

EFTA SURVEILLANCE AUTHORITY DECISION
of 15 December 2016

on Enova's Eco-Inn scheme 2017-2022

(Norway)

The EFTA Surveillance Authority ("the Authority"),

HAVING REGARD to:

the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) The Norwegian authorities notified Enova's Eco-Inn scheme 2017-2022 ("the Eco-Inn scheme"), pursuant to Article 1(3) of Part I of Protocol 3, by letter of 20 October 2016.¹

2 Background

2.1 Previously approved schemes

- (2) On 1 January 2002, the Norwegian Energy Fund aid scheme was established. It represented the continuation of two schemes operated by the Norwegian Water Resources and Energy Directorate. The Norwegian Energy Fund aid scheme was approved by the Authority in 2006 by its Decision No 125/06/COL. Amendments to that scheme were approved by the Authority by Decisions No 536/09/COL, 75/10/COL and 486/10/COL.

¹ Documents No 823196, 823198 and 823203.

- (3) In 2011, the Authority approved a new Norwegian Energy Fund aid scheme by Decision No 248/11/COL. An amendment to that scheme was approved by Decision No 299/11/COL.

2.2 The notified aid measure

- (4) The notified Eco-Inn scheme is an aid scheme for the promotion of eco innovation. It is managed by Enova SF (“Enova”), a state enterprise owned by the Norwegian State via the Ministry of Petroleum and Energy. The aim of the scheme is to protect the environment and the climate by supporting eco innovation. More concretely, Enova intends to incentivise investments in new production processes, new products or services, and new management and business methods to the benefit of the environment and the climate.

2.3 Schemes not covered by the current notification

- (5) Whilst the Norwegian Energy Fund aid scheme approved by Decision No 248/11/COL was a broad scheme encompassing a wide variety of activities (four programmes which in turn were divided into chapters),² the current notification exclusively covers support to eco innovation.
- (6) Enova will continue to support a wide variety of environmental activities with the Energy Fund. To this end, the Norwegian authorities have notified separately two other schemes; one under which it will grant aid for the demonstration of new energy and climate technology, and one for alternative fuels infrastructures. They have also made use of the General Block Exemption Regulation (“GBER”)³ to exempt from notification the remaining aid granting activities of Enova.

3 National legal basis

- (7) The national legal basis for the Eco-Inn scheme is Parliamentary Decision of 5 April 2001 on the basis of a proposition by the Ministry of Petroleum and Energy of 21 December 2000. The Parliamentary Decision amends the Energy Act of 29 June 1990 No. 50.

4 Beneficiaries

- (8) The eligible beneficiaries under the Eco-Inn scheme are undertakings investing in innovation activities in favour of the protection of the environment and the climate in the domain of energy efficiency, renewable energy, resource efficiency and reduction of greenhouse gas emissions. The beneficiaries are the end-users adopting the environmentally friendly innovations. The scheme is technologically neutral, and is not sector specific.
- (9) In order to be eligible for aid under the scheme, the relevant undertaking must be registered in Norway. The supported project must be located in Norway, or in the Norwegian economic zone. In case of ships, they must in principle be registered in the Norwegian ship registers (NOR or NIS) in order to be eligible for aid. However, ships that are not registered in NOR or NIS may be eligible for aid where significant operations in Norwegian territory or economic zone can be documented for the lifetime of the investment.
- (10) Undertakings with pending recovery orders will not be eligible for aid, nor will undertakings in financial difficulties.

² See Decision No 248/11/COL, paragraphs 8-12.

³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014 p. 1). Incorporated into point 1j of Annex XV of the EEA Agreement.

5 Eligible projects

- (11) The scheme supports the following environmentally friendly innovation activities with a positive impact or reduced negative impacts on the environment, provided that they go beyond Union standards or are undertaken in the absence of Union standards:
- a. Investments improving resource efficiency by the reduction, recycling or substitution of raw materials.
 - b. Investments to reduce greenhouse gas emissions.
 - c. Investments to acquire new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided the vehicles are acquired before those standards enter into force and that, once mandatory, the standards do not apply to vehicles already purchased before that date.
 - d. Investments to retrofit existing transport vehicles for road, railway, inland waterway and maritime transport, provided the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, the standards do not apply retroactively to those vehicles.
 - e. Investments improving energy efficiency, including peak shaving and load shifting.
 - f. Investments in energy from renewable sources.
- (12) The investment in the environmentally friendly innovation activity must not be undertaken in order to ensure that undertakings comply with Union standards already adopted, but not yet in force.
- (13) The investment in the environmentally friendly innovation activity must enable the beneficiary to increase the level of environmental protection resulting from its activities (i) by improving on the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards, or (ii) in the absence of Union standards.
- (14) Additionally, the environmentally friendly innovation activity must align with the definition of eco-innovation in point (14)(4) of the Authority's Guidelines on state aid for environmental protection and energy 2014-2020 ("EEAG").
- (15) The environmentally friendly innovation activities eligible for aid under the Eco-Inn scheme encompass eco-innovation assets or eco-innovation projects that are highly environmentally friendly and highly innovative investments. The environmentally friendly innovation activity (asset or project) must be new or substantially improved compared to the state of the art in the relevant industry in the EEA, see point (14)(4) of the EEAG. A precise description of the innovation activity and the market conditions for its introduction or diffusion, comparing it with the state-of-the-art processes or organisational techniques generally used by other undertakings in the same industry, can demonstrate its novelty and must be submitted with the application for aid.
- (16) The expected environmental benefit must be significantly higher than the improvement resulting from the general evolution of the state-of-the-art in comparable activities. If quantitative parameters can be used to compare eco-innovative activities with standard,

non-innovative activities, 'significantly higher' means that the marginal improvement expected from the innovative activities, in terms of reduced environmental risk or pollution, or improved efficiency in energy or resources, should be at least twice as high as the marginal improvement expected from the general evolution of comparable non-innovative activities.

- (17) Where the proposed approach is not appropriate for a given case, or if no quantitative comparison is possible, the application should contain a detailed description of the method used to assess this criterion, ensuring a standard comparable to that of the proposed method.
- (18) The innovative character of the assets or projects involves a clear degree of risk, in technological, market or financial terms, which is higher than the risk generally associated with comparable non-innovative assets or projects. This risk can be demonstrated for instance in terms of: costs in relation to the undertaking's turnover, time required for the development, expected gains from the activity compared to the costs, and probability of failure.

6 Aid instruments

6.1 General

- (19) Under the notified scheme, Enova provides grants, loans (ordinary loans, soft loans, or convertible loans) and guarantees. Enova will use the most appropriate aid instrument that in a given situation addresses the specific market failure.

6.2 Grants

- (20) Direct grants are used to handle the profitability barrier. In other words, grants are used in cases where the present values of the projects' estimated operating profits are less than the investment cost. It is the view of the Norwegian authorities that this is the main challenge faced by the eco innovation projects supported under the scheme. Grants will therefore be the main aid instrument.
- (21) Grants are disbursed in tranches according to the progress of the project and the budget. The disbursements are made after Enova has approved reports provided by the beneficiaries with documented costs. Twenty percent of the total grant is withheld until Enova has approved a final project report.

6.3 Loans

- (22) Ordinary loans, soft loans and convertible loans are used to handle the financing barrier. The ordinary loans will be granted on market terms. Enova will also give soft loans (loans with interest rates lower than market rates).
- (23) In addition, Enova will give convertible loans, which are loans with debt relief covenants. These convertible loans might be interest-free or have an interest level below market rates. There is no automatic debt relief. In case the criteria for conversion are met, the beneficiary can apply for it. The covenants will be connected to the risks in the construction phase as well as the first years of operations. At that point in time there is a cut-off where the convertible loan is turned into an ordinary loan unless the debt reduction covenants are called. For debt conversion, Enova will rely on three kinds of third-party evaluations: (i) financial assessments of the beneficiary; (ii) legal assessment of the covenants and the contracts; and (iii) technological assessments of the technologies.

- (24) The Norwegian authorities explain that Enova's mandate is to complement the market, not to compete with ordinary financial institutions. Enova should offer loans when the financial market, due to a perceived high level of risk or otherwise, does not provide capital at normal market conditions.
- (25) For all the loans, the maximum loan-to-value ratio is 60%. Enova will provide its loans with a maximum tenor of 20 years. The loans are disbursed in tranches according to the progress of the project and the budget. The disbursements are made after Enova has approved reports provided by the beneficiaries with documented costs.

6.4 Guarantees

- (26) Guarantees will be used to handle the financing barrier where there is a substantial risk. The risk can manifest itself as a financial risk, market risk or technological risk. Investments in energy and climate innovation projects are typically capital intensive with a high innovation or market risk. A guarantee might be suitable where there is a great probability of a high positive return on the investment coupled with a real technological or market risk that, if materialised, would lead to a substantial loss. It is the view of the Norwegian authorities that the financial markets typically overestimate the risk and consequently require a prohibitively high premium. This represents the market failure that could be alleviated by the guarantees.
- (27) The guarantee premium will be below what a guarantor would require and hence below the market rate.
- (28) The guarantee holder must document that the conditions for payment under a guarantee are met before Enova will disburse any part of the guaranteed amount. Payments under the guarantees will be made once Enova has received sufficient documentation.

7 Eligible costs, aid intensities and cumulation

- (29) The Norwegian authorities confirm that the eligible costs will be limited to the extra investment costs required to achieve investments in environmentally friendly innovations that will result in a higher level of environmental protection; that is, beyond the level of environmental protection required by the Union standards. Where no Union standards exist, the eligible costs will consist of the investment cost necessary to achieve a higher level of environmental protection than what the undertaking in question would achieve in the absence of any environmental aid.
- (30) The level of profitability of the project will be evaluated by calculating the net present value ("NPV") and the internal rate of return ("IRR") for each individual project. The assessment will be carried out as described in the EEAG for all projects. The aid will in all cases be limited to the amount necessary to achieve an NPV that equals zero.
- (31) For the calculations, Enova uses observed market prices, which are collected from several sources such as: price statistics, listed exchange prices, tenders and Enova's project database. Enova calculates a common internal price for certain commodities like electricity, in order to ensure comparability between applicants and price stability from month to month. Currently, the electricity price is calculated as a six-month moving average of the three-year forward prices on the power market Nord Pool Spot AS, converted from EUR to NOK. Where the applicant has entered into long-term contracts for commodities like oil and electricity, Enova will use the contract price in the calculation.

- (32) The maximum aid intensity is 50% for large enterprises, 60% for medium-sized enterprises and 70% for small enterprises.
- (33) Aid granted under the scheme can be cumulated with aid from other sources to cover the same eligible costs. Enova is responsible for ensuring that the total aid granted does not exceed the aid intensities set out in the EEAG. Applicants are obliged to provide information about aid from other sources to the relevant project.

8 Procedure for granting aid

- (34) Within the remit of the Eco-Inn scheme, Enova designs programmes. The programmes are launched and announced on Enova's website: <https://www.enova.no/>. The calls for applications describe the purpose of the programmes, the associated objectives, eligible applicants, eligible projects, selection criteria, the application process and the application forms.
- (35) Applicants must submit electronic application forms, developed for interactive processing through Enova's extranet services. The forms include detailed instructions about the application requirements. Applicants must provide a self-declaration of the size of the undertaking, a description of the project, including its location and project start and end dates, eligible costs, investment plan and cash flow analysis, as well as the requested amount of financing. In the application form, beneficiaries must also describe the counterfactual scenario. Where the project requires any form of authorisation such as a concession (licence), proof must be provided that the concession has been granted.
- (36) Enova assesses whether the application is complete, and whether the project fulfils the programme requirements. For some projects, it will be necessary to ask the applicant for additional information, or to ask a third party for an independent evaluation of specific aspects of the project (technology, financial analysis, debt relief covenants etc.). Enova assesses the cost-effectiveness of the projects and the incentive effect of the subsidies.
- (37) Projects under the Eco-Inn scheme are given priority according to the level of innovation of the technology versus state-of-the-art technologies, the technology's potential for contributing to increased environmental protection, and the applicant's financial and technical ability to execute the project. All other factors being equal, projects are given priority on the basis of the level of aid needed (per kWh saved/produced/improved specific energy consumption as an energy result, or per CO₂ equivalent saved/improved specific GHG emissions as a climate result) until the annual budget is fully allocated.
- (38) Where the gross grant equivalent of the aid exceeds EUR 15 million (which is NOK 144.7 million with the current exchange rate⁴), Enova will notify the individual aid measure to the Authority for its prior approval. In these cases, no aid will be granted without the Authority's prior approval.

9 Irregularities

- (39) If a project is not carried out, no aid will be granted. If a project is only partially carried out, Enova may reclaim the aid. If the beneficiary has provided incorrect information in the application for aid, or in cases where the project differs significantly from the application, Enova will reclaim the aid. In cases where the applicant has carried out the project as described in the application, but the project is terminated due to factors beyond the beneficiary's control, Enova may not claim the aid back.

⁴ The Authority sets currency exchange rates for the NOK on an annual basis. For 2016, EUR 1 equals NOK 9.6475. The rates are available at the Authority's website: <http://www.eftasurv.int/state-aid/rates/>.

- (40) If the costs of the project turn out to be lower than expected in the application, the total aid will be reduced pro rata. Regardless of the aid instrument used, Enova will in any event not pay more than the predetermined aid amount.

10 Financing of the scheme, budget and duration

- (41) The Eco-Inn scheme is financed by allocations over the state budget, drawing on the Energy Fund. The Energy Fund has a total annual budget of NOK 2 546 million, and is financed by the following three revenue streams:
- a. Interest accrued on a fund set up to finance the Energy Fund, the Base Fund. At present, this amounts to NOK 1 846 million annually.
 - b. Interest accrued on the resources of the Energy Fund itself. At present, this amounts to NOK 50 million annually.
 - c. A levy on the electricity grid tariff. Households are charged NOK 0.01/kWh. All other end users of electricity are charged NOK 800 per measurement point. At present, the revenue from the charge amounts to NOK 650 million annually.
- (42) The 2017 budget of the Eco-Inn scheme is NOK 1.5 billion.
- (43) As explained above^{6.3}, Enova intends to make use of interest carrying loans and guarantees with premiums under the scheme. These revenues will be added to the scheme's budget. The Norwegian authorities estimate that this will generate NOK 20 million from 2018 onwards.
- (44) The duration of the Eco-Inn scheme is 1 January 2017 until 31 December 2022.

11 Transparency

- (45) The Norwegian authorities have confirmed that they will ensure that the information concerning the implementation of the scheme is published on the national comprehensive state aid website (the national state aid register) in accordance with Section 3.2.7 of the EEAG.

12 Evaluation

- (46) The Norwegian authorities have explained that Enova routinely evaluates their programmes in order to assess the degree to which they achieve their objectives. The evaluations are carried out in accordance with evaluation methodologies in line with international best practices.⁵ They are conducted by an independent third parties, which are chosen through public tenders. The evaluation reports are made publicly available.

⁵ E.g. the European Commission's Common methodology for state aid evaluation (Commission staff working document SWD(2014) 179 final (Brussels, 28.5.2014), available at the following url: http://ec.europa.eu/competition/state_aid/modernisation/state_aid_evaluation_methodology_en.pdf.

II. ASSESSMENT

1 The presence of state aid

(47) Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

(48) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.

1.1 Presence of state resources

(49) In order to constitute aid within the meaning of Article 61(1) of the EEA Agreement, the measure must be granted by the State or through state resources. The Eco-Inn scheme supports various projects by disbursing direct grants, which are financed by the interest generated on the Base Fund and the Energy Fund, as well as the revenue of the parafiscal charge.

(50) The financing stemming from the state controlled funds represent state resources. With regard to revenue from the parafiscal charge, state resources are involved where money is transferred from a fund established by the State, and the fund is fed by contributions imposed or managed by the State,⁶ and its assets are permanently under the control of public authorities.⁷ The level of the parafiscal charge is determined by the State. The proceeds are allocated directly to the Energy Fund from where Enova in turn, allocates them directly to the chosen projects. The Authority, therefore, considers that the Norwegian State exercises permanent control over the levy, and that it qualifies as state resources within the meaning of Article 61(1) of the EEA Agreement.

(51) On this basis, the Authority considers that the resources disbursed under the Eco-Inn scheme constitute state resources within the meaning of Article 61(1) of the EEA Agreement.

1.2 Favouring certain undertakings or the production of certain goods

(52) In order to be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must favour certain undertakings or the production of certain goods.

(53) The EEA law notion of “undertaking” encompasses every entity engaged in economic activity, regardless of the legal status of the entity and the way in which it is financed. Economic activity is characterised by the provision of goods and services on a market. The goal of the Eco-Inn scheme is to incentivise investments in new production processes, new products or services and new management and business methods. Thus, the scheme is

⁶ Judgments in *Italy v Commission*, 173/73, EU:1974:71, paragraph 16; and *Steinike*, 78/76 EU:C:1977:52, paragraphs 21-22.

⁷ Judgments in *Vent De Colère and others*, C-262/12, EU:C:2013:851, paragraph 21; and *Essent Netwerk Noord BV*, C-206/06, EU:C:2008:413, paragraph 70.

targeted towards economically active entities that constitute “undertakings” within the meaning of Article 61(1) of the EEA Agreement.

- (54) In order to “favour” an undertaking, the measure must confer an advantage on undertakings.
- (55) To the extent that Enova grants loans on market terms, it does not provide an advantage to the borrower. The Authority considers loans granted on the basis of the methodology set out in its Guidelines on reference rates and discount rates⁸ not to confer an advantage on the borrower. As they do not constitute state aid, these loans are therefore not subject to the compatibility assessment in this decision. The market based loans will, however, be referred to, in order to give a complete picture of the functioning of the scheme.
- (56) Direct grants, soft loans, convertible loans and guarantees with premiums below market rates provide undertakings with financial advantages that they would not obtain on the market. They therefore confer advantages on the beneficiaries.
- (57) Additionally, in order to constitute state aid, the measure must be selective. It cannot apply generally to all undertakings. The Eco-Inn scheme involves disbursing economic advantages to certain undertakings engaging in environmentally friendly activities. Only undertakings successfully participating in the selection processes (open calls for applications) receive support. Hence, the measure is selective within the meaning of Article 61(1) of the EEA Agreement.

1.3 Distortion of competition and effect on trade between Contracting Parties

- (58) The aid measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement. The Authority is not required to establish that an aid measure actually has an appreciable effect on trade between Contracting Parties or that competition is actually being distorted, but only to examine whether such aid is liable to do so.⁹
- (59) In the present case, funding provided for under the measure will strengthen the competitive situation of the supported undertakings, which actually or potentially compete with other undertakings in the EEA. Accordingly, the aid measure is liable to distort competition.
- (60) Equally, the aid measure is liable to affect trade. The Eco-Inn scheme supports projects in all economic sectors covered by the EEA Agreement. The support enables the benefitting undertakings to lower the cost of implementing environmentally friendly energy measures. Support will be granted to undertakings engaged in intra-EEA trade. These advantages will be liable to distort competition and affect trade between Contracting Parties.

1.4 Conclusion on the presence of state aid

- (61) In light of the above, the Authority considers the Eco-Inn scheme to constitute an aid scheme.

2 Procedural requirements

- (62) Pursuant to Article 1(3) of Part I of Protocol 3: “*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or*

⁸ OJ L 105 21.4.2011 p. 24.

⁹ Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnjord and Others v EFTA Surveillance Authority*, [2005] EFTA Ct. Rep. 117, paragraph 93.

alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”

- (63) The Norwegian authorities have submitted a notification of the aid measure and have not let the scheme enter into force yet. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (64) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled. For measures such as the one at hand, the Authority has further spelled out the conditions for compatibility in the EEAG.
- (65) The Norwegian authorities have explained that the aid will be granted to undertakings going beyond Union standards or increasing environmental protection in the absence of Union standards. In point (22) of the EEAG, the Authority has clarified that it applies the following general compatibility conditions when assessing that kind of aid:
- contribution to a well-defined objective of common interest;
 - need for state intervention;
 - appropriateness of state aid as a policy instrument;
 - incentive effect;
 - proportionality of the aid (aid limited to minimum necessary);
 - avoidance of undue negative effects on competition and trade between Contracting Parties; and
 - transparency of aid.

3.1 Objective of common interest

- (66) State aid must aim at a well-defined objective that has been recognised by the Contracting Parties as being in their common interest.
- (67) The Eco-Inn scheme has an overall objective of promoting investments in environmentally friendly innovation activities that result in or aim at significantly improving environmental protection. The protection of the environment is recognised as an objective of common interest in the EEA Agreement by the Contracting Parties.¹⁰ It is also recognised by the Authority in the EEAG. The Authority requires the Contracting Parties to define precisely the objective pursued and explain the expected contribution of the measure towards the objective, see point (26) of the EEAG. With the notified scheme, the Norwegian authorities more concretely intend to promote investments in eco innovation that enable undertakings to go beyond Union standards, or to achieve a higher level of environmental protection in the absence of Union standards.
- (68) The Norwegian authorities have described the eligibility criteria as set out in chapter I.5 above. The Norwegian authorities have confirmed that, in order to be eligible for support under the notified scheme, the projects must meet the standard set out in the EEAG on eco

¹⁰ See Articles 1(2)(f), 73-76, 78 of the EEA Agreement as well as the preamble at its ninth and tenth recital.

innovation.¹¹ It is the view of the Authority that this demonstrates that the scheme seeks to support activities that protect the environment, and hence is targeted at an objective of common interest.

- (69) In light of the above, the Authority concludes that aid for investments under the Eco-Inn scheme is aimed at a well-defined objective of common interest.

3.2 Need for state intervention

- (70) In order to assess whether state aid is effective to achieve the identified objective of common interest, it is necessary first to diagnose and define the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure or addressing an equity or cohesion concern, see point (29) of the EEAG.
- (71) The substantial environmental benefit pursued is the increased implementation of novel, innovative and environmentally friendly assets or projects, thereby contributing to an increased protection of the environment. It is the Authority's understanding that the Eco-Inn scheme attempts to incentivise environmentally friendly and innovative investments, and to address a double market failure linked to the higher risks of innovation coupled with the environmental aspect of the investment. This double market failure results from knowledge spill-over effects (positive externalities) and the insufficient internalisation of the cost of pollution (negative externalities), as well as insufficient profitability or capital limitations. The Norwegian authorities have argued that the positive long-term externalities such as knowledge spill-overs stemming from the diffusion of innovative technologies are not sufficiently taken into account when profit-seeking undertakings make investment decisions. Due to the perceived unattractive rates of return from a commercial perspective, the number of investments in this field risk being sub-optimal from a community perspective. The Authority concurs with the assessment of the Norwegian authorities.
- (72) On the basis of the above, the Authority concludes that there is a need for state intervention.

3.3 Appropriateness of state aid

- (73) State aid must be an appropriate instrument to address the identified objective of common interest. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the common objective is achievable through other less distortive policy instruments or other less distortive types of aid instruments, see point (35) of the EEAG. The choice of instrument should be coherent with the market failure, and aid should not be granted where other less distortive non-aid based instruments can achieve the same goal, see point (36) of the EEAG.
- (74) Non-aid instruments (other than the market loans by Enova) are unlikely to be appropriate to address the market failures referred to above. In particular, there are no regulatory obligations for Norwegian undertakings to use innovative technologies to increase environmental protection. The Authority notes that even if such higher national standard existed, this would in principle not preclude the Norwegian authorities from granting state aid to go beyond Union standards under the EEAG.
- (75) Concerning the choice of aid instruments, the Norwegian authorities have explained that Enova will use the aid instrument that is the least distortive. In assessing which instrument

¹¹ EEAG, points (14)(4) and (73), as well as footnotes 49-51.

to use, Enova evaluates the market conditions. Where an undertaking has plans to invest in an environmentally friendly eco innovation project, but does not have the necessary means and is not able to obtain financing on the market, Enova will firstly consider whether it can trigger the investment without granting aid, but rather by providing a loan on market terms. Only in the cases where this would not trigger the investment will Enova consider granting aid.

- (76) The Norwegian authorities have designed the aid scheme so that Enova can use different aid instruments to tackle different forms of market failure. Where a project is faced with a financing barrier, soft loans, convertible loans or guarantees will be the preferred instruments. Soft loans and convertible loans will be used when there is a need for risk mitigation, for example when the revenue is uncertain because the market risks are substantial. Soft loans will be used where the undertaking could not obtain a market based loan and furthermore not carry the full financial burden of a market based loan. Convertible loans will be used to share risks where the project has a clearly binary outcome; success or failure. In case the project achieves its target, the recipient can reap the profits and will be in a position to repay the loan. In case of failure, the undertaking will not realise the intended profit and might not be in a position to pay back the loan. Guarantees will be the preferred instrument for capital intensive projects with a substantial financial exposure and risk.
- (77) Where a project is faced with a profitability barrier, grants will be the preferred aid instruments. Enova will use the grants to cover the profitability gap, to render otherwise unprofitable projects profitable.
- (78) In light of the explanations above and the information summarised in chapter I.6 of this decision, the Authority is satisfied that the Norwegian authorities have carefully assessed the different instruments to address the different market failures. The Authority concurs with the conclusions of the Norwegian authorities on the different instruments and their suitability to target different market failures.
- (79) In light of the above, the Authority concludes that state aid is appropriate and that the notified scheme uses the appropriate instruments to achieve its objectives.

3.4 Incentive effect

- (80) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid, see point (44) of the EEAG.
- (81) The Norwegian authorities have explained that the incentive effect of the aid will be verified by Enova through a counterfactual analysis, comparing the levels of intended activity with and without aid. Enova will follow the methodology in points (55) to (58) of the EEAG. Where the incentive effect is to be assessed on the basis of a counterfactual scenario analysis, the level of profitability can be evaluated by reference to methodologies which are standard within the particular industry concerned. Where no counterfactual scenario is known, the incentive effect can be assumed when there is a funding gap and be documented by internal company documents.
- (82) Additionally, Enova will assess the following elements to verify that the aid has incentive effect:

- a. whether any relevant EU or national standards will be introduced in the foreseeable future;
 - b. whether the investment in the relevant projects represents normal market behaviour;
 - c. the level of risk connected to the project and whether the investment would generate an appropriate profit;
 - d. the project's level of increased environmental protection; and
 - e. the extent of the production advantages obtained by the recipient.
- (83) If, on the basis of the assessment of those factors, Enova finds that the applicant would have invested without the aid, Enova does not grant aid.
- (84) The Authority is satisfied that the methodology presented by the Norwegian authorities is suitable to examine whether aid would be needed to trigger the projects for which an aid application is made. The Authority therefore concludes that the scheme as notified complies with the requirements of the EEAG and ensures that the aid has incentive effect.

3.5 Proportionality

- (85) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest, see point (64) of the EEAG.
- (86) The Norwegian authorities have explained that Enova limits the aid to the net extra investment cost, by comparing the supported project to the counterfactual scenario in the absence of the aid, see point (65) of the EEAG. When difficulties arise in calculating all economic benefits an undertaking will derive from an additional investment (not subject to an individual assessment), Enova uses a simplified method for its calculations, see point (66) of the EEAG. This is in accordance with the EEAG which requires the eligible costs to be limited to the extra investment costs either identified in the total investment costs as a separate investment or identified by comparing the aided investment to a counterfactual reference investment, see points (67) to (71) of the EEAG. Enova respects the maximum aid intensities of the scheme as set out in paragraph (32) above. These comply with the EEAG, see points (72) to (74).
- (87) The Norwegian authorities have explained that they will ensure that the projects that are supported under the notified scheme do not receive aid from other sources to the extent that they receive aid in excess of the maximum aid intensities set out in the EEAG, see paragraph (33) above. This also applies to *de minimis* aid in respect of the same eligible costs. On this basis, the Authority is satisfied that the notified scheme complies with the requirements of the EEAG, points (76) and (77).
- (88) On the basis of the above, the Authority concludes that the Norwegian authorities have justified that the scheme, as notified, ensures that the condition of proportionality is met.

3.6 Avoidance of undue negative effects on competition and trade

- (89) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest, see point (83) of the EEAG.

- (90) Above, the Authority has concluded that the notified scheme establishes a methodology to ensure that the aid is well targeted to the market failure it seeks to address. This limits the risk that the aid will unduly distort competition, see point (92) of the EEAG. Furthermore, the Authority has concluded that the aid scheme ensures that the aid is proportionate and limited to the extra investment cost. This also softens the negative effects of the aid, see point (93) of the EEAG. It is the Authority's view that Enova's open selection process ensures that only the most efficient operators are eligible for aid and that the aid is limited to the minimum necessary, see point (94) of the EEAG. In that regard, the Authority notes that the condition for undertakings to be registered in Norway, in order to be eligible for aid under the scheme, see paragraph (9) above, does not impose an undue burden on undertakings not registered in Norway. This is because Norwegian law caters for the administratively simple registration of foreign companies; Norwegian registered foreign undertakings, so-called NUFs^{12, 13}.
- (91) The aid under the scheme will by its nature provide advantages to undertakings investing in environmentally friendly measures that are innovative over undertakings investing in non-environmentally friendly and non-innovative technologies, for instance by reducing production unit costs, see points (85) and (95) of the EEAG. The aid, by its very objective, being in support of eco innovation, the Authority will not view those effects as an undue distortion of competition, see point (85) of the EEAG. In addition, the use of an NPV analysis takes account of any direct production advantages, reducing the amount of aid to the minimum necessary.
- (92) The Norwegian authorities have confirmed that the maximum aid intensities will not be exceeded. This is in line with the principle laid down in point (90) of the EEAG, which requires aid grantors to respect maximum aid intensities. Furthermore, aid will not be granted where it merely leads to a change in location of the economic activity without improving the existing level of environmental protection in the Contracting Parties. This is in line with point (91) of the EEAG, which requires that aid should not merely lead to the relocation of economic activities without contributing to environmental protection.
- (93) In light of the above, and on balance, the Authority concludes that the negative effects of the aid in terms of distortions of competition and impact on trade between Contracting Parties are limited and outweighed by the positive effects in terms of contribution to the objective of common interest.

3.7 Transparency

- (94) The Norwegian authorities have confirmed that they will ensure that the information concerning the implementation of this scheme is published on the national comprehensive state aid website (the national state aid register) in accordance with Section 3.2.7 of the EEAG. Thus, the Norwegian authorities comply with the transparency requirements.

4 Evaluation, reporting and monitoring

- (95) The Authority does not require that the Norwegian authorities evaluate the notified scheme. Nonetheless, the Norwegian authorities regularly carry out ex-post evaluations. As set out in paragraph (46) above, the Norwegian authorities have explained that such evaluations are carried out in accordance with evaluation methodologies in line with international best practices. They are conducted by an independent third party, chosen

¹² In Norwegian: *norskregistrert utenlandsk foretak*.

¹³ The Authority notes that this requirement is also in line with the general principle set out in Article 1(5)(a) of the GBER that a requirement to have an establishment or branch in the aid granting State at the moment of payment of the aid is compatible with EEA law.

through a public tender. Enova's evaluation reports are made publicly available. The Authority welcomes this practice.

- (96) The Norwegian authorities have confirmed that detailed records for each aid award will be kept by Enova in accordance with the requirements of the EEAG. On this basis, the Authority concludes that the scheme complies with point (244) of the EEAG.

5 Compliance with other general provisions

- (97) The Norwegian authorities have confirmed that the definitions set out in point (14) of the EEAG are applied by Enova.
- (98) The Norwegian authorities have confirmed that no aid will be granted to projects that fall outside the scope of the EEAG, see its points (9) and (10).
- (99) By confirming that no aid can be granted to firms in difficulty, nor firms with an outstanding recovery order, the Norwegian authorities have ensured that the scheme complies with points (11) and (12) of the EEAG.
- (100) The Norwegian authorities have committed to notifying individual awards of aid that exceed the EUR 15 million threshold set out in point (15)(a) of the EEAG.

6 Conclusion

- (101) The Authority considers that the Eco-Inn scheme constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. The aid is compatible with the functioning of the EEA Agreement.
- (102) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Authority has accordingly decided not to raise objections to Enova's Eco-Inn scheme 2017-2022 on the grounds that it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done in Brussels, on 15 December 2016.

For the EFTA Surveillance Authority

Sven Erik Svedman
President

Helga Jónsdóttir
College Member

This document has been electronically signed by Sven Erik Svedman, Helga Jonsdottir on 15/12/2016