



# *EFTA SURVEILLANCE AUTHORITY*

Doc.No. 99-6820-I  
Dec.No. 228/99/COL  
Ref. No. SAM030.99011

## EFTA SURVEILLANCE AUTHORITY DECISION

OF 22 SEPTEMBER 1999

ON THE MEASURES THAT THE NORWEGIAN GOVERNMENT INTENDS TO TAKE IN ORDER TO COMPLY WITH THE EFTA SURVEILLANCE AUTHORITY'S DECISION OF 2 JULY 1998 WITH REGARD TO STATE AID IN THE FORM OF REGIONALLY DIFFERENTIATED SOCIAL SECURITY TAXATION  
(AID No. 95-010)

(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 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>2</sup>, in particular to Article 24 and Article 1 of Protocol 3 thereof,

Having regard to the Authority's Guidelines<sup>3</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Having regard to the EFTA Surveillance Authority's Decision of 2 July 1998 with regard to state aid in the form of regionally differentiated social security taxation (Aid No. 95-010)<sup>4</sup>,

Having regard to the Judgment of the EFTA Court dated 20 May 1999 (Case E-6/98, *the Government of Norway v EFTA Surveillance Authority*) concerning the application for annulment of Decision No.165/98/ COL of 2 July 1998 of the EFTA Surveillance Authority with regard to State aid in the form of regionally differentiated social security taxation (Norway) (Aid No. 95-010)<sup>5</sup>,

---

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

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

<sup>3</sup> [Adopted and issued by the EFTA Surveillance Authority on 19 January 1994, OJ L 231 of 3 September 1994 \(page 1\).](#)

<sup>4</sup> Dec. No. 165/98/COL, OJ L 327 of 3 December 1998 (page 1).

<sup>5</sup> [EFTA Court Report 1999 page 0000 Not yet reported. The Judgment is available from the EFTA Court homepage \(www.efsa.int\).](#)

WHEREAS:

## I. FACTS

### 1. The notification

By telefax dated 17 September 1999, registered by the Authority on 17 September 1999 (Doc. No. 99-6890-A), the Norwegian authorities notified a "*Proposal for New Regulations in the Norwegian Scheme of Regionally Differentiated Social Security Contributions*".

### 2. Background

#### 2.1. The Norwegian national social insurance scheme ("Folketrygden")

Under the Norwegian Insurance Act of 28 February 1997 ("Folketrygden"), replacing a former act of 17 June 1966, all persons residing or working in Norway are subject to a compulsory insurance scheme under which employees and employers pay social security contributions. The scheme covers benefits such as pensions, rehabilitation, medical care, wage compensation and unemployment benefits. Social security contribution rates are decided annually by the Norwegian Parliament as part of the fiscal budget.

The contributions levied on employers are calculated on the basis of the individual employee's gross salary income. A system of regionally differentiated contribution rates ranging from 0 to 14.1% are in place, with a contribution rate depending on the zone where the employee has his or her registered permanent residence. The system of regionally differentiated contribution rates was introduced in 1975 and various adjustments have been made since then. The geographical scope of the zones was last revised in 1988. Since 1 January 1995, the applicable contribution rates have been as follows:

**Zone 1** (Central municipalities in southern Norway): 14.1%

**Zone 2** (Rural districts in southern Norway): 10.6%

**Zone 3** (Coastal area mid-Norway): 6.4%

**Zone 4** (Northern Norway): 5.1%

**Zone 5** (Spitsbergen, Finnmark, Northern part of Troms): 0%

The system applies to salaries paid to employees both in the private and the public sector except for the central government, which pays the maximum rates regardless of the residence of employees. It applies to foreign employees residing in Norway if they are covered by the national social security system.

#### 2.2. The Decision of the EFTA Surveillance Authority of 14 May 1997.

By letter dated 16 June 1995 (ref. 95-3560-D), the Authority requested the Norwegian authorities to submit full details on the system of regionally differentiated social security contributions paid by employers. The request was made in order to examine whether certain elements of this system might constitute State aid in the meaning of Article 61(1) of the EEA Agreement and if so, to examine to what extent any of the

derogations in Article 61(3) of the EEA Agreement might be applicable. The Norwegian authorities responded to the Authority's request by letters of 5 September 1995 (ref. 95-4968-A) and 19 September 1995 (ref. 95-5441-A).

On 14 May 1997 the Authority concluded<sup>6</sup> that the lower rates in zones 2-5 of the Norwegian system of regionally differentiated social security contributions from employers led to disbursements of State aid in the meaning of Article 61(1) of the EEA Agreement and that a general exemption was not warranted. Being an existing aid scheme, the Authority proposed therefore a number of appropriate measures for the system to be compatible with the EEA Agreement. The Authority requested the Norwegian authorities to signify its agreement to the proposal for appropriate measures, or otherwise submit its observations within two months from the receipt of the decision.

### **2.3. The Decision of the EFTA Surveillance Authority of 2 July 1998.**

By letter dated 11 July 1997 (ref. 97-5170-A), the Norwegian authorities responded that it could not concur with the Authority's proposal for appropriate measures, *inter alia*, because the rules in question were part of the general taxation system, and thus falling outside the scope of Article 61(1) of the EEA Agreement. After having received this reply, the Authority decided on 19 November 1997<sup>7</sup> to open the procedure that is provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian authorities replied to the Authority's Decision to open the investigation procedure by letter of 23 January 1998 (ref. 98-696-A), explaining why they considered that the scheme did not constitute State aid in the meaning of Article 61(1) of the EEA Agreement.

On 2 July 1998 the Authority rendered a Decision<sup>8</sup> (hereinafter "the Decision") in which it found that the scheme of regionally differentiated contribution rates for employers under the Norwegian social security system was incompatible with the EEA Agreement.

The Authority found that the system provided, through the State budget, a benefit to certain enterprises and must therefore be regarded as constituting State aid. The Authority further found that the general nature and character of the system did not justify the lower rates. The Authority also found that the aid distorted or threatened to distort competition within the European Economic Area.

The Authority considered whether the exceptions in Article 61(3)(a) and (c) of the EEA Agreement were applicable. It did so on the basis of its "Procedural and Substantive Rules in the Field of State Aid (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 Authority on 19 January 1994, as subsequently amended on several occasions (hereinafter "the Guidelines").

---

<sup>6</sup> Dec. No. 145/97/COL.

<sup>7</sup> Dec. No. 246/97/COL, OJ C 38 of 5 February 1998 (pages 6-17) and the EEA Supplement thereto.

<sup>8</sup> Dec. No. 165/98/COL, OJ L 327 of 3 December 1998 (page 1). ([Aid No. 95-010](#)).

The Authority found that no areas in Norway qualified for regional aid on the basis of Article 61(3)(a) of the EEA Agreement. With regard to Article 61(3)(c) of the EEA Agreement, however, the Authority indicated in its Decision that activities confined to certain areas could upon further notification qualify for regional transport aid.

The Authority further found that certain activities, such as enterprises with no alternative location and industries covered by sector specific rules, despite being situated in areas eligible for transport aid, could not benefit from the system of lower social security taxes.

With regard to the service sector and other non-manufacturing activities, the Authority found that differentiated social charges directed at enterprises in those sectors, to the extent that these activities fell within the scope of Article 61(1) of the EEA Agreement, could be accepted for indirect compensation for additional transport costs. However, this did not apply to certain enterprises providing transport, telecommunications or financial services (except for branch offices that only provide local services in the latter sector).

The conclusion of the Decision reads as follows:

*"The system of regionally differentiated social security contributions involves State aid in the meaning of Article 61(1) of the EEA Agreement. Parts of this aid may on certain conditions be exempted according to Article 61(3), while other parts cannot be exempted. Norway must undertake the necessary measures to ensure that the identified infringements of Article 61(1) are brought to an end."*

The operative part of the Decision reads:

*"1. The system of regional differentiation of employers' social security contributions in Norway is incompatible with the EEA Agreement in so far as,*

*a) it applies to activities not referred to in point b) below, unless it is confined to areas which have been notified to the Authority and found eligible for regional transport aid,*

*b) it allows for the following kind of enterprises to benefit from the lower social security contribution rates applied in zones 2-5,*

- enterprises engaged in Production and distribution of electricity (NACE 40.1)*
- enterprises engaged in Extraction of crude petroleum and gas (NACE 11.10)*
- enterprises engaged in Service activities incidental to oil and gas extraction excluding surveying (NACE 11.20)*
- enterprises engaged in Mining of metal ores (NACE 13)*
- enterprises engaged in activities related to the extraction of the industrial minerals Nefeline syenite (HS 2529.3000) and Olivine (HS 2517.49100)*
- enterprises covered by the act referred to in point 1b of Annex XV to the EEA Agreement (Council Directive 90/684/EEC on aid to shipbuilding)*

- enterprises engaged in production of ECSC steel,
- enterprises with more than 50 employees engaged in Freight transport by road (NACE 60.24)
- enterprises engaged in the Telecommunications (NACE 64.20) sector
- enterprises having branch offices established abroad or otherwise being engaged in cross-border activities related to the following sectors, namely, Financial intermediation (NACE 65), Insurance and pension funding (NACE 66), and Services auxiliary to financial intermediation (NACE 67), with the exception of branch offices only providing local services.

2. For the system of regionally differentiated social security contributions from employers to be adapted in such a way that it would become compatible with the rules on regional transport aid as reflected in the Authority's State Aid Guidelines and allow the Authority to carry out its surveillance functions in accordance with Article 1 of Protocol 3 to the Surveillance and Court Agreement, in addition to the adjustments required by points 1(a) and (b) of this decision, the following conditions would have to be complied with:

a) The applicability of the system would have to be limited in time, not going beyond 31 December 2003. Before that time, a request for extension may be submitted for examination by the Authority.

b) The Norwegian Government would be required to submit detailed annual reports on the aid scheme in accordance with the format indicated in Annex III of the State Aid Guidelines. As foreseen in Chapter 32 of the State Aid Guidelines, those reports would have to cover two financial years and be submitted to the Authority not later than six months after the end of the financial year. The first report is to be submitted before 1 July 2000.

c) In accordance with the rules on regional transport aid, the detailed annual reports would have to show, in addition to information required according to point (b), the operation of an aid-per-kilometre ratio, or of an aid-per-kilometre and an aid-per-unit-weight ratio.

d) The detailed annual reports would also have to contain, in addition to information required according to points (a) and (c), the estimated amounts of indirect compensation for additional transport costs in the form of lower social security contributions received by enterprises in the sectors covered by special notification requirements (motor vehicle industry, synthetic fibre industry and non-ECSC steel industry).

e) For production covered by the specific sectoral rules related to synthetic fibres, motor vehicles and non-ECSC steel, the Norwegian Government would have to notify the Authority of any recipients of aid benefiting from the lower social security contribution rates in zones 2-5.

f) The Norwegian authorities would have to introduce specific rules to ensure that overcompensation due to the cumulation of regional transport aid from different sources will not occur.

3. *Norway shall take the necessary measures to ensure that the aid which the Authority has found incompatible with the functioning of EEA Agreement is not awarded after 31 December 1998 and, where applicable, that the conditions in point 2 of this decision are complied with. It shall inform the Authority forthwith of the measures taken.*
4. *This decision is addressed to Norway. The Norwegian Government shall be informed by means of a letter containing a copy of this decision.*
5. *This decision is authentic in the English language."*

#### **2.4. The Judgment of the EFTA Court of 20 May 1999.**

On 2 September 1998, the Norwegian authorities brought an action, under Article 36 of the Surveillance and Court Agreement, before the EFTA Court for annulment of the Decision of 2 July 1998. On 16 November 1998 the Norwegian authorities asked the Court to order suspension of the Decision until final judgment. The Court ordered the suspension of the Authority's Decision on 11 December 1998<sup>9</sup>.

On 20 May 1999 the Court dismissed the application brought by the Norwegian authorities for the annulment of the Decision. The Court found the contribution system to be selective, favouring certain undertakings, and thus constituting State aid within the meaning of Article 61(1) of the EEA Agreement, and not to be a general measure falling outside the scope of Article 61(1), as argued by the Norwegian authorities. Further, the Court found that the system in fact conferred direct competitive advantages to undertakings in the favoured regions and that the Authority was correct by relying in its assessment on the characteristics of the aid scheme as such. However, the Court also found that the Authority had not fully considered the effect of harsh weather conditions or other circumstances which may justify an improvement of the employment situation by lowering the costs of labour in the affected areas. The Court, however, did not find that there were sufficient grounds for annulling the Decision for lack of reasoning covering factors other than those warranting the granting of regional transport aid, but emphasised that it is the obligation of the Authority, in considering a revised system of regional aid, to consider all aspects of the matter.

### **3. The contents of the proposed measures.**

#### **3.1. Introduction.**

The notification contains a "*proposal for new regulations in the Norwegian scheme of regionally differentiated social security contributions*". This proposal outlines how Norway intends to bring its legislation in line with the operative part of the Authority's Decision. The Norwegian authorities have, as an annex to the notification, also submitted a copy, in Norwegian language, of the tax proposal, which will be presented as part of a bill before the Parliament ("Stortinget"). A shortened version of the notified areas to be eligible for regional transport aid is referred below in point

---

<sup>9</sup> Case No. E-6/98 R. Not yet reported. [The Court order is available from the EFTA Court homepage \(www.efta.int\).](http://www.efta.int)

4.2. A shortened version of the other aspects of the Norwegian authorities' proposal is referred below in the appreciation part of the present Decision.

### **3.2. Notification of the geographical scope of the regionally differentiated social security contributions system**

#### **3.2.1. Areas proposed eligible for regional transport aid**

The Norwegian authorities point out that since the last revision of the geographical scope in 1988 substantial changes have taken place in population, industry, infrastructure etc. in remote and urban areas in Norway. On this background, and in view of the Authority's Decision, the Norwegian authorities have notified a new map for regional transport aid.

The total population coverage of the area proposed eligible for regional transport aid (zones 2-5) is 24.04% of the population (per 1.1.1999), whereas the existing population coverage is 25.96% (per 1.1.1998).

Nine out of 19 counties (NUTS<sup>10</sup> level III) in Norway have a population density of less than 12.5 inhabitants per square kilometer<sup>11</sup>. These are: Hedmark, Oppland, Telemark, Aust-Agder, Sogn og Fjordane, Nord-Trøndelag, Nordland, Troms and Finnmark. These counties account for 30,16 percent of the total population. The average population density in the nine counties is 5,8 inhabitants per square kilometer. Four out of the 9 counties; Finnmark, Troms, Nordland and Sogn and Fjordane, are as a whole proposed eligible for transport aid. Only part of the counties Nord-Trøndelag, Aust-Agder, Telemark, Oppland and Hedmark are proposed eligible for transport aid.

The Norwegian authorities argue that there are a number of municipalities in counties with a more dense population than 12.5 persons per square kilometer, which experience problems due to a peripheral location and sparse population. Therefore certain municipalities in six other counties; Sør-Trøndelag, Møre and Romsdal, Hordaland, Rogaland, Vest-Agder and Buskerud, are proposed to be covered by the map of areas eligible for regional transport aid. The municipalities in question are sparsely populated (on average 4.9 inhabitants per square kilometer). None of the municipalities in question have a population density of more than 12.5 inhabitants per square kilometer.

#### **3.2.2. Differentiation of the social security contributions**

The notified area is divided into four geographical zones with differentiated rates. The rates vary from 10,6% in zone 2 to 0% in zone 5. The full rate (in zone 1) is 14,1%. The differentiation is not changed compared to the existing regime (See table 1 below).

---

<sup>10</sup> Nomenclature of Statistical Territorial Units in the European Communities.

<sup>11</sup> According to the Authority's Guidelines, Chapter 25, low population is defined as less than 12.5 inhabitants per square kilometre.

Table 1: Current and proposed zones for social security contributions

Zones	Tax rate %	Current zones			Proposed zones			
		Population 1.1.1998	In per cent	Number of municipalities	Population 1.1.1999	In per cent	Population Density	Number of municipalities
1	14.1	3.270.868	74.00	161	3.376.859	75.96	61.8	174
2	10.6	628.988	14.20	166	456.677	10.27	5.1	121
3	6.4	16.444	0.40	6	95.806	2.16	2.4	32
4	5.1	406.892	9.20	76	422.790	9.51	6.4	82
5	0.0	94.407	2.14	26	93.197	2.10	1.7	26
2-5		1.146.731	25.96	274	1.068.470	24.04	4.02	261
Total Norway		4.417.599	100	435	4.445.329	100	14.5	435

Zone 5 covers Finnmark and the northern part of Troms. Zone 4 covers the rest of Troms, Nordland and some coast and island municipalities in Sør-Trøndelag and Møre and Romsdal. Zone 3 covers parts of Nord-Trøndelag, Møre and Romsdal, Sør-Trøndelag, Oppland and Hedmark counties. Zone 2 covers the county of Sogn and Fjordane and parts of Møre and Romsdal, Hedmark, Oppland, Buskerud, Telemark, Aust-Agder, Vest-Agder, Rogaland, Hordaland, Sør-Trøndelag and Nord-Trøndelag. Zone 1 covers the rest of the country.

39 municipalities will, according to the proposal, obtain a reduced tax rate compared to the existing regime. These are:

- From zone 1 to zone 2: Sigdal
- From zone 2 to zone 3:
  - Hedmark county: Stor-Elvdal, Rendalen, Engerdal, Folldal, Tolga, Alvdal, Os and Tynset.
  - Oppland county: Dovre, Lesja, Skjåk, Lom, Vågå, Sør-Aurdal, Nord-Aurdal, Etnedal, Vestre Slidre, Øystre Slidre, Vang and Sel.
  - Møre og Romsdal county: Halså, Surnadal, Rindal, Aure and Tustna.
  - Sør-Trøndelag county: Røros, Holtålen, Tydal, Oppdal, Snillfjord and Hemne.
  - Nord-Trøndelag county: Snåsa
- From zone 3 to zone 4:
  - Møre og Romsdal county: Smøla
  - In Sør-Trøndelag county: Åfjord, Osen, Frøya, Hitra og Roan

14 municipalities will, according to the proposal, get an increased tax rate compared to the existing regime. These are:

- From zone 2 to zone 1:
  - In Telemark county: Notodden
  - In Rogaland county: Forsand and Bokn
  - In Hordaland county: Fusa, Samnanger, Austevoll, Vaksdal, Osterøy, Meland, Radøy, Lindås and Austrheim.
  - In Møre og Romsdal county: Volda and Ørsta



The above mentioned changes implies that zone 2-5, which have reduced social security tax rate, is being reduced with 13 municipalities. The population density of the proposed area for reduced social security tax (zone 2-5) is 4.02 persons per square kilometre (per 1.1.1999).

## II. APPRECIATION

### 1. The presence of State aid and notification formalities

The notified aid is being funded by State resources and will favour certain undertakings in the meaning of Article 61 (1) of the EEA Agreement. As the benefiting undertakings are actually or potentially in competition with similar undertakings in Norway and other EEA States, and the proposed aid threatens to affect trade and distort competition, the aid therefore constitutes State aid in the meaning of Article 61 (1) of the EEA Agreement.

The Norwegian authorities have, by notification dated 17 September 1999 (Doc.No. 99-6890-A), fulfilled their obligation under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement in notifying plans to grant or alter aid. Consequently, the Authority is obliged to assess whether any of the exemption clauses under Article 61(2) or (3) of the EEA Agreement are applicable in order to exempt the aid measure from the general prohibition of aid under Article 61(1) of the EEA Agreement.

### 2. Introduction

It follows from the Authority's Decision, which alterations the Authority would deem to be necessary, in order to make a future system compatible with the EEA Agreement. For further information on these considerations, reference is made to the Authority's Decision. The Authority's findings were upheld by the EFTA Court in its judgment of 20 May 1999. These findings are, at present, equally valid.

Instead of abolishing the entire system, the Norwegian Government has opted for alterations to the system in the light of the Authority's Decision.

According to the Decision, the aid must be confined to areas that have been notified and found eligible for regional transport aid, in order to be compatible with the EEA Agreement (point 1a of the operative part of the Decision). The Authority found in its assessment<sup>12</sup> *"that if the Norwegian authorities after having received the Authority's Decision, notify an area to be designated for regional transport aid, then the whole of the counties of Finnmark, Troms, Nordland and Sogn og Fjordane, and the parts of Nord-Trøndelag, which belong to tax zones 2-4, may be considered eligible for regional transport aid. However, the Authority is not convinced by the information presented so far, that regional transport aid is justified for all municipalities presently covered by tax zone 2 in the counties of Rogaland, Hordaland, Møre og Romsdal and Hedmark. This concerns in particular those parts of the latter counties which do not form in principle a contiguous area with other municipalities in tax zone 2, those*

---

<sup>12</sup> Part III, point 3.4, p.19 of the Decision of 2 July 1998 (Dec. No. 165/98COL).

*which are located close to larger cities, or those which otherwise appear not to need compensation of a permanent nature to ensure regional development."*

Further, the Authority listed in the operative part of its Decision (Point 1 b) certain activities, which are not allowed to benefit from lower social security contribution rates, even if they would be situated in regions eligible for regional transport aid.

Finally, the Authority established necessary reporting requirements and the introduction of specific rules on cumulation of aid (point 2 of the Decision), in order to make a future system compatible with the rules on regional transport aid and to allow the Authority to carry out its surveillance functions.

The present notification concerns,

- a) a map of designated areas that need to be notified and approved by the Authority in order to be eligible for regional transport aid, as laid down in point 1 a) of the Decision.
- b) a proposal regarding how the Norwegian authorities intend to bring their legislation in line with points 1 b) and 2 of the operative part of the Decision. This includes:
  - i) enterprises with no alternative location, i.e. production and distribution of electricity, extraction of petroleum and natural gas and mining and quarrying,
  - ii) manufacturing industries covered by sector specific rules including the ship building industry,
  - iii) financial services (except for branch offices that only provide local services), transport and telecommunications,
  - iv) general questions concerning, inter alia, the application of the de minimis rule and provisions to avoid cumulation, laid down in point 2 of the Decision.

### **3. Assessment of the notification on the geographical scope of the regionally differentiated social security contribution system**

#### **3.1. Introduction**

Chapter 25.4(27) of the Guidelines states that: *"In the regions of low population density qualifying either for exemption under Article 61(3)(a) or under 61(3)(c) on the basis of the population density test referred to in Chapter 25.3, paragraph (17), aid intended partly to offset additional transport costs<sup>13</sup> may be authorized under special conditions. It is up to the EFTA State to prove that such additional costs exist and to determine their amount."*

---

<sup>13</sup> Additional transport costs mean the extra costs occasioned by movements of goods within the borders of the country concerned. In no circumstances may such aid constitute export aid, nor must it constitute measures having an equivalent effect to quantitative restrictions on imports, within the meaning of Article 11 of the EEA Agreement.

Annex XI of the Guidelines specifies the conditions that have to be met. Regarding the areas qualifying for regional aid, it is stated that:

*"Aid may be given only to firms located in areas qualifying for regional aid on the basis of the new population density test. Such areas will be made up essentially of NUTS level III geographic regions with a population density of less than 12.5 inhabitants per square kilometer. However, a certain flexibility is allowed in the selection of areas, subject to the following limitations:*

- *flexibility in the selection of areas must not mean an increase in the population covered by transport aid;*
- *the NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometer;*
- *they must be contiguous with NUTS III regions which satisfy the low population density test;*
- *their population must remain low compared with the total coverage of the transport aid."*

### **3.2. Compensation for additional transport costs**

To prove the existence of additional transport costs in the proposed areas (ref. Chapter 25.4(27) of the Guidelines), the Norwegian authorities refer to a study undertaken by the Institute of Transport Economics in Norway (TØI) in 1996<sup>14</sup>. The study covered 36 different companies in various parts of the country, randomly sampled by TØI.

The study showed that enterprises located in the most remote and sparsely populated areas did have a substantial disadvantage, compared to enterprises in more central areas, due to higher direct and indirect transport costs. The study also showed that in aggregate terms additional transport costs exceeded by far the estimated benefits to the enterprises with lower social security contributions. No company in the survey had a greater advantage from reduced social security charges than the extra transport cost caused by remote localization.

The study from TØI was also a basis for the Authority's Decision of 2 July 1998. The Authority accepted in the Decision *"that manufacturing enterprises not belonging to sectors excluded from the referred study, and located in tax zones 2-5, face significant additional transport costs, and that the additional transport costs are not overcompensated by the financial benefits associated with the lower social security contribution rates in the same regions."*

### **3.3. Areas proposed eligible for regional transport aid**

The Norwegian authorities have proposed a total population coverage for zone 2-5 of 24.04%, which is a reduction compared to the present coverage of 25.96%. The total number of municipalities in tax zones 2-5 is reduced by 13.

---

<sup>14</sup> [Karl-Erik Hagen \(1996\): "Industribedrifters transportvolum og kostnader"](#), Institute of Transport Economics in Norway (TØI), [nr 0-2273](#).

The Authority finds that the reduction of the total population coverage and the number of municipalities are in accordance with the general introductory remarks in the Guidelines. It is stated in Chapter 25.1 (5) of the Guidelines that regional aid "*is conceivable in the EEA only if it is used sparingly and remains concentrated on the most disadvantaged regions*".

The Authority, furthermore, finds that the proposal to transfer municipalities from zone 2 to 1 largely meets the concerns expressed by the Authority in its Decision of 2 July 1998, as referred to in section II.2 above, and that the transfer in the present context must be seen as a minimum.

The present proposal implies that there is no change regarding the four northernmost counties compared to the present regime (Finnmark (zone 5), Troms, (zone 4/5), Nordland (zone 4), Nord-Trøndelag (zone 2/3)), except one municipality (Snåsa) in Nord-Trøndelag which is moved from zone 2 to zone 3. There is also no changes regarding Sogn og Fjordane (zone 2). The population densities per 1.1.1998 in these counties are:

- Finnmark: 1.6 inhabitants per square kilometre
- Troms: 5.8 inhabitants per square kilometre
- Nordland: 6.2 inhabitants per square kilometre
- Nord-Trøndelag: 5.7 inhabitants per square kilometre
- Sogn og Fjordane: 5.8 inhabitants per square kilometre

The Authority finds that all of these counties meet the conditions set out in Annex XI of the Guidelines and hence qualify for regional transport aid.

Counties Hedmark, Oppland, Telemark and Aust-Agder also have a population density of less than 12.5 inhabitants per square kilometres. For these counties the Norwegian authorities have proposed that only part of the counties shall be eligible for regional aid. On the other hand, parts of 6 other counties, namely Sør-Trøndelag, Møre and Romsdal, Hordaland, Rogaland, Vest-Agder and Buskerud, are proposed covered by the map of areas eligible for regional transport aid. These counties do not have a population density of less than 12.5 inhabitants per square kilometres.

This exchange in municipalities must not mean an increase in the population covered by transport aid according to Annex XI of the Guidelines. The population of the 9 counties with a population density of less than 12.5 inhabitants per square kilometre accounts for 30,16 percent of the total population. The total population coverage of the area proposed eligible for regional transport aid (zones 2-5) is 24.04% of the population (per 1.1.1999). The first condition mentioned in section 2.1 above is therefore met.

The NUTS III parts qualifying for flexibility must also, according to Annex XI, have a population density of less than 12.5 inhabitants per square kilometre. The municipalities in Sør-Trøndelag, Møre and Romsdal, Hordaland, Rogaland, Vest-Agder and Buskerud which are proposed as eligible for regional transport aid have on average a population density of 4.9 inhabitants per square kilometre. The second condition referred to is therefore also met.

The areas must further, according to Annex XI, be contiguous with NUTS III regions that satisfy the low population density test. This condition is also met.

The population of the municipalities in Sør-Trøndelag, Møre and Romsdal, Hordaland, Rogaland, Vest-Agder and Buskerud which are proposed as eligible for regional transport aid must also, according to Annex XI, remain low compared to the total coverage of the transport aid. The total population of the municipalities in the 6 counties that are included in tax zone 2-5 amounts to 265.599 persons. This is 24.9 per cent of the total population coverage of zone 2-5. The Authority is in some doubt as to whether this can be considered as being low, but finds that it can consider this condition also as being met.

### **3.4. Increased population coverage in zone 3 and 4**

The notified area for tax zone 3 increases with 24 municipalities, while the notified area for tax zone 4 increases with 6 municipalities. All the 32 municipalities in the new zone 3 are being moved from the existing zone 2, while the 6 existing municipalities in zone 3 are being moved to the new zone 4. The population coverage for tax zone 3 goes up from 16.444 persons (per 1.1.1998) to 95.806 persons (per 1.1.1999), or from 0.40% to 2.16% of total population. The population coverage for tax zone 4 goes up from 406.892 persons (per 1.1.1998) to 422.790 persons (per 1.1.1999), or from 9.20% to 9.51% of total population.

The 32 municipalities in southern Norway being moved from zone 2 to zone 3, are located in Nord-Trøndelag (1 municipality), Sør-Trøndelag (6 municipalities), Møre og Romsdal (5 municipalities), Hedmark (8 municipalities) and Oppland (12 municipalities). Out of these counties, Sør-Trøndelag and Møre og Romsdal does not have a population density of less than 12.5 inhabitants per square kilometre.

According to the notification, very few companies in the suggested zone 3 are subject to international competition. The TØI survey covered, however, two companies in Stor-Elvdal (Hedmark) and Røros (Sør-Trøndelag), located in existing zone 2 and suggested zone 3. Both these two companies had extra transport costs well above the average in zone 2. By changing status for these municipalities to zone 3, the advantage to these firms, due to reduced social security, will increase by approximately 55%. This implies that the ratio showing the relationship between the extra transport costs and the advantage gained by reduced social security is reduced for these two firms from 5.12 and 12.32, to 3.30 and 7.95, respectively, implying that the extra transport costs still more than offset the advantage gained by reduced social security. Also other enterprises in the study located in other parts of Oppland, Hedmark, Sør-Trøndelag and Nord-Trøndelag with lower rates have high transport costs.

The proposed zone 3 is a contiguous area neighbouring zones 2 and 4.

Six municipalities at present in zone 3, is proposed eligible for zone 4 (Smøla, Åfjord, Osen, Frøya, Hitra and Roan). As a consequence, the proposed zone 4 increases marginally (with 0.31 percentage points in terms of population). Out of these 6 municipalities 3 are islands (Smøla, Hitra and Roan). The three others also have a remote location.

The number of municipalities being moved, in particular from zone 2 to zone 3, are considerable. This implies that the enterprises in these municipalities will benefit from a lower social security rate. The Authority finds that the Norwegian authorities by moving 39 municipalities to a lower tax zone have exploited the possible scope within the present system to its maximum. However, given that the municipalities that are proposed to be moved from tax zone 2 to 3, and from 3 to 4, are areas experiencing objective handicaps caused by an unfavorable demographic situation and remote location, the Authority has therefore no objections to this part of the notification

#### **4. Assessment of the proposal for new regulations in the Norwegian scheme of regionally differentiated social security contributions.**

##### **4.1. Enterprises with no alternative location**

###### **4.1.1. Production and distribution of electricity.**

According to the proposal of the Norwegian authorities, enterprises engaged in hydropower production will be excluded from the benefit of lower rates in zones 2-5. The argument is that electricity generation by other means than hydropower has an alternative location and should therefore fall outside the prohibition of regional transport aid to enterprises with no alternative location.

As regards the activities that could not benefit from the system of reduced rates, the Decision of 2 July 1998 was based on the criteria defined in former Chapter 28.2.3.2 of the Guidelines on regional transport aid. In the amended Guidelines (amended by the EFTA Surveillance Authority Decision No 316/98/Col of 4.11.1998) these provisions are now laid down in Chapter 25(4)(27) and in Annex XI of the Guidelines, entitled: "*Aid to offset additional transport costs in regions qualifying for exemption under Article 61(3)(c) on the basis of the population density test*".

For enterprises with no alternative location specific provisions are laid down in the fifth bullet (fifth sub-bullet) of Annex XI to the Guidelines, which states:

\* "*No aid may be given towards the transport or transmission of the products of enterprises without an alternative location (products of the extractive industries, hydroelectric power stations, etc.).*"

The notification does not contain any information as to what extent electricity in Norway is produced by other means than hydropower. The Authority assumes that other means than hydropower are such as gas turbine, diesel (fossil fuel) and renewables.

The Authority agrees that electricity produced by other means than hydropower has alternative locations and therefore should fall outside the prohibition of regional transport aid.

The proposal does also not exclude enterprises engaged in the transmission and distribution of electricity from the lower rates. The reasons provided for this is that electricity network enterprises are "natural" monopolies, which, by definition, do not

face competitive pressure. There is thus no economic or legal basis for (potential) competition between grid companies.

According to Article 61(1) of the EEA Agreement, only aid that affects trade between Contracting Parties falls within the scope of this provision.

It is recognized<sup>15</sup> that there is a natural monopoly in electricity transmission.

Due to the organization and structure of the Norwegian energy market there is no disparity regarding the prices charged to the users for the transmission. It is therefore difficult to substantiate a distortion of competition because of reduced costs in transmission of electricity due to reduced social security contributions. The Norwegian authorities outlined that these economic conditions form the basis for the Norwegian regulatory regime for electricity networks, which requires that network operations be separated from other economic activities (vertical unbundling), and which, through licensing requirements and power system planning, ensures that no parallel lines are constructed.

The Authority agrees that at the present stage of the development of the electricity market in the EEA aid to the transmission and distribution of electricity in Norway is not liable to affect trade between the Contracting Parties in the meaning of Article 61(1) of the EEA Agreement. Enterprises engaged in transmission and distribution of electricity may benefit from the system of regionally differentiated social security contribution system in Norway.

In light of the above considerations, the Guidelines and the Authority's Decision of 2 July 1998, the Authority has no objections to the proposal of the Norwegian authorities on this point.

#### **4.1.2. Mining of metal ores**

The Norwegian authorities have proposed that mining of metal ores, except iron ores (NACE 13.1), shall not benefit from the differentiated system of social security contributions.

Although coal and steel products are generally covered by the EEA Agreement<sup>16</sup>, certain mining activities are, however, subject to the special provisions of the Free Trade Agreements between the European Coal and Steel Community, its Members States and the individual EFTA States<sup>17</sup>. As regards the mining of iron ores, the Norwegian authorities are of the opinion that this activity is not covered by the EEA

---

<sup>15</sup> Directive 96/92 EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, OJ ~~No~~-L 27, 30 ~~01~~-January 1997, (page 20).

<sup>16</sup> [Protocol 14 \(on trade in coal and steel products\) of the EEA Agreement. Annex XV point 1\(a\) of the EEA Agreement \(Commission Decision No. 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, OJ L 338 of 28 December 1996, page 42\).](#)

<sup>17</sup> [Agreement between the Member States of the European Coal and Steel Community and the European Coal and Steel Community, of the one part, and the Kingdom of Norway, of the other part - Protocol concerning the treatment applicable to certain products - Final Act - Declarations, OJ L 348 of 27 December 1974 \(pages 17-35\).](#)

Agreement<sup>18</sup>. The Authority takes account of the Norwegian authorities' position on this point.

#### **4.1.3. Extraction of nepheline syenite and olivine**

The Norwegian authorities proposed that extraction of nepheline syenite and olivine (HS 2517.4900) can not benefit from the differentiated system of social security contributions.

Since extraction of these two products are geographically concentrated activities, based on limited natural resources, which are geographically bound, such extraction must be considered as being a production without an alternative location. Thus, the Authority takes account of the proposal on this point, it being in accordance with the Guidelines and the Authority's Decision of 2 July 1998 on this point.

#### **4.2. Industries covered by specific sectoral rules**

The fifth bullet (sixth sub-bullet) of Annex 11 to the Guidelines states:

*\* "Transport aid given to firms in industries which the EFTA Surveillance Authority considers sensitive (motor vehicles, synthetic fibres, shipbuilding and steel must always be notified in advance and will be subject to the industry guidelines in force."*

Thus, as regards industries covered by sector specific rules, the notification will have to be considered in light of these provisions.

##### **4.2.1. Companies covered by the Act referred to in point 1(b) of Annex XV to the EEA Agreement (Shipbuilding).**

As concerns aid to shipbuilding, the proposal distinguishes between activities covered by the Act referred to in point 1(b) of Annex XV to the EEA Agreement and activities not covered by that Act. At the time of the Decision of 2 July 1998 the applicable Act was Council Directive 90/684/EEC<sup>19</sup>. The Act in question is now Council Regulation 1540/98 of 29 June 1998<sup>20</sup> establishing new rules on aid to shipbuilding. In the following the Act will be referred to just as Regulation 1540/98.

As concerns activities not covered by Regulation 1540/98, the proposal establishes that these activities shall benefit from lower social security contributions. The argumentation is that the enterprises in question are subject to the same objective regional handicaps as other activities in the regions concerned and therefore have additional transport costs. These additional transport costs exceed the benefits stemming from lower social security contributions, to which the enterprises consequently shall be entitled. The Norwegian authorities have examined information

---

<sup>18</sup> [Article 5 of Protocol 14 of the EEA Agreement. Article 1 and Annex 1 of the Free Trade Agreement between Norway, the ECSC and its Member States.](#)

<sup>19</sup> [Council Directive 90/684/EEC of 21 December 1993 on aid to shipbuilding, OJ L 380 of 31 December 1990, page 27, as amended by Council Directives 93/115/EEC, OJ L 326 of 28 December 1993, page 62, and 94/73/EC, OJ L 351 of 21 December 1994, page 10.](#)

<sup>20</sup> OJ L 202 of 18 July 1998, p.1. EEA Joint Committee Decision of 29 January 1999.



on the transport cost situation and the cost structure of ship yards located in zones 2-5. The Norwegian authorities have taken into account the available information on the respective yards' actual location, their proximity to markets and suppliers and geographical circumstances that affect their logistic costs. The examination concludes that the disadvantages associated with the enterprises' additional transport costs outweigh the benefits associated with the lower social security contribution rates in the zones where they are located. The Authority takes account of the Norwegian authorities' examination and will closely monitor this point in the annual reports.

Concerning activities covered by Regulation 1540/98, the proposal lays down that these activities do not benefit from lower social security contributions. Thus, no question of aid arises. Consequently, the Authority takes account of this part of the notified measure, they being in accordance with Regulation 1540/98 and the Authority's Decision of 2 July 1998.

As for activities not covered by Regulation 1540/98, it appears that the activities in question are subject to the same regional disadvantages as other activities in the regions concerned. The activities in question are not singled out by any peculiar traits pertaining to them. Furthermore, it appears that the additional transport costs that the enterprises have to bear because of their location in the regions concerned outweigh the benefits stemming from lower social security contributions. The Authority therefore has decided not to raise objections to the proposal.

#### **4.2.2. Companies covered by the Act referred to in point 1(a) of Annex XV to the EEA Agreement (ECSC steel)**

The Norwegian authorities propose that enterprises producing ECSC steel (Enterprises covered by the Act referred to in point 1(a) of Annex XV to the EEA Agreement (Commission Decision No 2496/96/ECSC))<sup>21</sup> can not benefit from the differentiated system of social security tax.

The Authority takes account of this part of the proposal, it being in accordance with the Act referred to in point 1(a) of Annex XV to the EEA Agreement, the Guidelines and the Authority's Decision of 2 July 1998.

### **4.3. The service sector and other non-manufacturing activities**

#### **4.3.1 Introduction**

The rules on regional transport aid are designed in such a way that they are mainly applicable vis-à-vis enterprises producing goods, and therefore less suitable for the Authority's compatibility assessment of the measures under consideration, inter alia, vis-à-vis the service sectors.

The Authority has therefore applied a broader perspective with regard to the applicability of Article 61(3)(c) of the EEA Agreement. It has in particular taken into account the impact of reductions in social charges on the employment situation, and

---

<sup>21</sup> Point 1 (a) of Annex XV to the EEA Agreement. Commission Decision ~~38552496/916~~/ECSC of ~~27 18 November~~~~December~~ 199~~16~~ establishing Community rules for aid to the steel industry, ( ~~OJ No. L 33862, of 28 31.12. December 1996~~, (page ~~4257~~)).

assessed the effects of the lower tax rates under consideration with respect to the effects on competition and trade for certain service sectors.

A systematic overview of the situation with respect to the transport costs for the service sectors is not available. However, it is clear that certain parts of the service sector face significant transport costs and are therefore likely to be negatively affected by additional transport costs in the same way as the goods producing sectors. The average transport costs in one segment of wholesale trade have been estimated at approximately 5 % of turnover<sup>22</sup>, while the average transport costs for the retail and wholesale sector as a whole have been estimated at 33 % of value added<sup>23</sup>.

The Authority accepts that enterprises in most service sectors located in regions that may be found eligible for regional transport aid may be negatively affected in a direct or indirect way by long distances to markets, or by long distances in intra-regional communication. The presence of harsh weather conditions is an additional qualitative factor, which may increase the operating costs of economic operators also in the service sectors.

Against this background the Authority has found that, as concerns service activities and non-manufacturing activities, other than those referred to below, and to the extent they fall within the scope of Article 61(1) of the EEA Agreement, the lower tax rates are justified as aid for regional development on the basis of Article 61(3)(c) of the EEA Agreement, as long as the lower tax rates are limited to an area which is authorized by the Authority for indirect compensation for additional transport costs.

The Authority has found, however, that the lower rates in zones 2-5 cannot apply to undertakings involved in the following service activities, namely, financial services, transport and telecommunications, since these activities to a considerable extent are faced with competition from undertakings situated in other states with the EEA. As regards financial services, the Authority can accept, however, that branch offices in areas eligible for regional transport aid may be allowed to benefit from the lower rates in these areas, provided that the branch offices in question are only providing local services.

#### **4.3.2 Financial services**

The proposal imposes full social security contributions on companies mentioned in the Norwegian Financial Institutions Act section 1-4 and the Norwegian Securities Trading Act section 7-1, provided that the companies in question provide cross-border services, have a branch in another EEA State or have a subsidiary providing such services within the EEA.

The Authority takes account of the proposal and finds it in accordance with the Guidelines and the Authority's Decision of 2 July 1998 on this point.

---

<sup>22</sup> TØI Prosjekt O-1238 Næringslivets transportkostnader for rør- og sanitærgrossister (Hagen).

<sup>23</sup> TØI rapport 297/1995 Analyse av kostnadsutviklingen i innenlandske godstransporter (Hagen).

#### **4.3.3. Enterprises with more than 50 employees engaged in Freight transport by road**

The Norwegian authorities have proposed that enterprises with more than 50 annual work units (in the preceding calendar year) engaged in freight transport by road cannot benefit from reduced social security rates. However, enterprises that provide transport services for their own use within the enterprise and freight transport within an enclosed space will be excluded from this rule.

The Decision refers to "*enterprises with more than 50 employees engaged in Freight transport by road (NACE 60.24)*". The proposal uses instead 50 annual work units, and not employees. The definition of SMEs used in the Guidelines<sup>24</sup> is based on the number of annual works units (AWUs), that is to say the number of wage- and salary-earners employed full-time for a whole year, with part-time or seasonal work being counted as fractions of a unit. The Authority therefore finds it correct to use AWUs and not the number of employees. The Authority also finds it in accordance with its Decision of 2 July 1998 that enterprises that provide transport services for their own use within the enterprise, and freight transport within an enclosed space, are covered by the differentiated system of social security contributions. Therefore, the Authority has no objection to this part of the proposal.

#### **4.3.4. Telecommunication services**

The Norwegian authorities have proposed that enterprises providing telecommunication services cannot benefit from the differentiated system of social security contributions.

The Decision refers to "*enterprises engaged in the telecommunications (NACE 64.20)*" within the service sector. The reasons for the Authority's position on this point are partly that the EEA Agreement contains specific provisions aiming at promoting trade and competition in these sectors, and more generally, that the introduction of the most recent information technology implies that the services mentioned may only to a very limited extent be considered as permanently hampered by long distances and harsh weather conditions. In the light of the above, the Authority takes account of the proposal and finds it in accordance with the Guidelines and its Decision of 2 July 1998.

#### **4.4 Local services**

According to the notification, the Norwegian authorities will at a later stage pass a regulation, which will contain provisions, according to which local services, concerning the activities mentioned under 4.2.1 and 4.3.2 above, may benefit from differentiated social security contributions. The Authority shall observe that any use of these provisions, which may affect trade between the Contracting Parties of the EEA Agreement, would require prior notification and approval by the Authority.

---

<sup>24</sup> Chapter 10.2.

#### **4.5. General questions (point 2 of the Decision)**

##### **4.5.1. Enterprises engaged in activities partly covered by the Decision.**

According to the proposal, enterprises will be required to keep separate accounts for activities that have to pay the highest social security contributions, if other activities in the enterprise are to benefit from lower social security contribution rates. When an enterprise fails to submit clearly separated accounts to the tax authorities, it shall be obliged to pay the highest rate of social security contributions for all its activities.

It follows from the general principles laid down in Article 61 of the EEA Agreement that state aid must only be granted to activities eligible for the aid in question. Thus the grant of aid must not lead to cross-subsidization of activities that may not benefit from the aid.

The proposal from the Norwegian authorities seeks, in cases where an enterprise is involved in activities that may and may not benefit from the system of regionally differentiated contributions, to avoid spill-over effects to activities that may not benefit from reduced contributions and thus to eliminate cross-subsidization.

The proposal implies that no spill-over effects and thus that no cross-subsidization will take place in favour of activities that may not benefit from the system of regionally differentiated contributions .

In light of the above considerations, the Authority has no objection to this part of the proposal.

##### **4.5.2. Aid that is allowed according to the de minimis rule.**

The proposal from the Norwegian authorities contains a provision that allows enterprises that may not benefit from the regionally differentiated social security system (i.e. enterprises with no alternative location, industries covered by sector specific rules and undertakings providing, financial, transport and telecommunication services) to receive de minimis aid.

Concerning these activities, employers' social security contributions will be based on the lower rates as long as the difference between the social security contributions based on the highest rate and the social security contributions based on the lower rates do not exceed NOK 270.000 for one year.

When this limit is exceeded, the social security contributions will have to be based on the highest rate. This means that the total maximum net aid will never exceed EURO 100.000 over a three-year period.

The provision on the de minimis aid will not apply to ECSC steel and freight transport by road.

The Guidelines, Chapter 12, state that "*The EFTA Surveillance Authority is of the view that aid below a certain amount is considered not to have an appreciable effect on trade and competition between the Contracting Parties. Therefore, Article 61(1) of*

*the EEA Agreement can be said not to apply and notification is not required for payments of aid as defined below.*" The amount is set at EURO 100.000 over a three-year period.

It follows from Chapter 12.1 (6) that the de minimis rule does not apply to the steel industry covered by the ECSC Treaty nor to transport.

The Act referred to in point 1.B of Annex XV to the EEA Agreement (Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding, and in particular Article 10(2)(b)) states the following:

*"The following shall be notified to the Commission in advance by the Member States and authorized by the Commission before they are put into effect:*

*any decision to apply a generally applicable aid scheme, including generally applicable regional aid schemes, to the undertakings covered by this Regulation in order to verify compatibility with Article 92 of the Treaty, in particular in cases referred to in Articles 6, 7, 8 and 9 unless the aid is below the de minimis threshold of ECU 100 000 [now EURO] over any three-year period" (emphasis added).*

The system proposed by the Norwegian authorities ensures that the total maximum net aid will never exceed EURO 100.000 over a three-year period [EURO 100.000 multiplied with the exchange rate between EURO and NOK (8.7745 NOK/EURO<sup>25</sup>) divided by three is NOK 292 483]. The limit of NOK 270 000 set by the Norwegian authorities is therefore well below the actual de minimis limit.

The proposal also ensures that the de minimis provision does not apply to the steel industry covered by the ECSC Treaty or transport.

Given Council Regulation (EC) 1540/98, the de minimis rule may apply to the shipbuilding sector in Norway.

In order to avoid possible cumulation of de minimis aid with aid from various aid schemes the Norwegian authorities will introduce an amendment to the regulations laid down pursuant to the State Aid Act ("Lov av 27. nov 1992 nr 117 om offentlig støtte").

In light of the above considerations the Authority has no objection to the proposal from Norway as regards the application of the de minimis rule to the system of regionally differentiated social security tax.

#### **4.5.3. Cumulation with other forms of aid.**

According to the Norwegian authorities, direct transport aid schemes are at present being operated in six counties in Norway. The provisions of these schemes provide that transport compensation is provided on objective grounds on the basis of individual applications from enterprises.

---

<sup>25</sup> The rate is set according to the principle laid down in Chapter 33.1 of the Guidelines.

For enterprises that are allowed to benefit from reduced social security contributions, and which apply for direct transport aid, the Norwegian authorities will, according to the notification, ensure that overcompensation will not occur and that cumulating control measures are introduced in accordance with the Guidelines for the respective direct transport aid schemes. As regards the present case, the Authority specifically stated in point 2 f) of the operative part of the Decision that "*the Norwegian authorities would have to introduce specific rules to ensure that overcompensation due to cumulation of regional transport aid from different sources will not occur*".

The Authority has noted that the Norwegian authorities' commitment to ensure that overcompensation will not take place and that the required cumulation control measures will be introduced in line with the Guidelines for the respective direct transport aid schemes. However, no further description or information of these control measures were provided.

Since no specific rules were notified, the Norwegian authorities would have to introduce within the 2 months, from the date of this Decision, specific rules to ensure that the required cumulation control measures are in place and inform the Authority of these measures within this deadline. The Norwegian authorities are also reminded in this context that the ceiling for the de minimis aid applies to the total of all public assistance considered to be de minimis aid and that de minimis aid needs to be taken into account, in order to prevent aid cumulation.

## **5. Annual reports and periodic review**

The Authority's Decision of 2 July 1998 imposed clear reporting obligations for the Norwegian authorities<sup>26</sup>. With reference to Chapter 32 (see also Annex IV) of the Guidelines, the Authority therefore finds it appropriate to request the Norwegian authorities to submit detailed annual reports on the application of the Norwegian scheme of regionally differentiated social security contributions in accordance with its Decision of 2 July 1998. The submission of annual reports is considered necessary for the Authority to fulfil its obligation under Article 1(1) of Protocol 3 of the Surveillance and Court Agreement to keep all existing systems of State aid under constant review in co-operation with the EFTA States.

The Authority will also remind the Norwegian authorities of point 2a) of the operative part of the Decision which reads as follows: "*The applicability of the system would have to be limited in time, not going beyond 31 December 2003. Before that time, a request for extension may be submitted for examination by the Authority.*"

## **6. Conclusions**

The system of regionally differentiated social security contributions involves State aid in the meaning of Article 61(1) of the EEA Agreement. However, the system, as notified in its current form, can be exempted according to Article 61(3)(c) of the EEA Agreement.

---

<sup>26</sup> See part III, point 3.10, p. 28-29 of the Decision and point 2 of the operative part of the Decision, referred in part I, point 2.2 above.

**HAS ADOPTED THIS DECISION:**

1. The Authority has decided not to raise objections to the proposed new scheme of regionally differentiated social security contribution as notified by the Norwegian authorities by telefax of 17 September 1999 (Doc.No. 99-6890).
2. The Norwegian authorities are obliged to submit simplified annual reports to the Authority on the application of the regionally differentiated social security contributions, in accordance with point 2 b)-e) of the Authority's Decision of 2 July 1998<sup>27</sup>, Chapter 32 and Annex IV of the Guidelines.
3. In accordance with the Authority's Decision of 2 July 1998, the approval of the system is limited in time, not going beyond 31 December 2003. Before that time, a request for extension may be submitted for examination by the Authority.
4. The Norwegian authorities shall notify within 2 months, from the date of this Decision, specific rules to ensure that cumulation control measures are in place.

Done at Brussels, 22 September 1999

For the EFTA Surveillance Authority

Knut Almestad  
President

Bernd Hammermann  
College Member

---

<sup>27</sup> Dec. No. 165/98/COL.