

Case No: 71659  
Event No: 705041  
Dec. No: 192/14/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 8 May 2014

to close the case concerning the financing of Norwegian public dental health care services  
("DOT")

(Norway)

The EFTA Surveillance Authority ("the Authority"),

HAVING REGARD to:

The Agreement on the European Economic Area (the "EEA Agreement"), in particular to Articles 61(1) and 62(1)(b) and Protocol 26,

Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular Article 1(1) of Part I and Article 19(1) of Part II,

WHEREAS:

- (1) By letter dated 11 May 2012 (Event No 631636), 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 Norwegian public dental health care services ("DOT"). The Norwegian authorities responded by letter dated 11 June 2012 (Event No 637332). The Authority requested additional information by letter dated 7 September 2012 (Event No 639550). The Norwegian authorities responded by letters dated 16 January 2013 and 10 July 2013 (Event Nos 659561 and 678347).
- (2) On 5 November 2013, the Authority sent a letter in accordance with Article 17(2) of Part II of Protocol 3 (Event No 685054), informing the Norwegian authorities of its view that the financing of DOT involves state aid that is incompatible with the functioning of the EEA Agreement. The Norwegian authorities responded by letter dated 4 December 2013 (Event No 692258).
- (3) On 12 March 2014, by Decision No 113/14/COL, the Authority concluded that the financing of DOT constituted existing state aid which is incompatible with the functioning of the EEA Agreement.<sup>1</sup>
- (4) DOT provides services for free to children, youths and other groups, which are of a non-economic nature. Secondly, DOT provides subsidised dental services in sparsely populated areas, which are economic in nature but could qualify as a service of general economic interest ("SGEI"). Finally, DOT provides dental services to paying patients in

---

<sup>1</sup> Available on the Authority's website: <http://www.eftasurv.int/media/decisions/113-14-COL.pdf>.

areas where there is a sufficient coverage from private dentists. In order to ensure that there will be no cross-subsidies, the Authority found that the Norwegian authorities should keep separate accounts and allocate costs. Furthermore, DOT should be required to generate a reasonable return on capital for the commercial activities. The Authority also concluded that the Norwegian authorities would have to ensure that the compensation to the SGEI activities comply with the provisions of Commission Decision 2012/21/EU (“the SGEI Decision”).<sup>2</sup>

- (5) On this basis, the Authority proposed that the Norwegian authorities take the following appropriate measures to ensure that no aid is granted in the future to the economic activities of DOT:
- In accordance with the Authority’s practice, separate accounts should be kept for the three following activities:
    - (i) the non-economic activities;
    - (ii) the services provided to paying patients in remote and sparsely populated areas with a market failure, classified as an SGEI; and
    - (iii) the services provided to paying patients in areas with sufficient private alternatives.
  - All costs, both direct and indirect, as well as an appropriate contribution to the common costs (such as rent, equipment and personnel) and revenues should be allocated on the basis of clearly established, consistently applied and objectively justifiable cost accounting principles.<sup>3</sup>
  - In addition, the commercial activities of DOT (point (iii) above) should be required to generate a reasonable return on capital (comparable to what a private investor would expect from a similar undertaking).
  - the compensation system for dental services in areas with insufficient provision of dental care must comply with the SGEI Decision.
- (6) The Authority required the Norwegian authorities to implement the measures by 1 January 2015.
- (7) By letter dated 8 April 2014 (Event No 705008) the Norwegian authorities accepted the appropriate measures proposed by the Authority and accepted to implement them by the deadline of 1 January 2015. However, with regard to the deadline, the Norwegian authorities stressed that although they accepted the appropriate measures and the deadline, they could not guarantee that the Norwegian Parliament would adopt the legislative amendments in time for the legislation to enter into force from 1 January 2015.
- (8) To the extent the Norwegian authorities implement the appropriate measures as they have accepted, the Authority is satisfied that the financing of DOT will be compatible with the functioning of the EEA Agreement.
- (9) 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.
- (10) 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

---

<sup>2</sup> Commission Decision of 20.12.2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7 11.1.2012 p. 3) incorporated into the EEA Agreement in its Point 1h of Annex XV.

<sup>3</sup> For the division between DOT’s non-economic and economic activities, the requirements in Articles 5 and 6 of the SGEI Decision should be complied with.

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 113/14/COL on the financing of Norwegian public dental health care services.

*Article 2*

There are no longer grounds for pursuing the case concerning the financing of Norwegian public dental health care services. 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, 8 May 2014.

*For the EFTA Surveillance Authority*

Oda Helen Sletnes  
*President*

Frank Büchel  
*College Member*