

Case No: 64824
Event No: 498328
Dec. No: 69/09/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 18 February 2009
on the notification of the Bioenergy Scheme
(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹,

Having regard to the Agreement on the European Economic Area², 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 Justice³, in particular to Article 24 and Article 1 in Part I of Protocol 3 thereof,

Having regard to the Authority's Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the Chapter on Aid for Environmental Protection thereof⁵,

Whereas:

I. FACTS

1 Procedure

By letter dated 6 June 2008 (Event No 480352) the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, the Bioenergy Scheme.

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement or EEA.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>

⁵ In the State Aid Guidelines, Part III, Horizontal Aid Rules. The Chapter on Aid for Environmental Protection was last amended by Decision 500/08/COL of 16 July 2008. Hereinafter referred to as the Environmental Guidelines.

After a first assessment of the information received, the Authority considered the notification to be incomplete and asked the Norwegian authorities for additional information by letter dated 6 August 2008 (Event No 487373). The Norwegian authorities replied to the information request by letter dated 5 September (Event No 490450). By letter dated 5 November 2008 (Event No 497126) the Authority requested further information which the Norwegian authorities submitted by letter of 17 November 2008 (Event No 498802). Finally, in their letter of 18 December 2008 (Event No 502317) the Norwegian authorities amended the notification by withdrawing a certain part of the notification⁶.

2 Description of the scheme

2.1 The objective of the aid scheme

The notified scheme is a continuation of the Bioenergy Scheme established in 2003. As that scheme granted support to agricultural activities it was not notified to the Authority. The Norwegian authorities have however expanded the scope of the scheme to cover all sectors and consider, consequently, that the scheme as notified is covered by the state aid provisions in the EEA Agreement.

The objective of the aid scheme as notified is to promote and increase the production and use of renewable energy for heating and thereby to reduce the emission of CO₂ and other greenhouse gases. The scheme is supposed to contribute to the national goal of increasing the production of bioenergy with 14 Twh within 2020 and, moreover, provide employment opportunities in sustainable economic activities in rural areas. The measure is aimed at generating (producing, utilising and delivering) bio energy activities within the agricultural and forestry sector, but all sectors will be eligible for support under the notified scheme.

One of the specific objectives of the scheme is to replace oil burners with technologies based on bioenergy, as well as installing new heating based on bioenergy. Such replacements are said to have a great impact on CO₂ emissions. The electricity prices in Norway are relatively low compared with other EEA countries. Due to the low price level bioenergy has a competitive disadvantage. Thus, in view of the Norwegian authorities, state aid is necessary in order to encourage investment in bioenergy infrastructure.

2.2 National basis for the aid measure

The national basis for the aid scheme is the Annual Agricultural Agreement (St. Prp. 77 2006-2007), as well as the annual state budget (St. Prp. 1, 2007-2008, item 5011) and the annual letter of allocation from the Ministry of Agriculture and Food to Innovation Norway⁷.

⁶ The withdrawal concerned the part of the notification concerning investment aid for the production of wood chips.

⁷ Innovation Norway is a state owned company, established by Act nr. 130 19 December 2003. The company replaced 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. According to information published on their website, Innovation Norway promotes nationwide industrial development profitable to both the business economy and Norway's national economy, and helps release the potential of different districts and regions by contributing towards innovation, internationalisation and promotion, see www.innovasjon Norge.no.

2.3 Form of the aid

The aid will be in the form of non-repayable direct grants.

2.4 Beneficiaries

According to the notification, the main target group of the scheme are farmers and forest owners but it is open to all sectors and covers all regions. The scheme targets large firms as well as small and medium-sized enterprises⁸ falling within the EEA SME-definition⁹.

The Norwegian authorities have estimated the number of beneficiaries to be up to 500.

2.5 Activities eligible for aid

2.5.1 Aid for renewable energy

The scheme will cover aid for renewable energy. According to the notification the eligible costs are limited to the extra investment costs borne by the beneficiary as compared with the costs for a conventional heating system with the same capacity in terms of the effective production of energy.

Investment support and/or operating aid may be granted to the following projects:

2.5.1.1 Installations for farm heating

Aid will be available for installations for farm heating. Investment aid may be granted for heating plants using wood, wood chips or straw as fuel, which is connected to a waterborne heating system for the heating of farms. Investment aid may also be granted for new installations or installations where oil burners are replaced with burners using renewable energy sources.

Two types of projects are eligible for funding; plants at agricultural properties with an extensive need for heating (above 25 000 kWh) in the production (agricultural or other economic activity such as tourism, hiring out cabins etc.) and plants at agricultural properties with a low degree of used heating (below 25 000 kWh) in the production.

The eligible costs for the first category are expenses to boiler houses, heating installations and infrastructure for distribution (pipelines) to agricultural production. The eligible costs for the second category are expenses for heating installations used for one or more private houses or combination of private houses and agricultural production based on the property.

No operating aid will be granted for installations for farm heating.

⁸ Hereinafter referred to as SMEs.

⁹ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation, OJ L 214, 9.8.2008, p. 3) incorporated into the EEA Agreement at point 1j of Annex XV to the Agreement by Decision No 120/2008 of 7 November 2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008), entered into force 8.11.2008.

2.5.1.2 Greenhouse heating

Investment aid for greenhouse heating, based on combustion of wood chips, straw or wood may be granted. The aim of this type of aid is to replace the use of oil burners in greenhouses with heating based on burners using renewable energy sources.

Eligible costs are expenses to boiler houses, heating installations and infrastructure for distribution (pipelines).

No operating aid will be granted for greenhouse heating.

2.5.1.3 Installation for the sale of heating

Investment aid will be granted to installations for the sale of heating. Eligible projects are installations delivering energy for heating, providing 0,2 to 5 GWh pr. year. Costs related to boiler houses, heating installations, fuel storage and pipelines for heating distribution will be eligible costs.

Operating aid will not be granted for installations for the sale of heating.

2.5.1.4 Production of biofuel

Aid can be granted for investments in the production of biofuel used as transportation fuel, based on energy sources from sustainable forestry and agriculture or waste from agriculture, forestry and fisheries. Eligible costs are costs related to investments in installations and distribution from the installation to the customer.

Aid may also be granted for studies on the production of biofuels, in accordance with section 3.1.4 of the Environmental Guidelines (see section 2.5.3 in this decision).

No operating aid will be granted for the production of bio fuel.

2.5.1.5 Aid intensities – applicable to all categories of investment aid

The aid intensities will not exceed 60% of the eligible investment costs. The aid intensity may increase by 10% for medium sized enterprises and 20% for small enterprises.

Summary of the aid intensities:

	Aid intensity for renewable energy sources and for cogeneration
Small enterprises	80%
Medium-sized enterprises	70%
Large enterprises	60%

2.5.1.6 Operating aid for the production of energy from wood chips

The scheme, as notified to the Authority, will cover operating aid for the production of energy from wood chips as a form of biomass. On the other hand, it does not cover any aid for the production and sale of the wood chips¹⁰.

Installations for the production of heating may be eligible for operating aid to the purchase of feedstock in order to compensate the difference between the cost of feedstock and the price of heat. Aid can be granted to cover the difference between the cost of producing energy from renewable energy sources and the market price of the form of energy concerned. The aid will be based on the difference between the costs of the raw material and the market price of energy multiplied with kWh. Aid can be granted for installations with a maximum power of 125 MW.

Operating aid can be granted until the cost of the plant is depreciated and will only be granted until the enterprise becomes profitable. Operating aid will in any case not be granted for more than five years.

2.5.2 Aid for cogeneration

Aid for biogas installations producing both electricity and heat will be granted in accordance with section 3.1.7 of the Environmental Guidelines. Investment aid can be granted for cogeneration units satisfying the definition of high efficiency cogeneration as set out in point 70(11) of the Environmental Guidelines. The cogeneration units eligible for support under the notified scheme are installations based on biogas, defined as a manure gas and sewer gas.

The aid intensities will not exceed 60% of the eligible investments costs. The aid intensity may increase by 10% for medium sized enterprises and 20% for small enterprises (table in section 2.5.1.5 above).

Aid for environmental studies may also be granted, in accordance with section 3.1.4 of the Environmental Guidelines (see section 2.5.3 below).

No operating aid will be granted for cogeneration.

2.5.3 Aid for environmental studies

Operating aid to pre-projects, studies and development of competence directly linked to investments for the purpose of producing bio energy from wood and agricultural waste may be granted.

The aid intensities are as follows:

	Aid intensity for environmental studies
Small enterprises	70%
Medium-sized enterprises	60%
Large enterprises	50%

¹⁰ See footnote 6 above.

2.6 Budget and duration

The aid scheme is notified for the period from the date of the Authority's approval to 1 January 2014. The estimated total annual budget for the Norwegian Bioenergy Scheme is foreseen to be NOK 35 million (approximately EUR 3.9 million). The amount can however vary from year to year.

2.7 Cumulation

According to the Norwegian authorities, aid under the Bioenergy Scheme may be combined with other aid, e.g. aid from the Norwegian Energy Fund operated by ENOVA, an administrative body organized as a state enterprise owned by the Norwegian State. However, the Norwegian authorities indicate that aid will not be granted to the same eligible costs and confirm that there will be no cumulation of aid granted under the notified scheme with any aid received from other local, regional, national or Community sources.

2.8 Incentive effect

According to the notification, an incentive effect will be required for any project to be accepted under the scheme. No aid will be granted to projects already started before the application.

The Bioenergy Scheme stipulates that the annual report on implementation shall, in the case of large firms, contain a description of the incentive effect for each individual application.

2.9 Administration and monitoring of the scheme

The aid scheme will be administered by Innovation Norway and, prior to its implementation, published on its website¹¹.

Moreover, the Norwegian authorities have committed to submit annual reports to the Authority with detailed information regarding large undertakings.

Furthermore, the Norwegian authorities have committed to maintain for 10 years detailed records on all the aid granted and submit them to the Authority upon request, with all the information necessary to establish that the provisions on eligible costs and aid intensity have been complied with.

II. ASSESSMENT

1 Scope of the EEA Agreement

The Bioenergy Scheme, as notified, covers support to the production, selling and use of renewable energy for heating, the production of biofuel for transportation, the cogeneration of electricity and heat and studies directly linked to these activities. The activity of generating, utilising and selling energy falls within the scope of the EEA

¹¹ www.innovasjon Norge.no/tjenester/.

Agreement as confirmed in consistent administrative practice of the Authority¹². The main target group of the Bioenergy Scheme is farmers and forest owners but the scheme as such is open to all sectors. Moreover, farmers and forest owners may also produce goods falling within Article 8(3) EEA and/or offer services within the meaning of the EEA Agreement. Indeed, the notification explicitly states that the scheme may be utilised in connection with economic activities such as tourism, hiring out of cabins etc.

Where a scheme covers various activities, the possibility that a particular activity may fall outside the scope of the EEA Agreement does not affect the jurisdiction of the Authority as such¹³

On this basis the Authority concludes that the scheme as notified falls within the scope of the EEA Agreement.

2 State aid within the meaning of Article 61(1) EEA

Article 61(1) of the EEA Agreement provides that:

“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.”

In the following the Authority will assess whether the criteria for the existence of state aid in the meaning of Article 61(1) EEA are fulfilled.

2.1 Presence of state resources

The notified scheme is funded through the Norwegian State Budget and therefore constitutes a transfer of state resources.

2.2 Favouring certain undertakings or the production of certain goods

Aid under the Bioenergy Scheme will be granted to entities in economic activity falling within the scope of the EEA Agreement, as established above under section 1. Hence, they constitute undertakings within the meaning of Article 61(1) EEA. The notified scheme will allow beneficiaries to be relieved of part of costs which they would normally have to bear themselves. The scheme is in principle open to all sectors. The scheme is nevertheless limited to the specific activities as set out in section I.2.5 above. Thus, the Authority considers that the scheme favours certain undertakings and the production of certain goods within the meaning of Article 61(1) EEA.

2.3 Distortion of competition and effect on trade between Contracting Parties

In the present case, the measures will strengthen the competitive situation of the supported undertakings producing energy. The aid has a potential to distort trade within the European Economic Area since the Bioenergy Scheme affects *inter alia* electricity

¹² See EFTA Surveillance Authority decisions 257/03/COL and 125/06/COL.

¹³ See Case E-2/05 *EFTA Surveillance Authority v Iceland* [2005] EFTA Court Report p. 202, paragraph 24.

markets and markets for fuel, where such trade exists¹⁴. Consequently, the Bioenergy Scheme distorts or threatens to distort competition and affects the trade between the Contracting parties within the meaning of Article 61(1) of the EEA Agreement.

3 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 present notification for the Bioenergy Scheme, the Norwegian authorities have complied with the notification requirements. The Norwegian authorities have furthermore confirmed that no aid comprised by the notification will be disbursed until the Bioenergy Scheme has been approved by the Authority.

The Authority therefore concludes that the Norwegian authorities have respected their obligations pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

4 Compatibility of the aid

4.1 Introduction

The Authority has assessed the notified scheme according to Article 61(3)(c) of the EEA Agreement in combination with the Environmental Guidelines.

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

Chapter 3 of the Environmental Guidelines further describes the measures which may be found compatible under Article 61(3) (c) EEA. The guidelines state that state aid for environmental protection is compatible with the functioning of the EEA Agreement if, on the basis of a balancing test, it leads to increased environmental protection activities without adversely affecting trading conditions to an extent contrary to the common interest. In this context the duration of the aid scheme should be subject to a reasonable time limit. The Environmental Guidelines moreover prescribe that the measures described in points 73-146 may be found to be compatible under Article 61(3)(c). The aid scheme will be applicable until 1 January 2014. The Authority considers this to be a reasonable time limit within the meaning of the Environmental Guidelines.

4.2 Aid for renewable energy sources and for cogeneration

As mentioned above, the scheme covers support to different activities, first investment aid for heating (heating of farmhouses and greenhouses), sale of heating and production of

¹⁴ See Case C-730/79, *Philip Morris Holland v Commission* [1980] ECR 2671, paragraph 11, where it is stated that *“When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid.”*

biofuels. Second, the scheme covers operating aid to producers of energy from wood chips. Third, the scheme supports biogas installations producing both electricity and heat.

The investment aid for heating, sale of heating, production of biofuels and the operating aid to producers of energy from wood chips, falls to be assessed under section 3.1.6 of the Environmental Guidelines. The section states that environmental investment and operating aid for the promotion of energy from renewable sources will be considered compatible with Article 61(3)(c) EEA if the conditions in points 102 to 111 are fulfilled. Moreover, aid for the production of biofuels shall be allowed only with regard to sustainable biofuels.

As regards aid for renewable energy sources, eligible investments costs must be linked to the extra investment costs borne by the beneficiary compared with a conventional power plant or heating system, according to point 105 and 106 of the Environmental Guidelines.

According to the notification, the eligible costs are limited to the extra investment costs borne by the beneficiary as compared with the costs for a conventional heating system with the same capacity in terms of the effective production of energy. The Norwegian authorities have provided estimates of costs in the notification and have explained that in most cases the eligible costs will be relatively easy to identify¹⁵. If that should not be the case a detailed individual assessment will be made. Moreover, the authorities have explained that eligible costs will be calculated net of any operating benefits (i.e. cost savings directly linked to the extra investment) and operating costs (additional production costs flowing from the extra investment, i.e. costs related to the altered production) related to the extra investment during the first five years of the investment. Thus, costs eligible for investment aid under to the Bioenergy Scheme and the method of calculating benefits and operating costs related to extra investment are in conformity with points 105 and 106, of the Environmental Guidelines.

As regards the operating aid for the production of renewable energy, aid may be justified in order to cover the difference between the cost of producing energy form renewable energy sources and the market price of the form of energy concerned, according to points 107 to 109 of the Environmental Guidelines.

According to the notification, operating aid for the production of heat from wood chips may be granted to compensate for the difference between the cost of the raw material for the production of energy and the market price of that energy. The support will be based on NOK per produced kWh, that is to say, the difference between the costs of the raw material and the market price, multiplied by the number of kWh. Operating aid will be granted as a fixed rate per kWh feedstock. Installations with an effect up to 125 MW will be eligible for aid. As soon as the enterprise becomes profitable, the aid will cease. Operating aid can not be granted for a period exceeding five years. The Norwegian authorities have explained that the productions costs are defined as the costs of purchasing feedstock (wood chips) and that the average market price for renewable energy is defined as the average price of electricity. Moreover, the authorities have provided detailed analysis of the cost of the feedstock per kWh compared with a detailed analysis of the market price for electricity per kWh. The Authority concludes that the operating aid the Norwegian authorities plan to grant for renewable energy sources are in line with point 107 and with option 1 in point 109 of the Environmental Guidelines.

¹⁵ The Norwegian authorities estimate that an investment in a bioenergy installation with a capacity of 3 MW, producing 3 GWh heat costs NOK 3 million more than a comparable conventional installation.

With regard to aid to biogas installations producing both electricity and heat, the scheme should be assessed under section 3.1.7 of the Environmental Guidelines. According to point 112 of the Environmental Guidelines, investment aid can be considered compatible with the functioning of the EEA Agreement, provided that the cogeneration unit satisfies the definition of high-efficiency cogeneration set out in point 70(11) of the guidelines, in case of a new cogeneration unit, it will overall make primary energy savings compared to separate production as defined by Directive 2004/8/EC¹⁶ and Decision 2007/74/EC¹⁷ and, in case of improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit, it will result in primary energy savings compared to the original situation. The Norwegian authorities have confirmed that only investment aid will be granted and that it will only be granted to cogeneration units if the above mentioned criteria are met. The authorities have further explained that the sources of energy, manure gas and sewer gas, would have contributed to the emission of methane and carbon dioxide, if it would not have been used for energy production, and that the use of biogas for the production of electricity and heating will result in high degree of energy savings, due to the re-usage of gas.

The aid intensities described above in sections I.2.5.1.5 and I.2.5.2 do not exceed the basic aid intensities foreseen in points 102 and 114 or the bonuses for small and medium sized enterprises described in points 103 and 115 of the Environmental Guidelines.

The Norwegian authorities have confirmed the eligible costs with regard to aid for cogeneration will be limited to the extra investment costs necessary to realise high-efficiency cogeneration plants as compared to the reference investment according to point 117 of the Environmental Guidelines and calculated according to point 118, that is net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of this investment, as set out in points 81 to 83 of the Environmental Guidelines.

It follows from the above that aid for renewable energy sources under the Bioenergy Scheme will be granted in accordance with section 3.1.6 and aid for cogeneration in accordance with section 3.1.7 of the Environmental Guidelines. The Authority consequently concludes that aid for renewable energy sources and for cogeneration is in line with the Environmental Guidelines.

4.3 Aid for environmental studies

According to the notification, operating aid will be granted for environmental studies. The Norwegian authorities have confirmed that any environmental studies to be funded will have to be directly linked to investment in production based on biomass as a renewable energy source corresponding to the definition in section 2.2 of the Environmental Guidelines, and under conditions set out in section 3.1.6 of the Environmental Guidelines. The Norwegian authorities have confirmed that aid for these purposes will be granted according to section 3.1.4 of the Environmental Guidelines.

¹⁶ Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/47/EEC (OJ L 52, 21.2.2004, p. 50, incorporated into the EEA Agreement in point 24 of Annex IV).

¹⁷ Commission Decision of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council (OJ L 32, 6.2.2007, p. 183).

Furthermore, the Norwegian authorities have confirmed that the precise renewable energy related costs constitute the eligible costs, and that the eligible costs are calculated net of any operating benefits and costs related to extra investment for renewable sources of energy and arising during the first five years of the life of the investment concerned.

The aid intensities which are illustrated in the table in section I.2.4.2 above, correspond to the basic aid intensities and bonuses for SMEs described in points 92 and 93 of the Environmental Guidelines.

The Authority therefore concludes that aid for environmental studies is in line with section 3.1.4 of the Environmental Guidelines.

4.4 Incentive effect

According to the notification, all aid granted under the Bioenergy Scheme must result in the recipients contributing to increase the level of environmental protection. In particular, aid for investment under the Bioenergy Scheme will be granted to projects which would not have been launched without the aid. The aid will be limited to what is absolutely necessary for the project to be launched. Innovation Norway will evaluate applications according to the methodology for calculation of eligible costs set out in points 81 to 83 of the Environmental Guidelines.

The Norwegian authorities have confirmed that no aid will be granted to projects having started before an aid application. In line with point 144 of the Environmental Guidelines, the requirement of incentive effect is thus automatically met for all categories of aid granted to an SME.

No aid under the Bioenergy Scheme will have to be assessed in accordance with the detailed assessment provided for in section 5 of the Environmental Guidelines, since no aid granted under the scheme, for individual measures covered by these guidelines, will exceed the ceilings stipulated in point 160(b) thereof.

As regards large undertakings, the Norwegian authorities have committed themselves to submit a detailed overview of how the incentive effect has been respected in case of each beneficiary in the annual reports to the Authority. This is in accordance with the criteria specified in section 3.2 of the Environmental Guidelines.

The Authority finds that the provisions defined by the scheme for incentive effect meet the conditions laid down in the Environmental Guidelines. Therefore, the conditions related to the incentive effect are satisfied and the measure complies with section 3.2 of the Environmental Guidelines.

4.5 Cumulation

The Norwegian authorities have confirmed that Innovation Norway will ensure that no aid ceilings under the Environmental Guidelines will be exceeded, also in cases where aid is received from more than one source.

According to the notification, ENOVA also grants aid for renewable energy. However, the Norwegian authorities have stated that aid under the Bioenergy Scheme will not be granted if the project has already received aid from ENOVA to the same eligible costs. The Norwegian authorities have further explained that applicants for aid under the

Bioenergy Scheme must provide information on any other support sought for the same project. If an applicant has applied for aid to the same eligible costs, Innovation Norway will in cooperation with ENOVA decide which of the two organisations shall grant the aid.

The Norwegian authorities have confirmed that if aid is granted under the *de minimis* regulation (Commission Regulation 1998/2006 of 15 December 2006), Innovation Norway must ensure that the beneficiary has not received non-notified aid which would result in exceeding the *de minimis* threshold from other sources within any period of three years.

The Authority finds, based on the above, that the provision on cumulation in section 6 of the Environmental Guidelines has been complied with.

4.6 Reporting and monitoring

The Norwegian authorities have committed to comply with the reporting and monitoring requirements specified in section 7 of the Environmental Guidelines.

5. Conclusion

On the basis of the foregoing assessment, the Authority considers that the Bioenergy Scheme which the Norwegian authorities have notified is compatible with the functioning of the EEA Agreement within the meaning of 61(3)(c) of the EEA Agreement and the Environmental Guidelines.

Prior to implementing the scheme, the Norwegian authorities shall publish the full text of the final aid scheme on the internet and communicate it to the Authority.

In Decision No 125/06/COL of 3 May 2006 the Authority requested recovery of any unlawful and incompatible aid granted by the ENOVA. Insofar as the potential beneficiaries under the currently notified Bioenergy Scheme are the same beneficiaries as received unlawful and incompatible aid by ENOVA, the Norwegian authorities are reminded of their obligation not to pay out new aid to these beneficiaries unless they have reimbursed the old unlawful and incompatible aid in accordance with the so-called *Deggendorf* case law¹⁸.

The Norwegian authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme and the additional requirements stipulated in section 7.1 of the Environmental Guidelines. The reports will be published on the internet site of the Authority.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority. The Authority draws the Norwegian authorities' attention to the fact that a review of the Environmental Guidelines is foreseen in four years after their adoption. In case the rules of the Environmental Guidelines change, this may have an effect on all existing aid schemes falling under the guidelines, including the scheme authorised by this decision.

¹⁸ Case C-355/95 P *Textilwerke Deggendorf GmbH* [1997] ECR I-2549, paragraphs 24-30.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the scheme notified as the Bioenergy scheme.

The scheme is compatible with Article 61(3)(c) of the EEA Agreement and the Environmental Guidelines.

Article 2

This Decision is addressed to the Kingdom of Norway

Article 3

Only the English version is authentic.

Done at Brussels, 18 February 2009

For the EFTA Surveillance Authority



Per Sanderud
President



Kurt Jaeger
College Member