2025	655	281
2026	717	307
2027	655	281
2028	655	281
2029	717	307
2030	655	281
2031	491	210
Total	14 884	6 378

In *Ot. prp. nr. 16 (2001-2002)* it is proposed that the depreciation rate for new, large scale LNG-plants is set to 33 $^{1}/_{3}$ pct. The change in the net present value of taxes due to changes in the depreciation rate is directly proportional to investments, but does not depend on the operating cost of the companies.

In the *letter to the ESA of 19 April 2002*the economic consequences of the amendment to the Petroleum Taxation Act is specified. The difference between the net present value of taxes with a depreciation rate of 6 years and 3 years is estimated to 250 mill. NOK, using a discount rate of 4,68 pct. The calculation takes into account that a reduced depreciation period increases deferred taxes and thereby reduces the debt capacity of the companies. As a percentage of the net present value of the companies» investments this amounts to 1,4 pct (with a discount rate of 4,68 pct).

It should, however, be noted that the net present value of the companies» investments in table 3 (last column) in the letter to the ESA of 19 April 2002, has been estimated with a slightly different time period than the net present value for the total investments. A correction of the time period implies that the numbers in the last column in table 3 in the letter should be 17,4, 15,9 and 13,1 billion NOK for discount rates of 4,68, 6,32, and 10,0 pct. respectively. The correction is so small that it does not change the estimate of 1,4 pct. given above.

2 Compatibility with Article 61(3)(c) of the EEA Agreement

2.1 Introduction

If the EFTA Surveillance Authority appears to deem the amendment of the PTA to constitute aid within the meaning of Article 61(1) EEA, it should nevertheless be compatible with the EEA Agreement due to the derogation in Article 61(3)(c) EEA, as stated in our letter of 19 April. We hereby submit further information in this respect.

The current regional aid map and the ceilings on the intensity of aid for initial investment is approved for the period 1.1.2000-1.1.2007. As described in our letter of 19 April 2002, the regional disadvantages of target zone A (Finnmark + northern part of Troms) in the regional aid map are partly explained by its location in the extreme northern periphery of Norway and characterised by i.a. remoteness and harsh climate conditions, a very low population density (appr. 1,6 persons per square kilometre) and a one-sided industrial structure. In Zone A the current maximum level of regional aid is 25 pct., (SMEs have been allowed to receive an additional 5% (gross)). These investment aid ceilings have been notified to and approved by the Authority.

2.2 Aid for initial investment

According to the Authority's State Aid Guidelines chapter 25.4(8), aid for initial investment is calculated as a percentage of the investment's value. This value is established on the basis of a uniform set of items of expenditure (standard base) corresponding to the following elements of the investment: land, buildings and plant/machinery.

As shown in part 1 of this letter, t he net value of the special depreciation rate implied by the amendment of the PTA is estimated to 1.4 pct. of the companies» investment. This is within the maximum aid level of 25 pct. in target zone A.

2.3 Job creation

The depopulation problem, as described in our letter of 19 April 2002, is partly linked to the lack of alternative jobs and the one-sided industry structure. Jobs are mainly within fisheries services and public services. We also know that many people are interested in moving (back) to Finnmark if alternative jobs are available. Indeed, according to Aetat, the public manpower bureau, 1.200 persons have made general applications (i.e. expressed an interest) in working for Snøhvit in Finnmark.

According to the Guidelines chapter 25.4(22), regional aid may also focus on job creation, i.e. jobs linked to the carrying-out of an initial investment project. As described in our letter of 19 April 2002, the regional impact of Snøhvit and the large scale LNG-facility regarding direct and indirect job creation is considerable.

The tables below show the estimated regional employment effects of the Snøhvit project [41)]

Tabell 5.3: Employment effect (man-labour years) in Finnmark county in the project execution phase

Type	2002	2003	2004	2005	2006

Tabell 5.3: Employment effect (man-labour years) in Finnmark county in the project execution phase

Direct	80	205	215	250	75
Indirect	40	100	115	130	35
Total	120	305	330	380	110

Tabell 5.4: Annual employment effects (man-labour years) in Finnmark county in operational phase (regional effects)

Type	2006 onwards
The LNG facility at Melkøya	180
Direct production effects	345
Indirect production effects	205
Consumption generated effects (appr.)	365
Total	appr 1000-1100

Tabell 5.5: Annual employment in the Hammerfest region in the operational phase (local effects)

Type	2006 onwards
Direct	180
Indirect	175
Total	355

Although some of the numbers may seem fairly modest, they are vital for revitalization of the region. We also want to emphasize that the small numbers in the project execution phase reflects the lack of competence/work force in the area due to the previously mentioned emigration of young, well-educated people. E.g, the 355 new man-years locally (table 3.4) in the operational phase, implies an increase of 8% of the number of man-labour years employed in the Hammerfest region.

2.4 Multisectoral framework on regional aid for large investment projects

Regarding job creation in the region as a regional development goal and the employment effect of realising the Snøhvit project, the Norwegian authorities refer to the Authority's State Aid Guidelines chapter 26. The Norwegian authorities consider the assessment criteria of the Multisectoral framework on

41) The employment data is taken from analyses carried out by Agenda Utredning & Utvikling AS: *Snøhvit konsekvensutredning. Samfunsmessige konsekvenser 2001*and Bedriftskompetanse as: *Snøhvit konsekvensutredning. Nærings- og sysselsettingsmessige virkninger lokalt og regionalt 2001*. The analyses are carried out by using the planning model PANDA. The model takes as a starting point the estimated goods and sevices delivered by local and regional businesses, distributed according to sector and year. On this basis the total production value created regionally is being calculated, including activities in both contractors and subcontractors. The production value is converted into direct and indirect employment, measured as man-years. In addition to that, consumption generated effects are also estimated on the regional level.

regional aid for large investment projects as being of relevance when examining the measure in question.

i) Competition factor

The Snøhvit project does not imply aid to companies operating in sectors which are in structural overcapacity and we consider that there will be no negative effects in terms of (i)-(iii) in paragraph (10). On the contrary, and as argued in the letter of 19 April 2002, the Snøhvit project is fully in line with an energy policy that is generally regarded as beneficial to the EEA. The adjustment factor is therefore set at 1,00.

ii) Capital-labour factor

The total number of direct jobs created by the Snøhvit project is 198, which is a weighted average of employment (man-labour years) in the development and operational phase, as shown in table 3 and in Annex 1.

The new capital/jobs, i.e. the total amount of proposed capital [42] divided by the number of job created, is then:

17,4 bill NOK = 2,13 bill Euro

2,13 bill Euro/ 198 = 10,8 mill Euro

The capital-labour factor is thus 0,6

iii) Regional impact factor

As shown in table 3, the number of jobs at the LNG facility on Melkøya is 180. The indirect job creation, that is, man-labour years created with first-tier suppliers and customers in the assisted region where the company is located (Finnmark county), is 345 in the operational phase. The degree of indirect creation for each job created by the aid recipient, i.e. the number of indirect jobs divided on the number of direct jobs is 1,7. The impact is thus well above 100 pct, giving a regional impact factor of 1,2 (see also Annex 1).

Using the calculation formula in Chapter 26.3, (10), the allowable aid intensity is estimated as follows:

25 x 1 x 0,6 x 1,2 = 18

This means that the maximum allowable aid intensity under the conditions of Chapter 26 will be 18 pct.

As earlier shown, the actual investment aid level in the Snøhvit project, estimated as a share of the total eligible costs is only 1,4 pct.

3 Commercial implications of a delay in the development of the Snøhvit project

ESAs assessment introduces uncertainty regarding the fiscal framework conditions for the Snøhvit project. The licencees have stated that predictable fiscal framework conditions are crucial for the decision to go ahead with the project. The licencees have so far been able to negotiate with the LNG buyers to postpone the lifting of the final conditions in the LNG sales contracts. Correspon-

[42] By «proposed capital» we understand the companies' share of total (discounted) investment costs of the Snøhvit project.

dingly, there have been discussions with ship yards. The last negotiation resulted in a postponement until 31 May 2002. At this point all conditions have to be deleted. As several postponements have already been made, it is uncertain whether further postponement will be accepted by the buyers. Thus, if the issue regarding the fiscal framework conditions for the project is not resolved by this date, contracts may fall, jeopardising the whole project, or, alternatively, contracts may only be prolonged through payment of considerable fees.

Indeed, there are indications that buyers and ship yards may want to cancel or reopen contracts. El Paso, the American buyer, has already entered into a contract with firm commercial commitments with the owners of the Cove Point receiving terminal. Thus, it is of course of utmost importance for El Paso to secure its gas supply, which again shall create income to cover the cost of leasing of said receiving terminal capacity. The alternative for El Paso, if the contract with Snøhvit sellers can not be confirmed, is to find alternative sources of supply. El Paso has expressed their concern in a letter to the Minister of Petroleum and Energy of 5 April 2002, stating that El Paso will have to consider alternative supply sources to secure firm LNG supplies in the case of further delay in the development of the Snøhvit project.

Yours sincerely,
Pål Hellesylt (b.a.)
Deputy Director General
Bjørnar Alterskjær
Senior Executive Officer