

Case No: 67099
Event No: 554102
Dec. No: 59/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 24 February 2010
on training aid granted by Innovation Norway for training purposes in Romania
(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹

HAVING REGARD to the Agreement on the European Economic Area,² 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,³ in particular to Article 24 thereof,

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

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement,⁵ and in particular the Chapter on the criteria for the analysis of the compatibility of state aid for training subject to individual notification thereof,

HAVING REGARD to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3,⁶

Whereas:

¹ Hereafter referred to as the "Authority".

² Hereafter referred to as the "EEA Agreement".

³ Hereafter referred to as the "Surveillance and Court Agreement".

⁴ Hereafter referred to as "Protocol 3".

⁵ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the Official Journal of the European Union (hereafter referred to as the "OJ") L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1 (hereafter referred to as the "State Aid Guidelines"). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/state-aid-register/>.

⁶ Decision 195/04/COL of 14.7.2004 published in OJ C 139 of 25.05.2006 p. 57 and EEA Supplement No 26 of 25.05.2006 p. 1 as amended by Decision 319/05/COL of 14 December 2005 published in OJ C 286 of 23.11.2006 p. 9 and EEA Supplement No 57 of 23.11.2006 p. 31.

I. FACTS

1. Procedure

The Norwegian authorities notified a measure relating to aid from Innovation Norway for training purposes in Romania, pursuant to Article 1(3) of Part I of Protocol 3, by letter of 17 September 2009 (Event No 530745).

By letter dated 6 October 2009 (Event No 532262), the Authority requested additional information.

By letter dated 3 November 2009 (Event No 535670), the Norwegian authorities replied to the Authority's information request.

By letter dated 13 November 2009 (Event No 536854), the Authority requested the Norwegian authorities to provide additional information.

By letters dated 5 January 2010 (Event Nos 541635 and 541632), the Norwegian authorities provided the requested information.

2. Description of the proposed measure

On 25 July 2007, Norway entered into an agreement with the European Union concerning a Co-operation Programme for Economic Growth and Sustainable Development in Romania and a bilateral agreement with Romania to that effect (the "Agreement").⁷

Under the Agreement, the Norwegian authorities commit to "make available a total amount of EUR 48 million, for commitment in a single tranche in 2007. This amount shall be made available from the date of entry into force of the Agreement on the Participation of the Republic of Bulgaria and Romania in the European Economic Area or an agreement to apply that Agreement provisionally, to 30 April 2009".

The Agreement provides that the Co-operation Programme for Economic Growth and Sustainable Development in Romania (the "Co-operation Programme") is available for bilateral cooperation projects between eligible applicants from Norway and Romania to promote social and economic development in Romania within certain priority sectors (Article 4).

The Memorandum of Understanding between Norway and Romania on the implementation of the Co-operation Programme provides that: *"All public or private sector bodies and non-governmental organisations (NGOs) constituted as legal entities in the Parties may apply for assistance, provided that a partnership has been established with at least one entity from the other Party"* (Article 4).

The Rules and Procedures for the implementation of the Norwegian Cooperation Programmes for economic growth and sustainable development in Bulgaria and Romania provide, in Article 4.1 that:

"All public or private sector bodies and non-governmental organisations (NGOs) constituted as legal entities in the Beneficiary States and in Norway may apply for assistance, provided that a partnership has been established. Partnership means cooperation between at least one legal entity in the Beneficiary State and at least one

⁷ OJ L221, 25.08.2007, p. 52.

legal entity in Norway, and where all entities perform substantial tasks in the completion of the project”.

Any entity legally registered in Norway or Romania is eligible to apply for a grant, irrespective of the country of ownership origin. The Standard Terms and Conditions for the grants provide that public procurement principles and procedures must be complied with where applicable.⁸

The Memorandum of Understanding also provides that Innovation Norway is responsible for the operation of the Co-operation Programme in Norway (Article 2.2).

Through the Co-operation Programme, entities from Romania and Norway are invited to apply for “Seed Money” grants for introductory work to identify suitable partners, and “Individual Project” grants. Details, including eligibility criteria and guidelines, are available at <http://www.eeagrants.org/id/1>.

In the case notified to the Authority, Innovation Norway will provide state support under the Co-operation Programme in the form of training aid to a project involving Romanian undertakings and companies in Norway.

Following receipt of an application from The Grenland Group, Innovation Norway awarded The Grenland Group seed money in order to identify potential partners in Romania and prepare an application for an Individual Project grant.⁹ During the seed money phase, The Grenland Group identified a number of possible Romanian partners and eventually chose SC Promex SA and SC 24 Januarie SA.¹⁰

In partnership with those companies, The Grenland Group applied for a grant to provide to the two Romanian companies training in a number of areas relating to subsea structures and equipment for oil and gas exploitation and production. The training will cover, *inter alia*, welding techniques applicable to deep-sea metal structures, project management and health and safety issues. Fifteen courses will be available, including the following:

- Material and material standards: strength of materials, introduction to fracture mechanics, material properties, static equilibrium, introduction to design of structures;
- Material handling and traceability: the purpose of the course is to describe and explain welding problems when dealing with the application of structural and high strength steels, with particular reference to physical, chemical and mechanical characteristics;
- Health, environment and safety: the purpose of the course is to explain the health and safety hazards associated with welding and fabrication processes, including techniques to minimise the risk of such hazards.

⁸ Standard Terms and Conditions of Grants from Innovation Norway, 27.3.2009, para. 6.

⁹ The Grenland Group is a supplier of engineering, construction and modification services to the global oil and gas industry.

¹⁰ SC Promex SA and SC 24 Januarie SA are “large enterprises” pursuant to the definition of SME in Annex I of the Act referred to at point 1j of Annex XV to the EEA Agreement (Commission Regulation (EC) No 800/2008 of 6.8.2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation), as adapted to the EEA Agreement by Protocol 1 thereto (the “General Block Exemption Regulation”).

The training courses will generally lead to recognised diplomas and certificates and will cover knowledge, skills and competence at all levels in the organisations.

Following an assessment process, a grant was awarded subject to certain conditions, including, in particular, compatibility with the EEA state aid rules. The grant will enable The Grenland Group to finalize negotiations with the Romanian companies in order to provide the training envisaged.

The Grenland Group will be the project promoter. It has selected ISIM and the University College of Trondheim to provide training services to SC Promex SA and SC 24 Januarie SA. ISIM is the only Authorized National Body (ANB) in Romania able to validate diplomas and certification for workers in the mechanical industry. The diplomas and certificates that will be awarded are internationally recognized and accepted in all areas of the welding industry.

The University College of Trondheim is a highly reputed provider in Norway of training for use of digital tools in education combined with the use of video conference equipment, which will be important for the project.

A Partnership Agreement has been entered into between The Grenland Group and SC Promex SA and SC 24 Januarie SA as part of the application for the grant under the Co-operation Programme. Contracts will also be entered into between the The Grenland Group and the other training providers.

A total amount of aid of EUR 247 051 will be made available, representing approximately 24% of the total eligible costs of EUR 1 046 600, which consist of:

- | | |
|---|-------------|
| • Trainers' personnel costs | EUR 432 600 |
| • Trainers' and trainees' travel expenses | EUR 78 000 |
| • Material and Supplies | EUR 8 000 |
| • Guidance and counselling services | EUR 146 000 |
| • Trainees' personnel costs | EUR 382 000 |

In addition, the equipment costs for the project are granted pursuant to Regulation 1998/2006 on the application of Articles 107 and 108 of the Treaty to *de minimis* aid.¹¹ Aid qualifies as *de minimis* on the condition that the relevant thresholds set out in Article 2(2) of Regulation 1998/2006 are complied with.

Eligible Costs for *de minimis* aid:

- | | |
|------------------------------------|-------------|
| • Equipment and ancillary services | EUR 300 000 |
| • Audit | EUR 10 000 |
| • Total | EUR 310 000 |

The total amount of *de minimis* aid granted is EUR 186 000, that is, 60% of the total eligible costs, to be equally shared between the partners.

¹¹ OJ L 142, 14.05.1998, p. 1.

Thus, the total grant will not exceed EUR 433 051, of which EUR 247 051 (24% of the total budget of 1 046 600) is for training, and EUR 186 000 (60% of a total of EUR 310 000) is for equipment and ancillary services.

The total contribution by the Norwegian State of EUR 433 051 represents 41.4% of the total project costs.

Article 5 of the Agreement provides that, “*The Norwegian contribution in the form of grants shall not exceed 60% of the project cost except for projects otherwise financed by central, regional or local government budget allocations, where the contribution may not exceed 85% of project cost. Community ceilings for co-financing shall not be exceeded in any case. Contributions to non-governmental organisations and social partners may be up to 90% of project costs*”.

The Norwegian authorities have confirmed that the training aid will not be granted unless and until the Authority has formally approved the measure. An advance payment of 20% will be released within one month of receipt of the decision approving the aid. Subsequent payments will be made on a quarterly or semi-annual basis to be agreed. The last day of expenditure eligibility will be 30 April 2011, with payments corresponding to the reimbursement of incurred costs possible until 31 October 2011.

2.1. Aid intensity eligible costs, overlap with other schemes

The Norwegian authorities have indicated that the aid will not be cumulated with aid received from other local, regional, national or EU schemes to cover the same eligible costs.

II. ASSESSMENT

1. The presence of state aid

1.1. State aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement provides that:

“*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.*”

It follows from Article 61(1) EEA that in order for a measure to amount to state aid the following conditions must be met:

- The aid must be granted through *state resources*;
- It must favour certain undertakings or the production of certain goods, that is the measure must confer an *economic advantage* on an undertaking;
- It must be *selective*; and
- It must be capable of *distorting competition* and *affecting trade* between Contracting Parties.

1.2. Presence of state resources

The aid is financed from resources from the general budget of Norway and transferrable directly to the beneficiaries.

Therefore, the Authority considers that state resources are involved.

1.3. Selective economic advantage

First, the aid measure must confer on SC Promex SA and SC 24 Januarie SA advantages that relieve them of charges that are normally borne from their budget. Most employers find it necessary to train their workforce in order to ensure the proper functioning of their undertakings. Training is therefore a charge that would normally be borne by undertakings as a budget cost. The measure at issue therefore confers an economic advantage on the beneficiaries.

Second, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”. The provision by the Norwegian State of funds to finance training to SC Promex SA and SC 24 Januarie SA clearly favours those companies. The aid is therefore selective in nature.

1.4. Distortion of competition and effect on trade between Contracting Parties

Aid strengthens the position of an undertaking as compared to other undertakings competing in the EEA. It is settled case law that for a measure to distort competition it is sufficient that the recipient of aid compete with other undertakings on markets open to competition. The activities in question concerning the production of subsea structures and equipment for oil and gas exploitation and production are carried out both within the EEA and between Norway and other EEA States and third countries. Therefore, the measures affect trade between the Contracting Parties.

By altering costs, state aid alters profitability, and can therefore affect an undertaking’s position on the market. Thus, state aid that would reduce ongoing costs of production, such as training for staff, could operate to the detriment of competitors.

State aid for training may also result in some territories benefiting from more favourable production conditions than others. This may result in the displacement of trade flows in favour of the regions where such aid is given.

SC Promex SA and SC 24 Januarie SA compete with other undertakings in the EEA. Once the training has been provided, Norway has indicated that SC Promex SA and SC 24 Januarie SA will be able to compete in a global market worth approximately EUR 150 billion.

In the light of the above, the Authority considers that the aid is capable of distorting competition and affecting trade between Contracting Parties.

2. Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, “*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 aid measure by way of a letter dated 17 September 2009 (Event No 530745), and have therefore complied with the notification requirement.¹² They have also indicated that they will not implement the aid measure unless and until it has been approved by the Authority, thereby complying with the standstill obligation.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

In assessing the compatibility of the notified measure with the EEA Agreement, the Authority will apply the Chapter of its State Aid Guidelines on the criteria for the analysis of the compatibility of state aid for training subject to individual notification (the “Training Guidelines”). The Authority will follow the approach set out in the Training Guidelines whereby “*for ad hoc aid training to a large undertaking below the threshold of EUR 2 million, the Authority will mutatis mutandis apply the principles as outlined in this Chapter, though in a less detailed manner*”.¹³

3.1. Existence of market failures

In assessing the existence of market failures, the Authority will, in line with the Training Guidelines, consider the following elements: the nature of the training (**3.1.1.**) and the transferability of the skills acquired (**3.1.2.**).

3.1.1. The nature of the training

The Training Guidelines provide that “*general training will produce more positive externalities*”.¹⁴ Article 38 of the General Block Exemption Regulation defines specific and general training as follows:

- *Specific training means training involving tuition directly and principally applicable to the employee’s present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work;*
- *General training means training involving tuition which is not applicable only or principally to the employee’s present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work. Training shall be considered “general” if, for example,*
 - (a) *it is jointly organised by different independent undertakings or where employees of different undertakings may avail themselves of the training;*
 - (b) *it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.*

The Authority considers that the training to be offered appears to be a mixture of both general and specific training. The training covers welding techniques applicable to deep-sea metal structures, which will be principally applicable to employees’ present or future

¹² The Norwegian authorities notified the aid measure pursuant to Article 5 of the General Block Exemption Regulation, which provides: “*This Regulation shall not apply to ad hoc aid granted to large enterprises, except as provided for in Article 13(1)*”.

¹³ See footnote 2 of the Training Guidelines.

¹⁴ See Section 2.1, para. 9.1.

position in the beneficiary undertakings, but also more general modules, such as project management and health and safety issues. Most of the courses will lead to a diploma.

3.1.2. *The transferability of the skills acquired*

The Training Guidelines provide that *“the more transferable the skills the higher the likelihood of positive externalities; training will be considered to provide transferable skills if, for example:*

- (a) *training is jointly organised by several independent undertakings, or if employees of different undertakings may benefit from the training;*
- (b) *training is certified, leads to a recognised diploma or is validated by public authorities or institutions;*
- (c) *training targets the categories of employees that are characterised by a high turnover in the undertaking in the sector concerned;*
- (d) *training could be valuable for the employee beyond his current job (future occupations in another undertaking, social life, well-being, etc.)”*¹⁵

The Authority considers that the condition regarding the transferability of the skills acquired is met as the training courses will generally lead to recognised diplomas, which will give employees extra qualifications that they may use in a future position. The diplomas and certificates that will be awarded are internationally recognised diplomas which are accepted in all areas of the welding industry.

3.2. **Appropriateness of the measure**

The Training Guidelines provide that before granting the aid the EFTA State concerned should have considered other policy options. Only *“where the EFTA State has considered other policy options, and the advantages of using a selective instrument such as state aid for a specific undertaking are established, the measures concerned are considered to constitute an appropriate instrument. The Authority will in particular take account of any impact assessment of the proposed measure the EFTA State may have made”*.

The Norwegian authorities have indicated that an impact assessment was carried out in respect of the notified aid measure, and have concluded that without the aid the training would not be undertaken.

The Authority considers that the Norwegian authorities have provided sufficient supporting data to demonstrate that the aid measure under scrutiny is an appropriate measure and that no other form of instrument would have enabled the beneficiaries to have access to this type of training (see Section 3.3. below).

3.3. **Incentive effect and necessity of the aid**

The Training Guidelines provide that *“state aid for training must result in the aid beneficiary changing its behaviour so that it provides more and/or better training than would have been the case without the aid [...] EFTA States should demonstrate to the Authority the existence of the incentive effect and the necessity of the aid: first, the beneficiary must have submitted an application for the aid to the EFTA State concerned before it started the training project. Second, the EFTA State must demonstrate that the*

¹⁵ See Section 2.1, para. 9.2.

state aid leads to an increase, by comparison to the situation without aid, in the size, quality, scope or targeted participants of the training project”.

As described above, an application for the aid was submitted to Norway and the aid will not be granted unless and until it has been approved by the Authority.

The Norwegian authorities have indicated that without the aid the training would not be undertaken. In fact, the main purpose of the training is to enable the beneficiaries to gain expertise in a sector where they currently are not active. Once the training has been completed, the beneficiary companies will satisfy NORSOK Offshore standard requirements for the petroleum industry. The NORSOK standards are developed by interested parties in the Norwegian petroleum industry, and are used in the design and fabrication of offshore and sub-sea structures with the aim of long life under harsh environmental conditions. The Authority understands that the standards are used as the *de facto* standards in the industry. The Authority also understands that there are no equivalent Romanian standards.

Meeting the NORSOK standards will allow the beneficiaries to enter new markets. The training required is only possible because of the support offered by Innovation Norway as the required expertise does not at present exist in Romania.

3.4. Proportionality of the aid

The Training Guidelines provide that *“the EFTA State must demonstrate that the aid is necessary and the amount is kept to the minimum in order to achieve the objective of the aid. Eligible costs must be calculated in accordance with Article 39 of Regulation (EC) No 800/2008 and be limited to the costs arising from training activities which would not be undertaken without the aid”.*

Article 39(3) of the General Block Exemption Regulation provides that:

“in cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the aid intensities applicable to specific training shall apply”.

The notified aid measure involves both general and specific training (see above, Section 3.1.1.). The Authority will therefore apply the aid intensity levels applicable to specific training.

Article 39(2) of the General Block Exemption Regulation provides that: *“the aid intensity shall not exceed (a) 25% of the eligible costs for specific training”.*

Article 39(4) provides that the *“eligible costs of a training project shall be:*

- (a) trainers’ personnel costs;*
- (b) trainers and trainees’ travel expenses, including accommodation;*
- (c) other current expenses such as materials and supplies directly related to the project;*
- (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 costs and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the other eligible costs referred to in points (a) to (e). As regards the trainees, personnel costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account".*

The Norwegian authorities have indicated that the total aid intensity represents 24% of the total eligible costs. The amount of EUR 247 051 will be granted, representing 24% of the total eligible costs of EUR 1 046 600, which consist of:

- | | |
|---|-------------|
| • Trainers' personnel costs | EUR 432 600 |
| • Trainers' and trainees' travel expenses | EUR 78 000 |
| • Material and Supplies | EUR 8 000 |
| • Guidance and counselling services | EUR 146 000 |
| • Trainees' personnel costs | EUR 382 000 |

The Authority considers that the conditions relating to maximum authorised aid intensity levels are met.

The Authority notes that the beneficiaries will also receive EUR 186 000 as *de minimis* aid (see above). The Norwegian authorities are reminded that *de minimis* aid cannot be cumulated with state aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the General Block Exemption Regulation.¹⁶

4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the aid that Innovation Norway proposes to grant for training purposes in Romania is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise any objections to the aid that Innovation Norway proposes to grant in favour of SC Promex SA and SC 24 Januarie SA for training purposes in Romania, pursuant to Article 61 of the EEA Agreement.

Article 2

Implementation of the notified measure is therefore authorised.

¹⁶ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, OJ L 379, 28.12.2006, p. 5, Article 2(5), incorporated into the EEA Agreement at point 1ea of Annex XV by Decision No 29/2007, OJ L 209, 9.8.2007, p. 52, and EEA Supplement No 38, 9.8.2007, p.34.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 24 February 2010

For the EFTA Surveillance Authority

Per Sanderud
President

Kurt Jaeger
College Member