

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 16 March 2016  
raising no objections to an aid scheme for investment in a European Rail Traffic  
Management System (“ERTMS”)  
(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 49 and 61,

Protocol 26 to the EEA Agreement,

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,

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,

Whereas:

## **I. FACTS**

### **1. Procedure**

- (1) Following pre-notification discussions, the Norwegian authorities notified a scheme for investment in a European Rail Traffic Management System, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 16 February 2016. By letter dated 29 February 2016 the Norwegian authorities provided additional information.

### **2. The notified measure**

- (2) The Norwegian authorities have notified a scheme to grant investment aid for a European Rail Traffic Management System (“ERTMS”).

### 3. Background

- (3) The Norwegian authorities have decided to implement a standardised European Rail Traffic Management System, ERTMS.<sup>1</sup> ERTMS is a common interoperable system for rail traffic management in Europe. It reduces the need for voluminous trackside equipment and entails reduced disturbances as well as reduced maintenance costs for the rail infrastructure manager. It requires the installation of new equipment trackside and onboard the vehicles.
- (4) ERTMS is scheduled to replace the currently used Automatic Train Control (“ATC”) system which, like ERTMS, is installed both trackside and onboard the vehicles. Vehicles currently using the ATC system will not be able to operate on railway lines that have replaced the ATC system with ERTMS. The Norwegian authorities is of the view that aid is needed in order to provide the rail vehicle owners that regularly operate on the Norwegian rail network with an incentive to equip their vehicles with ERTMS.

### 4. Legal basis and the administration of the scheme by Jernbaneverket

- (5) The national legal basis for the scheme will be a decision by the Norwegian Parliament implementing the scheme in accordance with Jernbaneverket’s guidelines, Aid Scheme for ERTMS Onboard Equipment (“the ERTMS Guidelines”). The scheme is also based on the ERTMS National Implementation Plan.<sup>2</sup>
- (6) The scheme will be administered by Jernbaneverket (the Norwegian National Rail Administration), which is a public administrative body responsible for the management of the national railway network in Norway.
- (7) The application process is designed as follows. Vehicle owners submit preliminary applications for aid to Jernbaneverket specifying all vehicles intended for retrofitting. Jernbaneverket processes the applications on the basis of the eligibility criteria set out in the ERTMS Guidelines. After signing a contract with a supplier of on-board equipment (onboard contract), the vehicle owner can submit a definitive application for aid. The application shall contain a list of committed vehicles and a time schedule conforming to the milestones in the rollout plan (see paragraph (10)). On the basis of the application Jernbaneverket makes a decision on the basis of the eligibility criteria in the ERTMS Guidelines.
- (8) Aid grants are based on documented eligible costs. Payments are made on a quarterly basis. In case a vehicle owner submits incomplete or incorrect information and this results in excessive aid being granted, a system of recovery is in place. A vehicle owner that has received excessive aid cannot receive further aid until that aid has been recovered.

### 5. Technology provider

- (9) Jernbaneverket intends to enter into an onboard agreement with a single provider of ERTMS onboard equipment. The supplier will be selected on the basis of an open tender procedure in accordance with EEA public procurement rules. The equipment will have to be approved by the National Safety Authority in accordance with the Regulation on vehicles on the national rail network.<sup>3</sup>

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<sup>1</sup> The Norwegian authorities have decided to implement ERTMS Baseline 3 (version 3.5.0).

<sup>2</sup> Adopted by Jernbaneverket, dated 9.7.2013, document number ERP-00-A-00001, revision 00E.

<sup>3</sup> FOR-2012-06-21-663.

- (10) The Norwegian authorities have explained that having a single provider will facilitate the implementation of ERTMS. It is the view of the Norwegian authorities that a single supplier model will lead to economic efficiencies and that both project cost and complexity inevitably increases with multiple suppliers, on-board systems, developments and approval processes. Project milestones will be set in a roll out plan.
- (11) This supplier solution does not, however, exclude other technology providers. As set out below, vehicle owners can, subject to certain conditions, opt for another provider/technology.

## **6. Beneficiaries and criteria for eligibility**

- (12) All owners of vehicles that operate on the Norwegian national railway network are eligible for aid under the scheme, regardless of ownership and nationality.
- (13) Although the scheme is directed towards vehicle owners, eligible costs incurred by non-owner operators of the vehicles can qualify for aid. In any event, it is the vehicle owner that applies for aid and is responsible for documenting the eligible costs.
- (14) Vehicle owners applying for aid have to enter into agreements with Jernbaneverket specifying the vehicles where ERTMS will be implemented. They must furthermore sign a contract (a firm order for retrofitting) with a supplier of on-board equipment (onboard contract).
- (15) The following vehicle types are eligible for aid: passenger locomotives/trains, freight locomotives, shunting locomotives,<sup>4</sup> salvage locomotives<sup>5</sup> and rescue trains<sup>6,7</sup>.
- (16) Vehicle owners may apply for aid to vehicles that operate on the Norwegian national railway network. A vehicle that will be active on the railway network during the so-called timetable period R16 (December 2015 to December 2016) will be considered to meet that criteria.<sup>8</sup>
- (17) As for beneficiaries who carry out a considerable part of their activities outside Norway, Jernbaneverket has formulated a set of principles to ensure that the scheme covers only a number of vehicles that is proportionate to the undertakings actual activities in Norway.<sup>9</sup>
- (18) Vehicle owners can purchase and install an on-board system from any supplier. In order to be eligible for aid the vehicle owner choosing an on-board system from another supplier

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<sup>4</sup> Used for moving vehicles in and between terminals and stations. The Norwegian authorities regard this as freight traffic.

<sup>5</sup> Used for clearing tracks after breakdowns or accidents. The Norwegian authorities regard this as freight traffic.

<sup>6</sup> Used for evacuation of passengers in case of breakdowns. The Norwegian authorities regard this as passenger traffic.

<sup>7</sup> On track machines (OTM) are used for track maintenance and construction works. They are not eligible for aid under the scheme. Large OTMs are towed to the work sites, they therefore have no use for ERTMS. When Jernbaneverket uses privately owned OTMs, it will carry the cost of the ERTMS installation on a contractual basis. Jernbaneverket will carry the cost of installing ERTMS in the OTMs and museum locomotives that it owns, they will therefore not be eligible for aid under the scheme. Shunting locomotives operated on Jernbaneverket's license is not regarded as engaging in freight traffic and is therefore not eligible for aid under the scheme.

<sup>8</sup> A vehicle that will replace an existing eligible vehicle that operates on the Norwegian rail network during the timetable period R16 may be eligible for aid. The vehicle owner will not be eligible for aid for both the existing vehicle and the replacement vehicle.

<sup>9</sup> Section 6.2.1 of the ERTMS Guidelines.

(self procurement) would have to demonstrate that it will be able to meet the milestones of the roll out under the single supplier model and that choosing another system could entail that the owner could upgrade existing ERTMS equipment, achieve system similarity in its own fleet and show other time and cost gains. Applications for aid for vehicles not following the single supplier model must be submitted before the single supplier contract is awarded. The system has to be compatible with ERTMS version 3.5.0, as implemented by Jernbaneverket. Like the technology provided under the single supplier model, the equipment will have to be approved by the National Safety Authority in accordance with the Regulation on vehicles on the national rail network. If the on-board system has been approved in another EEA State, a simplified procedure applies.

- (19) The Norwegian authorities estimate the number of vehicle owner beneficiaries to between 3 and 30. The estimated number of vehicles fitted with ERTMS under the scheme is 250 to 700.

## 7. Eligible costs

- (20) With the aid measure, the Norwegian authorities aim to cover the transition cost arising as a result of the transition to ERTMS in Norway. The following direct investment costs associated with the deployment (projecting and installation) of ERTMS are eligible for aid under the scheme:

- Vehicles taken out of operation for installation of ERTMS. This includes costs for replacement vehicles. Indirect costs such as forgone revenue is not eligible.
- Moving vehicles to and from depot/workshop/test area (both vehicle and driver cost).
- Alteration of vehicles facilitating ERTMS installation.
- First of Class and series installation (specific design, ERTMS and STM equipment, removal of ATC, installation, testing, approvals, management and administration).
- Project management, technical work, installation, testing, documentation, follow-up and approval process.
- Relevant training.

- (21) Only costs incurred (i) after the signing of the onboard contract and (ii) after the date of the definitive application for aid are eligible for aid. In the case of self procurement (as referred to in paragraph (18)) the signing of a corresponding contract is the starting point. Costs associated with subsequent operations or repairs of the equipment are not regarded as eligible investment costs.

## 8. Aid instrument, intensity, budget, duration, cumulation and transparency

- (22) The aid will take the form of direct grants. The maximum aid intensity is 50% of the eligible cost. The maximum aid amount is NOK 5 million per First of Class installation and NOK 2 million per serial installation.
- (23) The budget of the scheme is NOK 1 331 million, which amounts to EUR 138 million.<sup>10</sup>
- (24) The duration of the scheme is five years, from 1 July 2016 until 1 July 2021.

<sup>10</sup> Using the Authority's 2016 conversion rate of EUR 1 = NOK 9.6475. The Authority's conversion rates are available at the following url. <http://www.eftasurv.int/state-aid/rates/>.

- (25) The Norwegian authorities have confirmed that Jernbaneverket will ensure that aid under the scheme will not be cumulated with other forms of aid or financing from other EEA States or the EU, if such aid would lead to a higher level of aid than 50% of the eligible costs.
  
- (26) The Norwegian authorities will comply with the general state aid transparency requirements by publishing the full text of the aid scheme and making necessary disclosures on a central website.

## II. ASSESSMENT

### 1. The concept of state aid

(27) 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.”*

(28) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage to an undertaking; (iii) has an impact on trade between Contracting Parties and is liable to distort competition.

### 2. The notified measure involves state aid

(29) The funds disbursed under the scheme are controlled by Jernbaneverket. They therefore qualify as state resources.

(30) The recipients of the funds are, as described above, owners and/or operators of railway vehicles active on the Norwegian market. These undertakings provide railway passenger transport and freight services or lease out railway vehicles for remuneration and are as such undertakings carrying out an economic activity on a market. Only undertakings that carry out activities on the Norwegian national railway network are eligible for aid, undertakings operating other modes of transport or in other EEA rail markets are not eligible for aid under the scheme, the notified measure is therefore selective.

(31) The notified measure covers by way of a direct cash grant up to 50% of the cost of installing the on-board ERTMS, a cost the vehicle owners themselves would have to cover had the Norwegian authorities not implemented the aid measure. The notified measure therefore entails an advantage conferred to the beneficiaries of the scheme.

(32) The notified measure is open to all vehicle owners that are active on the Norwegian national rail network. These are transport companies that not only compete with companies providing other modes of transport in the intra-EEA market, but also with other transport operators active in other EEA States. In light of this, the Authority is of the view that the notified measure threatens to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

(33) On the basis of the above the Authority concludes that the notified measure involves state aid.

### 3. Procedural requirements

(34) 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”*.

- (35) By submitting a notification and by not putting the scheme into effect prior to the Authority's approval, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

#### 4. Compatibility of the aid

- (36) According to Article 49 of the EEA Agreement:

*“Aid shall be compatible with this Agreement if it meets the needs of coordination of transport (...)”*

- (37) In the Guidelines on state aid to railway undertakings (“SARU”)<sup>11</sup> the Authority has set out the conditions it will apply when assessing the compatibility for transport coordination<sup>12</sup> under Article 49 of the EEA Agreement.
- (38) The Authority notes that ERTMS is a European Union backed initiative to enhance cross-border interoperability with the view to creating a common European standard for train control and command systems. Aid for the deployment of ERTMS therefore qualifies as interoperability aid for transport coordination.<sup>13</sup>
- (39) The Authority is satisfied that the eligible costs, as set out in chapter I.7 are limited to investment associated with the deployment of ERTMS in accordance with paragraph 106 of the SARU.
- (40) Paragraph 107(c) of the SARU clarifies that there is a presumption of necessity and proportionality of the aid when its intensity stays below 50% for interoperability aid. The Norwegian authorities have limited the aid intensity to 50%. Thus, the Authority, in accordance with the presumption principle laid down in the SARU concludes that the aid is both necessary and proportionate. The Norwegian authorities have in any event argued that the railway undertakings, in the absence of a scheme, would have had to increase prices significantly in order to recoup the costs associated with the installation of ERTMS onboard equipment. This would likely have driven customers to other, less environmentally friendly means of transport, such as road. In the view of the Authority, this demonstrates that the aid has the effect of encouraging the modal shift to rail in accordance with paragraph 110 of the SARU.
- (41) The Norwegian authorities have confirmed that Jernbaneverket will ensure that aid under the scheme will not be cumulated with other forms of aid or financing from other EEA States or the EU, if such aid would lead to a higher level of aid than 50% of the eligible costs. On this basis, the Authority is satisfied that the condition on cumulation in paragraph 124 of the SARU is met.
- (42) By limiting the duration of the scheme to 5 years, the Authority is satisfied that the Norwegian authorities have complied with the requirement set out in paragraph 97 of the SARU.
- (43) The Norwegian authorities will comply with the transparency requirements by publishing the full text of the aid scheme and making necessary disclosures on a central website.

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<sup>11</sup> OJ L 105 21.4.2011 p. 48.

<sup>12</sup> See para. 87 of the SARU. See also para. 106 of the SARU which specifically refers to ERTMS.

<sup>13</sup> See para. 98(c) of the SARU.

## 5. Conclusion

- (44) On the basis of the foregoing assessment, the Authority considers that the notified measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.
- (45) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

### *Article 1*

The aid scheme for investment in European Rail Traffic Management System (“ERTMS”) is compatible with the Article 49 of the EEA 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.

Done in Brussels, on 16 March 2016.

*For the EFTA Surveillance Authority*

Sven Erik Svedman  
*President*

Frank Buechel  
*College Member*

Helga Jónsdóttir  
*College Member*

*This document has been electronically signed by Sven Erik Svedman, Frank Buechel, Helga Jonsdottir on 16/03/2016*