

Case No: 74910
Event No: 696031
Dec. No: 56/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 12 February 2014

on a prolongation and a budget increase of the Norwegian Bioenergy Scheme for 2014

(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(3)(c) 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 thereof,

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

Whereas:

1. Procedure

- (1) By Decision No 69/09/COL of 18 February 2009,¹ the Authority approved the Norwegian Bioenergy Scheme (the “Scheme”).
- (2) By letter dated 20 December 2013,² the Norwegian authorities submitted a simplified notification to the Authority concerning a prolongation of the Scheme for the next five years (1 January 2014 to 31 December 2018) and an increase in the budget for the year 2014, from the original budget of NOK 35 million to a total amount of NOK 60 million.
- (3) The Authority informed the Norwegian authorities that the Guidelines on state aid to environmental protection³ (the “Environmental Guidelines”) would expire on 31 December 2014 and that the prolongation could not be extended beyond that date.⁴

¹ OJ C 156, 9.7.2009, p. 16 and EEA Supplement No 36, 9.7.2009, p. 16.

² Event No 694255 and Event No 694256.

³ OJ L 144, 10.6.2010, p. 1 and EEA Supplement No 29, 10.6.2010, p.1 (<http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>).

⁴ Event No 695710 and Event No 695712.

- (4) On 14 January 2014,⁵ the Norwegian authorities submitted a new simplified notification to the Authority, with a prolongation of the Scheme from 1 January 2014 to 31 December 2014 and an increase in the budget for the year 2014 to a total amount of NOK 60 million. The simplified notification was made pursuant to Article 1(3) of Part I of Protocol 3 in conjunction with Article 4 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").⁶

2. Description of the proposed measures

2.1 The Scheme

- (5) The Scheme was originally established by the Norwegian authorities in 2003. As that Scheme granted support to agricultural activities it was not notified to the Authority. In 2008, the Norwegian authorities expanded its scope and notified the Scheme to the Authority for a period up to 1 January 2014. The Authority approved the Scheme on 18 February 2009 by Decision No 69/09/COL.
- (6) The objective of the Scheme is to promote and increase the production and use of renewable energy for heating and thereby to reduce the emission of CO₂ and other greenhouse gases.
- (7) The Scheme aims at contributing to the national goal of increasing the production of bioenergy with 14 Twh within 2020 and providing employment opportunities in sustainable economic activities in rural areas.
- (8) The Scheme is limited to the specific activities that are set out in Section I.2.5 of Decision No 69/09/COL (installations for farm heating, greenhouse heating, installation for the sale of heating, aid for cogeneration and aid for environmental studies).

2.2 Notified alterations to the Scheme

- (9) The simplified notification concerns a prolongation of the Scheme, from 1 January 2014 until 31 December 2014, and an increase in the budget for the year 2014 to a total amount of NOK 60 million.⁷

2.3 National legal basis for the aid measure

- (10) The national legal basis for the prolongation and the budget for 2014 are the Annual Agricultural Agreement⁸ and the state budget approved by the Norwegian parliament for 2014.⁹

⁵ Event No 695692 and Event No 695693.

⁶ Decision No 195/04/COL of 14.7.2004, OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1 (<http://www.eftasurv.int/media/decisions/195-04-COL.pdf>).

⁷ In the Authority's Decision No 69/09/COL the estimated annual budget for the Bioenergy Scheme was NOK 35 million. However, it was foreseen that the estimated amount could vary from year to year.

⁸ Prop. 164 S (2012 - 2013) - "Jordbruksoppgjøret 2013 - endringer i statsbudsjettet for 2013 m.m." (<http://www.regjeringen.no/pages/38348771/PDFS/PRP201220130164000DDDPDFS.pdf>)

⁹ Prop. 1 S (2013 - 2014) - "Proposisjon til Stortinget for budsjettåret 2014 Statsbudsjettet) and Innst. 8 S (2013 - 2014) - "Innstilling til Stortinget fra næringskomiteen" (<https://www.stortinget.no/Global/pdf/Innstillinger/Stortinget/2013-2014/inns-201314-008.pdf>).

II. ASSESSMENT

1. The presence of state aid

(11) 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.”

(12) In Decision No 69/09/COL, the Authority established that the state resources were funded through the state budget and therefore constituted state aid within the meaning of Article 61(1) of the EEA Agreement.

(13) The notified prolongation and the increase in the budget do not alter the assessment made in Decision No 69/09/COL. The allocations represent state resources granted to certain undertakings¹⁰ that threaten to distort competition and affect intra-EEA trade.¹¹

2. Procedural requirements

(14) 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”.

(15) The Norwegian authorities notified the prolongation of the Scheme by letter dated 20 December 2013,¹² before the existing Scheme expired. However, that notification was withdrawn by the Norwegian authorities on 20 December 2013.¹³

(16) A new simplified notification was submitted by the Norwegian authorities to the Authority on 14 January 2014.¹⁴ The Norwegian authorities have instructed Innovation Norway to stop granting aid under the Scheme as from 1 January 2014 and until a final decision is made by the Authority. The proposed measures have therefore not been put into effect and the Norwegian authorities have complied with the stand still obligation.

(17) With regard to the application of the simplified notification procedure, the Norwegian authorities have notified a one year prolongation of an existing authorised Scheme and a new budget in accordance with Article 4(2) 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.

(18) Consequently, the simplified notification procedure is applicable to the prolongation and to the budget increase of the Scheme.

¹⁰ See Section II.2.2 of Decision No 69/09/COL.

¹¹ See Section II.2.3 of Decision No 69/09/COL.

¹² Event No 695692 and Event No 695693.

¹³ Event No 695710.

¹⁴ Event No 695692 and Event No 695693.

3. Compatibility of the aid

- (19) In Decision No 69/09/COL, the Authority concluded that the Scheme was compatible with Article 61(3)(c) of the EEA Agreement and the Environmental Guidelines. The Authority refers to that decision for a more detailed description of its analysis. The requested prolongation and the increase of the budget are the only changes that are made to the approved measures. All other aspects of the Scheme remain unchanged.
- (20) On the basis of the above, the Authority considers that the prolongation and the budget for 2014 do not alter the assessment made in Decision No 69/09/COL as regards the classification of the Scheme as state aid that is compatible with the functioning of the EEA Agreement in conjunction with the Environmental Guidelines.
- (21) The Environmental Guidelines are due to expire on 31 December 2014, or will be replaced by a new set of Environmental Guidelines before that time. Accordingly, the Authority can only declare the prolongation and the budget increase to be compatible with the current Environmental Guidelines as long as they are in force.

4. Conclusion

- (22) On the basis of the foregoing assessment, the Authority does not raise objections to the prolongation of the Scheme until 31 December 2014 or the budget in the amount of NOK 60 million for 2014.
- (23) The Norwegian authorities are reminded of the general obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 5 to 7 of Decision No 195/04/COL to provide annual reports on the implementation of the Scheme.
- (24) Moreover, the Norwegian authorities are reminded of the general obligation to notify budget increase of an authorized aid Scheme that exceeds 20%, in conjunction with Article 4 of the before mentioned Decision.
- (25) Furthermore, the Norwegian authorities are reminded about the specific reporting and monitoring obligations resulting, from Section II.4.6 of Decision No 69/09/COL and from Section 7 of the Environmental Guidelines.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority raises no objections to the notified prolongation and the budget for 2014 of the Norwegian Bioenergy Scheme under the current Environmental Guidelines.

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 language version of this decision is authentic.

Decision made in Brussels, 12 February 2014.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member