Case No: 79421
Document No: 814392
Decision No: 165/16/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 12 September 2016

on the pricing mechanism for market loans of Export Credit Norway

(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,

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(2) of Part II,

Whereas:

I. FACTS

1 Procedure

(1) The Norwegian authorities notified for legal certainty the continued application of the existing pricing mechanism for Export Credit Norway, pursuant to Article 1(3) of Part I of Protocol 3, by letter dated and received on 1 August 2016.[1]

2 Description of the measure

2.1 Background

(2) Export Credit Norway is a state-owned limited liability company, established under the Norwegian Export Credit Act.[2] The main purpose of Export Credit Norway is to offer long-term financing to international buyers of Norwegian capital goods and services.

[1] Document No 813850, with annexes (Document Nos 813852 to 813867).
[2] Act of 22 June 2012 No 57.

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(3) The lending activities of Export Credit Norway are entirely financed by budget allocations from the Norwegian state.

(4) Export Credit Norway offers medium- to long-term export financing for up to 85% of the export contract value. It can issue both Commercial Interest Reference Rate ("CIRR") loans, which are priced according to the OECD arrangement on officially supported export credits[3]) and loans on market terms. The choice between these two types of loans is with the borrower. Export Credit Norway can only issue loans if there is a guarantee from the Norwegian Guarantee Institute for Export Credits ("GIEK") and/or highly rated financial institutions. Generally, loans have a maturity of between two and 12 years.

(5) The notification only relates to the pricing mechanism for loans on market terms.

2.2 Description of the pricing mechanism for market loans

(6) Export Credit Norway intends to continue using its existing pricing method for market loans, which is based on the following elements.

(7) Profit maximisation: Export Credit Norway operates as a market player and seeks to maximise profits in each transaction. The interest rate is commercially set and reflects what is considered to be the market price for similar loans.

(8) Coverage of base price: The interest rate covers at least Export Credit Norway's base price, i.e. all costs related to the loan and a reasonable margin. The base price is derived from the Norwegian Government Fixed rate yield curve and includes a market-based estimate of all relevant costs a private lender would take into account, including hedge/swap premiums. This base price is the absolute lowest lending price, even if the market price is considered to be lower.

(9) Use of market benchmarks: The interest rate is not set at a lower rate than the observed market prices for similar loans, which are used as benchmarks. There are mainly three sources of documentation for establishing the market price:

- If the loan is syndicated, Export Credit Norway gets a good and well documented indication of market terms in the relevant transaction through its participation, and this is used as a benchmark.

- If Export Credit Norway is not part of a bank syndicate, and a term sheet from a similar lender, no older that one month, is available, this is considered to be a good and well documented indication of market terms in the relevant transaction.

- The OECD publishes a margin benchmark for officially supported floating rate loans based on commercial banking prices for aircraft transactions on a monthly basis as part of its Sector Understanding for Financing of Civil Aircraft under the Arrangement ("the OECD Margin Benchmark"). It is compiled from all reported prices of officially guaranteed export loans issued by commercial providers from the last three months and calculated as an average of the lowest 50% of the observations. It represents publicly available documentation of market prices that can be used as a benchmark in all transactions if none of the other two benchmarks is available.

[3] Available at: http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=tad/pg(2013)1. CIRR rates are quoted on the 14th of every month and made publicly available on www.oecd.org.

(10) If no market benchmark is available, the Authority's reference rate is used as a fall-back.

2.3 Decision 127/13/COL and audit reports

(11) By its Decision 127/13/COL of 20 March 2013, the Authority found that the pricing mechanism of Export Credit Norway as described above does not constitute state aid. The Norwegian authorities committed to organising an annual independent audit of the functioning of the pricing mechanism. The pricing mechanism was furthermore made subject to a time limit of four years, after which it would be re-notified to the Authority and re-assessed based on the practical experience described in the audit reports.

(12) As part of the notification, the Norwegian authorities have submitted to the Authority the annual audit reports for the years 2013 (as from June) to 2015 concerning the pricing mechanism. These reports, first of all, confirm compliance with the pricing mechanism as set out in Decision 127/13/COL, in so far as all market loans were priced according to the applicable market benchmark and above the cost base. Furthermore, they show that the OECD Margin Benchmark was the applicable pricing floor for almost all the market loans granted by Export Credit Norway.[4] Finally, the reports show that in these cases, the market loans were consistently priced well above the pricing floor, and on average closer to the Authority's reference rate than to the OECD Margin Benchmark.

(13) In addition, the Norwegian authorities have provided a comparison of the actual prices charged by Export Credit Norway for market loans with other market benchmarks based on different types of bonds.[5] The information provided shows that the actual prices for market loans also always exceeded these benchmarks.

[4] From June 2013 to December 2015, Export Credit Norway granted a total of 96 loans, of which 90 applied the OECD Margin Benchmark as the pricing floor. The other six loans were syndicated.

[5] For three- and five-year USD prices, Moody's "Bonds over Libor for credit risk Aa2" was chosen as a market reference. For NOK five-year prices, five-year covered bonds issued by Nordic banks were used as a market reference. The Norwegian authorities have explained that the credit risk of such covered bonds is AAA, and that the credit risk behind Moody's "Bonds over Libor" and Nordic covered bonds pricing are the market benchmarks that are the closest to the actual credit risks assumed by Export Credit Norway.

II. ASSESSMENT

1 The presence of state aid

(14) 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.*"

(15) In its Decision 127/13/COL, the Authority considered that loans granted by Export Credit Norway involve the use of state resources, as Export Credit Norway is entirely financed by the Norwegian State and all funds connected with its lending activities are passed directly from and to the State. The Authority also considered the lending activity to be selective, as loans are only available to purchasers from Norwegian-based companies exporting goods and services. Finally, given that the measure concerns the provision of loans on a commercial basis in the context of commercial export activities, the Authority considered the measure liable to affect trade within the EEA and to distort competition.

(16) Given that the organisation, the functioning and in particular the pricing mechanism of Export Credit Norway remains unchanged since the adoption of Decision 127/13/COL, the Authority has no reasons to change its conclusion on these points.

(17) Concerning the question of whether the pricing mechanism of Export Credit Norway could confer any advantage on individual borrowers, the Authority considered in its Decision 127/13/COL first of all that pricing information from an actual participation in a syndicate with commercial lenders and the use of a very recent term sheet for the same transaction from another commercial lender represent well documented indications of recent market terms. Using these elements as a market price benchmark would therefore not lead to the borrower being granted an advantage.

(18) The Authority has no reasons to change its conclusion concerning the use of the pricing information in syndicated loans and from recent term sheets, which both constitute good indications of market terms.

(19) In addition, the Authority considered in its Decision 127/13/COL that given the specific situation of Export Credit Norway, which can only issue loans if there is a full guarantee from GIEK and/or highly rated financial institutions, the OECD Margin Benchmark represents an acceptable method for approximating a market price floor in the absence of other market price information. In this respect, the Authority noted in particular that the OECD Margin Benchmark would only be used as a pricing floor, and that the actual pricing decision would be taken on a commercial basis with a view to maximising profit.

(20) The audit reports submitted by the Norwegian authorities show that in the cases where the OECD Margin Benchmark is used as a pricing floor, the actual prices agreed with borrowers have been considerably higher than the floor price, and were on average closer to the Authority's reference rate. The actual prices charged by Export Credit Norway also exceeded the alternative market benchmarks put forward by the Norwegian authorities. The experience of the practical application of the pricing mechanism for market loans as described in the audit reports thus provides support for the claim that Export Credit Norway takes its pricing decisions on a commercial basis with a view to maximising profit.

(21) The Authority therefore has no reasons to depart from the conclusion reached in its Decision 127/13/COL that the pricing mechanism for market loans of Export Credit Norway does not confer an advantage on individual borrowers.

2 Conclusion

(22) On the basis of the foregoing assessment, the Authority considers that the pricing mechanism for market loans of Export Credit Norway does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The pricing mechanism of Export Credit Norway 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 12 September 2016.

For the EFTA Surveillance Authority

Sven Erik Svedman	Helga Jónsdóttir	Frank J. Büchel
President	*College Member*	*College Member*

This document has been electronically signed by Sven Erik Svedman, Frank J. Buechel, Helga Jonsdottir on 12/09/2016