

Case No: 63186  
Event No: 450292  
Dec. No. 659/07/COL

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 12 DECEMBER 2007  
on the “Nyvekst” scheme on State aid for newly established small enterprises  
(Norway)

THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>,

Having regard to the Agreement on the European Economic Area<sup>2</sup>, 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<sup>3</sup>, 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,

Having regard to the Authority’s Guidelines<sup>4</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the chapter on regional aid<sup>5</sup>,

Having regard to the Authority’s Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway<sup>6</sup>,

Having regard to the Authority’s Decision 228/06/COL of 19 July 2006 on the notified scheme concerning regionally differentiated social security contributions,

Whereas:

## I. FACTS

### 1. Procedure

By letter dated 15 October 2007 from the Norwegian Ministry of Government Administration and Reform forwarding a letter from the Ministry of Local Government and Regional Development dated 11 October 2007, both received and registered by the Authority on 15 October 2007 (Event No 447007), the Norwegian authorities notified the

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<sup>1</sup> Hereinafter referred to as “the Authority”.

<sup>2</sup> Hereinafter referred to as “the EEA Agreement”.

<sup>3</sup> Hereinafter referred to as “the Surveillance and Court Agreement”.

<sup>4</sup> 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 EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No 32. The Guidelines were last amended on 3 May 2007. Hereinafter referred to as “the State Aid Guidelines”.

<sup>5</sup> Hereinafter referred to as “the Regional Aid Guidelines”.

<sup>6</sup> The State aid decisions of the Authority can be found at our website: [www.eftasurv.int](http://www.eftasurv.int).

*Nyvekst* scheme on State aid for newly established small enterprises, pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

By letter dated 21 November 2007 (Event No 451408), the Authority requested additional information.

By letter dated 30 November 2007 from the Norwegian Ministry of Government Administration and Reform forwarding a letter from the Ministry of Local Government and Regional Development of the same date, both received and registered by the Authority on 30 November 2007 (Event No 455013), the Norwegian authorities replied to the information request.

## **2. Description of the proposed measures**

### **2.1 The objective of the scheme**

According to the notification, efforts to promote entrepreneurial activity are important in order to create jobs in the rural areas in Norway. Furthermore, evidence from Statistics Norway<sup>7</sup> indicates that the rate of start-ups in the area covered by the regional aid map for Norway<sup>8</sup> is substantially lower than in central regions in Norway. On average, the rate of start-ups is 40% lower in the assisted areas compared to the rest of Norway.

The notified *Nyvekst* scheme for newly established small enterprises is intended to stimulate the establishment of more profitable small enterprises in the assisted areas by providing economic support in the first years after their creation.

According to the notification, newly created small enterprises with growth potential often go through a long development phase before they realise their potential. In order for the enterprises to get through this phase, they need access to capital. By targeting enterprises in this critical phase, and providing aid for a broader range of costs than under other established schemes, the Norwegian authorities consider that the notified scheme will be an effective tool to stimulate successful entrepreneurship in the assisted areas in Norway.

### **2.2 National legal basis for the aid scheme**

The legal basis of the aid scheme can be found in the Norwegian State Budget for 2008.

### **2.3 Form of aid**

The aid will be granted in the form of direct grants and conditional grants.

### **2.4 Geographical scope**

The geographical scope of the scheme is the assisted areas in Norway, cf. the Authority's Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway.

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<sup>7</sup> Statistisk Sentralbyrå

<sup>8</sup> Cf. the Authority's Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway, hereinafter referred to as "the assisted areas".

## 2.5 Sectoral scope

The scheme is open to undertakings in all sectors, except for undertakings active in the production of the steel products referred to in Annex I to the Regional Aid Guidelines, undertakings active in the synthetic fibres sector as defined in Annex II to the Regional Aid Guidelines and for undertakings active in the shipbuilding sector, cf. the Authority's Guidelines on state aid to shipbuilding.

## 2.6 Beneficiaries

The aid beneficiaries under the scheme are small enterprises within the meaning of Article 2 of Annex I to Commission Regulation (EC) No 364/2004<sup>9</sup> with a registered location of business activity in the assisted areas in Norway. Aid under the scheme may only be granted to enterprises in the first five years after the creation of the enterprise.

The estimated number of beneficiaries is between 101 and 500.

Aid under the scheme will not be granted to small enterprises in which one or more shareholders which own at least a third of its capital are in parallel majority shareholders of another company that, in the previous twelve months, closed down or remained inoperative. A statement confirming that the abovementioned conditions will be respected will be provided by the shareholders in question.

The scheme will not apply to undertakings that are in difficulty within the meaning of the Authority's Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty.

## 2.7 Eligible costs

According to the notification, the costs eligible for aid under the scheme are legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise. This includes:

- Legal costs connected to the preparation of formal documents needed to establish and register the enterprise (in accordance with Norwegian Company Law);
- Charges related to the creation of the enterprise, for example charges for registering the company in a company register;
- Other advisory and consultancy expenditures and administrative costs limited to the actual creation of the enterprise, such as:
  - The use of advisors and consultants to choose whether to establish the company as a private limited company, a partnership or in another legal form;
  - Financial consultancy costs;
  - Costs related to the development of a business plan in connection with the creation of the enterprise.

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<sup>9</sup> The Regulation was incorporated in the EEA Agreement through Annex XV point 1f) by Joint Committee Decision No 131/2004 of 25.09.2004 (OJ L 64, 10.3.2005, p. 57 and EEA Supplement No 12 p. 42).

Furthermore, the following expenses are eligible for aid insofar as they are actually incurred within the first five years of the creation of the enterprise:

- Interests on external finance and a dividend on own capital employed not exceeding the reference rate;
- Fees for renting production facilities/equipment;
- Energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
- Depreciation, fees for leasing production facilities/equipment as well as wage costs including compulsory social charges may also be included provided that the underlying investments or job creation and recruitment measures have not benefited from other forms of aid.

Expenses due to environmental taxes will not be eligible for aid under the scheme.

## 2.8 Aid intensities

The aid ceiling under the scheme is based on the following three criteria: First, the aid intensity will not exceed 30% of the eligible expenses incurred in the first three years after the creation of the enterprise and 20% in the two years thereafter. Second, the total aid granted will not exceed Euro 1 million per enterprise. Third, the annual amounts of aid awarded will not exceed 33% of the total amount of EUR 1 million.

## 2.9 Cumulation

Aid granted under the scheme may only be cumulated with *de minimis* aid if this does not imply that the combined aid exceeds the aid intensities set out above.

Aid granted with regard to wage costs under the notified scheme may be cumulated with aid under the scheme concerning regionally differentiated social security contributions by employers<sup>10</sup>.

The maximum aid intensity under the established scheme concerning differentiated social security contributions ranges from 0% in the central parts of Norway (Zone 1) to 12.4% of the wage costs in the northernmost part of Norway (Zone 5). The Norwegian authorities wish to maintain the geographical differentiation of the social security contributions as set out in the Authority's decision on this scheme. Hence, the maximum aid for wage costs under the notified scheme will not be regionally differentiated, as this would lead to a situation where more aid is granted in the more centrally located regions than in the more remote regions.

In order to avoid any over-compensation of wage costs, the Norwegian authorities have decided that aid for wage costs under the notified scheme will not be eligible for a higher aid intensity than 17.6% for the first three years after the creation of the enterprise, and 7.6% in the following two years.

The table below sets out the aid intensities under the notified scheme and the scheme concerning regionally differentiated social security contributions for the first three years after the creation of the enterprise:

<sup>10</sup> Cf. the Authority's Decision 228/06/COL of 19 July 2006.

Zone	Rate for social security contribution %	Aid intensity social security scheme %	Aid intensity wage costs in notified scheme %	Aid intensity of notified scheme cumulated with social security scheme %
1	14.1	0	17.6	17.6
2	10.6	3.1	17.6	20.7
3	6.4	6.8	17.6	24.4
4	5.1	7.9	17.6	25.5
4a	7.9	5.4	17.6	23.0
5	0	12.4	17.6	30.0

#### 2.10 Budget and duration

The annual budget of the scheme is estimated to be of approximately NOK 100 million (approximately EUR 12.5 million).

The scheme will be in effect from 2008 until 2013.

#### 2.11 Administration of the scheme

The Ministry of Local Government and Regional Development is the authority responsible for the scheme. The scheme is funded by the Ministry of Local Government and Regional Development and by the county municipalities.

The scheme will be administered by Innovation Norway, a State agency. The scheme is discretionary and aid under the scheme is granted only upon application.

According to the notification, aid granted under the scheme should go to enterprises which are not able to develop their high growth potential due to lack of capital. The Norwegian authorities state that Innovation Norway will aim at identifying enterprises with internal resources such as human resources and competence, networks, structure capital, equipment and technology as well as the possibility to attract future investors in order to find enterprises with growth potential.

Innovation Norway will calculate the appropriate aid for each applicant on the basis of the information submitted by the applicant in the application for aid. The cost elements on the basis of which aid is granted will be specified in the decision to grant aid.

The beneficiary is required to document state aid from other sources received on the basis of costs included in the application for aid under the proposed scheme. Innovation Norway will request an auditor-confirmed overview of:

- Public funding and grant offer letters received on the basis of the same eligible costs as under the notified scheme;

- Public funding and grant offer letters received in the form of *de minimis* aid during the last three years;
- Other public benefits granted on non-commercial terms.

Innovation Norway will provide the applicants for aid under the scheme with information on what constitutes state aid and the implications with regard to cumulation of aid for the same eligible costs.

If the applicant has already received state aid for the costs eligible for aid under the notified scheme, the proportion of this aid of the total eligible cost will be subtracted from the total aid intensity foreseen by the scheme as well as from the total amount of aid foreseen by the scheme.

If the beneficiary has received state aid on the basis of job creation, wage costs for these jobs cannot be included in the eligible costs. If the beneficiary has received investment aid, the depreciation of the assets concerned cannot be included in the eligible costs.

Innovation Norway will provide a grant offer letter on the basis of an application by the enterprise and calculation of the eligible costs. On this basis, 50% of the aid will be disbursed up front based on an approved cost budget. The last 50% will be disbursed on the basis of documented costs. The final costs have to be documented by an auditor. The records of the payments will be maintained by Innovation Norway for ten years.

Wrongful information on the part of the applicant will lead to repayment of the aid that the applicant would not have received if he had submitted correct information.

## II. ASSESSMENT

### 1. The presence of State aid

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

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.”*

The notified aid is being funded by State resources in the form of budget allocations from the State and the county municipalities. State resources are thus involved. The scheme will favour certain undertakings in designated regions by relieving them of certain costs that they would normally have to bear themselves. The scheme is furthermore selective, as only undertakings located in certain of the regions in Norway that are eligible for assistance under Article 61(3)(c) of the EEA Agreement can receive aid under the scheme. Consequently, the aid strengthens the position of the beneficiaries in relation to their actual or potential competitors in the EEA, thus having an actual or potential distorting effect on competition within the EEA. In the eligible regions, the scheme applies to undertakings in different sectors. Some of these undertakings may be in competition with

undertakings in other EEA States. Hence, the 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 to the Surveillance and Court Agreement, *“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”*.

By submitting the notification for the aid scheme for newly created small enterprises with letters dated 15 October 2007 and 30 November 2007, and by not implementing the scheme until it has been approved by the Authority, the Norwegian authorities have complied with the notification and stand-still requirements.

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

## 3. Compatibility of the aid

### 3.1 Introduction

The Authority has assessed the compatibility of the proposed aid scheme for newly created small enterprises with Article 61(3)(c) of the EEA Agreement in light of the Regional Aid Guidelines. Article 61(3)(c) of the EEA Agreement concerns aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest of the Contracting parties to the EEA Agreement. Aid granted for regional development is assessed under the Authority’s State Aid Guidelines on Regional Aid.

### 3.2 Geographical delimitation

The scheme is limited to the assisted areas in Norway as defined in the Authority’s Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway.

### 3.3 Sectoral scope

The scheme is not sector specific, but, in general, open to undertakings in all sectors. An exception is made, however, for undertakings active in the production of the steel products referred to in Annex I to the Regional Aid Guidelines, undertakings active in the synthetic fibres sector as defined in Annex II to the Regional Aid Guidelines and for undertakings active in the shipbuilding sector, cf. the Authority’s Guidelines on state aid to shipbuilding.

That undertakings active in these sectors cannot benefit from the scheme is in line with paragraph 8 of the Regional Aid Guidelines.

### 3.4 Eligible applicants

The Norwegian authorities have confirmed that aid under the scheme will only be granted to small enterprises within the meaning of Article 2 of Annex I to Commission Regulation (EC) No 364/2004 with a registered location of business activity in the assisted areas in

Norway. Furthermore, aid will only be granted to enterprises in the first five years after the creation of the enterprise. This is in line with paragraph 75 and 76 of the Regional Aid Guidelines.

It follows from paragraph 80 of the Regional Aid Guidelines that the EFTA States should be aware of the risk of misuse of the aid for newly created small enterprises. On this basis, the Norwegian authorities have introduced a mechanism whereby aid under the scheme will not be granted to small enterprises in which one or more shareholders which own at least a third of its capital are in parallel majority shareholders of another company that in the previous twelve months closed down or remained inoperative. The Authority concludes that the mechanism introduced by the Norwegian authorities complies with the criteria set out in the Guidelines<sup>11</sup>.

Moreover, the Norwegian authorities have confirmed that the notified scheme, in line with paragraph 9 of the Regional Aid Guidelines, will not apply to undertakings that are in difficulty within the meaning of the Authority's Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty.

### 3.5 Eligible expenses

The Authority has assessed the eligible expenses under the scheme as listed above in Section 2.7 of this Decision. On this basis, the Authority concludes that the eligible costs are in line with paragraph 76 of the Regional Aid Guidelines.

### 3.6 Aid intensities

According to paragraph 77 of the Regional aid Guidelines, the aid intensity may not exceed 25% of eligible expenses incurred in the first three years after the creation of the enterprise, and 15% in the two years thereafter. However, it follows from paragraph 78 that these aid intensities are increased by 5%, i.a., in regions with a population density of less than 12.5 inhabitants/km<sup>2</sup>.

It follows from the Authority's Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway that the assisted areas in Norway in their entirety qualify for aid on the basis of a population density below 12.5 inhabitants/km<sup>2</sup>. On this basis, the Authority concludes that the top-up on the aid intensities which is set out in paragraph 78 of the Regional Aid Guidelines applies.

Therefore, the aid intensities set out by the Norwegian authorities whereby the aid intensity will not exceed 30% of the eligible expenses incurred in the first three years after the creation of the enterprise, and 20% in the two years thereafter are in line with the Regional Aid Guidelines.

Furthermore, it follows from paragraph 75 of the Regional aid Guidelines that the total aid must not exceed EUR 1 million per enterprise. The Norwegian authorities have confirmed that this condition will be complied with.

Lastly, the annual amounts of aid awarded under the scheme will not exceed 33% of the total amount of EUR 1 million. This is in line with paragraph 75 of the Regional Aid Guidelines.

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<sup>11</sup> Cf. in this regard Commission Decision N 203/2007 on a regional aid scheme for newly created enterprises in Murcia, Spain, not yet published.

### 3.7 Cumulation

In line with paragraph 79 of the Regional Aid Guidelines, the Norwegian authorities have put in place a system in order to ensure that the upper limits for the amount of aid and the relevant aid intensity in relation to the eligible costs concerned are not exceeded, cf. Section I.2.11 above.

The Norwegian authorities have furthermore confirmed that aid granted under the scheme will not be cumulated with other public support, including *de minimis* support, in order to circumvent the maximum aid intensities or amounts of aid laid down in the Regional Aid Guidelines.

### 3.8 Duration

The scheme will be in effect from 2008 until the expiry of the Regional Aid Guidelines in 2013.

## 4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the *Nyvekst* scheme for newly created small enterprises 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 to the Surveillance and Court Agreement in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme.

**HAS ADOPTED THIS DECISION:**

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the *Nyvekst* aid scheme for newly created small enterprises.

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, 12 December 2007

For the EFTA Surveillance Authority,

Per Sanderud  
President

Kristján Andri Stefánsson  
College member