


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 23 NOVEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO NORWAY FOR CERTAIN AID SCHEMES TO COMPLY WITH THE CRITERIA UNDER THE EEA AGREEMENT FOR AID TO SMALL AND MEDIUM-SIZED ENTERPRISES OR AID FOR RESEARCH AND DEVELOPMENT

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. Introduction

Article 1(1) of Protocol 3 to the Surveillance and Court Agreement provides that the EFTA Surveillance Authority shall in co-operation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

By letter dated 4 January 1994 (ref.94-469 D) the EFTA Surveillance Authority requested information on all existing aid measures in Norway. By letters of 4 and 24 March 1994 the Norwegian authorities provided information on such measures. As agreed in meetings held between officials from the State aid and Monopolies Directorate of the EFTA Surveillance Authority and Norwegian authorities in Oslo 12 and 13 June 1994 additional information on existing aid in

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

Norway was submitted to the Authority by letters of 23 June, 27 July, 19 August and 25 August 1994.

An initial examination of the schemes covered by this decision, all listed in Annex 1, indicated that the legal provisions were not altogether compatible with the Surveillance Authority's rules on State aid to small and medium-sized enterprises³ and/or aid for research and development. For this reason the matter was taken up at meeting between officials from the Norwegian Ministry of Industry and Energy and the EFTA Surveillance Authority in Oslo on 11 October 1994.

2. Relevant provisions of the schemes and aid programmes covered by this decision

2.1 Case no 93-140 SME grant scheme administered by SND⁴

Case no 93-140 SME grant scheme administered by SND (Tilskuddsordning for SMB i sentrale strøk) covers awards of aid in the form of direct grants to SMEs for general investment aid in tangible assets and "immaterial" investment outside areas eligible for regional aid. The legal basis for the scheme is laid down in the Law on SND of 3 July 1992 nr. 97 and the Society rules for SND of 4 January 1993. The scheme is financed over State budget chapter 2420 post 50. Total budget for 1994 is NOK 121.1 million. The information on awards of aid under this scheme is based on SND product sheet no. 16 and information enclosed in the standard form for the Authority's inventory on existing aid.

Small enterprises may receive aid in the form of direct grants up to 15 % and medium-sized enterprises up to 7.5 % of the eligible costs for investment in equipment. Investment in other tangible assets may be financed through other financial instruments administered by SND, notably soft loans and loans on market-terms. Small and medium-sized enterprises are defined as enterprises not exceeding work-force limits of 50 and 100 employees respectively.

The scheme may also cover awards of aid up to 50 per cent of the eligible costs for "immaterial investment", as described in the following;

- planning costs for enterprise development,
- extra-ordinary costs related to start-up or restructuring activities;
- product development,
- development costs related to production improvements and development,
- development of marketing strategies and marketing measures,
- transfer of knowledge and training of personnel,
- development of networks and co-operation between SMEs and
- quality testing.

2.2 Case no 93-141 Development grants administered by SND

³ Hereinafter referred to as SMEs

⁴ The Norwegian Industrial and Regional Development Fund, hereinafter referred to as SND

Case no 93-141 Development grants (Utviklingstilskudd) is financed over the same budget line and has the same legal basis as case no 93-140 described above. Total budget for 1994 is NOK 146.5 million. The main difference between this scheme and case 93-140 is that investment in tangible assets may not be aided and that the scheme may be applied both within and outside areas eligible for regional aid. The scheme is not formally restricted to SMEs, although SMEs are the primary beneficiaries. With reference to the number of aid programmes and aid schemes administered by SND, certain programmes may be funded through more than one scheme. Therefore, it cannot be ruled out that the list of cost categories eligible for aid to "immaterial investment" under case no 93-140 above is valid for awards of aid under case no 93-141 also.

According to the information received, priority under case no 93-141 is given to;

- development of SME networks,
- hiring of external consultants to develop in-house competence and skills in SMEs (< 100 employees),
- co-operation and product shaping in the tourism sector,
- technology development and
- strategic development in small firms

2.3 Case no 93-153 Development grants

Case no 93-153 Development grants (Bedriftsutviklingstilskudd) is a regional aid scheme administered partly by SND and partly by the county municipality authorities in areas eligible for regional investment aid. The scheme is funded over State budget chapter 2425 post 51.2 with a total budget for 1994 of NOK 390 million. The legal basis for the scheme is laid down in Circular letter H-2/93 S.nr. 93/290. The scheme covers aid for "immaterial" investment within areas eligible for regional investment aid in the form of direct grants up to 50 per cent of the eligible costs. The scheme is not restricted to SMEs. Investment in tangible assets may not be aided.

The cost categories covered by the scheme are;

- planning and research for the start-up of a new enterprise,
- initiation costs related to the start-up of a new enterprise,
- development of new products,
- marketing and market research,
- training programmes for development of in-house skills, i.a. in management and
- reallocation of enterprises to areas eligible for regional investment aid.

The scheme covers a programme on projects particularly important for employment of women, "Sats på kvinner". Projects covered by this programme may receive awards of aid up to 75 % of the overall costs. SMEs are given priority.

2.4 Case no 93-155 Regional development scheme

Case no 93-155 Regional development scheme is a regional aid scheme designed to improve the availability of knowledge and competence produced in national R&D institutions for SMEs and to encourage the demand and use of R&D in SMEs. The scheme is administered in co-operation between the Ministry of Local Government and Labour and the Ministry of Industry and Energy. The scheme is funded over State budget chapter 552 post 52 with a total budget for 1994 of NOK 119 million. The legal basis for the scheme is laid down in Circular letter H/8-94 S.nr. 93/4557. Funds under this scheme are available in areas eligible for regional investment aid. The scheme is limited to SMEs according to a definition similar to the definition laid down in Annex 2 to this decision. With reference to the rules on aid to R&D under the EEA Agreement, it is stated in the circular letter, that R&D related measures may be aided up to 50 per cent of the eligible costs (60 per cent for SMEs). However, basic industrial research may not be aided under the scheme. The scheme covers several aid programmes. The programmes relevant for this decision are described briefly below. Other programmes either expires in the course of 1994 or cover measures where the aid amounts to individual enterprises are relatively small.

- Innovation and technology programme (NT)

NT is a programme for technology transmission and innovation in the manufacturing industry in Northern Norway. The aim of the programme is to strengthen competitiveness through introduction of new technology. The maximum intensity of a single project's total costs is 50 % up to NOK 2.56 million. Pilot studies may be aided up to 75 %.

- Programme for technology transmission from R&D institutes to SMEs (TEFT)

The programme is based on an intermediary service link established to facilitate co-operation between R&D-institutes and enterprises. The maximum aid intensity per project is 75 % up to NOK 100 000. The programme started in 1994 and is scheduled for 5 years.

2.5 Case no 93-180 Industrial consultancy service schemes (Tilskudd til veiledningstjenester for næringslivet)

Case no 93-180 Industrial service consultancy schemes covers several programmes of which certain are general information infrastructure measures, while others, described below, concern the provision of services where the benefiting enterprises do not pay the full cost. These measures are therefore considered to constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

- Teknologisk institutt (TI)

TI is an independent private institution specializing in applied research and development. On this basis TI provides training of personnel⁵, consultancy services and distribution of information for the application of new technology in the enterprise sector. The services provided are considered mainly to fall under the notion of soft aid. In certain cases it may not be ruled out that the activity carried out are applied industrial research and innovation activities. According to the society rules of TI, priority is to be given to SMEs. However, a definition of SMEs is neither laid down in the society rules nor in other legal provisions for this purpose. Participation fees and payments for services provided constitute a relatively high share of the institution's total income. Total support from the Ministry of Industry and Energy for 1994 is NOK 59 million. This covers approximately 35 to 40 per cent of total operating costs. TI does not award direct financial support to the enterprise sector.

⁵ Personnel both from the business sector and the general education system may participate in activities carried out by TI.

- Veiledningsinstituttet i Nord-Norge (ViNN)

ViNN is an independent private institution specializing in the training of personnel, consultancy services and distribution of information concerning subjects falling under technical and economic/administrative fields. The institution's activities are restricted to the three most northern counties, namely Finnmark, Troms and Nordland. Total support from the Ministry of Industry and Energy for 1994 is NOK 39 million. This covers approximately 45 to 50 per cent of total operating costs. ViNN does not award direct financial support to the enterprise sector. The Authority has not received information indicating that the services supplied are confined to SMEs.

2.6 Case no 93-198 Funds for restructuring the region of Grenland (Fond for restrukturering av Grenland)

In case no 93-198 Funds for restructuring the region of Grenland, the available resources are channelled through a company called "Vekst i Grenland A/S". Government support for 1994 is NOK 10 million. It appears from the information submitted to the Authority, that the funds may not be used for investment in tangible assets, but mainly applied for development of SME-projects. The cost categories eligible for aid under the scheme may fall under the notion of soft aid. The scheme is not restricted to SMEs.

2.7 Case no-216 SIVA, The Norwegian Corporation for Industrial Estates and Development (Selskapet for industrivekstanlegg)

SIVA, The Norwegian Corporation for Industrial Estates, is a fully State-owned company which builds and rents out industrial estates on commercial terms. SIVA is for 1994 granted NOK 16 million in State support from the Ministry of Local Government and Labour to cover awards of aid for pre-evaluation projects, pilot projects and consultancy services falling under the notion of soft aid. Such awards of aid may cover up to 100 per cent of the eligible costs. The aid awarded is to be repaid if the project is successful.

II. APPRECIATION

1. Principles for assessment

The existing aid schemes covered by this decision, as listed in Annex 1, cover i.a. aid for investment, soft aid, aid for the purpose of encouraging co-operation and/or aid for research and development. The activities carried out under the schemes constitute aid in the meaning of Article 61(1) of the EEA Agreement either by providing direct financial support to individual enterprises or through measures by which the benefiting enterprises do not pay the full cost of the services supplied. The EFTA Surveillance Authority has therefore been obliged to assess, as part of its constant review of existing aid under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, whether the legal provisions

concerning the granting of aid under the schemes listed in Annex 1 are in line with the principles laid down in the Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994⁶.

In accordance with these principles aid may be awarded under Article 61(3)(c) of the EEA Agreement 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 if certain principles, are strictly observed. The relevant principles are laid down in Chapters 10 and 14 of the State Aid Guidelines for aid to SMEs and aid for R&D respectively.

2. Aid to SMEs

Definition of SMEs

In accordance with the rules laid down in Chapter 10 of the State Aid Guidelines⁷, it must be ensured that aid for SMEs is confined to enterprises that meet certain specific criteria which distinguish them clearly from larger firms. For this purpose, a definition of SMEs for State aid control is laid down in Section 10.2 of the State Aid Guidelines. The full text of the relevant definition is laid down in Annex 2 to this decision.

The application of a common definition of SMEs within the EEA which contains certain minimum conditions for an enterprise to be defined as an SME is necessary to ensure a homogenous application of the rules on State aid within the EEA.

The operation of the schemes listed in Annex 1 should, depending on the particularities of each scheme, either wholly or partially be restricted to SMEs as defined in Annex 2. A clear reference to an EEA relevant SME definition for the purpose of State aid control, consistent with the definition laid down in Annex 2 must be laid down in the relevant legal provisions of the schemes listed in Annex 1 for the following purposes;

- Aid for SMEs general investment outside areas eligible for regional aid
- Soft aid and other justified means of SME promotion such as encouraging co-operation
- Application of more generous aid ceilings concerning aid for R&D than may be allowed for larger firms

Whether the Norwegian authorities as in case no 93-140 SME grant scheme, wish to apply a more restrictive (\leq 100 employees) definition concerning the workforce limit compared to the definition in Annex 2, is a matter of national industrial or regional policy. Still, the other criteria, namely the independence condition and the conditions concerning either turnover or balance sheet total of the enterprises,

⁶ Hereinafter referred to as the State Aid Guidelines

⁷ Corresponding to the Community Guidelines on State aid for small and medium-sized enterprises (OJ No C 213, 19.8. 1992, p.2)

must be strictly observed. These criteria distinguish between those firms that have and those that do not have greater difficulty in raising finance. They also distinguish between firms that are subsidiaries to larger companies and de facto SMEs, thereby limiting aid to SMEs to those enterprises which face the particular handicaps associated to SMEs. Furthermore, failure to observe an adequate definition of SMEs by the responsible authorities may lead to a situation where high amounts of aid are granted to larger firms which would be more likely to distort competition and affect trade.

Soft aid for consultancy help, training and dissemination of knowledge

Soft aid measures have certain general features which justify favourable treatment compared to aid to investment for various purposes, in particular because such aid measures are targeted at the special difficulties frequently faced by SMEs. For this reason soft aid is restricted to SMEs in accordance with the definition laid down in Annex 2. In order to be classed under the notion of soft aid the eligible costs must be consistent with the following principles:

- They may involve the transfer of knowledge, information and advice, but on the other hand be distinguished from investment i.a. in computer software, secret technological know-how or other intellectual property.
- They must meet one-off requirements for up-to-date knowledge i.a. for training, expertise or increased capability which arise in connection with changes in a firm's management, production methods, products or markets, which distinguish them from services supplied on a routine basis. Aid to services supplied on a routine basis is considered to be operating aid, to which the Authority has reservations in principle. Such aid should be abolished.
- The services must not be compulsory.
- Aid for promotion of co-operation or establishment of networks between SMEs or similar justified purposes for aid to SMEs fall under the notion of soft aid.

The Authority generally accepts measures falling under the notion of soft aid up to a level of 50 per cent. In certain exceptional cases the Authority may allow aid intensities beyond 50 per cent. Soft aid is currently allowed up to 75 per cent of the eligible costs for certain aid programmes under the schemes listed in Annex 1. However, the Authority has not received any information on exceptional circumstances that would justify such high aid intensities, and cannot accept soft aid beyond the general level of 50 per cent of the eligible costs for the general application of the schemes covered in Annex 1⁸.

⁸ By decision of 28 September 1994, "case no 94-011 Alteration of regional aid schemes- Restructuring of traditional Sami activities", soft aid was authorized up to 75 per cent of the eligible costs under case no 93-153. The decision of 28 September is not affected by this decision to propose appropriate measures on other aspects of case no 93-153 Regional development grants.

3. Aid for Research and Development

As explained in Chapter 14 of the State Aid Guidelines the EFTA Surveillance Authority's basic approach to assessing aid for R&D is firstly to examine the nature of the activities involved and to classify these activities depending upon their proximity to the market place. For this purpose the Authority uses certain working definitions of the following groups of R&D activities: fundamental research, basic industrial research and applied research and development. In general the levels of aid are lower the nearer the R&D activity is to the market place. The information submitted to the Authority on the schemes covered by this decision concern cost categories which may be classed as aid for applied industrial research and development. The Authority has not received any information indicating that the supported activities may be defined as basic industrial research. Secondly, a definition of R&D costs as defined in Section 14.5 of the State Aid Guidelines is applied.

Under certain schemes listed in Annex 1, it appears from the information submitted by Norway that cost categories which may fall under the definition of applied research and development may be aided up to 50 per cent gross. The Authority does not generally accept aid levels above 25 per cent gross for applied research and development. In relevant cases of application, this ceiling can be enhanced by a 10 per cent top-up for SMEs as defined in Annex 2.

The criteria for awards of aid concerning the eligible cost categories under certain schemes listed in Annex 1 do not draw a clear distinction between aid for R&D and aid for other purposes, i.a. general investment aid or soft aid. In cases of application to be classed as aid for R&D it must be ensured that the ceilings indicated above are respected.

HAS ADOPTED THIS DECISION:

1. The Norwegian authorities shall lay down criteria which ensure that awards of aid under the schemes listed below are confined to enterprises which fully meet the conditions to qualify as an SME in accordance with the definition laid down in Annex 2 to this decision, for all relevant cases of application. The relevant cases of application are;

(i) General investment aid outside areas eligible for regional aid, not exceeding 15 % for small and 7.5 % for medium-sized enterprises pertaining to;

- Case no 93-140 SME grant scheme administered by SND

(ii) Cost categories eligible for soft aid pertaining to the following schemes;

- Case no 93-140 SME grant scheme administered by SND

- Case no 93-141 Development grants administered by SND
- Case no 93-153 Development grants
- Case no 93-155 Regional development scheme, NT and TEFT programmes,
- Case no 93-216 SIVA The Norwegian Corporation for Industrial Estates and Development,
- Case no 93-180 Industrial consultancy service schemes, TI and ViNN
- Case no 93-198 Funds for restructuring the region of Grenland

(iii) Aid for R&D for applied research and development beyond 25 % and up to 35 %

of the eligible costs for SMEs pertaining to the following schemes;

- Case no 93-140 SME grant scheme administered by SND
- Case no 93-141 Development grants administered by SND
- Case no 93-153 Development grants
- Case no 93-155 Regional development scheme, NT and TEFT programmes

2. The Norwegian authorities shall ensure that the principles referred to under point II 2. above concerning soft aid for consultancy help, training and dissemination of knowledge, are observed and that such aid is restricted to a general ceiling of 50 per cent of the eligible costs, with reference to the following schemes:

- Case no 93-140 SME grant scheme administered by SND
- Case no 93-141 Development grants administered by SND
- Case no 93-153 Development grants
- Case no 93-155 Regional development scheme, NT and TEFT programmes,
- Case no 93-216 SIVA The Norwegian Corporation for Industrial Estates and Development,
- Case no 93-198 Funds for restructuring the region of Grenland

3. The Norwegian authorities shall ensure that the principles concerning aid for R&D laid down in chapter 14 of the State Aid Guidelines and referred to under point II 3 are respected. Based on these principles, aid for applied industrial research and development must be restricted to a general ceiling of 25 per cent gross of the eligible costs for larger firms and to a ceiling of 35 per cent gross in the case of SMEs, with reference to the following schemes;

- Case no 93-140 SME grant scheme administered by SND
- Case no 93-141 Development grants administered by SND
- Case no 93-153 Development grants
- Case no 93-155 Regional development scheme, NT and TEFT programmes,

4. The Norwegian authorities must inform the EFTA Surveillance Authority of the proposed amendments in the respective legal provisions, insofar as these concern State aid, before they are put into effect.

5. The proposed amendments are to be put into effect as soon as possible and not later than 31 March 1995.

6. The Norwegian authorities must inform the Surveillance Authority of their acceptance of the above measures within one month of the date of this decision.

Done at Brussels, 23 November 1994

For the EFTA Surveillance Authority

Knut Almestad
President

Heinz Zourek
College Member

NORWAY- AIDSCHEMES COVERED BY COLLEGE DECISION COL/ /94

Case no.	English title	Norwegian title	Current SME definition
93-140	SME grant scheme administered by SND ¹	SND-Tilskuddsordning for SMB i sentrale strøk (jf. NOE kap 2420 post 50)	Work force limits only: Small enterprise ≤ 50 employees Medium-sized enterprise ≤ 100 employees
93-141	SND-Development grants	Utviklingstilskudd kap 2420 post 50	No SME definition
93-153	SND-Regional Development grants	Bedriftsutviklingstilskudd kap 2425 post 51.2	No SME definition Priority to SME ≤ 100 employees
93-155	Regional Development Scheme	Regional utvikling, kap. 552 post 52	EEA relevant SME definition (minor correction necessary)
93-180	Industrial consultancy services scheme, see institutions listed in the right-hand column.	Tilskudd til veiledningstjeneste for næringslivet kap 911 herunder; -post 70 Teknologisk institutt -post 71 ViNN ² -post 72 Bedriftenes rådgivningstjeneste	No SME definition
93-198	Funds for restructuring the Region of Grenland	Fond for restrukturering av Grenland kap. 900 post 21	No SME definition
93-216	SIVA - The Norwegian Corporation for Industrial Estates and Development	SIVA-Selskapet for industri-vekst anlegg, kap. 552, post 52	EEA relevant SME definition (minor correction necessary)

¹ The Norwegian Industrial and Regional Development Fund, "Statens Nærings- og Distriktsutviklingsfond"

² Veiledningsinstituttet i Nord-Norge

Annex 2

Definition of small or medium-sized enterprises for the purpose of State Aid control

Under points 10.2.(3), (4) and (5) of the State Aid Guidelines a SME is defined as an enterprise which:

- has no more than 250 employees (small: 50 employees) and
- either

an annual turnover not exceeding ECU 20 million (small; ECU 5 million) ,

or

a balance sheet total not exceeding ECU 10 million (small; ECU 2 million), and

- is not more than 25 % owned by one or more companies falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

Where it is necessary to distinguish between small and medium-sized enterprises, a small enterprise is defined as an enterprise which

- has no more than 50 employees and
- either

an annual turnover not exceeding ECU 5 million ,

or

a balance sheet total not exceeding ECU 2 million, and

- is not more than 25 % owned by one or more companies falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

The three criteria are cumulative , i.e., a firm is only considered to be a medium-sized or a small enterprise if it fulfils the independence condition, does not exceed the work-force limit and does not exceed at least one of the other limits for either turnover or balance sheet total.