

EFTA SURVEILLANCE AUTHORITY DECISION

of 29 March 2017

on alleged aid involved in an exemption from air passenger tax for departures from Norwegian airports

(Norway)

The EFTA Surveillance Authority (“the Authority”),

Having regard to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

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 Articles 13(1) and 4(2) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) On 9 March 2016, the Authority sent an information request to the Norwegian authorities, concerning the exemption from the air passenger tax for transit and transfer passengers (“the exemption for transit and transfer passengers” or “the exemption”), inviting the Norwegian authorities to pre-notify the exemption.¹ By letter dated 13 April 2016, the Norwegian authorities pre-notified the exemption.² By letter dated 2 May 2016, the Norwegian authorities provided additional information.³ In a telephone conference on 12 May 2016, the Authority informed the Norwegian authorities that it did not consider the exemption for transit and transfer passengers to involve state aid.

¹ Document No 796459.

² Document No 800600.

³ Document No 803204.

- (2) By letter dated 8 June 2016,⁴ the Federation of Norwegian Aviation Industries, NHO Luftfart (“the complainant”) complained to the Authority that the exemption for transit and transfer passengers constitutes unlawful state aid.
- (3) By letter dated 10 June 2016,⁵ the Authority forwarded the complaint to the Norwegian authorities and invited them to submit observations, which they did by letter dated 24 June 2016.⁶
- (4) On 4 November 2016, the complainant provided additional information.⁷

2 Description of the measure

2.1 The air passenger tax

- (5) The air passenger tax was adopted by the Norwegian Parliament on 14 December 2015 and entered into force on 1 June 2016. The conditions for the application of the tax are set out in section 3-22 of Regulation no. 1451 from 11 December 2001 on excise duties (“the Regulation”).⁸
- (6) The air passenger tax was not prepared and proposed by the Government as a part of the budget for 2016, but was adopted by the Parliament as a result of the budget negotiations between the political parties Høyre, Fremskrittspartiet, Kristelig Folkeparti and Venstre to balance the state budget 2016.⁹ The Norwegian authorities have explained that the objective of the air passenger tax is to generate revenue for the State. The tax is levied on the airlines. Norwegian excise duties are based on the principle of self-assessment and self-declaration. This entails that an airline that declares a flight without air passenger tax to the authorities must be able to prove that the exemption applies.¹⁰
- (7) The passenger tax is levied on all commercial flights¹¹ departing from Norwegian airports.¹²
- (8) The tax amounts to NOK 80¹³ per passenger¹⁴ commencing a flight subject to the tax, irrespective of the distance travelled.¹⁵

2.2 The exemption for transit and transfer passengers

- (9) The Regulation provides for an exemption for transit and transfer passengers.¹⁶ The terms describe a passengers’ consecutive flights using the same aircraft (transit) or another aircraft (transfer).¹⁷

⁴ Documents No 807510 – 807515. On 10 June 2016, the complainant forwarded an annex missing from the complaint (Documents No 807864 and 819315).

⁵ Document No 807877.

⁶ Documents No 810036 – 810037.

⁷ Documents No 825141 and 832174 – 832175.

⁸ Forskrift 11. desember 2001 nr. 1451 om særavgifter.

⁹ See Innst. 3 S (2015-2016) <https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2015-2016/inns-201516-003.pdf>.

¹⁰ Article 2-8 of the Regulation.

¹¹ “Commercial flights” are all flights except for military flights and flights for rescue, emergency – or ambulance services, see Article 3-22-1(2) of the Regulation. The tax is applied to flights by airplane and helicopter.

¹² Flights from the continental shelf and from airports on Svalbard, Jan Mayen and the Norwegian dependencies are exempt, see Article 3-22-1(1) of the Regulation.

¹³ NOK 88 including VAT.

¹⁴ Passengers under the age of two are exempted from the air passenger tax, see Article 3-22-4 of the Regulation.

¹⁵ Article 3-22-2 of the Regulation.

- (10) The tax is levied on a passenger on the first flight of a transit or transfer journey, departing from a Norwegian airport, but consecutive flights are exempted from the tax.¹⁸ As demonstrated in the table below, the air passenger tax is not levied on passengers which commence their journey from outside of Norway. The second leg of such a journey (for instance on the route London – Oslo – Trondheim) would not be subject to the air passenger tax as it is only applied to the first flight in a transit or transfer journey.
- (11) For the exemption to apply, the consecutive flight must be scheduled to start within 24 hours after the preceding one and be directly linked to that flight.¹⁹ The travel documents should display departure and arrival airports, departure and arrival dates and times for all flights in accordance with a timetable, the flights' connections and itinerary.²⁰
- (12) The following table demonstrates how the air passenger tax is applied to direct flights and to transit or transfer flights which fall under the exemption for transit and transfer passengers:

Oslo → Bodø	Air passenger tax: 80 NOK
Oslo → Trondheim → Bodø	Air passenger tax: 80 NOK
London → Oslo	Air passenger tax: 0 NOK
London → Oslo → Trondheim	Air passenger tax: 0 NOK
Trondheim → Oslo → London	Air passenger tax: 80 NOK

3 The complaint

- (13) The complainant is an organisation that supports aviation industry companies in Norway. The complainant alleges that the exemption constitutes state aid because it is drafted in such a manner that only airlines that have entered into interlining agreements will be able to benefit from the exemption. The complainant submits that this form of cooperation is primarily compatible with the business model of airlines which operate various networks and serve multiple destinations from their respective hubs and gateways as opposed to airlines which supply single flights and rely on passenger's ability to self-connect.²¹ In addition, the complainant alleges that the process of entering into the interline relationship is lengthy and will take about one year.²²
- (14) The complainant submits that the air passenger tax should be considered an environmental tax under EEA law. In the complainant's view, the mere fact that an excise duty is intended to raise fiscal revenue does not mean that it cannot be considered to pursue environmental objectives. In this context, the complainant notes that the tax measure has been presented and referred to, by prominent politicians in the Government and the Parliament, as an environmental measure during the legislative process under which the

¹⁶ Article 3-22-5 of the Regulation.

¹⁷ Article 3-22-5(1) of the Regulation.

¹⁸ Article 3-22-5(2) of the Regulation.

¹⁹ The Norwegian authorities have explained that the exemption will still be applicable if the flight is delayed.

²⁰ Article 3-22-5(3) of the Regulation.

²¹ The complainant also noted that these airlines operate in a market of fierce competition and many are unwilling to enter into cooperation with other airlines in the market whereby one might risk disclosure of sensitive information.

²² The complainant further noted that he is not aware of any charter airline operators that have entered into interlining agreements, nor any interlining agreements between helicopter companies operating flights to the North Sea, and assumes that an interlining agreement is not easily reconcilable with the business model of those companies. Furthermore, after the entry into force of the air passenger tax, no airlines operating in Norway have entered into new interlining agreement.

exemption was adopted. The complainant claims that the environmental objectives or effects of a tax measure cannot be ignored when assessing the compatibility of an exemption to the tax measure, regardless of whether the State chooses to formally define the measure as a pure fiscal tax or an environmental tax.

- (15) The complainant therefore claims that the question is whether the exemption for transit and transfer passengers is justified by the nature or general principles of the air passenger tax, taking into account the environmental objective the air passenger tax pursues. The environmental impact of air travel does not depend on whether the airline has entered into an interlining agreement (or another form of cooperation agreement). The exemption of transfer and transit passengers can therefore not be justified within the nature and logic of the passenger tax system.
- (16) The complainant further contends that even if the Authority disregards the environmental objective of the measure, the exemption will nevertheless constitute a selective measure under Article 61(1) of the EEA Agreement. In the complainant's view, the effects of the exemption are such that the exemption is inconsistent with the objective to prevent double taxation and ensure tax neutrality.
- (17) The complainant claims that in many situations the tax exemption is not consistent with the objective to prevent double taxation. For example, on a journey Oslo – Bergen – London, air passenger tax will be payable once on the departure journey but the return journey is completely exempted from air passenger tax. Thus, in many cases the effect of the measure is no taxation, and not the prevention of double taxation.
- (18) In this context, the complainant notes that a European-wide air passenger tax has never been implemented and today only a handful of countries have imposed taxes similar to the one Norway has introduced. Consequently, the effect of the exemption from the Norwegian air passenger tax will in the majority of cases be a total exemption and not the prevention of double taxation.

4 Comments by the Norwegian authorities

- (19) The Norwegian authorities submit that the exemption does not involve state aid as the selectivity criterion of Article 61(1) of the EEA Agreement is not fulfilled.
- (20) The Norwegian authorities explain that the tax is to be levied on what is one journey from an airport in Norway. The technical solution to achieve this is to levy tax on all departures and to exempt transit and transfer flights to avoid double taxation and accumulation of tax.
- (21) In the view of the Norwegian authorities, a journey must be considered as a whole – in the same way as a metro ticket is paid only once even though the passenger may change lines to reach the final destination. An exemption for transit and transfer passengers will prevent multiple taxations for the same travel (accumulation of tax).²³
- (22) The Norwegian authorities explain that the purpose of the air passenger tax is to generate revenue for the State. To be classified as an environmental tax, according to the Norwegian authorities, the tax measure must either reflect external costs, target a specific environmental objective or at least be framed according to an environmental purpose.²⁴

²³ In this context, the Norwegian authorities note that without the exemption, passengers could be motivated to choose travels without stopovers.

²⁴ The Norwegian authorities refer to Decision of the Commission of 13 July 2011 in case SA.25254 - the Netherlands Air Transport – Exemption from air passenger tax, where the Commission did not consider the

The air passenger tax is levied with the same rate on all flights, regardless of the flight distance, the environmental state of the aircraft, fuel usage, noise levels or other environmental criteria. The Norwegian authorities therefore submit that the air passenger tax is not an environmental tax.

- (23) The Norwegian authorities acknowledge that the passenger tax may have certain positive effects on the environment, as it is often the case with excise duties, but that this does not change the fact that the main purpose is to raise revenue for the state.
- (24) In the light of the above, the Norwegian authorities consider the exemption for transit and transfer passengers to be within the nature and logic of the tax system. The air passenger tax is to be levied once for each journey which contributes to tax neutrality and prevents double taxation. The Norwegian authorities note that the exemption in certain cases may lead to zero taxation. This would be the case, for instance, on a journey from London to Trondheim with a stopover in Oslo. This is only due to the fact that the tax merely applies to flights from Norwegian airports, i.e., not from London to Oslo. The exemption for the second flight (Oslo-Trondheim) is a result of the general rule that it is the first flight which is applicable to the tax. In the opinion of the Norwegian authorities, the exemption causes a great extent of tax neutrality and prevents more double taxation than the opposite (no exemption). Furthermore, the Norwegian authorities note that the journey from London will be taxable in the UK, because of the UK air passenger tax.
- (25) The Norwegian authorities acknowledge that the exemption for transit and transfer passengers may have different consequences for different airlines. However, the exemption is, in principle, open to all airlines. As for all excise duties, taxable persons applying an exemption must be able to prove that the conditions for the exemption are fulfilled. It is up to the tax subject to decide whether they will invoke the exemption or not. If they do apply it, they decide themselves how they will document that the relevant conditions are fulfilled. The Regulation does not require an interlining agreement. Other less extensive agreements – for instance, to exchange information – may be sufficient.
- (26) The Norwegian authorities therefore submit that the information required is necessary in order to assess whether the conditions for the exemption are fulfilled or not. The airlines are free to provide any documentation that shows the connection between the flights. The tax exemption leads to revenue loss and in the opinion of the Norwegian authorities, the documentation requirements are reasonable and justified.

II. ASSESSMENT

1 The presence of state aid

- (27) According to Article 61(1) of the EEA Agreement a measure constitutes state aid if the following conditions are cumulatively fulfilled: (i) the measure is granted by the State or through state resources; (ii) confers a selective economic advantage to the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.

2 The exemption is not a selective measure

2.1 Introduction

- (28) In the following, the Authority sets out its reasoning why it has come to the conclusion that the exemption for transit and transfer passengers does not fulfil the selectivity criterion of Article 61(1) of the EEA Agreement.
- (29) The selectivity criterion distinguishes between (selective) state aid measures and measures of purely general application which do not favour only certain undertakings or the production of certain goods.²⁵ Advantages resulting from general measures applicable without distinction to all economic operators do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.²⁶

2.2 Reference system and possible derogation

- (30) In order to classify a tax exemption as “selective”, the Authority must begin its assessment by identifying the ordinary tax system applicable in the State concerned and demonstrate that the tax measure at issue is a derogation from that system, in so far as it differentiates between operators who, in the light of the objective pursued by that tax system, are in a comparable factual and legal situation.²⁷
- (31) Accordingly, the first step in the selectivity analysis requires the identification of the system of reference. The reference system is composed of a consistent set of rules that generally apply – on the basis of objective criteria – to all undertakings falling within its scope as defined by its objective. Typically, those rules define not only the scope of the system, but also the conditions under which the system applies, the rights and obligations of undertakings subject to it and the technicalities of the functioning of the system.²⁸
- (32) The air passenger tax is levied on all commercial flights departing from Norwegian airports. An exemption from the air passenger tax is provided for transit and transfer passengers in the sense that the first flight on a transit or a transfer journey, departing from a Norwegian airport, is liable to the tax, but all consecutive flights are exempted. In the absence of such an exemption, the relevant airlines would be liable for the payment of the tax for those transit and transfer passengers for each departure from a Norwegian airport.

²⁵ Judgment in *Air Liquide Industries and others*, Joined Cases C-393/04 and C-41/05, EU:C:2006:403, paragraph 32. See also the Authority’s Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (“the NoA”), section 5, available at: <http://www.eftasurv.int/media/esa-docs/physical/EFTA-Surveillance-Authority-Guidelines-on-the-notion-of-State-aid.pdf>.

²⁶ See Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 53 and the case law cited and judgment in *Commission v World Duty Free Groups SA and Others*, Joined Cases C-20/15 P and C-21/15 P, EU:2016:981, paragraph 56 and the case-law cited.

²⁷ Judgment in *Commission v World Duty Free Groups SA and Others*, Joined Cases C-20/15 P and C-21/15 P, EU:2016:981, paragraph 57 and the case-law cited.

²⁸ See the Authority’s Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (“the NoA”), section 5.2.3.1.

The Authority therefore considers the system of reference to be the taxation of air passengers departing from Norwegian airports.

- (33) The non-application of the air passenger tax to transfer and transit passengers constitutes a derogation from that system of reference. However, the fact that only taxpayers satisfying the conditions for the application of a measure can benefit from the measure cannot, in itself, make it a selective measure.²⁹ A condition for the application of a tax advantage may be grounds for a finding that the measure is selective, if those conditions lead to a distinction being made between undertakings which are, in the light of the objective pursued by the tax system, in a comparable factual and legal situation.
- (34) The Norwegian authorities have explained that the air passenger tax is to be levied on journeys from an airport in Norway. The legal and factual situation of airlines offering only single flights and airlines which also offer services that include transfer and transit flights, seem to differ in various respects. As the complainant has emphasised, the business models of these types of airlines are very different.
- (35) On the one hand, there are airlines that operate under the so-called “network-model”, whereby the airline operates various networks and serve multiple destinations from their respective hubs and gateways. These airlines, which are typically established providers, consider it attractive to afford their customers with an opportunity to purchase “single journeys”. On the other hand, there are also airlines operating under another business model, namely the “low-cost” model. Typically, the business idea of these airlines is to offer direct travels between airports at a lower price than traditional operators.
- (36) These “low-cost” airlines supply single flights, and rely on passengers’ ability to self-connect, rather than providing “single journeys” via a hub airport. When airlines offer passengers to purchase a “single journey” involving two or more transit or transfer flights, it is often sold as a single booking and passengers typically do not have to reclaim their luggage when transferring.
- (37) In the case at hand, the application of the exemption is independent of the business model pursued by the various airlines. In order to invoke the exemption in practice, the airline must be able to demonstrate that the passenger in question is, in fact, on a transit or a transfer flight. It is up to the airline to decide how the applicability of the exemption is established. Certain airlines that have in place cooperation agreements with other airlines, may be able to provide the necessary information more easily to demonstrate that the conditions for the exemption are fulfilled. However, as explained in further detail at paragraph 57 below, the Authority considers that the documentation requirements are necessary for the operability of the system and, given the flexibility offered, do not go beyond what is necessary to prove the applicability of the exemption. In the light of the above, the Authority does not consider that the exemption differentiates between economic operators who, in the light of the objective pursued by the tax system, are in comparable factual and legal situation and consequently confers an advantage on certain airlines.
- (38) In any event, a measure which derogates from the reference system (*prima facie* selectivity) is not selective if it is justified by the nature or general scheme of the system

²⁹ Judgment in *Commission v World Duty Free Groups SA and Others*, Joined Cases C-20/15 P and C-21/15 P, EU:2016:981, paragraph 59 and the case-law cited.

of which they form part.³⁰ The Authority will therefore assess whether the exemption can be justified by the logic and nature of the air passenger tax.

2.3 Justification by the logic and nature of the air passenger tax

- (39) Measures introducing a differentiation between undertakings when that differentiation flows from the nature or general structure of the system of which the measure form part, do not constitute state aid.³¹ This is the case where a measure derives directly from the intrinsic basic or guiding principles of the reference system or where it is the result of inherent mechanisms necessary for the functioning and effectiveness of the system.³²
- (40) It is for the EEA State that has introduced the differentiation to show that it is actually justified by the nature and logic of the system in question.³³ The need to avoid double taxation, to take into account administrative manageability and the principle of tax neutrality are recognised as grounds for justification.³⁴
- (41) In the case at hand, the complainant submits that the air passenger tax has a clear environmental objective beyond the mere fiscal objective of raising revenue for the State budget. According to the complainant, the purpose and effect of the air passenger tax is to impose a duty on non-environmental aviation activities and to change the behaviour of producers and consumers.
- (42) The complainant submits that the exemption is not consistent with the environmental objective of the air travel tax. It constitutes an unjustified tax differentiation to the detriment of airlines that are unable to benefit from the exemption, because they have not entered into an interlining agreement (or other form of cooperation) with other airlines, which allows them to benefit from the exemption.
- (43) The Norwegian authorities have explained that the air passenger tax is not an environmental tax. It is a fiscally motivated tax; its main purpose is to generate income to the State budget. The fact that it may have certain environmental effects does not change this.
- (44) The complainant and the Norwegian authorities have referred to the definition of the term “environmental tax” found in the Authority’s Guidelines on State aid for environmental protection and energy 2014-2020.³⁵ However, the definition therein is provided for the purposes of the application of those Guidelines and does, therefore, not provide sufficient guidance for defining the objectives of the measure at hand.
- (45) The Authority considers, in the context of a state aid assessment, that the determining factor in establishing the guiding principles of the reference system is the nature of the measure in question, i.e. the Norwegian air passenger tax. The Authority must assess whether the nature of the tax measure confirms the explanation provided by the

³⁰ Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, Joined Cases C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 75, judgment in *Commission v Hansestadt Lübeck*, Case C-524/14 P, EU:2016:971, paragraph 41 and case-law cited and judgment in *Ryanair v Commission*, Case T-512/11, EU:T:2014:989, paragraph 81. See also the NoA, section 5.2.3.3.

³¹ Judgments in *Portugal v Commission*, Case C-88/03, EU:C:2006:511, paragraph 81; and judgment in *Commission v World Duty Free Groups SA and Others*, Joined Cases C-20/15 P and C-21/15 P, EU:2016:981, paragraph 58 and the case-law cited.

³² See the NoA, paragraph 138 and the case-law cited.

³³ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 75.

³⁴ See the NoA, paragraph 139 and the case-law cited.

³⁵ Adopted by Decision No 301/14/COL (OJ L 131, 28.5.2015, p. 1 and EEA Supplement No 30, 28.5.2015, p. 1), point (14)(15).

Norwegian authorities, i.e. that the main objective of the tax measure is to generate revenue for the State. The tax is levied as a fixed amount per passenger regardless of the distance travelled. The tax therefore lacks any clear or proportional link to the reduction of energy use, pollution or gas emission, noise levels or other relevant factors to environmental protection. Accordingly, the Authority finds that the guiding principle of the system of reference is to tax air passengers, in order to raise revenue for the State.

- (46) Indeed, the tax can have indirect positive effects on the environment by way of decreased demand of air transport, due to an increased price for passengers. However, the fact that the tax can – like any other tax on transport – have certain positive effects on the environment does not change the fact that, according to its characteristics, its main purpose seems to be simply to generate revenue for the State. The fact that the air passenger tax has been referred to as an environmental measure during the legislative process and in the media, does not change this assessment when considered in the light of the above.³⁶
- (47) The Authority therefore needs to assess whether the exemption for transit and transfer passengers arises from the nature and logic of the reference system in the light of its guiding principles, i.e. raising revenue for the State.
- (48) It is not sufficient to rely on external policy objectives to justify a measure which derogates from the reference system.³⁷ Rather, the differentiation must relate to the logic of the system to which the measure belongs.³⁸ The relevant system must also be implemented such that the differentiation between undertakings is, in fact, consistent with the justification that is put forward.
- (49) The tax is to be levied on what is considered to be one journey from an airport in Norway. Accordingly, two or more flights which are part of the same journey should not be subject to the tax more than once. The Authority finds that the exemption for transit and transfer passengers is therefore consistent with the internal logic of the system as passengers are taxed the same way for each journey, regardless of the route travelled. The exemption contributes to the avoidance of accumulation of the tax and results in tax neutrality.
- (50) The Authority therefore considers that the non-application of the tax on transit and transfer flights passengers, which results in passengers being taxed the same way regardless of the route travelled, falls within the nature and logic of the relevant tax system.
- (51) As the Norwegian authorities have explained, the exemption in certain cases may lead to zero taxation. This could be the case, for instance, on a journey from London-Oslo-Trondheim. This is due to the fact that the air passenger tax is only applicable to flights departing from Norwegian airports, i.e. not when a flight departs from London to Oslo.

³⁶ As regards the classification of the tax measure, the same line of reasoning can be found in the Decision of the Commission of 13 July 2011 – State aid SA.25254 the Netherlands Air Transport – Exemption from air passenger tax, paragraph 27.

³⁷ See the NoA, paragraph 138 and the case-law cited.

³⁸ See, for instance, judgment in *Diputación Foral de Alava v Commission*, Joined Cases T-92/00 and T-103/00, EU:T:2002:61, paragraph 60 and case-law cited and judgment in *Ferring*, Case C-53/00, EU:C:2001:627, paragraph 17 and case-law cited.

- (52) The second flight (Oslo to Trondheim) is not subject to the air passenger tax as the tax is only applied to the first flight in a transit or transfer journey, all consecutive flights are exempted, which in this case, is the flight from London to Trondheim.³⁹
- (53) In the light of the above, the Authority considers that despite the fact that, in some instances, the exemption may result in zero taxation, it is in line with the nature and the logic of the reference system as it contributes to the avoidance of double taxation in instances where the airport of departure is located in a country which applies a similar air passenger tax.
- (54) The complainant alleges that only airlines that have entered into interlining agreements will be able to benefit from the exemption. Furthermore, that this form of cooperation is primarily compatible with the business model of airlines which operate various networks and serve multiple destinations from their respective hubs and gateways as opposed to airlines which supply single flights and rely on passengers' ability to self-connect.
- (55) The air passenger tax is levied on the airlines. If an airline declares a flight without air passenger tax to the tax authorities, the airline must be able to prove that the flight is entitled to exemption, as is the case with all excise duties.⁴⁰ In case of transit and transfer flights, this means that the airline applying the exemption must prove that the flight is connected to the previous one. It is up to the airline to decide how to document that it is entitled to apply the exemption. It is not a requirement that the information is contained in one single ticket or a single document; it is sufficient that several documents together contain such information. The airlines are not required to exchange information in a certain way or to carry out a specific form of cooperation. There is no obligation for the airlines to enter into certain contracts, such as interlining agreements.
- (56) The Authority notes that EEA States should introduce and apply appropriate control and monitoring procedures to ensure that derogations are consistent with the logic and general scheme of the tax system. For derogations to be justified by the nature or general scheme of the system, it is also necessary to ensure that those measures are proportionate and do not go beyond what is necessary to achieve the legitimate objective being pursued in that the objective could not be attained by less far-reaching measures.⁴¹
- (57) The travel documents should display departure and arrival airports for all flights, departure and arrival dates and times for all flights in accordance with a timetable, the flights' connections and itinerary. The Authority acknowledges that the requirements for the applicability for the exemption might affect airlines differently depending on their preferred business model. However, the Authority considers that the documentation requirements do not go beyond what is necessary to prove the applicability of the exemption. Documentation requirements are necessary for the operability of the system. For the exemption to apply, it needs to be demonstrated that the requirements are fulfilled, that is, that the flight in question is, in fact, a transit or a transfer flight. The Norwegian authorities have explained that airlines are free to provide any documentation that shows the connection between the flights. The fact that these requirements may result in certain airlines having practical difficulties in applying the exemption, is the result of an inherent mechanism necessary for the operability and effectiveness of the air passenger tax system.

³⁹ The Norwegian authorities have noted in this context that the journey from London in the example described, would be subject to air passenger tax in the United Kingdom.

⁴⁰ Regulation no. 1451 from 11 December on excise duties, Article 2-8.

⁴¹ See the NoA, paragraph 140 and case-law cited.

- (58) In the light of the above considerations, the Authority concludes that the exemption for transit and transfer passengers is not selective within the meaning of Article 61(1) of the EEA Agreement, since it is justified by the nature and logic of the system of air passenger tax.
- (59) As set out in section 1 of Part II, for a measure to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, all three conditions must be cumulatively fulfilled. Since the exemption for transit and transfer passengers is not a selective measure, it is not necessary to carry out an assessment with regards to the other conditions.

3 Conclusion

- (60) On the basis of the foregoing assessment, the Authority considers that the exemption for transit and transfer passengers does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The exemption set out in section 3-22-5 of Regulation no. 1451 from 11 December 2001 on excise duties for transit and transfer passengers from the air passenger tax, does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, on 29 March 2017

For the EFTA Surveillance Authority

Sven Erik Svedman
President

For Frank J. Büchel
College Member

This document has been electronically signed by Sven Erik Svedman, Helga Jonsdottir on 29/03/2017