



EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 18 JULY 2001

ON THE NEW AID SCHEME "RESEARCH AND DEVELOPMENT (R&D)-PROJECTS IN
ENTERPRISES"

("FORSKNINGS- OG UTVIKLINGS (FOU) – PROSJEKTER I NÆRINGSLIVETS REGI
(FUNN-ORDNINGEN) ")
(AID No. 01-002)

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, 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 Justice², in particular to Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines³ on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in Official Journal L 231, 03.09.1994. The Guidelines were last amended 23 May 2001, not yet published.

I. FACTS

1. The notification

By letter of 14 June 2001 from the Mission of Norway to the European Union, received and registered on 18 June 2001 (Doc. No: 01-4797 A), the Norwegian authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a new aid scheme: "Research and Development (R&D)–projects in enterprises (“Forsknings- og utviklings (FoU)-prosjekter i næringslivets regi (FUNN-ordningen)”) (hereinafter referred to as FUNN).

By letter dated 22 June 2001 (Doc. No: 01-4811 D), the EFTA Surveillance Authority acknowledged the receipt of the notification dated 14 June 2001. As the scheme was foreseen to start 1 July 2001, the Authority reminded the Norwegian authorities of the standstill obligation in Protocol 3, Article 1 (3), of the Surveillance and Court Agreement.

By telefax of 4 July 2001 from the Mission of Norway to the European Union, received and registered on 4 July 2001 (Doc. No: 01-5257 A), the Norwegian authorities confirmed that they are aware of the standstill obligation, and that no aid will be awarded before a positive decision has been taken by the Authority.

By telefax of 13 July 2001 from the Ministry of Trade and Industry, received and registered on 13 July 2001 (Doc. No: 01-5574 A), the Norwegian authorities informed the Authority that the draft guidelines for FUNN will be adjusted. The adjusted guidelines will contain rules on cumulation of aid to ensure that the cumulated aid intensities do not exceed the maximum applicable aid thresholds.

2. The contents of the proposed aid measure

2.1. Background and legal basis

FUNN is a new R&D grant scheme, which the Norwegian Government proposed to establish in its Fiscal Budget for 2001⁴. The scheme is financed by the Ministry of Trade and Industry on the State budget, Chapter 0928, Post 70. The scope of the grants is limited to NOK 200 million (some EUR 24.1 million) in 2001. The Norwegian Parliament decides upon the budgetary appropriations each year, but the Norwegian authorities expect, according to the notification, a budget of NOK 400 million (some EUR 48.2 million) in 2002 and thereafter.

FUNN will be administered by The Research Council of Norway (“Norges Forskningsråd”) on behalf of the Ministry of Trade and Industry.

In the notification letter dated 14 June 2001 (Doc. No: 01-4811 D), the Ministry of Trade and Industry submitted draft guidelines for FUNN⁵, guidelines for accounting in

⁴ "St.prp. nr. 1 (1998-99) for Nærings- og handelsdepartementet, p.115".

⁵ Retningslinjer for ordningen med offentlig støtte til ”Forsknings- og utviklings (FoU)-prosjekter i næringslivets regi” (FUNN-ordningen).

R&D-projects⁶, one example of conditions for research and development projects⁷ and one example of a project contract. The guidelines contain *i.a.* a description of the purpose of the scheme, target groups, eligible projects, specifications of eligible costs, and methods for assessing the aid intensities.

2.2 Objectives

The overall objective of FUNN is to increase the R&D and innovation in industry by stimulating the co-operation between enterprises and R&D-institutions. FUNN supports projects where enterprises buy services from R&D institutions. The aid is limited to the actual expenditure within the R&D-institution. Provisions laid down in the scheme's draft guidelines ensure, according to the notification, that ordinary expenses will not be replaced with aid. The scheme will, according to the Norwegian authorities, provide an incentive for firms to enter into projects of a novel character that otherwise might not be realised.

The stages of R&D benefiting from aid from FUNN are industrial research and precompetitive development activity as defined in Chapter 14.2.1 of the Authority's State Aid Guidelines.

Eligible R&D costs are, according to the notification, in accordance with the Authority's State Aid Guidelines, Chapter 14.6(1), *i.e.*:

- personnel costs (researchers, technicians and other supporting staff employed solely on the research activity);
- cost of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity;
- cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources;
- other operating expenses (e.g. costs of materials, supplies and similar products) incurred directly as a result of the research activity.

Enterprises from all sectors are eligible. FUNN is primarily directed towards Small and Medium-sized Enterprises (SMEs), but the scheme is not formally restricted to SMEs. The number of recipients is expected to be 1500-2000 a year.

2.3. Aid intensities

The aid will be given in the form of grants. The aid intensity is 25% of the actual R&D expenditure for the project within the R&D-institution. For enterprises in assisted areas in the northern part of Norway (the counties of Nordland, Troms and Finnmark) the maximum aid intensity proposed is 30%.

Total aid is limited to:

⁶ Retningslinjer for føring av prosjektregnskap for FoU-prosjekter.

⁷ General Conditions for Research and Development Projects at the SINTEF Group.

- NOK 4 million (some EUR 481000) for each project, and
- NOK 1 million (some EUR 120000) per year for each enterprise.

The aid cannot be combined with other aid from The Research Council, but can be combined with other governmental programs within their limitations and thresholds.

II. APPRECIATION

1. The presence of State aid and notification formalities

The notified aid is being funded by State resources in the meaning of Article 61(1) of the EEA Agreement and will favour certain undertakings in the meaning of Article 61(1). As the benefiting enterprises 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 scheme therefore constitutes State aid in the meaning of Article 61(1) of the EEA Agreement.

The Norwegian authorities have, by notification dated 14 June 2001 (Doc. No: 01-4797 A), fulfilled their obligation under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement to notify plans to grant or alter aid. Consequently, the EFTA Surveillance Authority is obliged to assess whether any of the exemption clauses under Article 61(2) or (3) are applicable in order to exempt the aid measures from the general prohibition in Article 61(1).

The draft guidelines for FUNN implied that the scheme should be operative from 1 July 2001. The notification was not received before 18 June 2001. The Authority therefore, in its letter of 22 June 2001, reminded the Norwegian authorities of the standstill obligation in Protocol 3, Article 1(3), of the Surveillance and Court Agreement. In the telefax of 4 July 2001 the Norwegian authorities confirmed that they are aware of the standstill obligation, and that no aid will be awarded before the Authority has taken a positive decision⁸.

2. Application of the relevant State aid rules

2.1. Article 61 EEA

Where it satisfies the requirements in Article 61(1) EEA and therefore has to be examined by the EFTA Surveillance Authority, aid granted to firms for *i.a.* R&D may be regarded compatible with the functioning of the EEA Agreement by virtue of one of the derogations provided for in Article 61(2) or Article 61(3). The relevant derogation in question is contained in Article 61(3)(c).

⁸ By reference to Chapter 3.3(2) of the State Aid Guidelines, the Authority would like to emphasize that “*by putting into effect*” mentioned in the last sentence of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement is meant not only the action of granting aid to the recipient. It is sufficient that the conferment of powers enabling the aid to be granted without further formality has taken place.

To qualify for the derogation in Article 61(3)(c), a State aid measure must in the first place be of the nature of an incentive: it must under no circumstances have the sole effect of continuously or periodically reducing the costs which the enterprise would normally have to bear, while otherwise leaving the status quo untouched, as in the case of operating aid, and it must be necessary in order to achieve objectives which market forces alone would not secure. The objectives pursued must be in the common interest. Lastly, the aid must be proportionate to the handicaps which have to be overcome in order to secure the socio-economic benefits deemed to be desirable on grounds of the common interest: the positive effect must outweigh the damaging effect which State aid has on competition and trade.

2.2. Objectives

In the notification of FUNN, the Norwegian authorities state that the stages of R&D benefiting from aid under the new scheme are industrial research and precompetitive development activity.

Chapter 14 of the Authority's State Aid Guidelines, Aid for Research and Development, is relevant for assessing the new scheme. The Guidelines draw a distinction between fundamental research, industrial research and precompetitive development activity (Chapter 14.2.1 of the Guidelines).

By industrial research is meant planned research or critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services. By precompetitive development activity is meant *i.a.* the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially.

The notification explicitly refers to the definitions laid down in the WTO Agreement on subsidies and countervailing measures, which corresponds to the definitions in Chapter 14.2.1 of the Authority's State Aid Guidelines. The EFTA Surveillance Authority finds that the criteria foreseen for aid to R&D under the new scheme are compatible with the criteria set out in the State Aid Guidelines (Chapter 14).

2.3. Aid intensities

The proposed maximum aid intensities for FUNN are 25% in general and 30% in northern Norway (Article 61.3(c) EEA regional aid area).

Chapter 14.5.1, paragraph (5), of the the State Aid Guidelines states that: "*As a general rule, the gross aid intensity for industrial research must not exceed 50% of the eligible costs of the project*".

Chapter 14.5.1, paragraph (6), states: "*Technical feasibility studies preparatory to industrial research activities may qualify for aid amounting to 75% of study costs, while such studies preparatory to precompetitive development activities may qualify*

for support amounting to 50% of study costs; these ceilings have been set in the light of the negligible impact of such aid on competition and trade conditions."

Chapter 14.5.1, paragraph (7), states: *"Precompetitive development activities are close to the market and there is a greater risk that any such aid will distort competition and intra-EEA trade. The permissible gross aid intensity for such activities is fixed at 25% of the eligible costs."*

However, these aid intensities may, according to Chapter 14.5.3.(1) of the Guidelines, be exceeded in *i.a.* the following situation:

- *"Where the research project is carried out in an Article 61(3)(c) region: an extra 5 percentage points."*

The Authority finds that the proposed maximum aid intensities for FUNN are in accordance with the permissible maximum aid intensities set out in the State Aid Guidelines (Chapter 14).

3. Cumulation of aid⁹

Grants from FUNN can, according to the notification, be combined with grants or other relevant support schemes from other sources.

The Authority has previously argued that it is appropriate that guidelines (or regulations) for new schemes contain rules on cumulation of aid to ensure that the cumulative aid intensity of aid granted under different schemes is within the maximum aid limits¹⁰.

The Norwegian authorities have, in their telefax of 13 July 2001, confirmed that the draft guidelines for FUNN submitted in the notification dated 14 June 2001 will be adjusted. The adjusted guidelines will contain rules on cumulation of aid to ensure that the cumulated aid intensities do not exceed the maximum applicable aid thresholds.

The Authority takes note of the fact that the adjusted guidelines for FUNN will contain rules on cumulation to ensure compliance with the Authority's State Aid Guidelines.

4. Conclusion

The criteria and the intensities foreseen for FUNN reflect the requirements set out in the State Aid Guidelines (Chapter 14) for aid under Article 61(3)(c) of the EEA Agreement. Aid awards may therefore be justified with reference to aid to facilitate

⁹ Cumulation of aid is defined as the application of more than one aid scheme to a given investment project. See Chapter 13 of the State Aid Guidelines.

¹⁰ See for example letter of 13 July 1999 (Doc.No: 99-5252 D) from the Authority to the Norwegian authorities regarding the notification of the new aid scheme "Project Development Grant" (Aid No 99-007).

the development of certain economic activities without adversely affecting trading conditions between the Contracting Parties to an extent contrary to the common interest. It is therefore concluded that the new "Research and Development (R&D)-projects in enterprises" scheme qualifies for exemption under Article 61(3)(c) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed new aid "Research and Development (R&D)-projects in enterprises" scheme as notified by the Norwegian authorities by letter dated 14 June 2001 (Doc. No: 01-4797 A).
2. The Norwegian authorities are obliged to submit a separate simplified annual report to the EFTA Surveillance Authority on the application of the ""Research and Development (R&D)-projects in enterprises" scheme (in accordance with Chapter 32 and Annex IV of the State Aid Guidelines).

Done at Brussels, 18 July 2001

For the EFTA Surveillance Authority

Hannes Hafstein
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