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# *EFTA SURVEILLANCE AUTHORITY*

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## EFTA SURVEILLANCE AUTHORITY DECISION

OF 9 JULY 1997

### ON THE INTERREG IIA SCHEME AND THE PILOT PROJECTS PROGRAMME (NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area<sup>1</sup>, 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 Justice<sup>2</sup>, in particular Article 1 of Protocol 3 thereof,

WHEREAS:

#### **I. FACTS**

##### **1. Introduction**

The Norwegian Authorities notified the EFTA Surveillance Authority by letter dated 11 March 1997, received on 11 March 1997 (ref. 97-1545A) of their participation in the Interreg IIA scheme and the Pilot Projects programme. The Norwegian authorities forwarded by fax of 18 June 1997 (ref. 97-4348A) additional information to their notification of 11 March 1997.

The notified policy measures referred to above were put into effect in 1996. Some Interreg IIA projects (no Pilot Projects) have already been awarded public financing from the Norwegian authorities.

##### **2. Interreg IIA scheme and Pilot Projects programme**

The Interreg IIA scheme and the Pilot Projects programme were initiated by the European Regional Development Fund (ERDF). The ERDF is the principal Community financial instrument pursuing the objective of economic and social

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<sup>1</sup> Hereinafter referred to as the EEA Agreement

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement

cohesion within the EU. The main part of the ERDF funding is mobilised to finance programmes implementing development strategies decided between the Member States and the European Commission in the Objective regions (Objectives 1, 2, 5a and 6). Norway was invited by the European Commission to participate in the Interreg IIA scheme and the Pilot Projects programme. The aim of the scheme/programme is to assist border areas of the European Union in overcoming the special development problems arising from their isolation within national economies. To increase the effects of the scheme/programme, non-Member States at the border of EU are also invited to participate.

The programme period of the Interreg IIA scheme and the Pilot Projects programme is 1995-99. It is foreseen that Norway will participate throughout the action period, i.e. until the end of 1999.

For both the Interreg IIA scheme and the Pilot Projects programme it is assumed the Norwegian Government will provide funding of the same amount as the sum of the funding by the Commission through ERDF and the EU Member States in question. In addition, it is foreseen that the private sector will provide financing to certain projects depending on content and arrangement of the individual projects in question.

## 2.1 The Interreg IIA scheme

The objective of the Interreg IIA scheme is to enhance inter-regional and cross-border co-operation in order to improve the conditions for industrial development, increased economic growth and employment in border regions.

Following the Commission's initiative to invite Norway to participate in the Interreg IIA scheme, the Finnish and Swedish authorities requested the Norwegian authorities in 1995 to participate in cross-border programmes on the basis of the Interreg IIA scheme's guidelines. After a co-operative consultation process involving regional authorities (county level) on both sides of the borders as well as the Swedish, Finnish and Norwegian central authorities, six Interreg IIA regions were pointed out. In one of the programme regions, the Barents region, co-operation with Russia is foreseen. The table below provides an overview of the six Interreg regions covered by this decision.

<b>Interreg II programme title/ regions</b>	<b>Area in Norway</b>	<b>Area in Sweden</b>	<b>Area in Finland</b>
Barents region <sup>3</sup>	Finnmark, Troms and Nordland	Norrbottn	Lapland
North Calotte region	Finnmark, Troms and Nordland	Norrbottn	Lapland
Kvarken - Mittskandia	Helgeland (Nordland)	Västerbotten	Vasa (coastal part) Central and south Österbotten
Nordens Gröna belte	Trøndelag	Jämtland	Vasa, Mellersta Finlands län
Inre Skandinavia	Hedmark plus parts of Akershus and Østfold	Parts of Värmland and Dalarna	not included
Ett gränslöst samarbete	Parts of Østfold	Parts of Bohuslän and Älvsborgs län	not included

An action plan has been worked out for each of the Interreg IIA title/region. The action plans contain a socio-economic description of the region, opportunities and threats to regional development and development strategies, which are linked to an operational programme covering initiatives towards priority areas for regional development and cross-border co-operation. The priorities differ between the six Interreg IIA regions within the scope of the main development aims set out by the Commission.

For each of the six Interreg IIA-programmes, Norwegian members (appointed by the Norwegian Government) participate alongside representatives from Sweden, Finland, and the Commission in an Interregional Programme Management Committee and a Monitoring Committee.

The six action plans were approved by the Commission at the end of July 1996.

The legal basis of the Norwegian participation in the Interreg IIA-programme is the Government decision of 11 May 1996. The Norwegian Government approved the Interreg programmes in September and November 1996. The programmes were then put into action. The first projects have, according to the Norwegian authorities already been granted aid.

NOK 50 million have been allocated to the Interreg IIA scheme in each of the Norwegian State Budgets for 1996 and 1997. Financial allocations of the same amounts are foreseen for the following two years of the action plan period.

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<sup>3</sup> The region covers also neighbouring parts of Russia namely Arkangelsk Oblast, the Karelian Republic and Murmansk Oblast.

The financial support is awarded in the form of direct grants. Government financing will partly be used in favour of infrastructure projects, and partly towards projects involving activities of a commercial nature initiated by enterprises.

The six programmes mainly cover areas in Norway which the Authority has found eligible for regional aid by its decision of 16 November 1994, but extends also to certain regions which are not covered by the Norwegian map of assisted areas.

The action programmes for each Interreg IIA area have been worked out in accordance with a formula prepared by the ERDF. A wide range of eligible measures are described in the guidelines laid down in the *Notice to the Member States* on Interreg II<sup>4</sup>. The above guidelines describe in a general way the framework within which aid may be provided to enterprises. Some of the action programmes contain provisions stating that the financial support from the EU Member States' funding and EU funding "will remain within the limits established by EU competition policy" while other action programmes are supposed to be in accordance with the 'de minimis' rule<sup>5</sup> for State aid.

The Norwegian Authorities have implemented the provision that the public funding for the Interreg IIA scheme and the Pilot Projects programme shall remain within the limits of EU competition policy, by ensuring that Government financing only are granted for projects which are in accordance with existing aid schemes which have been approved by the Authority or with guidelines issued by the Authority.

Grants provided to enterprises located in the areas eligible for regional aid shall be in accordance with the provisions set for the following existing aid schemes<sup>6</sup>:

- Aid no 93-143 SND Regional Investment Grant scheme,
- Aid no 93-153 SND Grants for Development of Business and Industry,
- Aid no 93-155 Regional Development Grants or
- SND Entrepreneur Grant Scheme<sup>7</sup>(ex Aid no 93-154)

Aid no.93-143 SND Regional Investments Grant is subject to provisions which the Authority has examined and found compatible with the EEA rules on regional aid by its decision of 16 November 1994 on the map of assisted areas (Dec. no. 157/94/COL).

By decision of 23 November 1994 (Dec. no. 170/94/COL), the Authority proposed appropriate measures covering i.a. Aid no 93-153 and Aid no 93-155 referred to

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<sup>4</sup> OJ No C 180/60 of 1 July 1994

<sup>5</sup> Commission notice on the "de minimis" rule for State aid (OJ No C 68, 6.3.96)

<sup>6</sup> All existing aid schemes referred to in this decision were aid schemes existing at the entry into force of the EEA Agreement which have been duly reported to the Authority.

<sup>7</sup> The Entrepreneur Grant Scheme has been adapted to the "de minimis" rule in accordance with Chapter 12 of the Authority's Procedural and Substantive Rule in the Field of State Aid as amended by 15 May 1996. Financial support covered by the 'de minimis' rule concerns aid below certain amounts which imply that the Authority does not consider them to have an appreciable effect on trade and competition between the contracting parties. In such cases Article 61(1) EEA can be said not to apply. The geographic scope of the scheme is not limited to the Norwegian map of assisted areas.

above, in order to comply with the EEA rules on aid to small and medium-sized enterprises and on aid for research and development. The Norwegian authorities accepted to amend these aid schemes as proposed by the Authority. The amendments became effective from end of March 1995. The application of the schemes Aid no. 93-153 and Aid no. 93-155 is limited in geographic terms to the area covered by the Norwegian map of assisted areas, accepted by the Authority in its decision to approve the Norwegian map of assisted areas on 16 November 1994.

Grants provided to enterprises located outside the areas eligible for regional aid shall be in accordance with the provisions of:

- Aid no 93-140 SND SME Grant Scheme or
- Aid no 93-141 SND Development Grants.

By its decision of 23 November 1994 (Dec. no. 170/94/COL), the Authority proposed appropriate measures also covering Aid no 93-140 and Aid no 93-141 referred to above, in order to comply with the EEA rules on aid to small and medium-sized enterprises and on aid for research and development. The Norwegian authorities accepted to amend the aid schemes as proposed by the Authority. The amendments became effective from end of March 1995.

The Norwegian authorities confirm in their notification documents that the projects covered by the Interreg IIA programmes must respect the aid ceilings and other provisions of existing aid schemes referred to above. This implies in cases where projects are financed partly by grants from the Interreg IIA and, in addition, receive assistance from other public sources, that the combined intensity of aid shall be within the ceilings defined according to the type of investment, the size of the recipient enterprise, the location of the enterprise and other relevant provisions of the schemes in question.

## 2.2 Pilot Projects programme

The Pilot Projects programme is provided for in Article 10 of the ERDF Regulation ((CEE) no 2083/93 of the Council). Norway can participate in pilot projects after invitation from EU Member States.

The projects financed according to this article are supposed to be "...smaller scale actions the contents of which are required to be innovative". The action areas in the period 1995-99 will be grouped around themes pointed out in the ERDF's guidelines to Article 10. The guidelines indicate that the eligible projects may involve State aid only to a limited degree. The typical project is presumed to be linked to spatial planning, urban development and co-operation within information society, innovation, technology transfer, new sources of jobs and cultural themes. Nevertheless, the Norwegian authorities have notified the Authority of the Pilot Projects programme as it may not be ruled out that the initiation of certain projects may involve State aid. Financial support provided will be subject to the same provisions as those set for Interreg IIA (see point 2.1 above).

In the Norwegian State Budgets of 1996 and 1997, NOK 12.5 million have been allocated each year to the Pilot Project programme. The funding for 1998 and 1999 is foreseen to be at the same level for each year. The Norwegian authorities have so far not awarded financial support to any pilot projects.

## II. APPRECIATION

The Norwegian authorities notified the EFTA Surveillance Authority of their participation in the Interreg IIA scheme and the Pilot Project programme by letter of 11 March 1997. Together with the information contained in the fax received by the Authority on 18 June 1997, this constitutes a complete notification.

It is foreseen in the '*Joint Declaration on aid granted through the EC structural funds or other financial instruments*' of the EEA Agreement that '*financial support to undertakings financed by the EC structural funds or...from any other financial instrument or fund shall be in keeping with the provisions of this agreement on State aid.*' It follows from Article 62 EEA, as regards the EC Member States, that the review as to the compatibility with Article 61 EEA shall be carried out by the EC Commission.

The plans established for each of the Interreg IIA regions have been examined by the Commission, which has found them compatible with the provisions governing EDRF financing. As concerns the use of EDRF financing and the financing provided by national authorities in Sweden and Finland, these are to "remain within the limits established by EU competition policy".

The projects and priorities set for the use of EDRF finance and financing provided by national authorities are not the same or identical in the respective states involved in the Interreg IIA scheme or for Pilot projects. The provisions for awarding State aid which may favour certain enterprises in Norway within the framework of the Interreg IIA scheme and the Pilot project programme are specific to Norway and therefore not identical to the part of the scheme which has been authorised by the EC Commission. Moreover the public financing which may potentially favour Norwegian enterprises is provided wholly by the Norwegian Government. It follows from Article 62 EEA that "*any plans to grant or alter State aid shall be subject to constant review as to their compatibility with Article 61. This review shall be carried out...as regards the EFTA States, by the EFTA Surveillance Authority...*".

The activities carried out under the Interreg IIA scheme and the Pilot Projects programme may cover measures which constitute State aid in the meaning of Article 61(1) of the EEA Agreement in circumstances where the financing provided by the Norwegian Government is awarded in favour of certain enterprises. In such cases the public financing will be subject to provisions which the Authority has examined and found to constitute State aid<sup>8</sup>.

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<sup>8</sup> Decision of 16 November 1994 on the map of assisted areas (Norway) (Dec. no. 157/94/COL) and

However, in the case at hand, the Norwegian authorities have put the Interreg IIA scheme and the Pilot Project programme into effect without notifying the Authority in advance in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement. Article 1(3) foresees that the Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid and that the State concerned shall not put its proposed measures into effect until the procedure of assessing the compatibility of the planned aid with the functioning of the EEA Agreement has resulted in a final decision.

Therefore, any aid granted under the Interreg IIA scheme and Pilot Projects programme must be regarded as unlawful on procedural grounds according to Chapter 6 of the Authority's State Aid Guidelines.

Considering firstly that the regulations which the Norwegian authorities have set for the Interreg IIA and Pilot Projects are in accordance with the provisions of lawful existing aid schemes, secondly that the EU Commission has approved the action programmes and thirdly that only a few Interreg projects (no Pilot Projects) have received aid, the Authority has, however, not found it necessary to invoke the injunction procedure referred to in section 6.2.1 of the State Aid Guidelines.

Although the measures under consideration are unlawful on procedural grounds as they have been notified late, the Authority is nevertheless, in accordance with Chapter 6 of the State Aid Guidelines, obliged to investigate whether the aid scheme complies with the substantive EEA rules and established practice in the field of State aid, and it is obliged to take a decision on the compatibility of the aid.

The Authority's examination has revealed that the granting of aid to enterprises under the Interreg IIA scheme and the Pilot Projects programme are undertaken in accordance with the State aid provisions which the Authority has examined and found compatible with the EEA Agreement or with the Authority's State Aid Guidelines ("de minimis"<sup>9</sup>.) The relevant details of the provisions in question have been described in the Authority's decisions of 16 and 24 November 1994<sup>10</sup>. The said provisions ensure that the EEA Competition rules on State aid for aid to small and medium-sized enterprises<sup>11</sup>, aid for research and development<sup>12</sup> and aid for regional development<sup>13</sup> are respected.

No changes have subsequently occurred which would alter this situation. It follows therefore that the aid granted according to provisions of the Interreg IIA scheme and Pilot Projects programme, will be granted in accordance with the rules of the existing and already reviewed aid schemes referred to above which the Authority has found

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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 (Dec. no. 170/94/COL)

<sup>9</sup> See Chapter 12 State Aid Guidelines

<sup>10</sup> Dec. no. 157/94/COL and Dec. no. 170/94/COL

<sup>11</sup> See Chapter 10 State Aid Guidelines

<sup>12</sup> See Chapter 14 State Aid Guidelines

<sup>13</sup> See Part V State Aid Guidelines

compatible with the EEA Agreement on the basis of the derogation in Article 61(3)(c) or according to the “de minimis“ rules.

However, in order to enable the Authority to monitor the schemes and in accordance with Chapter 32 of and Annex IV to the State Aid Guidelines the Norwegian Government will have to submit a simplified annual report to the Authority on Aid no. 97-004 The Interreg IIA scheme and Pilot Projects programme.

**HAS ADOPTED THIS DECISION:**

1. The EFTA Surveillance Authority has decided not to raise objections to the Norwegian Government's financing of the Interreg IIA scheme and the Pilot Projects programme as notified by the Norwegian authorities' letter of 11 March 1997 and telefax of 18 June 1997.
2. The Norwegian Government is obliged to submit a simplified annual report (according to Chapter 32 of and Annex IV to the Procedural and Substantive Rules in the Field of State Aid) to the EFTA Surveillance Authority on Aid No 97-004, the Interreg IIA scheme and Pilot Projects programme.

Done at Brussels, 9 July 1997

For the EFTA Surveillance Authority

Knut Almestad  
President

Hannes Hafstein  
College Member