

Case No: 67806
Event No: 546643
Dec. No: 75/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 10 March 2010
on a budget increase for the Norwegian Energy Fund

(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 state aid for environmental protection⁶ 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 3,⁷

Whereas:

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter 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 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1 as amended. Hereinafter 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/legal-framework/state-aid-guidelines/>

⁶ Adopted by Decision 500/08/COL of 16.7.2008, not yet published in the OJ or the EEA Supplement.

⁷ Decision No 195/04/COL of 14.7.2004 (published in OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1), as amended. Hereinafter referred to as Decision No 195/04/COL. A consolidated version of the Decision can be found on: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>

I. FACTS

1. Procedure

By Decision No 125/06/COL of 3 May 2006,⁸ the Authority approved the state aid scheme financed by the Norwegian Energy Fund.

By Decision No 536/09/COL of 16 December 2009,⁹ the Authority approved budget increases for the Norwegian Energy Fund and a tightening of the rules on eligibility for aid under its wind programme.

By letter dated 12 February 2010 (Event No 546334), the Norwegian authorities submitted a simplified notification of an increase in the 2010 budget of the Norwegian Energy Fund, pursuant to Article 1(3) of Part I of Protocol 3 in conjunction with Article 4 of Decision No 195/04/COL.

By email dated 16 February 2010 (Event No 546827), the Authority requested further information. By email dated 17 February 2010 (Event No 546920), the Norwegian authorities provided further information.

2. Description of the proposed measures

2.1. Title of the aid scheme

The Norwegian Energy Fund.¹⁰

2.2. Objective of the aid scheme

The Energy Fund is managed by Enova SF,¹¹ which is an enterprise fully owned by the state via the Ministry of Petroleum and Energy. The objective of the scheme financed by the Energy Fund 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.¹²

2.3. Notified alteration to the aid scheme

The current notification deals with an increase of the 2010 budget of the Energy Fund as originally authorised by the Authority in Decision No 125/06/COL and amended by Decision No 536/09/COL.¹³

The notified budget increase consists of a transfer of NOK 365 million over the state budget.

⁸ Published in OJ L 189, 17.7.2008, p. 36 and EEA Supplement No 43, 17.7.2008, p. 1. Hereinafter referred to as Decision No 125/06/COL.

⁹ Not yet published in the OJ or the EEA Supplement. Available on: <http://www.eftasurv.int/media/decisions/536-09-COL.pdf>. Hereinafter referred to as Decision No 536/09/COL.

¹⁰ Hereinafter referred to as the Energy Fund.

¹¹ Hereinafter referred to as Enova.

¹² See Decision No 125/06/COL for more information.

¹³ Reference is made to Section I.2.3 of the Authority's Decision No 536/09/COL for a more detailed account of the method of financing of the Energy Fund before 2010.

These funds represent a transfer of interest generated by a 2009 allocation of NOK 10 billion into a fund set up for the financing of the Energy Fund by the name of *Grunnfond for fornybar energi og energieffektivisering* (Basic capital for renewable energy and energy efficiency).¹⁴ As described in Decision No 536/09/COL, the *Grunnfond* was established on 2 January 2007 with the specific aim of contributing to the financing of the Energy Fund. The fund represents a budgetary mechanism known as an “account loan” (in Norwegian: *kontolån*). It was established by way of a capital deposit of NOK 10 billion over the state budget into a state-managed account in the Norwegian central bank (*Norges Bank*). This deposit in the Norwegian central bank generates a yearly interest fixed at a certain percent of the deposited capital per year for the following 10 years. The transfer from the *Grunnfond* to Enova’s Energy Fund is, however, subject to approval by the Norwegian Parliament (*Stortinget*) in the same manner as other budgetary allocations. The interest generated by the *Grunnfond* is intended to represent a permanent source of financing for the Energy Fund over the state budget.¹⁵

The fixed annual interest for the 2009 allocation of an additional NOK 10 billion to the *Grunnfond* is 3.65 percent per year for the following 10 years. Making NOK 365 million the basis for the annual allocations of interest.

2.4. Duration

The Energy Fund scheme has been authorised until the end of 2010.

2.5. National legal basis for the aid measure

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

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 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.

In the view of the Authority, the notified change 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.¹⁶

¹⁴ Hereinafter referred to as the *Grunnfond*.

¹⁵ The Norwegian authorities have indicated that the Norwegian state will make further capital contributions to the *Grunnfond*, thus increasing the amount of interest generated and consequently, the annual allocations to the Energy Fund.

¹⁶ See section II.1 of Decision No 125/06/COL.

2. Procedural requirements

The Authority notes that the notified changes represent new aid, and should consequently have been 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 have informed the Authority that the allocation of NOK 365 million stemming from the 2009 allocation to the *Grunnfond* will be held back until the Authority had taken a final decision thereon.

The Authority therefore concludes 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 Decision No 125/06/COL, the Authority assessed the scheme financed by the Energy Fund 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.¹⁷ 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,¹⁸ 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.¹⁹ 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 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.²⁰

The Authority considers that the notified changes represent a substantial increase of the budget of the Energy Fund. The enlarged budget enables Enova to support more aid recipients under the scheme. However, the potential effects on competition are limited, as the circle of eligible aid recipients remains the same.

On the basis of the above, the budget increase 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.

¹⁷ 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.

¹⁸ Article 4 of Decision No 125/06/COL.

¹⁹ See series of letters from the Norwegian authorities dated 4.7.2006 to 8.11.2006 registered in case no 57473.

²⁰ 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).

4. Conclusion

On the basis of the foregoing assessment, the Authority does not raise objections to the notified budget increase for the Energy Fund corresponding to an increase of yearly allocations amounting to NOK 365 million over the Norwegian state budget.

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 Guidelines on state aid for environmental protection.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified budget increase for the Norwegian Energy Fund.

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, 10 March 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Kurt Jaeger
College Member