

Case No: 69911
Event No: 667657
Dec. No: 174/13/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 30 April 2013

to close the case concerning the financing of municipal waste collectors

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

The Agreement on the European Economic Area (the “EEA Agreement”), in particular to Article 62 and Protocol 26 thereof,

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 thereof,

Article 1(1) of Part I and Article 19(1) of Part II of Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”),

WHEREAS:

- (1) By letter dated 12 May 2010 (Event No 552744), the Authority initiated the review procedure for existing aid according to Article 1(1) of Part I and Article 17(1) of Part II of Protocol 3 as regards the financing of municipal waste collectors in Norway. By letter dated 2 July 2010 (Event No 562863), the Norwegian authorities responded.
- (2) By letter dated 20 May 2011 (Event No 545914), the Authority sent a letter according to Article 17(2) of Part II of Protocol 3 in respect of the financing of municipal waste collectors, thereby informing the Norwegian authorities of its preliminary view that the financing of municipal waste collectors involves state aid that is incompatible with the functioning of the EEA Agreement.
- (3) The following measures were under assessment by the Authority:
 - (i) the waste collection fee (“the waste collection fee”), charged by the municipality to its inhabitants in order to finance the costs associated with the waste sector pursuant to Section 34 of the Pollution Control Act of 13 March 1981 No 6 (“the Pollution Control Act”) and,

- (ii) the income tax exemption for municipal waste collectors that are part of the legal person of the municipality, as laid down in section 2-30(1)(b) of the Tax Act of 26 March 1999 No 14 (“the Tax Act”).
- (4) The Norwegian authorities responded to the Authority’s Article 17(2) letter by letter dated 14 October 2011 (Event No 611738). The Norwegian authorities provided further comments by letter dated 6 February 2012 (Event No 623937). The Authority responded by letter dated 3 April 2012 (Event No 625592). The Norwegian authorities responded by letter dated 10 May 2012 (Event No 633948). The Authority requested further information by letter dated 13 July 2012 (Event No 635658). The Norwegian authorities responded by letter dated 31 August 2012 (Event No 645331). The Authority requested further information by letter dated 19 October 2012 (Event No 649745). The Norwegian authorities responded by letter dated 30 November 2012 (Event No 655171). The Authority requested further information by letter dated 21 December 2012 (Event No 656867). The Norwegian authorities responded by letter dated 21 January 2013 (Event No 660164).
- (5) In this correspondence, the Norwegian authorities *inter alia* presented the Authority with proposals for legislative amendments to ensure that any aid that might be present would be abolished.
- (6) On 27 February 2013, by Decision No 91/13/COL, the Authority concluded that the financing of municipal waste collectors constituted existing state aid which was incompatible with the functioning of the EEA Agreement.¹
- (7) In that decision, the Authority stipulated that the Norwegian authorities should take the following appropriate measures to ensure that that the award of the waste collection fee to municipal waste collectors would not entail state aid:
- *First*, the Norwegian authorities should introduce a legally binding obligation requiring municipal waste collectors carrying out economic and non-economic activities to keep separate accounts for the two types of activities. The Norwegian authorities should ensure that the waste collection fee will be calculated on the basis of the costs directly related to the non-economic activity as well as a proportionate share of fixed common costs,
 - *Second*, the Norwegian authorities should introduce an adequate system of control that prevents any form of cross subsidisation between the non-economic and economic activities of the municipal waste collectors, and;
 - *Third*, the Norwegian authorities should ensure that municipal waste collectors carrying out economic and non-economic activities are not empowered to set their own waste collection fees without approval by a state body (i.e. the municipality or central government).
- (8) In addition, the Authority stipulated, as an appropriate measure, the abolishment of the tax exemption, in so far as it applied to the economic activities of the municipal waste collectors.

¹ The EFTA Surveillance Authority Decision No 91/13/COL of 27.2.2013 on the financing of municipal waste collectors, available on the Authority’s website: <http://www.eftasurv.int/media/decisions/91-13-COL.pdf>.

- (9) By letter dated 25 March 2013 (Event No 667219) the Norwegian authorities accepted the appropriate measures proposed by the Authority. The Norwegian authorities submitted draft amendments to the Waste Regulation² requiring municipal waste collectors engaged in both economic and non-economic activities to keep separate accounts for the two types of activities, and that the costs of activities are allocated proportionately as well as the draft tax amendments requiring municipal waste collectors engaging in economic activities to pay income tax. Furthermore the Norwegian authorities confirmed that the measures would be fully implemented before 1 January 2014.
- (10) The Authority considers that the proposed regulatory and legislative changes to the scheme for the financing of municipal waste collectors will ensure the abolishment of the existing system of aid.
- (11) On the basis of the above, the Authority concludes that there are no grounds for pursuing the matter further and has consequently decided to close the case.
- (12) The present decision is without prejudice to the possibility for the Authority to continuously assess existing aid schemes under Article 1(1) of Part I of Protocol 3 and to propose appropriate measures required by the progressive development or the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority records the Kingdom of Norway's acceptance of the appropriate measures proposed by the Authority in its Decision No 91/13/COL on the financing municipal waste collectors and further outlined in the present Decision.

Article 2

There are no longer grounds for pursuing the case concerning the financing of municipal waste collectors. Therefore, the case is closed.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 30 April 2013.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Sabine Monauni-Tömördy
College Member

² Regulation of 1.6.2004 No. 930 Relating to the recycling and treatment of waste (*Forskrift om gjenvinning og behandling av avfall*).