

Case No: 69072
Event No: 579414
Dec. No: 486/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 15 December 2010
on the prolongation of the Norwegian Energy Fund scheme
(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 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 (“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(3) of Part II,

HAVING REGARD to the consolidated version of the Authority’s Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 (“the Implementing Provisions Decision”)¹,

HAVING REGARD to Authority’s guidelines on state aid for environmental protection (“the EAG”)²,

Whereas:

1. Procedure

By Decision No 125/06/COL of 3 May 2006,³ the Authority approved the Norwegian Energy Fund (“the Energy Fund”) scheme.

By Decision No 536/09/COL of 16 December 2009,⁴ the Authority approved budget increases for the Energy Fund and a tightening of the rules on eligibility for aid under its wind programme. By Decision No 75/10/COL of 10 March 2010,⁵ the Authority approved a budget increase for the Energy Fund.

¹ Available at: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>.

² OJ L 144, 10.6.2010, p.1 and EEA Supplement No 29, 10.6.2010, p. 1, also available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>.

³ OJ L 189, 17.7.2008, p. 36 and EEA Supplement No 43, 17.7.2008, p. 1.

⁴ OJ C 174, 1.7.2010, p. 12 and EEA Supplement No 34, 1.7.2010, p. 12.

⁵ OJ C 265, 30.9.2010, p. 8 and EEA Supplement No 53, 30.9.2010, p. 6.

The scheme expires on 31 December 2010. The Authority is currently performing a preliminary assessment of a new Energy Fund scheme in accordance with Article 4 of Part II of Protocol 3.⁶ The Authority will not finalise its preliminary assessment of the new scheme until after 31 December 2010. On this basis, the Norwegian authorities, by letter dated 1 December 2010 (Event No 579409), submitted a simplified notification of a prolongation of the Energy Fund until 31 December 2011, pursuant to Article 1(3) of Part I of Protocol 3 in conjunction with Article 4 of the Implementing Provisions Decision.

2. Description of the proposed measures

2.1. The Energy Fund scheme

The Energy Fund scheme is managed by Enova SF, which is an enterprise fully owned by the state via the Ministry of Petroleum and Energy. The objective of the Energy Fund scheme is to contribute to an environmentally friendly change in the use and production of energy. In order to achieve this, Enova SF grants aid to undertakings involved in projects which either:

- increase the supply of renewable heat,
- increase the supply of renewable electricity, or
- contribute to energy saving.⁷

2.2. Notified alteration to the aid scheme

The notification deals with a prolongation of the existing Energy Fund scheme with one year, from 31 December 2010 until 31 December 2011.

2.3. National legal basis for the aid measure

The national legal basis for the prolongation is the adopted Norwegian national budget for 2010 based on the proposition by the Ministry of Petroleum and Energy of 25 September 2009 Prop. 1 S (2009-2010).

2.4. Budget

The budget for 2011 is NOK 1 850 million.⁸

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

⁶ The Norwegian authorities initiated pre-notification contacts with the Authority regarding the Norwegian Energy Fund scheme by an email dated 23.12.2009 (Event No 541089). The Norwegian authorities notified the Energy Fund pursuant to Article 1(3) of Part I of Protocol 3 by letter of 9.7.2010 (Events No 563725, 563728, 563729, 563730 and 563733). By letter dated 3.9.2010 (Event No 567850), the Authority requested additional information. By letters dated 4.10.2010 (Event No 572020) and 15.11.2010 (Event No 577478) the Norwegian authorities responded.

⁷ See Decision No 125/06/COL for more information.

⁸ See the national budget for 2011 based on the proposition 1 S (2010-2011) by the Ministry of Petroleum and Energy of 17.9.2010.

certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

In Decision No 125/06/COL, the Authority established that the state resources allocated to undertakings under the scheme financed by the Energy Fund constituted state aid within the meaning of Article 61(1) of the EEA Agreement.

The notified prolongation does not alter the assessment made in Decision No 125/06/COL. The allocations represent state resources granted to certain undertakings that threaten to distort competition and affect intra-EEA trade.⁹

2. Procedural requirements

The Authority notes that the notified changes represent new aid, and are consequently to be notified to the Authority in accordance with Article 1(3) of Part I of Protocol 3, which reads as follows:

“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 notified the prolongation of the scheme by letter dated 1 December 2010 (Event No 579409), before the existing scheme expired. The Authority therefore concludes that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

With regards to the application of the simplified notification procedure, the Norwegian authorities have notified a one year prolongation of an existing authorised aid scheme in accordance with Article 4(2)(b) of the Implementing Provisions Decision. Furthermore, the Norwegian authorities have submitted annual reports in accordance with Article 4(3) in conjunction with Articles 5 to 7 of the Implementing Provisions Decision. Consequently, the simplified notification procedure is applicable to the prolongation.

3. Compatibility of the aid

In Decision No 125/06/COL, the Authority assessed the Energy Fund scheme in light of Article 61(3)(c) of the EEA Agreement and in light of the chapter of the Authority’s Guidelines on environmental aid applicable at the time.¹⁰ The scheme supported several initiatives for the promotion of energy production from renewable sources and other related measures. The Authority considered some support measures under this scheme to be compatible with the rules of the EEA Agreement subject to certain conditions,¹¹ and proposed appropriate measures in order to bring the scheme, as such, in line with the then applicable guidelines on environmental aid. The Norwegian authorities took the appropriate measures in order to bring the scheme in line with the then applicable guidelines on environmental protection.¹²

The Authority issued a new chapter on state aid for environmental protection by Decision No 500/08/COL of 16 July 2008. According to paragraph 200 of those guidelines, the

⁹ See section II.1 of Decision No 125/06/COL.

¹⁰ These Guidelines represented chapter 15 of the Authority’s State Aid Guidelines, published in OJ L 21, 24.1.2002, p. 32 and EEA Supplement No 6, 24.1.2002, p. 63.

¹¹ Article 4 of Decision No 125/06/COL.

¹² See series of letters from the Norwegian authorities dated 4.7.2006 to 8.11.2006 registered in Case No 57473.

Norwegian authorities had to ensure that the scheme was brought in line with these new guidelines by 16 January 2010. The Norwegian authorities have confirmed that appropriate measures have been taken to bring the scheme in line with the guidelines.¹³

The notified amendment does not entail other alterations to the scheme (*i.e.* other alterations than the prolongation itself).

On the basis of the above, the prolongation does not, in and of itself, alter the assessment made in Decision No 125/06/COL as regards the classification of the scheme as state aid compatible with the functioning of the EEA Agreement read in conjunction with the EAG.

4. Conclusion

On the basis of the foregoing assessment, the Authority does not raise objections to the prolongation of the Energy Fund scheme until 31 December 2011.

The Norwegian authorities are reminded of the general obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 5(a) of Decision No 125/06/COL to provide annual reports on the implementation of the scheme.

Furthermore, the Norwegian authorities are reminded about the specific reporting obligations resulting firstly, from Article 5(b) of Decision No 125/06/COL, and secondly, from paragraph 193 in conjunction with paragraph 200(iii) of the EAG.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified prolongation of the Norwegian Energy Fund scheme.

Article 2

The implementation of the measure is accordingly authorised.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 15 December 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Sverrir Haukur Gunnlaugsson
College Member

¹³ See letter from the Norwegian authorities dated 9.9.2009 (Event No 529851) and email from Norwegian authorities dated 8.11.2009 (Event No 536428).