

Case No: 60219
Event No: 393210
Dec. No: 377 /06/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 6 DECEMBER 2006

REGARDING A NOTIFICATION OF MØRE AND ROMSDAL PRIVATE SEED CAPITAL AND EQUITY FUND

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, 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 Justice², in particular to Article 24 thereof and Article 1(3) in Part I and Article 4(3) in Part II of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines³ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 10B on State Aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises⁴,

WHEREAS:

I. FACTS

1 Procedure

By letter dated 16 June 2006 from the Norwegian Mission to the European Union, forwarding a letter from the County Municipality of Møre and Romsdal (Møre og Romsdal fylkeskommune, hereinafter referred to as "the County Municipality"), also dated 16 June 2006, all received and registered by the EFTA Surveillance Authority

¹ Hereinafter referred to as "the EEA Agreement".

² Hereinafter referred to as "the Surveillance and Court Agreement".

³ Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, as amended by Decision 313/06/COL, inserting Chapter 10B. The State Aid Guidelines are available on the Authority's website: www.eftasurv.int.

⁴ Hereinafter referred to as "the Risk Capital Guidelines".

(hereinafter referred to as “the Authority”) on 16 June 2006 (Event No. 378455), Norway notified a private seed capital and equity scheme applicable to the county of Møre and Romsdal.

By letter dated 19 July 2006, the Authority requested further information regarding the scheme (Event No. 381636).

By letter dated 22 August 2006, received by the Authority on the same date, the Norwegian Ministry of Government Administration and Reform forwarded the County Municipality’s letter replying to the questions raised by the Authority in the letter of 19 July 2006 (Event No. 384935).

Following informal contacts with the legal representative of the County Municipality, the Authority sent a second request for information on 3 October 2006 (Event No. 393210). By letter dated 10 October 2006 and received by the Authority on the same date, the Norwegian Ministry of Government Administration and Reform forwarded further information from the County Municipality in reply to the Authority’s questions, in the form of a letter dated 9 October 2006 (Events Nos. 391807 and 391808).

2 Background

Pursuant to point 2 of the standard notification form enclosed as Annex 1 to the notification letter, the stated objective of the scheme is the provision of risk capital to SMEs.

The Norwegian authorities have not presented extensive evidence on the existence of a failure in the market for risk capital in Møre and Romsdal. However, the notification letter states that, relative to the number of inhabitants, fewer new enterprises are established in Møre and Romsdal than in most other county municipalities in Norway. The Norwegian authorities also state that experience to date regarding the schemes approved by the Authority by Decisions Nos 180/05 and 181/05, as amended by Decisions Nos 62/06 and 61/06, respectively, shows that little or nothing of the capital from these schemes will be invested in Møre and Romsdal.

3 Description of the notified scheme

On 26 April 2006, the County Municipality adopted a decision to ensure the establishment of a seed capital fund in Møre and Romsdal, named Møre and Romsdal Private Seed and Equity Fund (hereinafter referred to as “the Fund”). The Fund will be a limited liability company. The aid instrument consists of a subordinated loan of 75 MNOK from the County Municipality, amounting to 50 per cent of the Fund’s capital base. The loan is foreseen to be disbursed in three tranches.

Repayments of the loan (including repayment of interest and compound interest) will take place whenever an investment is realised (i.e. when the Fund exits from the target enterprise) and at the same pace as dividend is paid to the Fund’s shareholders. The maximum limit for repayment of the loan is 15 years. The interest rate chosen is the average 12 months NIBOR⁵ plus 0.5 per cent. The County Municipality states that the NIBOR rate is chosen as a reference rate because it is fluctuating according to market rates, and that the 0.5 per cent risk premium would result in a net return not substantially

⁵ Norway Inter-bank Offered Rate

different from what follows from historical net return on early-stage funds in Europe. The County Municipality points to a report by the European Private Equity & Venture Capital Association in this regard, which, however, concerns return on equity, not on loans. However, as this type of subordinated loans do not exist on the commercial market, a suitable benchmark for the market rate has not been found.

The rest of the capital in the Fund will be provided as committed equity capital by private investors. Thus, the investors will own the fund. Private equity capital will be provided in capital injections corresponding to the tranches, and will at any given moment constitute at least 50 per cent of the Fund's capital base. A public tender will be held to select investors, whereby priority will be given to individuals or companies deemed to possess important competence for the establishment of new companies. The minimum investment required is NOK 1.5 million, and no single investor may own more than 25 per cent of the Fund.

The Fund will be managed by a board, consisting of the commercial investors only (not the County Municipality). An agreement will also be entered into with Bølgen&Sydvestor, an advisory company selected by the County Municipality after consultation with several private equity advisors deemed to possess local knowledge. The County Municipality has explained that such local knowledge is necessary because the enterprises invested in will not be large quoted companies, but micro, small and medium sized enterprises possessing an idea having commercial potential. The advisor must be able to identify the best projects, in some cases even before an enterprise has been established. This requires local knowledge and physical nearness to the markets. It has been pointed out that investors will not be willing to invest in a fund not having an advisor in possession of such local knowledge. The advisor will not make binding decisions, only provide investment advice; thus, investments decisions are taken solely by the private investors in the Fund.

Investments may include early-growth financing up to the development or expansion stage for small enterprises and "micro" enterprises, as well as for medium-sized enterprises located in assisted areas⁶, and/or investments into other medium-sized enterprises in their start-up or other early stages. Enterprises in difficulty as defined by the Authority's State Aid Guidelines for rescuing and restructuring firms in difficulty, enterprises in the shipbuilding and coal and steel sectors, export-related activities⁷ or internationalisation and firms in markets featuring over-capacity or in declining industries are at the outset foreseen to be excluded from the scheme.

Investment tranches are limited to €500 000 for enterprises in non-assisted areas, or €750 000 in assisted areas, as applicable under Chapter 10A.6(5) of the Authority's State Aid Guidelines as they read at the time of notification. However, the Authority has also been requested to approve tranches up to €1 500 000 as provided for by the new Risk Capital Guidelines⁸. The scheme provides for follow-on investments up to the same limit provided that at least 12 months have passed from the original investment and compliance with footnote 22 to the former Chapter 10A of the Authority's State Aid Guidelines is

⁶ The term "assisted areas" refers to areas which have been identified by Norway, and approved as such by the Authority's decision, as eligible for regional investment aid pursuant to Chapter 25B of the Authority's State Aid Guidelines.

⁷ In Section 10B.2.1, paragraph 25, of the guidelines, aid to export-related activities are defined as "aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods".

⁸ See the new Chapter 10B, State Aid to Promote Risk Capital Investments in Small and Medium-Sized Enterprises, adopted by the Authority's Decision No 313/06/COL.

ensured⁹; in addition, the investments must be in a new product or development, which is wholly different from the original investment, or the original investment must be deemed to have met its outputs and milestones as per the original business plan. The tranches will be strictly complied with insofar as no *de minimis* amounts from the Fund will be disbursed in addition to the amounts falling within the tranches.

The scheme will be supervised by Innovation Norway¹⁰. Innovation Norway will, *inter alia*, ensure that the operation of the fund complies with the Authority's Decision. On request, the Norwegian authorities have explained that Innovation Norway will also ensure that no aid is granted in breach of the cumulation rules under aid schemes monitored by it. In addition, Innovation Norway will be informed by formal letter from the County Municipality that when capital provided from the Fund is used to finance costs eligible for aid under other EEA State aid provisions, and a target enterprise is subsequently granted such aid, the relevant aid ceilings or maximum eligible amounts have to be reduced by 50 per cent (by 20 per cent for target enterprises located in assisted areas). Similarly, the County Municipality will send a formal letter to all Norwegian ministries and to all municipalities in Møre and Romsdal about reductions in applicable aid ceilings following aid from the Fund. The target companies will also be informed about these reductions and obliged to inform future grantors about investments made by the Fund.

II. APPRECIATION

1 Notification requirement

According to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, the EFTA States have an obligation to inform the Authority in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The EFTA State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

The Norwegian authorities have notified the private seed capital and equity scheme applicable to the county of Møre and Romsdal. The proposed measures have not been put into effect yet. Thus, the Norwegian authorities have complied with the notification and standstill obligations laid down in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2 Existence of state aid within the meaning of Article 61(1) of the EEA Agreement

The Authority has examined the scheme in light of Article 61 of the EEA Agreement, and in particular on the basis of Chapter 10B, State Aid to Promote Risk Capital Investments in Small and Medium-Sized Enterprises, of the State Aid Guidelines, adopted on 25

⁹ Footnote 22 in the former Chapter 10A of the Risk Capital Guidelines read: "*Separate injections of capital within six months of each other would be considered to be part of the same tranche, as would different injections, even over a longer period, to which a commitment is made as part of a single transaction.*"

¹⁰ Innovation Norway was established as of 1 January 2004 replacing the following four organisations: The Norwegian Tourist Board, the Norwegian Trade Council, The Norwegian Industrial and Regional Development Fund (SND) and the Government Consultative Office for Inventors (SVO). Innovation Norway (IN) is the Norwegian government's most important financial tool in Norwegian business development. IN shall promote innovation, business development and turnaround operations in Norway. IN's financial tools are equity capital, low risk loans, venture capital loans, grants and guarantees. IN employs more than 700 people.

October 2006 by Decision No 313/06/COL. The scheme is thus in its entirety assessed under the new Risk Capital Guidelines, not under the former Chapter 10A relating to Risk Capital, even though this text was applicable at the time of notification. As stated in paragraph 81 of Chapter 10B, the Authority will apply that Chapter to all notified risk capital measures in respect of which it must take a decision after the guidelines have been adopted even where the measures were notified prior to the publication of the guidelines.

The following conditions must be met for a measure to constitute state aid within the meaning of Article 61(1) of the EEA Agreement:

- The measure must involve the use of State resources;
- The measure must distort or threaten to distort competition by conferring an advantage on the beneficiary;
- The advantage must be selective in that it is limited to certain undertakings;
- The measure must affect trade between EEA States.

In line with Section 10B.3.2. of the State Aid Guidelines, in the assessment of whether state aid is present within the meaning of the EEA Agreement, the Authority will consider the possibility that the measure may confer aid on at least three different levels:

- Aid to investors;
- aid to any fund or other vehicle through which the measure operates;
- aid to the companies invested in.

2.1 Aid to investors

State resources are present in that 50 per cent of the Fund's capital base will be provided by the state in the form of a subordinated loan.

Paragraph 31 of Chapter 10B.3.2 of the Guidelines states that where a measure allows private investors to effect equity or quasi-equity investments into a company or set of companies on terms more favourable than public investors, or than if they had undertaken such investments in the absence of the measure, then those private investors will be considered to receive an *advantage*.

In the case of the notified scheme, the County Municipality participates in the scheme on a different set of conditions than the private investors, as it provides a subordinated loan instead of equity. The County Municipality states that it has not been possible to establish what the market conditions would be for this type of loan, as such loans are not offered on the commercial market. In the Authority's view, however, the absence of a commercial market for the type of loan in question constitutes in itself an indication that it is offered on more favourable terms than would have been available from commercial lenders. This is even more evident when the loan is offered with an interest rate equal to NIBOR + 0.5 percentage points. Moreover, the County Municipality does not contest that the interest rate and the repayment terms constitute an aid element in the scheme.¹¹ It therefore appears that the loan offered by the County Municipality is not granted on conditions that would have been acceptable to a market investor, and that the County Municipality therefore does not participate *pari passu* with the private investors. Hence, advantages are conferred on the private investors as they will participate in the investment on more

¹¹ The notification letter of 15 June 2006, p. 3.

favourable terms than if they had undertaken such investments in the absence of the measure.

Even though the investors will be chosen through a tender procedure open to all market investors, only the investors selected at the outcome of the tender procedure will benefit from the County Municipality's participation. The scheme is therefore considered to be selective in nature.

The scheme strengthens the position of the selected investors compared to other investors who do not benefit from these favourable investment conditions and thereby distorts competition. Investment in capital is subject to considerable trade between EEA States and the scheme can therefore potentially affect trade between EEA States.

At the level of the investors, the Authority therefore considers that there is state aid within the meaning of Article 61(1) of the EEA Agreement.

2.2 Aid to the Fund and the advisor

Section 10B.3.2 (paragraph 32) of the guidelines state that in general, the Authority considers that an investment fund is an intermediary vehicle for the transfer of aid to investors and/or enterprises in which investment is made, rather than being the beneficiary itself. In general, this is only otherwise in case of direct transfer or fiscal advantages granted to an existing fund.

Aid to the Fund's managers will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations under the guidelines. In the case at hand, the Fund will not have a manager empowered to take legally binding decisions. The advisor chosen will nevertheless to a large extent be in a situation comparable to managers as described in the guidelines: The advisors tasks include, *inter alia*, identifying possible investment projects, preparing analyses and recommendations to the board, implementing the board's investment and realisation decisions, following up companies invested in, requesting legal advice where necessary and carrying out marketing activities in order for the Fund to have access to the best investments. The Authority will, therefore, apply the principles set out in the Guidelines with respect to managers, to the advisor.

According to the guidelines, there is a presumption that no aid is present at the level of managers if these are chosen through an open and transparent public tender procedure or if they do not receive any other advantages granted by the State. In the case at hand, however, Bølgjen & Sydvestor, the Fund's advisor, was not chosen through a tender procedure, but after informal consultations with potential advisors deemed to possess the requisite local knowledge.

Furthermore, it is presumed that no aid is present if it can be otherwise established that the advisor does not receive any advantage. Under the draft agreement that the Authority has obtained, the advisor receives a flat fee fixed as a percentage of the Fund's capital base as well a success fee based on the Fund's results, normally to be disbursed at the dissolution of the Fund. The Norwegian authorities have furthermore drawn the comparison with the remuneration paid in the scheme approved in Decision No 180/05/COL, allowing for a higher management fee than the scheme at issue in the case at hand. However, in the view of the Authority, as the market rate must be established with reference to *comparable situations*, the level of remuneration of the manager of other funds cannot automatically be

relied on to establish the appropriate market rate for the advisor in the case at hand. The Norwegian Authorities have stressed the importance of local knowledge in choosing the advisor. Consequently, the specific situation cannot be directly compared to rates applicable to managers of other approved schemes applicable to other areas. In these circumstances, the Authority does not have sufficient indications confirming the presence of aid at the level of the investors.

2.3 Aid to the enterprises invested in

It follows from the Guidelines, paragraph 33, that, where aid is present at the level of the investors, it will normally be considered to be at least partly passed on to the target enterprises and that, therefore, these do also receive aid. However, it is also stated that this may not be the case where investments are made on terms which would have been acceptable to a private investor in a market economy in the absence of State intervention. Although the scheme foresees that the Fund will be profit driven and based on business plans providing for an exit strategy, the Authority considers that the private investors in the Fund benefit from reduced risks when making an investment, and consequently can no longer be said to operate as normal economic operators. Moreover, it is stated in the notification letter that the scheme will encourage market investors to provide risk capital to the target enterprises which would not have happened in the absence of such measure. It therefore does not seem likely that investments in the target enterprises will, as a general rule, be made *pari passu* with private investors. Thus, there is a possibility that some of the advantages accorded to investors in the Fund are passed on to the enterprises invested in.

As the scheme is limited to SMEs situated in Møre and Romsdal in their start up and early stages, or for small enterprises or medium enterprises located in assisted areas, up to the development or expansion stage, it is considered to be a selective measure.

Finally, the scheme strengthens the position of the target undertakings compared to other undertakings who do not benefit from the Fund's investments and thereby distorts competition. The scheme may at least potentially affect trade between EEA States, as there is the possibility that the enterprises invested in are engaged or will get engaged in activities involving intra-EEA trade.

Consequently, the scheme entails the presence of aid at the level of the enterprises invested in.

3 Assessment of the scheme's compatibility

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

Under Section 10.B.1.3 of the Risk Capital Guidelines, it is explained that for this purpose, a balancing test is applied, whereby it must be considered whether the measure is aimed at a well-defined objective in the common interest, whether it is appropriate, has an incentive effect and is proportionate, and finally whether the distortions of competition and trade are limited, so that the overall balance is positive. Furthermore, it follows from Section 10B.4.1, that the Authority on this basis will declare a risk capital measure

compatible only if the measure leads to an increased provision of risk capital without adversely affecting trading conditions to an extent contrary to the common interest.

The Risk Capital Guidelines also state, in Section 10B.4.3 that state aid must target a specific market failure for the existence of which there is sufficient evidence in order to be compatible. In order to establish the presence of a specific market failure, specific safe harbour thresholds relating to tranches of investment in target SMEs in their early stages of business activity are laid down. As the notified measure respects the tranches provided for in Section 10B.4.3, a market failure can thus be assumed to be present.

3.1 Conditions for compatibility

It follows from Section 10B.4.3. of the Risk Capital Guidelines that when all the conditions set out therein are met, the Authority will consider that the incentive effect, the necessity and proportionality of aid are present in the risk capital measure and that the overall balance is positive. Below, the notified scheme is assessed in light of these conditions.

- **Maximum level of investment tranches**

According to Section 10B.4.3.1 of the Risk Capital Guidelines, the risk capital measure must provide for tranches of finance not exceeding EUR 1.5 million per target SME over each period of twelve months.

In the notified scheme, the upper limit for each tranche of finance is set to 500 000 EUR. Follow-on investments up to the same limit may be undertaken after 12 months have passed. However, in light of the changes to the Guidelines foreseen at the time of submission of the notification, the Authority has also been asked to approve tranches of 1 500 000 EUR instead of 500 000 EUR, and follow-on investments up to the same level. In light of the limit currently applicable under Chapter 10B of the State Aid Guidelines, the Authority considers that this request can be met.

- **Restriction to seed, start-up and expansion funding**

According to Section 10B.4.3.2 of the Risk Capital Guidelines, the risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises or medium-sized enterprises located in restricted areas, and to financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.

The notified scheme foresees financing of small and micro enterprises, as well as medium-sized enterprises located in assisted areas, up to the expansion stage, and financing of other medium-sized enterprises up to the start-up or other early stages. This fulfils the requirements set out in paragraph 43 of the Risk Capital Guidelines.

- **Prevalence of equity and quasi-equity investment instruments**

At least 70 per cent of the total budget of the risk capital measure must be provided in the form of equity or quasi-equity investment instruments into target SMEs. According to the notification letter, item 3.2.2, the Fund will only be allowed to provide target enterprises with capital in the form of equity, mezzanine and subordinated loans. Moreover, it follows from the draft statutes for the Fund (Enclosure 5 to the notification letter), Clause 5, as well as Enclosure 2 part III point 2.2 that at least 70 per cent of the capital will in any event be injected in the form of equity. It is therefore not necessary to assess the proposed quasi-equity instruments with respect to the definition of quasi-equity in paragraph 26 (c) of the Risk Capital Guidelines.

- Participation by private investors

At least 50 per cent of the funding of the investments must be provided by private investors. The scheme in question foresees that the private investors will most probably inject capital in three tranches corresponding to the capital injections made by the County Municipality, and that at least 50 per cent of the capital of the Fund at any time will be provided by the investors. It is therefore ensured that each investment will be at least 50 per cent funded by private funds.

- Profit-driven character of investment decisions

Decisions to invest in target enterprises must be profit-driven, i.e., the motivation to effect the investment must be based on the prospects of a significant profit potential and constant assistance to the target companies for this purpose.

This is, according to Section 10B.4.3.5 of the Risk Capital Guidelines, assumed to be the case where three conditions are met. First, a significant involvement of private investors providing investments on a commercial basis directly or indirectly in the equity of the target enterprises. In the case at hand, the contribution of private investors will at any time amount to at least 50 per cent of the Fund's capital base. Moreover, the Fund will be 100 per cent owned by investors as shareholders. According to the notification letter, the Fund's primary objective will be to create return on investments for the investors, and investment decisions will be made by the board, composed exclusively of private investors.

Second, a business plan must exist for each investment, containing details of product, sales and profitability development and establishing the *ex ante* viability of the project. In the notification letter, the Norwegian authorities have committed themselves to ensuring that business plans, in accordance with standard commercial practice and containing *inter alia* the above elements, will be drawn up prior to the execution of the investments.

Third, a clear and realistic exit strategy must exist for each investment. The Norwegian authorities have ensured that, at the time of an investment into a target enterprise, a shareholders agreement will be entered into, setting out *inter alia* the enterprise's main strategy, policy concerning shareholders, timing for investments and alternatives for timing of exit. It is also stated that the Fund at regular intervals will assess whether the investment has contributed to the required return on the invested capital and if the time has come to realise the investment, and that exit normally will take place in connection with an industrial sale, a merger, de-merger a share issue and/or stock-exchange listing.

On this basis, the Authority considers that the profit driven character of the investments is ensured.

- Commercial management

According to the Risk Capital Guidelines Section 10B.4.3.6, the management of a risk capital fund must be effected on a commercial basis. This is considered to be the case where there is an agreement between a professional fund manager and the participants in the fund, setting out the manager's performance related remuneration and the objectives of the fund and proposed timing of investments; where private market investors are represented in decision-making and where best practices and regulatory supervision apply to the management of the funds.

In case of the notified scheme, the Norwegian authorities have ensured that best practices and regulatory supervision will apply to the management of the Fund. As regards the participation of a fund manager and private market investors respectively, there is, strictly speaking, no manager, as the Fund's advisor does not have the power to make binding investment decisions. Binding decisions are taken by the board, consisting of private market investors. In return, the advisor is represented in the decision-making through its mandate, as set out in Clause 2.1 of the draft agreement with the Fund's manager, including, *inter alia*, the elaboration and presentation of reports including analyses, assessments and recommendations concerning possible investments and realisations to the board¹². Although this arrangement differs from the situation described in Section 10B.4.3.6, both professional advice and participation by market investors is ensured, whereas influence by the County Municipality is excluded from the decision making procedure. Thus, the Authority considers that there is no risk that the management team does not behave as managers in the private sector, seeking to optimise profits.

The notified scheme is therefore held to meet the requirement that the scheme be commercially managed.

- Sectoral focus

The notified scheme is sector neutral, but the Fund will be allowed to have a sectoral focus decided by the investors on a commercial basis. However, investments into enterprises in difficulty as defined in the Authority's State Aid Guidelines, Chapter 16, enterprises in the shipbuilding, coal and steel sectors, export related activities and their internationalisation as well as enterprises in markets featuring overcapacity or in declining industries, will not be allowed.

This is in compliance with the Risk Capital Guidelines Sections 10B.4.3.7 and 10B.2.1.

Furthermore, the Authority has been requested to consider the possibility of allowing investments constituting aid to export-related activities and their internationalisation as well as investments into enterprises in markets featuring over-capacity or in declining industries, should the final text of the guidelines be less strict than foreseen in the draft available at the time of notification. In light of the scope of the Chapter 10B as set out in Section 10B.2.1, the Authority considers that this request can be met with regard to investments into enterprises active in markets featuring over-capacity or in declining industries.

It follows from the above that all the conditions for compatibility set out in Section 10B.4.3 are met, and that the incentive effect, the necessity and proportionality of aid are present in the notified scheme and that the overall balance is positive.

3.2 Cumulation

Section 10B.6 of the Risk Capital Guidelines provides that where capital provided to a target enterprise under a risk capital measure covered by the guidelines is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks or other state aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 per cent in general and by 20 per cent for target

¹² See enclosure 1 to the County Municipality's letter to the Authority of 9 October 2006, submitted by letter from the Norwegian Authorities of 10 October 2006 (event # 391807).

enterprises located in assisted areas during the first three years of the first risk capital measure and up to the total amount received.

The notification letter as well as the draft statutes for the Fund (Clause 4.4) foresee such reductions as described above.

In order to ensure that possible aid grantors are actually informed about the Fund's investment to the effect that such reductions may effectively take place, the Norwegian authorities have undertaken to implement the following measures:

- The Fund will formally inform enterprises receiving capital injections of the cumulation rules and applicable restrictions with regard to aid from other sources.
- The County Municipality will send a formal letter to all Norwegian Ministries and municipalities within Møre and Romsdal with regard to the reductions of aid ceilings for aid to enterprises in which the Fund will invest.
- Innovation Norway will ensure that cumulation rules are respected in respect of other schemes monitored by it. Innovation Norway will also receive a letter with the same content as the described above.
- If breaches are uncovered, Innovation Norge will inform the enterprise concerned and the last grantor of the violation and the recovery obligation under the state aid rules, and the Fund may refuse to grant follow-on investments in the enterprise.

This is in line with the Risk Capital Guidelines Section 10B.6.

4 Conclusion

As is apparent from Section 3 above, the notified scheme meets all the requirements set out in Section 10B.4 of the Risk Capital Guidelines. Hence, the Authority considers that the incentive effect, the necessity and proportionality of the aid are present in the notified risk capital measure and that the overall balance is positive. Therefore, the proposed aid to increase the supply of risk capital to small and medium-sized enterprises located in Møre and Romsdal, is considered not to adversely affect trading conditions to an extent contrary to the common interest and thus to be compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement.

The Norwegian authorities have also committed to implementing adequate measures designed to avoid undue cumulation of aid.

The Norwegian authorities are reminded that, in respect of risk capital measures, the annual reports to be submitted under Protocol 3 to the Surveillance and Court Agreement and the EFTA Surveillance Authority Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement, must contain a summary table with a breakdown of the investments effected by the fund or under the risk capital measure including a list of all the enterprises benefiting from risk capital measures. The report must also give a brief description of the activity of investment funds with details of potential deals scrutinised and of the transactions actually undertaken as well as the performance of investment vehicles with aggregate information about the amount of capital raised through the vehicle.

According to Section 10B.7.1 (paragraph 77), of the Risk Capital Guidelines, in order to ensure that the EFTA States, economic operators, interested parties and the Authority itself have easy access to the full text of all applicable risk capital aid schemes, Norway is required to publish the full text of the scheme on the internet and to communicate the internet address of the publication to the Authority, and not to apply the scheme before the information is published on the internet

The Authority furthermore reminds the Norwegian authorities that in view of the intended life-time of the notified measure, which exceeds the validity of the current Chapter 10B, State Aid to Promote Risk Capital Investments in Small and Medium-Sized Enterprises, the measure will have to be subjected to any appropriate measure necessary to bring it in line with reviewed rules on state aid to promote risk capital measures in small and medium-sized firms.

The Authority also reminds the Norwegian authorities that according to the guidelines, all plans to modify this scheme have to be notified to the Authority.

HAS ADOPTED THIS DECISION:

1. The Authority has decided not to raise objections to the notified private seed capital and equity fund scheme applicable to the county of Møre and Romsdal.
2. The Norwegian authorities are requested to submit an annual report on the implementation of the scheme.
3. The Norwegian authorities are requested to publish the full text of the aid scheme on the internet and to communicate the internet address of the publication to the Authority. The scheme must not be applied before the information is published on the internet.
4. This Decision is addressed to the Kingdom of Norway.
5. This Decision is authentic in the English language version.

Done at Brussels, 6 December 2006

For the EFTA Surveillance Authority,

Bjørn T. Grydeland
President

Kristján Andri Stefánsson
College Member