

Brussels, 26 January 2011
Case No: 69060
Event No: 601529
Decision No: 09/11/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 26 January 2011
on the Innovation Cluster 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 (3) c) 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 4(3) of Part II,

Whereas:

I. FACTS

1. Procedure

The Norwegian authorities notified the Innovation Cluster scheme pursuant to Article 1(3) of Part I of Protocol 3 by letter of 24 November 2010 (Event No 578698).

2. Description of the proposed measures

2.1. The objective of the Innovation Cluster scheme

The main objective of the Innovation Cluster scheme is to enhance collaboration, innovation, growth and competitiveness in regionally based innovation clusters. The activities shall be based on collaboration between companies, R&D and educational institutions and relevant public sector institutions.

Each of the innovation clusters defines strategies that are considered to be of high importance for their competitiveness, followed by strategic actions that can reduce in an effective way barriers, or explore and act upon new opportunities. A cluster project, supported by one of the programmes, has individual tailor-made sets of goals and strategies.

The Innovation Cluster scheme aims at strengthening the following factors:

- access to R&D resources;
- access to business partners;

- understanding of technology and market trends;
- access to human capital;
- understanding of innovation processes as such and
- linkage between SMEs and larger companies and knowledge providers.

The Innovation Cluster scheme includes two main programmes:

- ARENA
- the Norwegian Centres of Expertise (“NCE”)

ARENA targets collaborative networks that do not yet function as innovative clusters. The NCE targets innovation clusters that are more mature and have a potential for higher international growth and competitiveness.

The aid scheme will be implemented by Innovation Norway.

2.2. Innovation clusters projects

One cluster project can only be supported by either the ARENA programme or the NCE programme and not by both at the same time. However, the cluster facilitator can operate two or more cluster projects, organised as separate projects.

2.2.1. The selection process

Projects are selected through a structured process which involves the following steps:

- an open call for proposals with set procedure and criteria;
- an open seminar for potential applicants where the criteria are explained;
- proposals are then assessed in terms of eligibility;
- proposals are evaluated by external experts, based on the selection criteria;
- proposals are then ranked and the highest ranked proposals are presented to the Board of Innovation Norway which decides which projects are chosen;
- once the projects have been chosen, the contracts are negotiated and signed.

The principal selection criteria are set out in the NCE and ARENA programme descriptions. The selection criteria are then presented in more detail in the calls for proposals.

2.2.2. The contract between the NCE or ARENA programme and the Innovation Cluster

Innovation Norway, representing either the NCE or the ARENA programme, negotiates a contract with the legal entity operating the cluster activities. This contract sets out the principles of the project, including:

- the organisation of the cluster;
- the participation;

- funding principles;
- communication;
- termination of the contracts;
- in addition, the NCE contracts include specifications of the enterprises that have signed contracts with the legal entity and their financial and in-kind contribution.

The funding is allocated to the legal entity acting as the facilitator. The facilitator is in most cases an established institution such as a knowledge park, an R&D institution or an education institution. It can also be a new organisation established specifically to act as a facilitator.

2.2.3. The contract between the Innovation Cluster and the cluster members

There are no standard contracts for the agreements between the legal entity and the cluster members. These contracts normally include principles regarding funding, codes of conduct concerning sharing of information, communication, exit from the organisation, etc.

Undertakings in difficulty are excluded from the scope of the scheme.

2.2.4. Financial support under the Innovation Cluster scheme

The financial support under the Innovation Cluster scheme is offered in the form of non-repayable direct grants. The total annual budget for the scheme, including support from all public sources, is not to exceed approximately NOK 150 million (approx. EUR 19 million).

The average annual grant to an innovation cluster under the NCE programme is approximately NOK 5 million (approx. EUR 625 000) and the estimated annual expenditure of the programme is approximately NOK 65 million (approx. EUR 8 125 000) with a portfolio of 12 NCE projects.

The average annual grant to an innovation cluster under the ARENA programme is approximately NOK 1.8 million (approx. EUR 225 000).

Eligible activities

The activities eligible for financial support are in substance the same for both programmes:

- process management;
- establishment of networks and meeting points;
- analysis and strategy processes;
- communication and marketing of the cluster's open access facilities;
- organisation of training programmes, workshops and conferences to support knowledge sharing between the members of the clusters;
- facilitating the development of project ideas and proposals in their early stages.

The Norwegian authorities have confirmed that where some of the cluster members also carry out other economic activities, measures will be taken in the form of a demand of separate accounts to ensure that public resources allocated to such participants may not be used to cross-subsidise their economic activities.

Duration of the financial support

The **ARENA programme** provides support to selected projects for a period of three years, with a possible extension period of maximum two years, based on specific criteria. Performance and progress will be assessed annually, based on standard reporting. At the end of the three year period results will be evaluated by external auditors.

The Norwegian authorities intend to provide support from the **NCE programme** to each of the NCE clusters for a period of maximum ten years. The support period is divided in fixed 3-3.5 years contracts period.

Through the aid from the scheme, the objective is to establish strong clusters that are economically independent of public intervention. Aid beyond five years will be deemed duly justified only if:

- the track record of the project indicates a positive cluster developing process and
- the already achieved objectives indicate that a prolonged public aid will add value to the projects ability to develop into strong clusters that are economically independent.

By the end of the first contract period (after three years), the NCE programme conducts a thorough individual assessment of each NCE project in order to decide whether a contract for a second period should be approved. This assessment is based on the following:

- an external evaluation of the cluster project in the first period;
- the cluster's own evaluation of performances in the period, and
- the cluster's strategies and plan for a second period.

Based on this evidence, the analysis as to whether a new contract should be entered into will be carried out in the light of the following criteria :

- the relevance of the project, *i.e.* to what extent are the chosen strategies and activities relevant to the opportunities and challenges the cluster faces, in terms of markets, technologies, knowledge, competition, partnership, etc.
- the goal achievement so far: what results and impacts have so far been produced, and what is the progress towards the specific goals of the project;
- the efficiency of the cluster organisation, *i.e.* to what extent has the cluster organisation been able to mobilise resources, efficiently facilitate the processes, and contribute to the results;
- the renewal of the strategies for a possible second period, *i.e.* to what extent has the project identified new opportunities and challenges and revised its strategies in order to pursue these possibilities;

- the concrete ambitions for the next period, *i.e.* the ambitions reflected in the concrete goals for the strategic areas, such as new partners, new international linkages, new business opportunities, access to competence, etc.
- the added value of the incentives given from the programme, *i.e.* to what extent can support from the programme further enhance and accelerate the development of the cluster.

Innovation Norway will examine whether the cluster project is able to develop strategies and strong commitment from the partnership for a long-term, strategic process, in order to strengthen its linkages to international networks, its capabilities to innovate and its overall competitiveness.

2.3. Budget and duration

The budgets for ARENA and NCE are derived from the Annual State budget under the budgets of the Ministry of Trade and Industry and the Ministry of Local Government and Regional Development. County authorities and municipal authorities may co-finance individual projects under the scheme. Innovation Norway will ensure in such cases that the maximum aid intensities are respected by calculating the total public support for the projects, including aid from other public sources.

The aid scheme has no fixed duration and will be implemented within the limitation of available resources for the time required to achieve the objectives set by the Norwegian Government.

2.4. Maximum aid intensities

Aid granted under both programmes will not exceed 50% and will be calculated on the basis of each individual cluster project. Spin-off projects which have reached a degree of maturity that allows for external financing will not be supported.

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.”

1.1. Presence of state resources

The aid measure must be granted by the State or through state resources.

The Innovation Cluster scheme is directly financed through the Annual State budget under the budgets of the Ministry of Trade and Industry and the Ministry of Local Government and Regional Development.

The Authority therefore considers that the first condition regarding use of state resources is met.

1.2. Favouring certain undertakings or the production of certain goods

The support under the Innovation Cluster scheme takes the form of a non-repayable direct grant which relieves its beneficiaries of charges that are normally borne from their budget.

Secondly, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”. The support constitutes a selective measure as it is only addressed to those undertakings that will be selected to participate in the Innovation Cluster scheme.

1.3. Distortion of competition and affect on trade between Contracting Parties

The private undertakings and the research organisations that carry out economic activities which benefit from the Innovation Cluster scheme carry out their economic activities in competition with other companies from other countries of the EEA and the support afforded strengthens their position. The support therefore distorts or threatens to distort competition and affects trade between the Contracting Parties.¹

1.4. Conclusion

Based on the above findings, the Authority comes to the conclusion that the notified scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

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 submitted a notification of the Innovation Cluster scheme with a letter dated 24 November 2010 (Event No 578698). However, the Authority notes that the ARENA and the NCE programmes were introduced in Norway respectively in 2002 and 2006. As far as the Authority has been able to ascertain these schemes were essentially the same as the one being notified.

The Authority therefore concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

The assessment of the aid measure will be carried out with reference to Article 61(3) of the EEA Agreement in combination with the chapter of the State Aid Guidelines on aid for research and development and innovation (“the R&D&I Guidelines”).²

In assessing whether an aid measure can be deemed compatible with the EEA Agreement, the Authority balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects by distortion of trade and competition.

The analysis made by the Authority of the notified scheme will be based on the following steps as laid down in paragraph 14 of the R&D&I Guidelines :

¹ See Case C-730/79, *Philip Morris v Commission* [1980] ECR 2677.

² Available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

- (1) Is the aid measure aimed at a well-defined objective of common interest (e.g. growth, employment, cohesion, environment)?
- (2) Is the aid well designed to deliver the objectives of common interest, *i.e.* does the proposed aid address the market failure or other objective?
 - (i) Is state aid an appropriate instrument?
 - (ii) Is there an incentive effect, *i.e.* does the aid change the behaviour of the firms?
 - (iii) Is the aid measure proportional, *i.e.* could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

The conditions set out in Section 5 of the R&D&I Guidelines which are described below (section 4.1) will have to be met in all cases irrespective of the potentially distortive effect of the aid measure.

Regarding the incentive effect, the R&D&I Guidelines provide for different levels of assessment depending on the amount of the aid and its potentially distortive effect; in some cases, a legal presumption will be applicable, in other cases, a more detailed assessment will be required.

3.1. Conditions applicable to innovation clusters

Section 5.8, paragraphs 117 and following provides that “*operating aid for cluster animation may be granted to the legal entity operating the innovation cluster. Such aid must be temporary and, as a general rule, must be abolished over time, so as to provide an incentive for prices to reflect costs rapidly.*”

Such aid may be granted for a limited duration of five years where the aid is degressive. Its intensity may amount to 100% the first year but must have fallen in a linear fashion to zero by the end of the fifth year. In the case of non-degressive aid, its duration is limited to five years and its intensity must not exceed 50% of the eligible costs. In duly justified cases, and on the basis of convincing evidence provided by the notifying EFTA State, aid for cluster animation may be granted for a longer period of time, not exceeding ten years. (Emphasis added)

The Norwegian authorities have confirmed that the aid scheme covers operating aid.

3.1.1. Eligible costs

Paragraph 119 of the R&D&I Guidelines provides that: “*the eligible costs shall be the personnel and administrative costs relating to the following activities:*”

- *marketing of the cluster to recruit new companies to take part in the cluster,*
- *management of the cluster’s open-access facilities,*
- *organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster.”*

The Authority finds that the eligible costs that will be taken into account by the Norwegian authorities (see above section 2.2.4) will be in line with the terms of the R&DI Guidelines.

3.1.2. Aid intensities

Paragraph 118 of the R&D&I Guidelines provides that *“in the case of non-degressive aid, its duration is limited to five years and its intensity must not exceed 50% of the eligible costs”*. (Emphasis added)

The R&D&I Guidelines provide however that *“in duly justified cases, and on the basis of convincing evidence provided by the notifying EFTA State, aid for cluster animation may be granted for a longer period of time, not exceeding ten years”*.

The Norwegian authorities have confirmed that the maximum aid intensities shall be 50% of the eligible costs. Regarding innovation clusters financed under the ARENA programme, the Authority has taken note of that the maximum duration of the financial support will be five years. Regarding innovation clusters under the NCE programme, the Norwegian authorities have confirmed that the financial support may be granted for a period of up to ten years. The Norwegian authorities have, however, confirmed that at the end of the first three year contract, the support will be continued only if evidence is given that specific conditions are met (see above section 2.2.4).

The Authority finds that the conditions regarding aid intensities and the duration of the support are fulfilled.

3.2. Incentive effect

Paragraph 128 of the R&D&I Guidelines provides that *“when assessing an aid scheme, the conditions relating to the incentive effect shall be deemed to be satisfied if the EFTA State has committed itself to grant individual aid under the approved aid scheme only after it has verified that an incentive effect is present and to submit annual reports on the implementation of the approved aid scheme. In the annual reports, the EFTA State must demonstrate how it has assessed the incentive effect of the aid before granting the aid through the use of the quantitative and qualitative indicators given above”*. (Emphasis added)

The Norwegian authorities have confirmed that they will *“through the selection process, verify that an incentive effect of the aid is present. The Norwegian authorities also commit to submit annual reports on the implementation of the approved aid scheme. In said reports, the Norwegian authorities will demonstrate how they have assessed the incentive effect ex ante, through the use of the quantitative and qualitative indicators, such as increase in project size, in particular as regards the increase in R&D-personnel, and the increase in total amount spent on R&D&I, as compared to the turnover”*.

Section 7 of the R&D&I Guidelines provides that the Authority will carry out a more detailed assessment where the aid amount exceeds for innovation clusters EUR 5 million per cluster.

The Norwegian authorities have confirmed that this threshold should never be met (see above Section 2.2.4). They have however committed to notify any project with an aid amount exceeding EUR 5 million.

The Authority is satisfied that the Innovation Cluster scheme fulfils the conditions set by the R&D&I Guidelines regarding incentive effect.

3.3. Cumulation

The Norwegian authorities are reminded that the aid ceilings fixed under the R&D&I Guidelines shall apply regardless of whether the support for the aided project is financed entirely from state resources or is partly financed by the European Union, except in the specific and limited context of the conditions established for European Union funding under the RTD framework programmes.

The Norwegian authorities have confirmed that the financial support provided under the Innovation Cluster scheme will be offered by several types of state resources. In addition to Innovation Norway, Norwegian counties and municipalities may co-finance projects within the NCE and ARENA programmes. The Norwegian authorities have however confirmed that the maximum 50% aid intensity will apply regardless of the origin of the financial support. Similarly, the Norwegian authorities have confirmed that the aid provided under the Innovation Cluster scheme will not be cumulated with *de minimis* support in respect of the same eligible costs.

4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the Innovation Cluster scheme which the Norwegian authorities are planning to implement is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

The Norwegian authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

The Norwegian authorities are further reminded that the R&D&I Guidelines will be applicable until 31 December 2013.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority concludes that the aid is compatible with the EEA Agreement and raises no objections to the Innovation Cluster scheme provided for on the basis of Article 61(3) c) of the Agreement.

Article 2

The implementation of the measure is authorised accordingly.

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, on 26 January 2011.

For the EFTA Surveillance Authority

Per Sanderud
President

Sabine Monauni-Tömördy
College Member