EFTA SURVEILLANCE AUTHORITY

Doc. No 03- 7093 I
Ref. No SAM030.03005
Dec No.: 185/03/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 22 OCTOBER 2003

ON A NEW TEMPORARY REGIONAL LOAN SCHEME

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area[1], 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[2], in particular to Article 24 and Article 1 in Part I of Protocol 3 thereof,

HAVING REGARD TO the EEA Joint Committee Decision No 12/1999 of 29 January 1999[3] incorporating into Annex XV to the EEA Agreement Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding[4],

HAVING REGARD TO the EEA Joint Committee Decision No 88/2002 of 25 June 2002[5] incorporating into Annex XV to the EEA Agreement Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid[6] and Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises[7],

---

[1] Hereinafter referred to as the EEA Agreement
[2] Hereinafter referred to as the Surveillance and Court Agreement
[3] OJ L 35, 10 02 00, p 43, and EEA Supplement No 7, 10 02 00, p 112
[4] OJ L 202, 18 07 98, p 1
[5] OJ L 266, 03 10.02, p 56, and EEA Supplement No 49, 03 10 02, p 42
[6] OJ L 10, 13 01 01, p 20.
[7] OJ L 10, 13 01 01, p.33

HAVING REGARD TO the Authority's Guidelines[8] on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

I. FACTS

1. Notification

By letter from the Mission of Norway to the European Union dated 15 April 2003, forwarding a letter from the Ministry of Trade and Industry dated 11 April 2003, both received and registered by the Authority on 16 April 2003 (Doc No: 03-2466 A), the Norwegian authorities notified a new temporary regional loan scheme. The letter from the Ministry of Trade and Industry dated 11 April 2003 did not contain all the attachments referred to in the notification (attachments 2, 3 and 4). The Authority received these on 12 June 2003 (Doc No 03-3766 A).

By letter dated 16 June 2003 (Doc No: 03-3837 D), the Authority acknowledged the receipt of the notification and requested further information.

By telefax dated 1 July 2003 (Doc. No: 03-4258 A), the Ministry of Trade and Industry sent a letter dated 26 June 2003 submitting additional information. The letter dated 26 June 2003 was also forwarded to the Authority by letter from the Mission of Norway to the European Union dated 2 July 2003, received and registered by the Authority on 3 July 2003 (Doc. No: 03-4344 A).

By letter dated 3 September 2003 (Doc. No: 03-5982 D), the Authority requested additional information from the Norwegian authorities

By telefax dated 23 September 2003 (Doc. No: 03-6566 A), the Ministry of Trade and Industry sent a letter dated 23 September containing an amended notification. The letter dated 23 September was also forwarded to the Authority by letter from the Mission of Norway to the European Union dated 25 September 2003, received and registered by the Authority on 26 September 2003 (Doc. No: 03-6638 A).

2. Description of the aid

The notification relates to a new temporary aid scheme: *"The temporary regional loan scheme"* (hereinafter "the scheme"). The primary objective of the scheme is to trigger economic development in less favoured and outlying regions in Norway by supporting investment and job creation in an economically sustainable context. The scheme has, according to the Norwegian authorities, R&D and employment as secondary objectives.

The legal basis for the scheme is the State Budget (St.prp nr. 1 (2002-2003) and Budsjett-innst. S nr. 8 (2003-2004)) and Act of 3 July 1992 No 97 (Lov om Statens nærings- og distriktsutviklingsfond). The Ministry of Trade and Industry has also laid

[8] 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 Official Journal L 231, 03 09 1994. The Guidelines were last amended 18 December 2002 (not yet published)

down detailed rules for the application of the scheme in separate Guidelines ("Regelverk for forvaltningen av distriktsrettet låneordning"), (hereinafter "the Guidelines for the scheme").

The Norwegian Parliament has allocated NOK 500 million (some EUR 61 million) in loans and NOK 75 million (some EUR 9 million) to cover pre-calculated losses and interest subsidies. The Norwegian Industrial and Regional Development Fund (SND) will administer the scheme. The duration of the scheme is until the NOK 500 million have been granted, or until the end of 2004. The estimated number of recipients is 500.

The less favoured and outlying regions in the context of the application of the scheme are the regions within the map of assisted areas as approved by the Authority in 1999[9]. However, loans may also, according to the Norwegian authorities, be granted to enterprises in regions outside the map of assisted areas if the projects contribute to regional and/or business development within the assisted areas and given that the aid is in accordance with provisions as outlined below.

Under the scheme, loans can be granted for the following objectives and with the following aid intensities:

2.1 Regional aid

Loans can be granted for initial investment and job creation with the following aid intensities:

Table 1

Investment support		
Geographical area[10]	General aid ceiling (NGE[11])	SME Supplement (gross)
Area A	25 %	5 %
Area B	20 %	5 %
Area C	10 %	10%

An extra 5% NGE is possible for both SMEs and larger enterprises in area C if an extraordinary regional impact is expected, with the exception of municipalities in the counties of Hordaland, Rogaland and Vest-Agder.

Loans to sectors described in the Multisectoral Framework on regional aid for large investment projects (e.g. synthetic fibres and motor vehicle industries) are subject to those specific rules. Loans will not be available to the steel industry (except for *de minimis* support) or for transportation purposes

[9] Decision number 327/99/COL

[10] The approved map of assisted areas for Norway (see Decision number 327/99/COL) is divided into three geographical areas, A, B and C, where area A has the highest aid intensity

[11] Net Grant Equivalent

2.2 Aid for Research and Development

Research and Development (R&D) in SMEs can be assisted if there is a potential for reaching the primary objective of regional and/or business development. Stages of R&D that can benefit from aid under the scheme are: Industrial research, Technical feasibility studies and pre-competitive development activities. The cost elements eligible for aid are:

- personnel costs (researchers, technicians and other supporting staff employed solely on the research activity),
- cost of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity,
- cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents etc. bought from outside sources,
- additional overheads incurred directly as a result of the research activity,
- other operating expenses (e.g. costs of materials, supplies and similar products) incurred directly as a result of the R&D activity.

The applicable maximum aid intensities are.

Table 2

Geographical area	Pre-competitive development aid (gross)	Technical feasibility studies and industrial research (gross)
Area A, B and C	40%	65%
Outside the assisted area	35%	60%

To obtain the maximum aid intensity, one of the following elements must be a leading element in the project: R&D co-operation between more companies, or, R&D co-operation between companies and research institutions and universities.

2.3 Aid for rescue and restructuring

Loans for rescue purposes can be granted, subject to the following conditions:

- it must consist of liquidity help in the form of loans bearing normal commercial interest rates,
- it must be restricted to the amount needed to keep a firm in business (for example covering wage and salary costs and routine supplies),
- it must be paid only for the time needed (generally not exceeding six months) to draw up the necessary and feasible recovery plan,
- it must be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other EFTA States or EC Member States.

Loans for restructuring purposes can be granted given that a plan for restructuring satisfies the following conditions:

- restoration of viability,
- avoidance of undue distortions of competition through the aid,
- aid in proportion to the restructuring costs and benefits,
- full implementation of restructuring plan and observance of conditions,
- monitoring and annual report.

All cases of rescue and restructuring must, according to the notification, be individually notified to the Authority.

The needs of regional development will be taken into account when assessing restructuring aid in assisted areas. A less restrictive attitude towards restructuring aid may be justified when it is granted to SMEs.

2.4 Aid to shipbuilding

Within the shipbuilding sector, loans under the scheme can be granted for investment for innovation, regional aid and R&D in accordance with articles 6, 7 and 8, respectively, of Council Regulation (EC) No 1540/98, as incorporated into the EEA Agreement.

Article 6, Investment aid for innovation, of the Regulation states *i.a.* that aid granted for innovation in existing shipbuilding, ship repair and ship conversion yards may be deemed compatible up to a maximum aid intensity of 10% gross.

Article 7, Regional investment aid, of the Regulation states *i.a* that aid granted for investment in upgrading or modernising existing yards may be deemed compatible provided that the intensity of the aid in Article 61(3)(c) EEA areas does not exceed 12,5% or the applicable regional aid ceiling, whichever is the lower.

Article 8, Research and development, of the Regulation states *i a.* that aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings on research and development projects may be considered compatible if it is in compliance with the framework for State aid for research and development.

2.5 Aid to SMEs outside the regional aid area

Loans can be granted for tangible investments (fixed physical assets) relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An investment in fixed assets undertaken in the form of the takeover of an establishment, which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment. Loans can also be granted for intangible investments in the form of transfer of knowledge (transfer of technology by the acquisition of patent rights, licenses, know-how or unpatented technical knowledge)

The applicable maximum aid intensities are:

Table 3

Investment support		
Geographical area	Small enterprises	Medium-sized enterprises
Outside the regional aid area	15%	7,5%

Aid to consultancy services to SMEs by outside consultants can be granted by up to 50% (gross).

2.6 Training aid

Loans can be granted for training purposes. The cost elements eligible for aid are:

(a) trainers' personnel costs,
(b) trainers' and trainees' travel expenses,
(c) other current expenses such as materials and supplies,
(d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project,
(e) cost of guidance and counselling services with regard to the training project,
(f) trainees' personnel cost up to the amount of the total of the other eligible costs referred to in (a) to (e). Only the hours during which the trainees actually participate in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

The applicable aid ceilings (gross) are:

Table 4

	General training	Specific training
SMEs Area A, B, C Outside the assisted area	 75 % 70 %	 40 % 35 %
Large enterprises Area A, B, C Outside the assisted area	 55 % 50 %	 30 % 25 %

3. Calculation of the aid element

The credit line for the new scheme is NOK 500 million (some EUR 61 million), while NOK 75 million (some EUR 9 million) has been allocated to cover losses (*i e.* 15% of the credit line).

The Norwegian authorities have submitted, as part of the notification, a method for calculating the aid element in loans with funds to cover losses. The method is based on a calculation of the difference between estimated losses on the loans as would emerge in cases of default and estimated incomes generated from the interest rates charged For each loan granted any possible aid is calculated individually and on the basis of the following principles:

Determination of the interest rate attached to a loan takes as a starting point the reference rate of interest established by the Authority according to Chapter 33 2 of the State Aid Guidelines. (Costs of administration are added.) This rate can be considered as a floor rate for loans with very low risks attached. To take account of risks related to the loans granted, the actual interest rate charged is set higher than the reference rate. The risk premium thus charged may, however, not be sufficient to cover the full risks of the loans. In cases of default it may therefore be necessary to draw on the allocated loss fund.

A special assessment of risks of default is carried out. Based on historical experience and assessment of each project at hand, SND estimates a risk of default expressed in percentage terms. This percentage multiplied with the amount of a loan expresses an estimated loss. Any aid is determined as the difference between this estimated loss and the estimated revenue stemming from the risk premium charged on the same loan, all amounts expressed in present value terms. (If the revenue generated by the risk premium is higher than the estimated loss, there is no aid involved)

The method may be illustrated by way of a simplified example If a risk loan of NOK 3,2 million is assessed as having a 23% risk of default, the estimated loss is NOK 736.000. If the interest rate for the loan is 9,90%, while the reference rate of interest is 6,82%, the risk premium is 3,08%. For a loan granted for a period of 22 years this risk premium generates a positive income of NOK 763.150 expressed in present value terms. In this case there is no aid element for this loan as the interest margin is sufficient to cover the calculated loss.

4. Cumulation of aid

The Norwegian authorities have stated in the notification that the projects aided are not excluded from receiving aid from other sources The aid intensity when combining aid from other sources must not exceed the thresholds as listed in tables 1-4 above.

II. APPRECIATION

1. Notification requirement and standstill clause

Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement states. "*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.*" Aid provided without notification or aid that is notified late, *i e* notified after being "*put into effect*" is considered unlawful aid.

The Norwegian authorities have notified the new aid scheme and made its entry into force conditional upon approval by the Authority Therefore, the Norwegian authorities have fulfilled their obligation according to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2. The existence 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."

The Authority notes that for the operator of the scheme a special loss fund has been provided by a direct grant from the fiscal budget. State resources are thus involved. The scheme is furthermore selective as only enterprises granted loans according to the scheme will benefit. These enterprises may therefore receive means they otherwise would not have access to and they may be in competition with other enterprises in the EEA area The Authority notes that the scheme concerns the granting of regional aid, aid for R&D, aid for rescue and restructuring, aid to the shipbuilding sector, aid to SMEs and aid for training. Accordingly, the Authority considers that the scheme falls within the scope of Article 61(1) EEA. It follows that the Authority must assess whether the scheme can be considered to be compatible with the EEA Agreement.

3. Compatibility of the aid.

3.1 Regional aid

The Authority refers to the State Aid Guidelines, Chapter 25, Regional aid, that set out the conditions under which national regional aid can be granted. The Authority also refers to the current map of assisted areas and levels of aid for Norway, approved by the Authority on 16 December 1999 (Decision number 327/99/COL) It falls to be assessed whether the application of the scheme for regional aid meets the requirements of Chapter 25 and Decision number 327/99/COL.

Under the regional aid guidelines, aid can be granted for initial investment and job creation, as laid down in the Guidelines for the scheme in question. The applicable aid ceilings for the scheme, as described in point I 2.1 above (table 1), are in accordance with the approved regional aid map for Norway. Accordingly, the Authority considers that the requirements of the regional aid guidelines and Decision number 327/99/COL are met

3.2 Aid for Research and Development

The Authority refers to the State Aid Guidelines, Chapter 14, Aid for research and development (R&D), that set out the conditions under which aid for R&D can be granted.

The R&D Guidelines (Chapter 14.2.1) define three stages of R&D. fundamental research, industrial research and precompetitive development activity. Loans under the scheme can be granted for the last two of these objectives. The cost elements eligible for aid, as described in point I 2.2 above, are in accordance with Chapter 14.6, eligible R&D Costs for the purpose of calculating the aid intensity, of the State Aid Guidelines. The maximum permissible aid intensities under the scheme, as referred to in table 2 of point I 2.2 above, are in accordance with Chapter 14.5.1 and 14 5.3, respectively, of the State Aid Guidelines. Accordingly, the Authority considers that the requirements of Chapter 14 of the State Aid Guidelines are met.

EFTA SURVEILLANCE AUTHORITY

3.3 Aid for rescue and restructuring

The Authority has regard to the Authority's State Aid Guidelines, Chapter 16, Aid for rescuing and restructuring firms in difficulty, that set out the conditions under which aid for rescuing and restructuring can be granted.

Chapter 16.3 of the State Aid Guidelines set out the general conditions for the authorisation of rescue and/or restructuring aid notified individually to the Authority. Loans for rescue purposes under the scheme can be granted subject to the same conditions as set out in Chapter 16.3.1, Rescue aid, of the State Aid Guidelines. Loans for restructuring purposes under the scheme can be granted given that a plan for restructuring satisfies the same conditions that are listed in Chapter 16.3.2, Restructuring aid, of the State Aid Guidelines. Accordingly, the Authority considers that the requirements of Chapter 16 of the State Aid Guidelines are met.

3.4 Aid to shipbuilding

Loans under the scheme granted to the shipbuilding sector must fulfill the requirements of Council Regulation (EC) No 1540/98, as incorporated into the EEA Agreement. The Guidelines for the scheme, as described above in point I 2 4, sets out the same conditions for granting aid as laid down in Articles 6, 7 and 8 of Council Regulation (EC) No 1540/98. Accordingly, the Authority considers that the requirements of Council Regulation (EC) No 1540/98 are met.

3.5 Aid to SMEs outside the regional aid area

Aid granted under schemes fulfilling all the conditions of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, as incorporated into Annex XV of the EEA Agreement by Joint Committee Decision No 88/2002 of 25 June 2002, shall be compatible with the functioning of the EEA Agreement within the meaning of Article 61(3) of the EEA Agreement and shall be exempt from the notification requirement (Article 3).

However, Regulation (EC) No 70/2001 is without prejudice to the possibility for EC Member States or EFTA States to notify aid to SMEs. As the Norwegian authorities have notified the new temporary loan scheme *i a.* as an aid scheme for SMEs, the Authority must assess whether the Guidelines for the scheme fulfils the criteria set out in Regulation (EC) No 70/2001.

Aid for SMEs under the scheme can be granted for investment in tangible and intangible assets. The definitions of tangible and intangible investments under the scheme, as referred above in point I 2.5, are identical to the definitions given in Article 2 of Regulation (EC) No 70/2001. Furthermore, aid schemes for SMEs must fulfill the conditions laid down in paragraphs 2 to 6 of Article 4 of Regulation (EC) No 70/2001. The maximum permissible aid intensities under the scheme are described above in point 1, 2.5, table 3. They are identical to the maximum aid intensities contained in Article 4 of Regulation (EC) No 70/2001. Accordingly, the Authority considers that the requirements of Article 4 of Regulation (EC) No 70/2001 are met.

3.6 Training aid

Aid granted under schemes fulfilling all the conditions of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, as incorporated into Annex XV of the EEA Agreement by Joint Committee Decision No 88/2002 of 25 June 2002, shall be compatible with the functioning of the EEA Agreement within the meaning of Article 61(3) of the EEA Agreement and shall be exempt from the notification requirement (Article 3).

However, Regulation (EC) No 68/2001 is without prejudice to the possibility for EC Member States or EFTA States to notify training aid. As the Norwegian authorities have notified the new temporary loan scheme *i.a.* as an aid scheme for training, the Authority must assess whether the Guidelines for the scheme fulfils the criteria set out in Regulation (EC) No 68/2001.

Aid schemes for training must fulfill the conditions laid down in paragraphs 2 to 7 of Article 4 of Regulation (EC) No 68/2001. The eligible costs for training under the scheme, as described in the Guidelines for the scheme referred above in point I 2.6, are identical to the eligible costs set out in Article 4, paragraph 7, of Regulation (EC) No 68/2001. Paragraphs 2 to 6 of Article 4 of Regulation (EC) No 68/2001 set out the maximum permissible aid intensity for training aid. The maximum aid intensities for the scheme are as described in table 4 in point I 2 6 above and corresponds to the aid intensities of Article 4 of Regulation (EC) No 68/2001. Accordingly, the Authority considers that the requirements of Article 4 of Regulation (EC) No 68/2001 are met.

4. Calculation of the aid element

The Authority considers it appropriate to take the risk of default into consideration when assessing the aid elements in risk loan schemes where funds have been granted to cover losses. The Authority notes that the aid element calculated for each loan takes into account the estimated loss based on an assessment of default. The higher the assessed risk of default is, the higher the estimated loss will be. In the extreme, a case with 100 percent risk of default would imply that the expected loss would amount to the whole loan. To arrive at the amount of aid the estimated revenue generated by the added risk premium charged on the loans is deducted from the estimated loss. As the risk premium is a charge paid by borrowers to cover partly or wholly the risk attached to the loan, it is appropriate to deduct that amount from the estimated loss. In assessing the case at hand the Authority has found the way of calculating the amount of aid satisfactory.

5. Cumulation of aid

The Norwegian authorities have stated that the projects aided are not excluded from receiving aid from other sources, but that the aid intensity when combining aid from other sources must not exceed the thresholds as listed in tables 1-4 in point I above. Since these thresholds are in line with maximum allowable aid intensities according to the legal acts and State Aid Guidelines, referred to in Section I.2.1-26 above, it is ensured that any aid granted would be compatible with the State aid provisions of the EEA Agreement.

6. Conclusion

For the reasons given above, the Authority considers the notified new scheme to be State aid compatible with the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The Authority has decided not to raise objections to the notified new temporary regional loan scheme.
2. With reference to Chapter 32 and Annex IV of the Authority's State Aid Guidelines, the Norwegian authorities shall submit information on the application of the scheme.
3. This decision is addressed to the Kingdom of Norway.

Done at Brussels, 22 October 2003,

For the EFTA Surveillance Authority

Einar M. Bull
President

Hannes Hafstein
College Member