

Case No: 68438
Event No: 597001
Dec. No: 125/11/COL

EFTA SURVEILLANCE AUTHORITY DECISION

Of 13 April 2011

on the lease agreement between Skedsmo municipality and Akershus Energi Varme AS
dated 3 December 2009

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(2),

Whereas:

I. FACTS

1. Procedure

By letter of 8 June 2010 (Event No 559674), the Norwegian authorities notified a lease agreement between Skedsmo Municipality and Akershus Energi Varme AS pursuant to Article 1(3) of Part I of Protocol 3.

By letter dated 1 July 2010 (Event No 561968), the Authority requested additional information from the Norwegian authorities.

By letter dated 14 July 2010 (Event No 564345), the Norwegian authorities requested an extension of the time limit to answer the information request. By letter dated 24 August 2010 (Event No 562728), the Norwegian authorities replied to the information request.

By letter dated 19 October 2010 (Event No 571076), the Authority requested additional clarifications.

By letter dated 19 November 2010 (Event No 579062), the Norwegian authorities provided the requested elements.

By letters dated 1 February 2011, 17 February 2011 (Event Nos 585253 and 587624) and by email dated 4 March 2011 (Event No 592369), the Norwegian authorities voluntarily provided the Authority with additional information.

2. Description of the notified measure

2.1 Akershus Energi Park

Akershus Energi AS is a medium sized Norwegian producer of hydroelectric power. Its 100% owned subsidiary Akershus Energi Varme AS (“AEV”) has established Akershus Energi Park¹.

Akershus Energi Park is an innovation park with projects related to renewable energy and environmental issues. It is located in Skedsmo municipality, 22 km north of Oslo. The construction of Akershus Energi Park started in June 2009 and should be completed in 2011. Various sources of energy will be utilised such as wood chips, gas from local waste, solar heating. The energy production is based on new and existing district heating technology and will, in total, produce 150 neutral GWh annually, equivalent to the heating needs of 15 000 households. Except for the solar collector plant, Akershus Energi plant has been built on land bought for that purpose.

As part of Akershus Energi Park, AEV, the Institute for Energi Technology and Akershus University College have entered into a cooperation agreement to build a land based solar collecting plant. The area of the planned solar heating plant is located north east of the Energi Park. The total land area will be about 30 000 m² and the total area for the solar heating panels will be 10 000 m². Total annual production is estimated at 4 GWh/year (3% of the total annual production of the plant). The solar heating plant is planned to be completed in 2012.

2.2 The terms of the lease agreement dated 3 December 2009

Skedsmo municipality and AEV have entered into a lease agreement dated 3 December 2009 whereby AEV will lease approximately 30 000 m² from the municipality to establish the solar collector plant (“the lease agreement”). The rental period is estimated to be of at least 10 years with the right to prolong the lease agreement for three periods of five years, starting on 1 October 2010.

The area is not regulated but appears as an LFN area (an area restricted to farming, natural scenery and recreational use of nature) in the existing County plan of regulation².

The entering into force and the validity of the lease agreement is conditioned on the Authority’s approval of the notified measure. Section 4 of the lease agreement provides that the annual rent is set at NOK 550 per 10 000 m² with a total rent of NOK 16 500.

¹ The Norwegian authorities have indicated that the project itself will benefit from the support of Enova under a scheme approved by the Authority.

² The procedure regarding reclassification of the plot has been initiated and it is expected that the final decision will be taken in autumn 2011.

This rent is the same as that charged by Skedsmo municipality when the land was leased to a farmer.

Section 7 of the lease agreement provides that the area can only be used for the establishment of a solar collector plant and no other form of building of any sort can be placed/built on the property. Sublease of the plot is not allowed. Furthermore, according to Section 8 of the lease agreement, when the agreement is terminated, AEV has an obligation to reset the whole area to its initial condition as agricultural farm land. Section 10 of the lease agreement provides that the land will be leased only once the authorisation to use the plot for the purpose of building a solar collector plant has been granted by the competent body (reclassification from agricultural use to the building of a solar collector plant).

The Norwegian authorities have indicated that they have notified the lease agreement for legal certainty only as they consider that the agreement does not entail any state aid. The notified measure is conditioned on the area being reclassified as described in Section 10 of the lease agreement.

2.3 Report by the independent expert

By letter dated 17 February 2011 (Event No 587624), the Norwegian authorities provided the Authority with a value assessment of the lease agreement carried out by an independent expert and dated 9 February 2011.

The independent expert concluded that the value for the rent as agreed upon in the lease agreement corresponded to the market value. The condition for the value assessment is that Skedsmo County will adopt the plan of regulation according to the purpose and use agreed upon between Skedsmo County and AEV.

The value assessment was based on the following elements:

“the area has an attractive location, and is centrally positioned. The ground is well placed when seen together with Akershus Energi Park on whole, and will harmonise well with the surrounding constructions already present.

- *One must take into consideration the singular character of the construction and its cooperation with Høgskolen in Akershus.*
- *When the operation is terminated in the future, the ground is to be brought back to its original state.*
- *The rental time is being set to last 10 years, with optional prolonging of the agreement with 5+5+5 years.*
- *No buildings are to be erected on the grounds; it is restricted solely to solar panels and necessary foundation for these”.*

II. ASSESSMENT

1. The presence of state aid

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.”

1.1 Presence of state resources

The measure must be granted by the State or through state resources.

In order to determine whether state resources are involved, the Authority must verify that the rent to be paid by AEV corresponds to market value and not an undervalued rent implying that the Norwegian local authorities will forego revenue.

To demonstrate that the rent paid corresponds to fair market value, the Norwegian authorities have provided the Authority with the report of an independent expert whose mission was to determine the value of the land leased for the purpose of establishing a solar collector plant.

The independent expert concluded that the annual value for the rent was of NOK 550 per 10.000 m² which corresponds to the rent agreed upon in the lease agreement (see above Section 2.3).

The Authority's Guidelines on state aid elements in sales of land and buildings by public authorities provide for a simple procedure that allows EFTA States to handle sales of land and buildings in a way that automatically precludes the existence of state aid. Where an independent expert has carried out a valuation of the land, this is considered as an indication of the market price which can be used to exclude the presence of state aid.

Despite the fact that the Authority's Guidelines on state aid elements in sales of land and buildings are not applicable to lease agreements, the Authority considers that the same approach is applicable.

In light of the report, and the currently available information, the Authority concludes that the lease agreement between Skedsmo Municipality and AEV dated 3 December 2009 does not entail any state aid. This analysis is based on the presumption that the land is reclassified to allow for the establishment of the solar collector plant. However, should the reclassification of the land lead to an increase in the value of the land leased, the Norwegian authorities will be under the obligation to re-notify the lease agreement.

2. Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, *“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”*.

The Norwegian authorities submitted a notification for legal certainty of the lease agreement on 8 June 2010 (Event No 559674). By submitting a notification of the lease agreement with a letter dated 8 June 2010 (Event No 559674), the Norwegian authorities have complied with the notification requirement.

By providing expressly in the lease agreement that the latter will not enter into force unless and until it is formally approved by the Authority, the Norwegian authorities have complied with the stand still obligation.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Conclusion

On the basis of the foregoing assessment, the Authority considers that the lease agreement between Skedsmo municipality and AEV on 3 December 2009 which the Norwegian authorities are planning to implement does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority considers that the lease agreement between Skedsmo municipality and Akershus Energi Varme AS dated 3 December 2009 does not constitute state aid within the meaning of Article 61 of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Decision made in Brussels, on 13 April 2011.

For the EFTA Surveillance Authority

Sabine Monauni-Tömördy
Acting President

Sverrir Haukur Gunnlaugsson
College Member