

Event No: 381996  
Case No: 59280  
Decision No: 228/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION  
of 19 July 2006  
on the notified scheme concerning regionally differentiated  
social security contributions  
(Norway)

THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>,

Having regard to the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof,

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

Having regard to the Authority's Guidelines<sup>4</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 25.B "National Regional Aid 2007-2013"<sup>5</sup> thereof,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement,

Whereas:

## I. FACTS

### 1. Procedure

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<sup>1</sup> Hereinafter referred to as the "Authority".

<sup>2</sup> Hereinafter referred to as the "EEA Agreement".

<sup>3</sup> Hereinafter referred to as the "Surveillance and Court Agreement".

<sup>4</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 in Part I of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No 32. The Guidelines were last amended on 6 April 2006. Hereinafter referred to as the "State Aid Guidelines". The State Aid Guidelines are available on <http://www.eftasurv.int>.

<sup>5</sup> Hereinafter referred to as the "Regional Aid Guidelines". The Guidelines correspond to the "Guidelines on National Regional Aid for 2007-2013" adopted by the European Commission, published in OJ 2006 C 54.

By letter dated 12 June 2006 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Finance dated 12 June 2006, both received and registered by the Authority on 12 June 2006 (Event Nos 377801 and 377804), the Norwegian authorities notified a scheme on regionally differentiated social security contributions, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

By letter dated 29 June 2006 (Event No 379358), the Authority asked for further information concerning the notified scheme. The Norwegian authorities provided answers to the information request by letter from the Ministry of Government Administration and Reform forwarding a letter from the Ministry of Finance, both dated 3 July 2006, received and registered by the Authority on the same date (Event No 380089). The Norwegian authorities submitted additional information by letter from the Ministry of Government Administration and Reform forwarding a letter from the Ministry of Finance, both dated 11 July 2006, received and registered by the Authority on the same date (Event No 381022).

## 2. Background

On the basis of the Norwegian Act No 19 of 28 February 1997 relating to the National Insurance Scheme (*Folketrygdloven*), all employers in Norway were subject to compulsory contributions to the national social security scheme. These contributions were calculated in relation to the gross salaries of employees and differentiated according to the place of residence of the employees. For this purpose, Norway was divided into five geographical zones. Zone 1 comprised the most central parts of the southern part of the country and covered 76.6% of the total population in Norway. Zone 2 comprised less central parts of Southern Norway and covered 9.4% of the total population in Norway. Zone 3 covered mostly certain mountain regions in Southern Norway with a coverage of 2.6% of the total population of Norway. Zone 4 was made up of the northernmost part of South Norway as well as North Norway south of Zone 5. Zone 4 covered 9.4% of the total population. Zone 5 covered the very northernmost part of the country.

The Authority opened the formal investigation procedure with respect to the regionally differentiated social security contribution rates in Norway on 19 November 1997<sup>6</sup>. On 2 July 1998, the Authority adopted a decision<sup>7</sup> in which it found that the system provided, through the State budget, a benefit to certain undertakings, which could not be justified on the basis of the general nature and character of the system and which distorted or threatened to distort competition within the European Economic Area<sup>8</sup>. The system had to be brought in line with the rules of the EEA Agreement.

On 2 September 1998, the Norwegian authorities brought an action under Article 36(1) of the Surveillance and Court Agreement before the EFTA Court requesting the annulment of the Authority's decision of 2 July 1998.

The Court dismissed the application for annulment on 20 May 1999<sup>9</sup> and upheld the Authority's decision. The Court confirmed that the system of differentiated social security

<sup>6</sup> Decision No 246/97/COL. The Authority's decisions are available on <http://www.eftasurv.int>.

<sup>7</sup> Decision No 165/98/COL.

<sup>8</sup> Hereinafter referred to as the EEA.

<sup>9</sup> Case E-6/98 The Government of Norway v EFTA Surveillance Authority [1999] Report of the EFTA Court, page 76.

contributions constituted state aid within the meaning of Article 61(1) of the EEA Agreement.

With a view to complying with the Authority's decision of 2 July 1998, the Norwegian authorities proposed new regulations on regionally differentiated social security contributions. On 22 September 1999, the Authority approved the new regulations for a limited period of time, not going beyond 31 December 2003<sup>10</sup>.

On 21 December 2000, the European Commission took a negative decision concerning a reduced social security contributions aid scheme notified by Sweden<sup>11</sup>. In the decision, the Commission pointed out that Norway, by letter dated 27 July 2000, not only submitted comments on the decision to initiate the procedure regarding the Swedish case but also confirmed that it operated a similar scheme.

In light of the Swedish decision, the Norwegian system was thereafter discussed at several meetings between the Norwegian authorities and the Authority, as well as between the Authority and the European Commission. In view of the similarities between the Norwegian and the Swedish schemes and in order to assure a level playing field within the EEA, the Authority considered it necessary to examine the compatibility of the Norwegian scheme and initiated a formal review of the Norwegian system by letter to the Norwegian authorities dated 4 June 2002 (Doc. No: 02-4189 D).

In its decision of 25 September 2002<sup>12</sup>, the Authority concluded that the regionally differentiated social security contributions scheme did not qualify for the derogation provided for under Article 61(3)(c) of the EEA Agreement and proposed the adoption of appropriate measures requesting the elimination of any incompatible aid involved in the system or to render it compatible with effect from 1 January 2004.

By letter from the Mission of Norway to the European Union dated 29 October 2002, received and registered by the Authority on 31 October 2002 (Doc. No: 02-7855 A), the Norwegian authorities accepted the appropriate measures.

In March 2003, the Norwegian authorities notified the Authority of a three-year transitional period, from 2004 to 31.12.2006, for the progressive adjustment of the rates of social security contributions applicable in Zones 3 and 4 (Doc. No: 03-1846 A).

By letter dated 15 April 2003 (Doc. No: 03-2467 A), the Norwegian authorities had also notified a continuation of regionally differentiated social security contributions in Nord-Troms and Finnmark (Zone 5). This notification was withdrawn, however, by letter from the Norwegian Ambassador to the European Union dated 4 July 2003 (Doc. No: 03-4403 A) as the EFTA States, by common accord in the Standing Committee of the EFTA States on 1 July 2003 (No 2/2003/SC), and by reference to the third paragraph of Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, had decided that the present scheme in Zone 5 was compatible with the EEA Agreement due to the exceptional circumstances in this zone.

After opening the formal investigation procedure by a decision dated 16 July 2003<sup>13</sup> and in line with the EFTA Court's judgment in Case E-6/98<sup>14</sup>, the Authority concluded that

<sup>10</sup> Decision No 228/99/COL.

<sup>11</sup> Published in the OJ L 244 of 14 September 2001, page 32.

<sup>12</sup> Decision No 172/02/COL.

<sup>13</sup> Decision No 141/03/COL.

the reduced rates of social security contributions in Zones 2, 3 and 4 was state aid. However, the Authority authorised the notified three-year transitional period for the regionally differentiated social security contributions in Zones 3 and 4 by Decision No 218/03/COL of 12 November 2003. In this decision, the Authority noted that without a transitional period, the increase in the social security payments would lead to adverse employment effects. The Authority observed that a gradual phasing out of the differentiated tax rates over a period of three years would mean that the annual cost increase for the undertakings would be spread over the period. On the contrary, an immediate abolishment of the current system would have implied a cost shock to the undertakings concerned. An appropriate transition period seemed advisable in order to mitigate the shock effects and give undertakings time to adjust to the new economic environment.

By letter dated 26 April 2004, the Norwegian authorities notified their intention to continue to apply reduced rates of social security contributions to undertakings located in Zones 2, 3 and 4 in Norway and active in certain economic sectors. The Norwegian authorities argued that the notified sectors were not exposed to trade within the EEA. After opening the formal investigation<sup>15</sup>, the Authority closed the case with a negative decision, concluding that the notified scheme involved state aid within the meaning of Article 61(1) of the EEA Agreement, which was incompatible with the rules of the EEA Agreement<sup>16</sup>.

On 6 April 2006, the Authority adopted new Regional Aid Guidelines for 2007 to 2013<sup>17</sup>. These Guidelines were based on corresponding Community Guidelines adopted by the European Commission on 21 December 2005. The new Regional Aid Guidelines opened up the possibility for greater flexibility to grant state aid in the least populated regions.

In these Regional Aid Guidelines the Authority proposed appropriate measures to the EFTA States, pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement, to bring their aid schemes in line with these new guidelines. By letter dated 10 May 2006, received and registered by the Authority on 11 May 2006 (Event No 373737), Norway accepted the appropriate measures without an exception for Zone 5.

### **3. Description of the proposed measure**

#### **3.1 *The objective of the aid measure***

The objective of the notified scheme for reduced rates for social security contributions is to reduce or prevent depopulation in the least populated regions in Norway by stimulating employment in these regions.

According to the notification, employment possibilities and expected income are the most decisive factors influencing a person's choice of where to take up residence. The regional differentiation of social security contributions aims at promoting employment in Norway's least populated regions and thereby reduce or prevent depopulation in these regions.

#### **3.2 *National legal basis for the aid measure***

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<sup>14</sup> Case E-6/98, cited above.

<sup>15</sup> Decision No 245/04/COL.

<sup>16</sup> Decision No 298/05/COL.

<sup>17</sup> Decision No 85/06/COL.

Section 23-2 of Act No 19 of 28 February 1997 relating to the National Insurance Scheme (*Folketrygdloven*) is the national legal basis for the employers' obligation to pay contributions to the national social security scheme. According to paragraph 12 of Section 23-2, the tax rates are determined by the Parliament. The Parliament's decision on the rates applicable is set out in Article 1 of the yearly Resolution of the Parliament on rates for social security contributions etc.

### 3.3 *Recipients*

Recipients of aid under the scheme will be all undertakings and institutions where the registered location of the business activity<sup>18</sup> is within the area proposed eligible for aid. If an undertaking or institution has more than one registered business location, the aid will only be granted with respect to the employees employed at a location of business activity within the eligible area.

The scheme is not sector specific but, in general, open to undertakings in all sectors. An exception is made, however, for undertakings active in the production of the steel products referred to in Annex I to the EEA Agreement and for undertakings building or repairing self-propelled seagoing commercial vessels as defined in Section 24B.2(10)(d) of the Authority's State Aid Guidelines on state aid to shipbuilding. Undertakings active in these sectors cannot benefit from reduced rates for social security contributions.

### 3.4 *Form of aid*

On the basis of the Act No 19 of 28 February 1997 relating to the National Insurance Scheme (*Folketrygdloven*), all employers in Norway are subject to compulsory contributions to the national social security scheme. These contributions are calculated in relation to the gross salaries of employees. The general rate in Norway is 14.1 per cent. Aid under the scheme will be granted in the form of reduced social security contributions, *i.e.* as tax rate reductions.

### 3.5 *Eligible expenses*

The eligible expenses under the scheme are the total labour costs for employees employed in undertakings and institutions with a place of business registered in the regions eligible for aid. The total labour costs are the total amount payable by the employer, *i.e.* the gross wages before taxes including the normal social security contributions which the employer should pay applying the normal rate.

### 3.6 *Geographical scope and aid intensities*

For the purpose of levying the social security tax on employers, the Norwegian authorities have proposed to establish six different geographic zones, each with a different tax rate. The full tax rate of 14.1 per cent will be charged in Zone 1 which comprises 82.3 per cent of the total population. Employees in Zones 2, 3, 4, 4a and 5 are proposed to be eligible for lower tax rates as shown in Table 1 below.

<sup>18</sup> Cf. Section 10 of Regulation of 9 February 1995 No 114 on Registration of Legal Persons etc. (*Forskrift av 9. februar 1995 nr. 114 om registrering av juridiske personer mm. i Enhetsregisteret § 10 Underenhet*).

Table 1

Zone	Rate for social security tax %	Aid intensity %	Population (1.1.2005)	Share of total population %	Change in population %		Population density (inhabitants per km <sup>2</sup> )
					1995-2005	2000-2005	
1	14.1	0	3 790 982	82.3	8.0	3.8	42.0
2	10.6	3.1	204 075	4.4	-4.3	-2.2	3.3
3	6.4	6.8	96 617	2.1	-4.2	-2.0	2.2
4	5.1	7.9	315 743	6.9	-4.3	-2.1	4.8
4a	7.9	5.4	106 972	2.3	11.3	5.3	27.1
5	0	12.4	91 974	2.0	-5.1	-1.3	1.6

The geographical scope of the notified scheme covers undertakings located in the following counties/municipalities, organised according to the different zones identified above:

Zone 2:	<u>Nord-Trøndelag:</u>	Verran, Mosvik, Meråker;
	<u>Møre og Romsdal:</u>	Sunndal, Tingvoll, Sandøy, Rauma, Stranda, Norddal;
	<u>Sogn og Fjordane:</u>	All municipalities except Flora, Førde and Sogndal;
	<u>Hordaland:</u>	Masfjorden, Fedje, Granvin, Ulvik, Eidfjord, Ullensvang, Odda;
	<u>Rogaland:</u>	Utsira, Kvitsøy, Suldal, Hjelmeland;
	<u>Aust-Agder:</u>	Bykle, Valle, Bygland, Evje og Hornes;
	<u>Hedmark:</u>	Trysil;
	<u>Telemark:</u>	Vinje, Tokke, Fyresdal, Nissedal, Kviteseid, Seljord, Tinn;
	<u>Buskerud:</u>	Nore og Uvdal, Hol, Ål, Hemsedal, Gol, Nes, Flå;
	<u>Oppland:</u>	Ringebu, Sør-Fron, Nord-Fron.
Zone 3:	<u>Nord-Trøndelag:</u>	Snåsa;
	<u>Sør-Trøndelag:</u>	Tydal, Holtålen, Røros, Oppdal, Rennebu, Snillfjord, Hemne;
	<u>Møre og Romsdal:</u>	Aure, Halså, Rindal, Surnadal;
	<u>Hedmark:</u>	Os, Folldal, Alvdal, Tynset, Tolga, Engerdal, Rendalen, Stor-Elvdal;
	<u>Oppland:</u>	Vang, Øystre Slidre, Vestre Slidre, Nord-Aurdal, Etnedal, Sør-Aurdal, Sel, Vågå, Lom, Skjåk, Lesja, Dovre.
Zone 4:	<u>Troms:</u>	All municipalities not included in Zone 4a or 5;
	<u>Nordland:</u>	All municipalities not included in Zone 4a;



	<u>Nord-Trøndelag:</u>	Leka, Nærøy, Vikna, Flatanger, Fosnes, Overhalla, Høylandet, Grong, Namsskogan, Røyrvik, Lierne, Namdalseid, Namsos;
	<u>Sør-Trøndelag:</u>	Osen, Roan, Åfjord, Frøya, Hitra;
	<u>Møre og Romsdal:</u>	Smøla.
Zone 4a:	<u>Troms:</u>	Tromsø;
	<u>Nordland:</u>	Bodø.
Zone 5:	<u>Finnmark:</u>	All municipalities;
	<u>Troms:</u>	Kvænangen, Nordreisa, Skjervøy, Kåfjord, Storfjord, Lyngen, Karlsøy.

### 3.7 *Description of the notified zones*

#### **Zone 5**

Zone 5 covers Norway's northernmost county, Finnmark, and seven adjacent municipalities in the neighbouring county of Troms. According to the figures provided by the Norwegian authorities, the total population in the zone is close to 92 000 persons, which constitutes approximately 2 per cent of the Norwegian population. The population density is only 1.6 inhabitants per km<sup>2</sup>, and the population growth has been negative both over the last ten and the last five years.

Economic activity in the region has traditionally been based on natural resources. Fishing and agriculture still dominate the economic activity in the region. In addition, a considerable part of the workforce is employed in the public sector. In general, the industry in the region is characterised by a low degree of diversification.

Internal distances in Zone 5 are considerable, the distance from the eastern to the western extremity of the zone is of approximately 1 000 kilometres. Travel distances to markets outside the zone are even longer, with approximately 2 300 kilometres from the region's administrative centre, Vadsø, to the Norwegian capital, Oslo.

Moreover, living conditions in the region are harsh, with temperatures below 0°C for approximately 200 days a year. Two months during the year the region is exposed to the polar night.

For these reasons, the Norwegian authorities have proposed to apply the highest aid intensity foreseen under the notified scheme in this part of the country.

#### **Zone 4a**

Zone 4a consists of the two main urban centres in Northern Norway, Tromsø and Bodø. Whereas Tromsø is the administrative centre of the county of Troms, Bodø is the administrative centre of the county of Nordland. The two cities have a joint population of approximately 107 000 inhabitants, Tromsø some 63 000 and Bodø some 44 000. The population development in the zone has been positive both over the last five and over the last ten years.

The Norwegian authorities have stressed that the relatively strong position of Tromsø and Bodø is crucial with regard to preventing a larger decline in the population of Northern



Norway. The Norwegian authorities argue that urban centres within the region reduce migration from the region to Southern Norway, both by competing for immigrants with centres in Southern Norway and by supporting settlement in adjoining areas. Furthermore, the Norwegian authorities claim that Tromsø and Bodø provide employment opportunities, basic services and momentum for development that the other municipalities in the region are too small to provide. These functions are particularly important in a region where there are no other comparable urban centres.

On this basis, the Norwegian authorities assert that it would have significant consequences for the region as a whole if the economic activity in Tromsø and Bodø should be weakened. The two cities are important engines for economic development in Northern Norway and have a fundamental role in preventing an even greater decline in the population of the northernmost part of Norway. On this basis, Zone 4a is proposed eligible for aid under the scheme. However, the aid intensity in the zone is set 2.5 percentage points lower than in the neighbouring zone (Zone 4).

#### ***Zone 4***

Zone 4 consists of the remaining part of Northern Norway, as well as the remote parts of the region's adjacent area. The zone has a population of approximately 316 000 inhabitants. The population density is of 4.8 inhabitants per km<sup>2</sup>, and the zone has experienced a population decrease both over the last five and over the last ten years.

#### ***Zone 3***

Zone 3 consists of the outer periphery of Southern Norway, and mainly covers mountain areas. It has approximately 97 000 inhabitants with a population density of 2.2 inhabitants per km<sup>2</sup>, and the population development has been negative both over the last five and the last ten years. Furthermore, there are no significant urban centres.

#### ***Zone 2***

Zone 2 consists of the remaining remote areas in Southern Norway, and does not include any urban growth centres. The population density is of 3.3 inhabitants per km<sup>2</sup>, and the population development has been negative both over the last five and the last ten years. Zone 2 delimits the border of the application of the scheme and the rest of Norway which is not covered by the notified scheme. Therefore, the Norwegian authorities have notified the lowest aid intensity for this zone, corresponding to 3.1 per cent of labour costs.

### ***3.8 Effects of the scheme***

The Norwegian authorities have argued that aid directly linked to labour costs is the most efficient measure to attain the objective of creating employment in specific regions<sup>19</sup>. In

<sup>19</sup> The Norwegian authorities have referred to the following studies: "Regional subsidies on labour and capital" by Truls Lind and Jan Serck-Hanssen, University of Oslo, published in the Swedish Journal of Economics 1972. Annex to the Official Norwegian Report; "Statlig næringsstøtte i distriktene", NOU 1984: 21 A, by Jan Serck-Hanssen, Professor in Social Economy at the University of Oslo. The conclusion of this report is that subsidies to labour at a rate that varies from region to region, but which is identical for all sectors within the region, are the most efficient measures when the aim is to achieve a settlement pattern objective, avoiding regional unemployment and depopulation. This conclusion has been

the notified scheme, the aid is directly linked to the cost of employing people. The result of the proposed aid measure will be a decrease in the employers' total labour costs. According to the Norwegian authorities, employers will take this into account when determining the location of their business activity, the method of production as well as any potential adjustment of the number of employees. In addition, the Norwegian authorities have put forward that the scheme will favour the use of labour over the use of capital in the eligible area and thus favour labour-intensive industries or production methods, and thereby promote employment in the eligible area.

According to studies submitted by the Norwegian authorities<sup>20</sup>, the decreased labour costs in specific areas can be expected to result in higher wages than there would otherwise have been in these areas. Thus, the benefit of the tax reduction would partly be shifted to the employees in the areas covered by the scheme. According to the Norwegian authorities, this spill-over effect would not adversely affect the primary aim of the aid scheme, namely to prevent or reduce depopulation. On the contrary, a region-specific increase in wages would raise the living standards in the area covered by the scheme, and thereby make migration from the area less attractive and thus reduce it.

In the notification, the Norwegian authorities argue that the scheme concerning regionally differentiated social security contributions is more efficient than alternative aid measures when the aim is to prevent or reduce depopulation of the least populated areas.

In the least populated areas, the main problem is often, according to the notification, a lack of profitable projects. Therefore, traditional investment aid does not seem to be the most adequate instrument to address the specific problems of low populated areas. Furthermore, as investment aid favours capital over labour, the Norwegian authorities consider that the effects of such aid on the population development in the regions would be less targeted than aid related directly to employment costs.

The Regional Aid Guidelines also include provisions concerning job creation. However, the Norwegian authorities doubt that aid for job creation within the framework of regional investment aid would be as efficient as operating aid linked to employment costs, as it

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repeated in Norwegian economic literature, amongst others in "Produksjonsteori" ("Production Theory"), by Michael Hoel and Karl Ove Moene at the Department of Economy at the University of Oslo, published by the Universitetsforlaget 1987 and in Report "Differensiert arbeidsgiveravgift, kunnskapsstatus" (Differentiated social security contributions, the status of knowledge) Møreforskning Molde, December, 2001 ([www.himolde.no](http://www.himolde.no)).

<sup>20</sup> The Norwegian authorities have argued that following J. M. Dyrstad (1992) "Arbeidsgiveravgiften og sysselsettingsproblemene" Sosialøkonomen no 3, 1992, approximately 30 per cent of the regional reduction in social security contributions is shifted over into wages. Frode Johansen and Tor Jakob Klette (1997) suggest in "Wage and Employment Effects of Payroll Taxes and Investments Subsidies" Discussion paper/ Statistics Norway, Research Department, no 194, 1997 and Memorandum from the Department of Economics, University of Oslo, 1998 that a proportion corresponding to 60 to 100 per cent of regional changes in payroll taxes is shifted over to wages. Finally, the study of J.M. Dyrstad and K. Johansen (2000) "Regional Wage Responses to Unemployment and Profitability: Empirical Evidence from Norwegian Manufacturing Industries", Oxford Bulletin of Economics and Statistics *Oxford Bulletin of Economics and Statistics*, 62 (1), 101-117 indicates that approximately 20 per cent of a partial regional change in social security contributions is shifted over in higher wages to employees.

would only apply in case of net increase of jobs in connection with an investment project. Thus, it would only apply to undertakings planning an expansion in their workforce, and not to all undertakings.

In the view of the Norwegian authorities, the same argument applies for the provisions of the Regional Aid Guidelines on regional employment aid to newly created small enterprises. Such a measure would not affect employment in existing undertakings. Furthermore, employment aid to newly created small enterprises can be granted over a maximum of five years, and it would thus be less likely to influence the choice of production methods and location of new enterprises. The Norwegian authorities claim that aid, including operating aid, that is limited to new enterprises will not be as efficient as a general operating aid scheme when it comes to stimulating employment.

Although investment in infrastructure may be a pre-requirement for the development of remote areas, the Norwegian authorities consider that it will normally be insufficient in order to achieve the aim of preventing or reducing depopulation. Thus, investment in infrastructure cannot substitute the application of the proposed scheme.

### **3.9 Cumulation**

Aid under the scheme may be cumulated with other forms of aid. The Norwegian authorities have committed themselves to ensuring that funding of the same eligible costs under other schemes will be coordinated with the social security scheme and that the aid ceilings in the guidelines applicable will not be exceeded.

No *de minimis* aid may be granted in relation to the labour costs eligible for aid under the social security scheme.

### **3.10 Budget and duration**

The Norwegian authorities estimate that reduced social security taxes for all beneficiaries, private and public, amount to a forgone revenue of NOK 8½ billion (approximately EUR 1 060 million) annually. It is estimated that approximately NOK 5 billion (approximately EUR 630 million) will benefit the private sector, whereas approximately NOK 3½ billion (approximately EUR 440 million) will benefit the public sector. The advantages to the private sector will be shared with approximately NOK 300 million (approximately EUR 40 million) to agriculture and fisheries, and the remaining NOK 4.7 billion (approximately EUR 590 million) to all other sectors.

The duration of the scheme will be from 1 January 2007 to 31 December 2013.

## **II. APPRECIATION**

### **1. Procedural requirements**

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”*.

By submitting the notification of the scheme for regionally differentiated social security contributions, forwarded with a letter from the Norwegian Mission to the European Union

dated 12 June 2006 (Event No 377801), and not putting the proposed scheme into effect, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

## 2. The presence of state aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

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

According to settled case-law, the classification as aid requires that all the four conditions set out in Article 61(1) of the EEA Agreement be fulfilled<sup>21</sup>: 1) there must be an intervention by the State and through state resources; 2) it must confer a selective advantage on the recipients; 3) this intervention must distort or threaten to distort competition and 4) the aid measure must affect trade between the Contracting Parties.

The former Norwegian scheme on geographically differentiated rates for social security contributions has been subject to several decisions taken by the Authority<sup>22</sup>. The EFTA Court has also assessed the scheme<sup>23</sup> and came to the conclusion that such a scheme constituted state aid.

The notified scheme is in essence the same as the former scheme. However, some changes have been made, such as the following three main changes: Firstly, the geographical scope of the new scheme is more restricted than under the former scheme, meaning that a somewhat smaller area will be covered by the new scheme. Secondly, whereas the aid under the former scheme was linked to the residence of the employees, aid under the new scheme will be granted only to undertakings with a registered location of the business activity within the area proposed eligible for aid. Thirdly, the division of the geographic areas into zones with varying aid intensity has been amended in the notified scheme in comparison to the former one by introducing a separate zone for the towns Bodø and Tromsø in Northern Norway.

In the view of the Authority, the abovementioned amendments do not alter the assessment of the notified scheme under Article 61(1) of the EEA Agreement compared to the former scheme, which was also under scrutiny by the EFTA Court. Hence, it is the Authority's view that the Authority's conclusions and EFTA Court's findings with regard to the classification of the former scheme on regionally differentiated social security contributions under Article 61(1) of the EEA Agreement apply equally to the present notified scheme with regard to all four cumulative criteria.

Thus, the notified scheme involves a consumption of state resources by way of income foregone by the State with the application of reduced rates of social security contributions.

<sup>21</sup> Case C-345/02 *Pearle BV, Hans Prijs Optiek Franchise BV, Rinck Opticiëns BV and Hoofdbedrijfschap Ambachten* [2004] ECR I-7139, paragraph 33; Case C-142/87 *Belgium v Commission* ('Tubemeuse') [1990] ECR I-959, paragraph 25; Joined Cases C-278/92 to C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 20; Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 68; and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 74.

<sup>22</sup> See above Section I.2. of this decision.

<sup>23</sup> Case E-6/98, cited above.

Further, the scheme confers a direct competitive advantage on undertakings in the favoured regions compared to undertakings located elsewhere.

The aid scheme covers both the public and private sectors within the designated area. In this context, the Authority would like to underline that a measure will only constitute state aid in as far as it concerns an undertaking which carries out an economic activity, that is, an activity consisting of offering goods and services in competition on a given market<sup>24</sup>. The case law defines undertaking as “*every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*”<sup>25</sup>. Therefore, no state aid can be involved in non-economic activities such as purely public administrative activities, or in compulsory social security activities, amongst other examples. On the other hand, when a public authority engages in economic activities, and for that purpose has to be regarded as an undertaking, the state aid rules apply in full. For the purpose of this decision it is not necessary to precisely define which activities from public authorities are economic activities or not, as the Authority assesses the scheme as such and not individual aid granted under the scheme<sup>26</sup>.

Only undertakings located in the areas covered by the scheme benefit from the application of reduced rates for social security contributions. When these undertakings provide goods or services in competition with undertakings falling outside the geographic scope of application of this scheme, the latter will have to put up with higher costs although they carry out the same activities. Thus, competition between undertakings is distorted.

As the scheme covers practically all sectors in the designated area, like for example mining and manufacturing, construction, electricity supply, wholesale and retail trade, financial services, telecommunications etc, it goes without saying that the scheme affects trade between the Contracting Parties to the EEA Agreement.

Since all conditions set out in Article 61(1) of the EEA Agreement are fulfilled, the Authority considers that the notified scheme of regionally differentiated rates for social security contributions constitutes state aid.

### **3. Compatibility of the aid**

#### **3.1 Introduction**

In its decision of 25 September 2002, the Authority concluded that the regionally differentiated social security contributions scheme did not qualify for the derogation provided for under Article 61(3)(c) of the EEA Agreement and proposed the adoption of appropriate measures requesting the elimination of any incompatible aid involved in the system or to render it compatible with effect from 1 January 2004. The Norwegian authorities accepted the appropriate measures. Later, a transitional period to phase out the aid was authorised by the Authority, due to the exceptional character of the situation.

In April 2004, the Norwegian authorities notified their intention to continue to apply reduced rates of social security contributions to undertakings located in Zones 2, 3 and 4 in Norway and active in certain economic sectors. After opening the formal investigation, the Authority closed the case with a negative decision on 22 November 2005, concluding

<sup>24</sup> Joined Cases C-180/98 to C-184/98 *Pavlov and others* [2000] ECR I-6451, paragraph 75.

<sup>25</sup> Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

<sup>26</sup> Case E-6/98, cited above, paragraph 57.



that the notified scheme involved state aid within the meaning of Article 61(1) of the EEA Agreement, which was incompatible with the rules of the EEA Agreement.

In both decisions, the fact that the aid scheme constituted operating aid, which the guidelines at the time did not open up for, was an important element in the assessment.

On 6 April 2006, the Authority adopted new Regional Aid Guidelines<sup>27</sup>. These Guidelines were based on corresponding Community Guidelines adopted by the European Commission. The new Regional Aid Guidelines open up the possibility for greater flexibility to grant state aid in the least populated regions and they also open up the possibility for the use of operating aid.

With the introduction of the new Regional Aid Guidelines, the aim of preventing or reducing depopulation in the least populated regions of the EEA has been recognised as an important aim for the regional policy within the EEA. Thus, in the context of the new Regional Aid Guidelines, this objective will be an important factor in the Authority's application of Article 61(3)(c) of the EEA Agreement to regional aid schemes.

It follows from the Regional Aid Guidelines that whereas regional aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited, such aid may be compatible in certain circumstances with the EEA Agreement. Thus, according to paragraph 69 of the Regional Aid Guidelines "*[o]perating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions. The least populated regions represent or belong to regions at NUTS-II level [...] with a population density of 8 inhabitants per km<sup>2</sup> or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion.*" Furthermore, it follows from footnote 65 to paragraph 69 of the Regional Aid Guidelines that it is the task of the EFTA State concerned to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation.

Following the provisions of the new Regional Aid Guidelines, the Norwegian authorities have proposed an operating aid scheme consisting of the application of reduced rates for social security contributions with the aim of preventing or reducing the continuing depopulation of areas characterised by very low population density.

In the following, the Authority will initially examine whether the scheme only covers regions which fall under the Regional Aid Guidelines' definition of "least populated regions". Furthermore, the Authority will analyse the necessity and appropriateness of the scheme in relation to the objects which are sought to be fulfilled, *e.g.* preventing or reducing depopulation in these regions. Finally, the Authority will assess the proportionality of the scheme.

### 3.2 The geographical scope of the scheme

According to paragraph 69 of the Regional Aid Guidelines, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions. The paragraph defines the least populated regions as regions that represent or belong to regions at NUTS-II level with a population density of 8 inhabitants per km<sup>2</sup> or less, and extending to adjacent and contiguous smaller areas meeting the same population density criterion.

<sup>27</sup>

Chapter 25.B of the State Aid Guidelines "National Regional Aid 2007-2013".



Thus, in line with paragraph 69 of the Regional Aid Guidelines, only regions falling under the definition of least populated regions may be eligible for aid under the scheme.

The Authority has started its assessment of the regions notified to be eligible for aid under the scheme on regionally differentiated rates for social security contributions on the basis of the NUTS classification<sup>28</sup>. According to the Eurostat list of NUTS and statistical regions, Norway is divided into seven regions at NUTS-II level. Furthermore, Norway has 19 regions at NUTS-III level, corresponding to the Norwegian counties. The Norwegian municipalities are classified as NUTS-V level regions.

### ***NUTS-II level***

The Norwegian authorities have notified two NUTS-II regions as fully or partly eligible for aid under the scheme. Both regions have a population density of below 8 inhabitants per km<sup>2</sup>.

The NUTS-II region of Northern Norway, comprising the counties Finnmark, Troms and Nordland, has a population density of 4.1 inhabitants per km<sup>2</sup>.

The second NUTS-II region partly proposed eligible is the region consisting of the counties of Hedmark and Oppland, located in Eastern Norway. The whole region has a population density of 7.1 inhabitants per km<sup>2</sup>. The part of the region proposed eligible has a population density of 2.2 inhabitants per km<sup>2</sup>.

Based on the figures above, the Authority concludes that the NUTS-II region of Northern Norway as well as the NUTS-II region of Hedmark and Oppland fall under the definition of least populated regions in paragraph 69 of the Regional Aid Guidelines. Therefore, the regions may, if the other conditions of the Regional Aid Guidelines are fulfilled, be eligible for operating aid.

### ***Smaller adjacent areas***

As mentioned above, paragraph 69 of the Regional Aid Guidelines defines the least populated regions as representing or belonging to regions at NUTS-II level and extending to adjacent and contiguous smaller areas with a population density of 8 inhabitants per km<sup>2</sup> or less.

On this basis, Norway has notified smaller adjacent areas to both NUTS-II regions proposed eligible. These smaller adjacent areas comprise, firstly, the two counties (NUTS-III regions) of Nord-Trøndelag and Sogn og Fjordane, except for certain urban and suburban agglomerations in these counties. Nord-Trøndelag is adjacent to the NUTS-II region of Northern Norway, whereas Sogn og Fjordane is adjacent to the NUTS-II region of Hedmark and Oppland. The two counties both have a population density of less than 8 inhabitants per km<sup>2</sup>. Concerning the parts of the counties proposed eligible for aid, the population density of the eligible area in Nord-Trøndelag is 2.6 inhabitants per km<sup>2</sup>, whereas the population density of the eligible parts of Sogn og Fjordane is 4.7 inhabitants per km<sup>2</sup>.

In addition to the NUTS classification, Norway is divided into 162 “labour market regions”<sup>29</sup>. A labour market region consists of one or more municipalities and represents a functional area with limited internal travel distances where the delimitation is related to the distance between the place of work and the place of residence. In this regard, there are two main indicators: 1) The presence of substantial levels of commuting to and from a centre or between the municipalities and 2) short internal travel distances which imply that commuting between the municipalities is easily feasible on working days.

In the Authority’s view, it seems appropriate to assess the application of the scheme of regionally differentiated rates for social security contributions as an operating aid scheme addressing a socio-economic problem of depopulation on the basis of the labour market regions. The labour market regions reflect cohesive areas where conditions for employment and population development are rather uniform. Therefore, they provide a useful tool to assess the area to be covered by this particular operating aid scheme which aims at tackling the problem of depopulation in low populated areas. Thus, the Authority has assessed the application of the scheme to areas adjacent to the NUTS-II regions of Northern Norway and Hedmark and Oppland on the basis of this classification.

According to the information provided by the Norwegian authorities, these smaller adjacent areas notified to be eligible for aid cover 30 labour market regions with a population density of less than 8 inhabitants per km<sup>2</sup> <sup>30</sup>.

In total, the adjacent area to the NUTS-II region of Northern Norway has a population density of 2.8 inhabitants per km<sup>2</sup>, whereas the adjacent area to the NUTS-II region of Hedmark and Oppland has a population density of 3.4 inhabitants per km<sup>2</sup>. On this basis, the Authority finds that the notified adjacent areas fall under the definition of least populated regions in the Regional Aid Guidelines.

## ***Conclusion***

The above information submitted by the Norwegian authorities shows that the areas notified are made up of NUTS-II regions or parts of such regions, as well as adjacent areas. Both the notified area in its entirety and the different NUTS-II regions and adjacent areas forming the total area proposed eligible have a population density of less than 8 inhabitants per km<sup>2</sup>. The total area proposed eligible for aid under the scheme has a population density of 3.5 inhabitants per km<sup>2</sup>, which is well below the Regional Aid Guidelines’ threshold of 8 inhabitants per km<sup>2</sup>. On this basis, the Authority concludes that the notified areas fall under the definition of least populated regions, as set out in paragraph 69 of the Regional Aid Guidelines. Altogether, the total area proposed eligible for aid under the scheme accounts for 17.7 per cent of the Norwegian population.

### ***3.3 The appropriateness and necessity of the scheme***

<sup>29</sup> Jukvam: Norwegian Institute for Urban and Regional Research report 2002-20, available (in Norwegian) at <http://odin.dep.no/filarkiv/176119/nibrrapport200220bareregioner.pdf>.

<sup>30</sup> Five labour market regions consisting of island municipalities are notified to be eligible even though they have a higher population density. These islands all suffer from remote location. They have very low populations, as their joint population is 6 770 inhabitants. They thus do not have any noticeable influence on the population figures for the smaller adjacent areas in general.

As referred to in Section I.3.8 above, the Norwegian authorities have submitted a number of arguments concerning why regionally differentiated social security contributions are particularly appropriate when the aim is to prevent or reduce depopulation in certain areas.

According to the notification, employment opportunities and expected income are the most decisive factors influencing a person's choice of residence. The areas notified to be eligible for aid under the scheme are characterised by a narrow industrial base and a high level of dependence on employment in the primary industries and in the public sector. Furthermore, the average income in the notified areas is significantly lower than in areas not proposed eligible for aid.

On this basis, it is argued that the creation of employment possibilities is of particular interest in order to achieve the aim of preventing or reducing depopulation in certain areas. The Norwegian authorities claim that the aim of creating employment in specific regions can best be reached by introducing aid linked directly to the costs of employing people<sup>31</sup>.

Concerning the appropriateness of the scheme, the Authority would like to point out that a similar scheme concerning regionally differentiated social security contributions has been in place in Norway since 1975. In spite of the former scheme concerning regionally differentiated social security contributions, the population development in the areas which have been covered by this scheme, which to a large extent correspond to the areas notified to be eligible under the new scheme, has been negative. However, the Norwegian authorities argue, and the Authority finds that this argument cannot be disregarded, that the population decrease in the area covered by the former scheme would have been even larger in the absence of differentiated social security contributions.

Based on the information submitted by the Norwegian authorities, including the references to the various studies made on the effects of differentiated social security contributions, the Authority cannot object to the claim that the scheme for regionally differentiated social security rates will contribute to reducing or preventing depopulation in the least populated regions in Norway.

It follows from the information submitted by the Norwegian authorities that the areas proposed eligible for aid under the scheme have a population density well below 8 inhabitants per km<sup>2</sup>. As shown in the table below, the population density in the area concerned varies from 2.2 to 4.1 inhabitants per km<sup>2</sup>. In total, the area proposed eligible for aid under the scheme has a population density of 3.5 inhabitants per km<sup>2</sup>.

Moreover, the population development in the areas proposed eligible has been negative both over the last five years and over the last ten years. The population decrease over the last ten years in the different parts of the notified area reaches from 1.3 per cent to 5.0 per cent in the areas notified, whereas the population decrease over the last five years lies between 0.4 per cent and 2.3 per cent. The population decrease in the notified area as a whole is of 2.6 per cent over the last ten years and 1.1 per cent over the last five years.

<sup>31</sup>

Cf. Section I.3.8 above and the studies referred to in footnote 19.

Table 2

Area	Population 1.1.2005	Population density (per km <sup>2</sup> )	Population development 1995-2005	Population development 2000-2005
NUTS-II region of Northern Norway	462 640	4.1	-1.3 %	-0.4 %
Area adjacent to Northern Norway	81 338	2.8	-3.3 %	-1.4 %
NUTS-II region of Hedmark and Oppland (total)	371 550	7.1	0.4 %	0.5 %
Eligible part of the NUTS- II region of Hedmark and Oppland	78 302	2.2	-5.0 %	-2.3 %
Area adjacent to Hedmark and Oppland	193 101	3.4	-4.4 %	-2.3 %
Total eligible area	815 381	3.5	-2.6 %	-1.1 %
Ineligible area	3 790 982	42.0	8.0 %	3.8 %
Norway (total)	4 606 363	14.2	5.9 %	2.9 %

The NUTS-II region of Northern Norway has a population density of 4.1 inhabitants per km<sup>2</sup> and has experienced a population decline both over the last five years and over the last ten years. However, the necessity of the scheme in the region as a whole could be questioned as, even though the population development in the region as such has been negative, it has a few urban centres which have experienced population growth. The Norwegian authorities have argued that these urban centres play an important role as engines for the economic development in the region, and thus prevent further depopulation of the region as a whole. The NUTS-II region of Northern Norway is therefore notified as eligible for aid in its entirety.

The Authority has assessed the situation of the NUTS-II region of Northern Norway and points out that, according to the notification, the specific problems in the NUTS-II region of Northern Norway implies that the urban centres seem to play an important role with regard to preventing a larger decline in the population of Northern Norway. In particular, it appears that the urban centres provide employment opportunities, basic services and momentum for development that the other municipalities in the region are too small to provide. It furthermore appears that these functions are particularly important in a region with low population density which has no similar urban centres. On this basis, the Authority concludes that the Norwegian authorities have shown that the scheme seems to be necessary in the whole NUTS-II region of Northern Norway.

The second NUTS-II region proposed eligible is the NUTS-II region of Hedmark and Oppland. As mentioned above, although the region has a population density of 7.1 inhabitants per km<sup>2</sup>, only the more remote parts of the region are proposed to be covered by the scheme. This is due to the fact that some areas within the region do not suffer from the same socio-economic difficulties regarding depopulation as can be observed elsewhere in the region. Thus, according to the Norwegian authorities, action is only necessary to tackle a depopulation problem in some areas in the region. The part of the region proposed eligible has a population density of 2.2 inhabitants per km<sup>2</sup>, and has experienced a population decline both over the last five and over the last ten years.

The Authority calls attention to the very low population density of the proposed eligible part of the region. Only labour market regions within the NUTS-II region of Hedmark and Oppland with a population density below 8 inhabitants per km<sup>2</sup> are proposed eligible for aid. Furthermore, the area proposed eligible suffers from an important population decline. On these grounds, the Authority concludes that the Norwegian authorities have demonstrated that the scheme can be considered to be necessary in order to prevent or reduce depopulation in the notified area in the NUTS-II region of Hedmark and Oppland.

The Norwegian authorities have considered it necessary to apply the notified scheme of regionally differentiated rates of social security contributions to areas adjacent to the above-mentioned NUTS-II regions meeting the same population criterion, *i.e.* with a population density of 8 inhabitants per km<sup>2</sup> or less.

These smaller adjacent areas comprise, firstly, the sparsely populated parts of the two counties of Nord-Trøndelag and Sogn og Fjordane, which have a population density of 2.6 inhabitants per km<sup>2</sup> and 4.7 inhabitants per km<sup>2</sup> respectively. Secondly, all the other adjacent areas, except for a few isolated island municipalities, consist of labour market regions with a population density of less than 8 inhabitants per km<sup>2</sup>. In total, the adjacent area to the NUTS-II region of Northern Norway has a population density of 2.8 inhabitants per km<sup>2</sup>, whereas the adjacent area to the NUTS-II region of Hedmark and Oppland has a population density of 3.4 inhabitants per km<sup>2</sup>. Furthermore, both adjacent areas have experienced a population decline both over the last five years and over the last ten years. The information submitted by the Norwegian authorities shows that both the eligible parts of Nord-Trøndelag and Sogn og Fjordane as well as all the labour market regions proposed eligible have suffered a population decline over the last ten or the last five years<sup>32</sup>.

The Norwegian authorities have not proposed to include the more central parts of the two counties of Nord-Trøndelag and Sogn og Fjordane in the scheme, even though both counties have a population density of less than 8 inhabitants per km<sup>2</sup>. Furthermore, the Norwegian authorities have only notified parts of some labour market regions as eligible for aid under the scheme, although these labour market regions as such have a very low population density. In these labour market regions, only the remote municipalities experiencing a population decline have been proposed eligible for aid, whereas more central municipalities have been excluded.

In the Authority's view, the information submitted by the Norwegian authorities indicates that similar socio-economic difficulties and depopulation problems are suffered in areas outside the borders of the NUTS-II regions proposed eligible for aid under the scheme as within these regions. On this basis, and in light of the information referred to above, the

<sup>32</sup>

The only exception to this rule is Frøya, a remote island-municipality with 4 114 inhabitants on the western coast of Norway.

Authority concludes, based on the figures concerning population density as well as population development in the notified area, that the Norwegian authorities have demonstrated that the scheme is appropriate and necessary, in order to prevent or reduce further depopulation in the notified area.

The Norwegian authorities have divided the area proposed eligible for aid into five geographic zones, and notified different aid intensities for each zone, as shown in Table 1 above. Before addressing the appropriateness and necessity of the various aid intensities proposed, the Authority points out that there is no particular provision in the new Regional Aid Guidelines on limitation of aid intensities concerning operating aid. It may, however, be noted that in the corresponding guidelines issued by the European Commission, for outermost regions in the European Community<sup>33</sup> “[t]he Commission considers that operating aid up to 10 % of the turnover of the beneficiary may be accorded without the need for specific justification”<sup>34</sup>. While “outermost regions” are defined in the EC Treaty and as such not directly relevant for Norway, the notified aid intensities in Norway may be compared with this figure.

The highest aid intensity is proposed for Zone 5. This zone covers Norway’s northernmost county and seven adjacent municipalities, and has a total population of some 92 000 persons. The population density is the lowest of all zones, only 1.6 inhabitants per km<sup>2</sup>. This area has also suffered the highest population decline over the last ten years, 5.1 per cent. Furthermore, socioeconomic data show that this zone suffers from problems related to the low degree of diversification of the industry, as well as problems resulting from remoteness, long internal and external travel distances and harsh weather conditions.

On the basis of the population data submitted by the Norwegian authorities concerning Zone 5, the Authority finds that, due to the specific problems of this zone, and especially the very low population density and the high population decline, a relatively high aid intensity in comparison with other parts of the total area proposed eligible for aid seems to be justifiable. The proposed aid intensity is 12.4 per cent of the labour costs. In relation to the quoted aid intensity concerning the outermost regions in the European Community, it may be noted that labour costs normally make up only a fraction of an undertaking’s turnover. In the view of the Authority, the aid intensity in Zone 5 appears justifiable.

Zone 4a consists of the two main urban centres in Northern Norway, Tromsø and Bodø. Whereas Tromsø is the administrative centre of the county of Troms, Bodø is the administrative centre of the county of Nordland. The two cities have a joint population of approximately 107 000 inhabitants. The population development in the zone has been positive both over the last five and over the last ten years.

The Authority, as explained above, finds that Norway has demonstrated that the aid measure is still necessary in this zone. In this regard, the Authority refers to the arguments submitted by the Norwegian authorities concerning the importance of relatively strong urban centres such as Tromsø and Bodø with regard to preventing a larger decline in the population of Northern Norway in general. The Norwegian authorities have demonstrated that urban centres such as Bodø and Tromsø play an important role as engines for economic development in a region such as Northern Norway where there are no comparable urban centres and that maintaining their position may prevent an even greater decline in the population of Northern Norway. The Norwegian authorities have proposed an aid intensity of 5.4 per cent in this zone, which is 7 percentage points lower than in

<sup>33</sup> Defined in Article 299 of the EC Treaty.

<sup>34</sup> Cf. footnote 74 to paragraph 80 of the guidelines.



Zone 5 and 2.5 percentage points lower than in neighbouring and surrounding Zone 4. In the view of the Authority, taking into account the role of Tromsø and Bodø for the whole region of Northern Norway, it is justifiable to apply a lower tax rate in Zone 4a than the full tax rate of 14.1 per cent applied in Zone 1, but not to apply a rate as low as in the surrounding areas. Therefore, the Authority can accept the proposed aid intensity in Zone 4a.

The three remaining zones proposed eligible for reduced social security rates, Zones 4, 3 and 2, all have a very low population density, although higher than in Zone 5. The population development has been rather similar in all three zones in the sense that they have experienced about the same relative decline in population both over the last ten and over the last five years. This similarity has to be seen, however, against the background that, historically, larger tax reductions have been granted in Zone 4 than in Zone 3, which again has been subject to lower taxes than Zone 2. One cannot exclude that these variations in the rate for social security contributions may have had the effect of evening out the relative population decline between the zones, which again may call for a continued differentiation of tax rates.

Zone 4 consists of the remaining part of Northern Norway, as well as the remote parts of the region's adjacent area. The population density is of 4.8 inhabitants per km<sup>2</sup>, and the zone has experienced a population decrease of 4.3 per cent over the last ten years and of 2.1 per cent over the last five years. Also this zone is exposed to problems resulting from long external and internal travel distances and harsh weather conditions.

The population data submitted concerning Zone 4 show that the zone is sparsely populated and suffers from continuing depopulation, and the Authority therefore finds that the Norwegian authorities have demonstrated that operating aid in the form of reduced social security contributions is necessary in order to prevent or reduce depopulation in the zone. The population density is higher than in Zone 5 and the population decline has not been as high as in that zone over the last ten years. This calls for a lower aid intensity. In the Authority's view, the proposed lower aid intensity of 7.9 per cent is justifiable.

Zone 3 consists of the outer periphery of Southern Norway, and mainly covers mountain areas. It has a population density of 2.2 inhabitants per km<sup>2</sup>. The population development has been negative both over the last five and the last ten years, showing a population decrease of 4.2 per cent over the last ten years and 2.0 per cent over the last five years.

The Authority observes that the Norwegian authorities have submitted population figures showing that Zone 3 has a low population density and suffers from continuing depopulation. Furthermore, the zone does not include, according to the notification, any significant urban centres. Based on the figures submitted, the Authority concludes that the Norwegian authorities have demonstrated that the reduced social security contributions are necessary in order to prevent or reduce depopulation in the zone. However, Zone 3 is located in Southern Norway, and for that reason is, at least to a certain extent, spared from some of the problems experienced in Zones 4, 4a and 5, which are more remote. On this basis, the Norwegian authorities have demonstrated that the proposed lower aid intensity of 6.8 per cent seems to be appropriate and necessary in order to achieve the aim of preventing or reducing depopulation in this zone.

Zone 2 consists of the remaining remote areas in Southern Norway, and does not include any urban growth centres. The population density is 3.3 inhabitants per km<sup>2</sup>, and the population development has been negative both over the last ten years, with -4.3 per cent, and over the last five years, with -2.2 per cent.



On the basis of the population data submitted by the Norwegian authorities concerning Zone 2, the Authority finds that, especially due to the relatively low population density, operating aid seems to be necessary in the zone. However, Zone 2 delimits the border of the application of the scheme and borders the rest of Norway which is not covered by the notified scheme (Zone 1). This implies that the areas covered by the zone must be regarded as relatively centrally situated. However, in the Authority's view, the Norwegian authorities have demonstrated that the proposed lower aid intensity of 3.1 per cent seems to be appropriate and necessary in order to achieve the aim of preventing or reducing depopulation in this zone.

On the basis of the information and justification of the Norwegian authorities referred to above, the Authority considers that the Norwegian authorities have sufficiently demonstrated that different aid intensities foreseen under the scheme will address the problem of depopulation in the least populated areas in an adequate way. With the proposed differentiated rates, the Norwegian authorities have tried to address different problems and specificities of the various areas concerned while avoiding the creation of tax borders that are too high between neighbouring regions. Thus, the Authority concludes that the Norwegian authorities have demonstrated that the aid intensities notified for the different geographic zones covered by the scheme seem to be appropriate and necessary in order to address the disparity of the problems in relation to depopulation in these zones.

The Norwegian authorities have argued that other measures, such as investment aid, would be less effective than operating aid in the form of regionally differentiated social security contributions<sup>35</sup>, in order to prevent or reduce depopulation in the least populated regions. They argue, *i.a.*, that the main problem in the least populated regions often is a lack of profitable projects, and that for this reason, traditional investment aid is not the most adequate instrument to address the specific problems of these areas. Moreover, as investment aid favours capital over labour, the Norwegian authorities consider that the effects of such aid on the population development in the regions would not be as targeted as aid related directly to employment costs. In addition, the Norwegian authorities point out that some of the possible aid measures, such as aid for job creation and employment aid under the Regional Aid Guidelines, only apply in case of a net increase of jobs in connection with an investment project and for a limited period of time.

On the basis of the information provided by the Norwegian authorities, the Authority finds that it is not apparent that measures other than operating aid would be better suited in order to achieve the aim of preventing or reducing depopulation in the least populated areas.

To conclude, the Authority is of the opinion that the Norwegian authorities have demonstrated that operating aid in the form of reduced social security contributions is an appropriate and necessary measure in order to achieve the aim of preventing or reducing depopulation in the very low population density areas notified to be eligible for aid under the scheme. Furthermore, the Authority finds that the Norwegian authorities have demonstrated that the aid intensities are appropriate and necessary in order to make sure that the scheme takes into account the disparities with regard to problems related to low population density and depopulation in the different zones proposed eligible.

<sup>35</sup>

Cf. Section I.3.8 above.

### 3.4 *The proportionality of the scheme*

According to Article 61(3)(c) of the EEA Agreement, aid granted in order to facilitate the development of certain economic areas may be 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*”. Thus, in order to be compatible with Article 61(3)(c) of the EEA Agreement, the scheme concerning regionally differentiated social security contributions must be proportionate to the objective of the scheme.

With the introduction of the new Regional Aid Guidelines, the aim of preventing or reducing depopulation in the least populated regions of the EEA has been recognised as an important objective of the regional policy in the EEA. Moreover, the new Regional Aid Guidelines accept that comprehensive measures may be employed in order to achieve the objective. This is apparent from the fact that, as an exception to the general rule under the Regional Aid Guidelines, when the objective is to prevent or reduce depopulation in the least populated regions, admissible measures include the granting of operating aid.

Furthermore, by issuing the new Regional Aid Guidelines that open up the possibility for operating aid in order to achieve these aims, the Authority and the European Commission have taken the position that operating aid that fulfils the criteria of the Regional Aid Guidelines can be deemed to be compatible with the EEA Agreement.

On this basis, the Authority will, in the following, examine whether the scheme on regionally differentiated social security contributions is proportionate in relation to the objective of the scheme.

In this regard, it can, on the one hand, be referred to the fact that the scheme concerning regionally differentiated social security contributions is an extensive scheme covering nearly all sectors of the Norwegian economy. Furthermore, it follows from the notification from the Norwegian authorities that the annual expenditures under the scheme will be considerable. Therefore, the scheme’s ability to affect trading conditions must be taken into consideration.

On the other hand, the proposed eligible area under the scheme has a population density of 3.5 inhabitants per km<sup>2</sup>, which is well below the Regional Aid Guidelines’ threshold of 8 inhabitants per km<sup>2</sup>. Furthermore, the entire area proposed eligible for aid under the scheme has experienced depopulation both over the last five and over the last ten years.

Moreover, the scheme foresees a division of the area proposed eligible for aid into five geographic zones with different aid intensities reflecting the disparity of the problems in the different zones. Thus, the scheme will address the problem of depopulation in low populated areas in a way proportioned to the specific socio-economic difficulties of each zone.

On the basis of the above, the Authority concludes that the scheme concerning regionally differentiated social security contributions is proportionate to its aim, which is to prevent or reduce depopulation in the least populated regions, and will not affect trade to an extent contrary to the interest of the Contracting Parties to the EEA Agreement.

### 3.5 Conclusion on the compatibility of the scheme

In the Authority's view, the notified scheme on regionally differentiated social security contributions covers only areas falling under the definition of the least populated regions in paragraph 69 of the Regional Aid Guidelines and which suffer from depopulation. Furthermore, the Norwegian authorities have sufficiently justified the necessity, appropriateness and proportionality of the notified scheme. Finally, the scheme foresees the application of different aid intensities to the various zones covered in order to target in a more proportionately and better way, the socio-economic difficulties it aims to address.

For the above mentioned reasons, the Authority considers that the regionally differentiated rates for social security contributions constitute compatible state aid within the meaning of Article 61(3)(c) of the EEA Agreement and the provisions of the Regional Aid Guidelines.

## 4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the notified scheme of regionally differentiated rates for social security contributions which the Norwegian authorities are planning to implement constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority considers that this aid is compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement and the provisions of the Regional Aid Guidelines which will apply as of 1 January 2007.

In analogy with the rules applicable to regional investment aid<sup>36</sup>, the Authority notes that operating aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the provisions of the Regional Aid Guidelines.

The Norwegian authorities are reminded of the general obligation resulting from Article 21 in Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Article 6 of the Authority's decision 195/04/COL to provide annual reports on the implementation of the scheme. For the purpose of regional operating aid schemes, this obligation has been further concretised under paragraph 72 in the Regional Aid Guidelines:

*"In order to verify the effects on trade and competition of operating aid schemes, EFTA States will be required to provide each year a single report in respect of each NUTS-II region in which operating aid is granted which provides a breakdown of total expenditure, or estimated income forgone, for each operating aid scheme approved in the region concerned and identifies the ten largest beneficiaries of operating aid in the region concerned, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each."*

Furthermore, the Authority refers to paragraph 71 of the Regional Aid Guidelines:

*"In all cases, the need for and level of operating aid should be regularly reexamined to ensure its long-term relevance to the region concerned. The Authority will therefore only approve operating aid schemes for the duration of these guidelines"*.

Therefore, the notified scheme for regionally differentiated social security contributions is only approved for the duration of the applicability of the Regional Aid Guidelines.

<sup>36</sup> See paragraph 64 of the Regional Aid Guidelines.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

#### **Article 1**

The EFTA Surveillance Authority has decided not to raise objections to the notified scheme of regionally differentiated social security contributions for the duration of the applicability of the Regional Aid Guidelines.

#### **Article 2**

Norway is required to provide, each year, a single report in respect of each NUTS-II region in which operating aid is granted which provides a breakdown of total expenditure, or estimated income forgone, for this operating aid scheme and identifies the ten largest beneficiaries of operating aid in each region, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each of them.

#### **Article 3**

This Decision is addressed to the Kingdom of Norway.

#### **Article 4**

Only the English version is authentic.

Done at Brussels, 19 July 2006

For the EFTA Surveillance Authority,

Bjørn T. Grydeland  
President

Kristján A. Stefánsson  
College Member