


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 1 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO NORWAY ON THREE AID SCHEMES FOR EXPORT
PROMOTION

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. FACIS

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 aid for export promotion in Norway was submitted to the Authority by letter 19 August 1994.

¹Hereinafter referred to as the EEA Agreement.

²Hereinafter referred to as the Surveillance and Court Agreement.

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 rules on State aid to small and medium-sized enterprises³ as laid down in Chapter 10 of the Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994⁴ and with practice established by the Commission. For this reason the matter was taken up at the meeting between officials from the Norwegian Ministry of Industry and Energy, the Norwegian Ministry of Foreign Affairs⁵ 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 93-157 Export strategy funding (Strategiske satsinger for økt eksport fra fastlands-Norge)

Case no 93-157 Export strategy funding is administered by the Norwegian Trade Council. The scheme covers awards of aid in the form of direct grants for export-promoting activities. The legal basis for the scheme is laid down in the Statutes for the Norwegian Trade Council and the Norwegian Export Fund⁶. The scheme is financed over State budget chapter 0121 post 70. Total budget for 1994 is NOK 38 million. The information on awards of aid under this scheme is based on the general guidelines for the Export Council's use of export-promotion funds (Norges Eksportråd, Retningslinjer for bruk av eksportfremmende midler), Memo of 30 September 1991 Guidelines on Export Strategy Funds (Retningslinjer for eksportstrategi-midler, Fellestiltak) and information enclosed in the standard form for the Authority's inventory on existing aid.

The primary objective of the scheme is, according to the Norwegian authorities, aid to SMEs. However, this is neither reflected in the Statutes of the Trade Council, in present guidelines or in other provisions, i.a. through indicative priorities or by reference to a definition of SMEs. Awards of aid under the scheme primarily go to common measures covering more than one enterprise, but awards of aid to individual enterprises are not ruled out. The Norwegian authorities estimate the average amount per firm at NOK 70 000.

Awards of aid under the scheme may cover up to 50 per cent of costs related to the following;

- participation in fairs and seminars,
- market surveys,
- travelling expenses,
- buying of market information and
- information activities

³Hereinafter referred to as SMEs

⁴Hereinafter referred to as the State Aid Guidelines

⁵The schemes covered by this decision fall under the responsibility of the Ministry of Foreign Affairs. The Ministry of Industry and Energy has i.a. a co-ordinating role in the field of State aid under the EEA Agreement.

⁶Amended by Royal Decree of 12 March 1993

2.2 Case no 93-158 Grants to export-related activities (Tilskudd til bedriftenes eksportfremmende tiltak)

Case no 93-158 Grants to export-related activities is also administered by the Norwegian Trade Council. The scheme covers aid to export promotion activities in the form of grants. The scheme has the same legal basis and is funded over the same budget line as case no 93-157 above. Total budget for 1994 is NOK 40.5 million. The information on awards of aid under this scheme is based on material published by the Norwegian Trade Council⁷, information enclosed in the standard form for the Authority's inventory on existing aid and relevant parts of the State budget for 1994.

The scheme is in practice restricted to firms with less than 500 employees, by way of the Trade Council's invitation for applications. Aid is as a general rule not provided for routine activities or other activities of an operating character, i.a. as support to already established export activities. The benefiting enterprises are not excluded from receiving aid from other sources.

The scheme may cover awards of aid up to 50 per cent of the eligible costs related to the following categories of expenditure;

- market planning,
- acquisition of market reports,
- travel costs related to customer's visits to Norway and
- participation in fairs and seminars

2.3 Case no 93-165 Export development programme for SMEs

Case no 93-165 Export development programme for SMEs⁸ (Eksportutviklingsprogrammet for små og mellomstore bedrifter (SMB-E programmet)) is administered by the Norwegian Trade Council. The scheme covers primarily awards of soft aid for consultancy and training. The scheme has the same legal basis and is funded over the same budget line as case numbers 93-157 and 93-158 above. The scheme is financed over State budget chapter 121 post 70. Total budget for 1994 is NOK 34 million. The information on awards of aid under this scheme is i.a. based on information enclosed in the standard form for the Authorities inventory on existing aid, information leaflets to enterprises published by the Norwegian Trade Council and SND, and relevant parts of the State budget⁹. Within the framework of case no 93-165, SND¹⁰ and the Trade Council co-operate on the administration of a particular programme called "Export manager for hire" ("Eksportsjef til leie" (ETL)).

⁷Invasjon til næringslivet - Tilskudd til bedriftenes eksportfremmende tiltak i 1994

⁸Small and medium-sized enterprises

⁹St.prp. nr. 1 Utenriksdepartementet (1993-94) Kap 0121 Eksportfremmende tiltak

¹⁰The Norwegian Industrial and Regional Development Fund, (Statens nærings- og distriktsutviklingsfond)

The scheme is limited to enterprises with less than 100 employees and a minimum annual export volume of NOK 10 million. In addition such enterprises must not be owned by companies which have or are part of a consolidated group with more than 500 employees. These criteria are not laid down in guidelines or other formal provisions of a legally binding nature. The benefiting enterprises are not excluded from receiving aid from other sources.

The maximum possible aid intensity in the favour of one project is 50 % of the eligible costs up to NOK 270 000. Average aid per company a year is NOK 100 000. The scheme may cover awards of aid up to 50 per cent of the cost categories described in the following;

- market surveys,
- implementation of a market plan,
- information services,
- consultancy and training and
- advisory services.

Under the "Export manager for hire"-programme, which is part of case no 93-165, enterprises may receive financial support to cover costs related to engaging an export manager over a period of up to three years. The "export manager" must not have been employed by the enterprise at an earlier date. Awards of aid are decided upon for 1 year at a time. Normally, the financial support which may cover up to 50 % of the eligible costs, is reduced in the second and third year. The cost categories eligible for financial support cover i.a. wages/social costs and travel costs including subsistence allowances during travel. This programme as a whole also covers assistance to enterprises in strategic planning and follow-up measures related to individual "export manager for hire" projects.

II. APPRECIATION

1. Principles for assessment

The existing aid schemes covered by this decision, as listed in Annex 1, cover i.a. soft aid for consultancy help, training and the dissemination of knowledge, aid for the purpose of encouraging co-operation between enterprises and other measures for the purpose of export promotion. 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 State Aid Guidelines.

In accordance with these principles, aid may fall 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 applicable for this decision are laid down in Chapter 10 of the State Aid Guidelines and by practice established by the Commission.

2. Soft aid for export promotion

The Authority has reservations in principle against export aid, also in cases of application where the amounts awarded to each firm are relatively small. This is reflected i.a. in point 12(3) of Chapter 12 "Application and implementation of the *de minimis* rule" of the State Aid Guidelines. It should be noted that the *de minimis* rule does not apply to export aid even though such amounts of aid are small. Small amounts of aid in accordance with the *de minimis* rule are generally not subject to examination by the Authority in cases of application other than for export aid and aid to the sectors which are subject to specific sectoral rules¹¹. Certain measures for export promotion may be compatible with the rules on State aid under the EEA Agreement if they fall under the concept of soft aid. Those aspects of the schemes listed in Annex 1 to this decision which fall outside the concept of soft aid, are considered to be export aid and must therefore be eliminated. Aid for export promotion may be compatible with the rules on State aid under the EEA Agreement if the principles for soft aid as outlined in the following are observed.

Firstly, soft aid to SMEs must be restricted to SMEs in accordance with the definition laid down in point 10.2 of the State Aid Guidelines, as soft aid is justified on the basis of the particular difficulties faced by SMEs. The full text of the relevant definition is reproduced in Annex 2 to this decision.

Secondly, awards of aid must not be confined to enterprises already established as exporters, as this may lead to potentially greater distortions to trade. Furthermore, such restrictions may lead to greater distortions of competition by favouring enterprises which already have the necessary in-house expertise with respect to export activities to the detriment of other SMEs in greater need of external assistance in order to benefit from improved market access within the EEA.

Thirdly, as the schemes covered by this decision are oriented towards export promotion, it is of particular importance to ensure that the cost categories eligible for aid fulfil certain criteria so as to be covered by the notion of soft aid. In addition to the two conditions mentioned above, the following principles must be observed;

-Awards of aid must be of a one-off nature, i.a. relate to new markets, new products and not cover ordinary operating costs. In the EEA context, support for hiring in-house expertise beyond one year or covering travel costs for customers are not considered to be consistent with this principle. The aided services must not be compulsory.

¹¹Currently synthetic fibres, motor vehicle, steel and transport

-The supported activities should typically involve the transfer of information and knowledge which is generally available and not include investment in proprietary information such as computer software, secret technological know-how or other intellectual property. Such information supplied from external sources, whether it is related to training of personnel or involves the use of advice from external experts, should typically be of a nature which benefits industry in general.

-Support for attending seminars and gathering general information abroad or participation in fairs and exhibitions is considered to be covered by the notion of soft aid.

-Among other justified means of SME promotion are aid to i.a. collective business support services and establishment of networks of enterprises for business support services¹². Public support to such collective services and facilities should be limited to the expenditure to establish the networks or facilities and to run them in. The services provided must not be of a routine operating nature such as joint distribution or marketing. They may, however, extend to the organization of seminars, shows, exhibitions or collective representation at trade fairs.

-As the amounts per firm typically tend to be relatively modest the activities eligible for aid may be supported up to 50 % of the eligible costs. Counselling to help enterprises identify their needs and select the services they require may be provided free of charge. The aid limit of 50 % must include aid from all public sources. A cash limit is not indispensable, but the schemes must clearly identify the eligible costs and indicate the duration of the activity.

Finally, for schemes related to export activities, a distinction may be drawn between export promotion related to markets with an EEA-dimension and other markets. There are several reasons for this. Access to overseas and other non-EEA markets may in many cases involve greater risk and higher initial costs than within the EEA. Further, it is perceived that export promotion measures directed towards non-EEA markets usually have less impact on competition between enterprises established within the EEA. For these reasons the provisions on aid for export promotion to SMEs may be differentiated according to the relevant market. Such provisions must however be examined on a case by case basis, i.a. by taking into account the maximum awards of aid that may be awarded to individual enterprises, sectoral aspects and other relevant factors.

HAS ADOPTED THIS DECISION:

1. The Norwegian authorities shall amend the schemes listed in Annex 1 to this decision and lay down criteria which ensure that awards of aid under the schemes are consistent with the principles outlined in point II.2 of this decision.

¹²I.a. for dispensing information, advice, counselling and training

2. The Norwegian authorities must inform the EFTA Surveillance Authority of the amendments to be made in the respective legal provisions or guidelines, insofar as these involve State aid, before they are put into effect.
3. The amendments are to be put into effect as soon as possible and not later than 31 March 1995.
4. The Norwegian authorities must inform the Surveillance Authority of the acceptance of the above measures by 20 December 1994.

Done at Brussels, 1 December 1994

For the EFTA Surveillance Authority

Knut Almestad
President

Heinz Zourek
College Member

NORWAY- AIDSCHEMES COVERED BY COLLEGE DECISION 202/94COL

Case no.	English title	Norwegian title	Current SME definition
93-157	Export Strategy Funding	Strategiske satsinger for økt eksport fra fastlands-Norge	No SME definition
93-158	Grants to export-related activities	Tilskudd til bedriftenes eksportfremmende tiltak (EKK)	Restricted in practice to enterprises with less than 500 employees
93-165	Export development programme for SMEs	Ekspertutviklingsprogrammet for små og mellomstore bedrifter	Restricted to enterprises with less than 100 employees

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 an 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.