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EFTA SURVEILLANCE AUTHORITY DECISION
of 24 June 2015
Evaluation plan for the block exempted Skattefunn aid scheme

(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,

the Act referred to at point 1j of Annex XV to the EEA Agreement, in particular to Article 1(2)(a) thereof,

Whereas:

I. FACTS

1 Procedure

(1) On 18 December 2014, the Norwegian authorities submitted a summary information sheet pursuant to the Act referred to at point 1j of Annex XV to the EEA Agreement *(Commisison Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the “General Block Exemption Regulation” or “GBER”))*[1] on a tax credit scheme for research and development (R&D) projects (the “Skattefunn scheme”), which was put into effect on 1 January 2015 in application of Articles 1(2)(a) and 25(2)(b) and (c) GBER. According to the Norwegian authorities, the Skattefunn scheme is to be implemented until the end of 2024.

(2) The aid scheme, with an average annual budget exceeding EUR 150 million, constitutes a large scheme within the meaning of Article 1(2)(a) GBER. Under this provision, aid schemes are exempted only for a period of six months after their entry into force, unless a

[1] Decision of the EEA Joint Committee No 152/2014 (OJ L 342, 27.11.2014, p. 63 and EEA Supplement No 71, 27.11.2014, p. 61), e.i.f. 28.6.2014.

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longer period of exemption is authorised by the Authority following the assessment of an evaluation plan for the scheme to be notified by the EFTA State concerned.

(3) To obtain the prolongation, the Norwegian authorities pre-notified an evaluation plan for the scheme on 7 April 2015, followed by a formal notification on 18 May 2015.

2 Description of the notified evaluation plan

(4) As described in Article 2(16) GBER and in line with best practices recalled in the Commission Staff Working Document on Common methodology for State aid evaluation[2] (the "Staff Working Document"), the notified plan to be evaluated shall provide a description of the following main elements:

a. Objectives of the aid scheme,
b. Evaluation questions,
c. Result indicators,
d. Envisaged methodology to conduct the evaluation,
e. Data collection requirements,
f. Proposed timing of the evaluation including the date of submission of the final evaluation report,
g. Description of the independent body conducting the evaluation or the criteria that will be used for its selection, and
h. Modalities for ensuring the publicity of the evaluation.

a. Objectives of the aid scheme

(5) The Skattefunn scheme was introduced in 2002 and is a government program designed to stimulate R&D in the business sector. The main reason for having a R&D tax incentive scheme is that the business sector alone will not supply the socially optimal amount of R&D because of positive external effects.

(6) The scheme should first and foremost stimulate R&D investments in the business sector (first order effect), and ideally also lead to innovations (second order effect) and to a more knowledge based economy (third order effect). Businesses and enterprises that are subject to taxation in Norway are eligible to apply for tax relief. Small and medium sized businesses may receive a tax credit of up to 20 per cent of the eligible costs related to R&D activity for approved projects, whereas large businesses may receive a tax credit of 18 percent of eligible costs. All costs must be associated with an approved project. To qualify as R&D, any activity must meet the definitions set out by the Research Council of Norway. If the tax credit for the R&D expenses is greater than the amount the firm is liable to pay in tax, the remainder is paid in cash to the firm. If the firm is not liable for tax, the entire allowance is paid in cash.

b. Evaluation questions

(7) The plan provides the specific questions to be addressed by the evaluation. In particular, the plan will look at the intended effects of the scheme (i.e. the extent to which the scheme would lead to more R&D investment in the business sector, to innovations and to a more

[2] Commisison Staff Working Document on Common methodology for State aid evaluation, Brussels 28.5.2014, SWD(2014) 179 final.

knowledge based economy), and how it interacts with other measures to stimulate R&D investment.

(8) Other questions to be considered are:

a. How effective is the Skattefunn scheme compared to similar tax incentive schemes in other countries?
b. Could the same effects have been obtained with less aid or a different form of aid?
c. How does the Skattefunn scheme affect different types of research (basic, applied, experimental etc.)?
d. Does the Skattefunn scheme have any distortionary effects on trade and competition?

c. Result indicators

(9) The above mentioned questions will be answered relying on the following indicators: additional R&D expenditure undertaken by supported companies; number of additional patents registered; number of new researchers employed in the supported companies. Particularly, as regards the proportionality of the scheme, the plan will assess the private return on Skattefunn projects, the labour productivity and total factor productivity of supported companies over time and compared to other companies, and the relation between productivity within a sector or a region and supported R&D investment (by the scheme) in the same sector or region (a measure of the external effects of the R&D investment induced by the scheme).

(10) The Norwegian authorities have further mentioned that in order to assess any distortionary effects on trade and competition, in addition to the above mentioned indicators, also other possible indicators will be sought.

d. Envisaged methodology to conduct the evaluation

(11) The plan foresees a method to compare companies with R&D investment below and above the scheme thresholds before the thresholds were introduced or increased. Thus companies with R&D investment above the thresholds do not get any incentive to increase their R&D investments because the cost of the marginal R&D project is unaffected. On the other hand, companies with R&D investment below the thresholds will have an incentive to increase R&D investment as the cost of the marginal R&D project is reduced. The development of R&D investment for the two groups of companies can, for example, be analysed with panel data regressions, taking account of relevant control variables.

(12) The evaluation plan allows the contractor to make use of other methods to evaluate the intended effects of the scheme, if such methods are better suited to answer the evaluating questions. The methods applied may vary for the different evaluating questions.

e. Data collection requirements

(13) Data on aid beneficiaries will be collected on an annual basis from the Norwegian Tax Administration (through collected tax forms), as well as from the Research Council of Norway and Statistics Norway.

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f. Proposed timing of the evaluation including the date of submission of the final evaluation report

(14) The table below shows the stages to be implemented and the proposed timing of the evaluation:

Table 1

Stage	**Responsibility** and participation	**Deadlines**
Stage 1 –feasibility study	**Researcher/consultant**	Third quarter 2015
Stage 2 –dialogue	**The ministry of Finance**, author of the feasibility study, open invitation for research institutions, evaluation environments	Fourth quarter 2015
Stage 3 –tender and selection of the evaluator(s)	**The ministry of Finance**	Second quarter 2016
Stage 4 –evaluation period, first draft of the evaluation	**The evaluator(s)**, the reference group	Fourth quarter 2017
Stage 5 –assessment of the first draft of the evaluation and further works/adjustments to finalize the evaluation	**The evaluators,** the peer review group	First quarter 2018
Stage 6 – Assessing the results of the evaluation	**The Ministry of Finance**	15 May 2018
Stage 7 – Deadline for the evaluation – official delivery to the Authority	**The Ministry of Finance**	15 May 2018

g. Description of the independent body conducting the evaluation or the criteria that will be used for its selection

(15) The body conducting the evaluation will be selected through an open tender competition.

(16) The award will be based on the financially most favourable tender, based on the following criteria: understanding of the task (40%), competence offered (30%) and price (30%).

h. Modalities for ensuring the publicity of the evaluation

(17) The results of the feasibility study and the evaluation plan (first draft and final version) will be published on the website of the Ministry of Finance: http://www.finansdepartmentet.no

(18) The findings of the evaluation will be discussed with relevant stakeholders.

II. ASSESSMENT OF THE EVALUATION PLAN

(19) Pursuant to Article 1(2) GBER, *"[t]his Regulation shall not apply to: (a) schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44), and 10 of Chapter III of this Regulation, if the average annual State aid budget exceeds EUR 150 million, from six months after their entry into force."*

(20) Article 2(15) GBER defines such aid schemes as *"[…] any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount"*.

(21) Article 1(2) GBER also states that *"[t]he [Authority] may decide that this Regulation shall continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the [Authority], within 20 working days from the scheme's entry into force"*.

(22) Article 2(16) GBER defines as evaluation plan *"[a] document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation."*[3]

(23) As mentioned in recital 6 of the GBER *"[a]id that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempted from the notification obligation laid down in Article 108(3) of the Treaty"*. Article 1(2)(a), Article 2(15) and Article 25(1) GBER form the bases for the exemption of the aid scheme concerned from the notification requirement of Protocol 3, in particular Article 1(3) of Part I and Article 2(1) of Part II. The correct application of the GBER is thus the responsibility of the EEA State concerned.

(24) The Authority hereby does not assess the compatibility of the Skattefunn scheme with the GBER. The present decision does not create any legitimate expectations and is without prejudice to any future position that the Authority may take in the context of monitoring the compatibility of the aid scheme pursuant to Chapter II of the GBER, or when assessing complaints against individual aid granted under the aid scheme. In addition, the Auhtority reminds the Norwegian authorities that any alterations to this scheme which can significantly affect its compatibility with the GBER or the content of the approved evaluation plan are, pursuant to Article 1(2)(b) GBER, excluded from the scope of the GBER and must be notified to the Authority.

(25) The present decision assesses only the evaluation plan notified by Norway. According to recital 8 of the GBER, the evaluation of large schemes is required *"[i]n view of the greater potential impact of large schemes on trade and competition"*. The required *"[e]valuation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid*

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[3] Further guidance on evaluation plans is provided in the Staff Working Document, cited in footnote 1.

measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade". State aid evaluation should in particular allow the direct incentive effect of the aid on the beneficiary to be assessed (i.e. whether the aid has caused the beneficiary to take a different course of action, and how significant the impact of the aid has been). It should also provide an indication of the general positive and negative effects of the aid scheme on the attainment of the desired policy objective and on competition and trade respectively. State aid evaluation examines moreover the proportionality and appropriateness of the chosen aid instrument.[4]

(26) It is noted that the annual average State aid budget of the aid scheme concerned estimated by Norway, namely NOK 2 350 million for 2015 or approximately EUR 275 million, exceeds the threshold of EUR 150 million set in Article 1(2)(a) of the GBER.

(27) The Authority regrets that Norway submitted the formal notification of the evaluation plan belatedly, i.e. outside the 20 working day deadline referred to in recital 8 of the GBER. Nonetheless, as this is a novel GBER provision entailing complex issues of assessment, the Authority accepts this late submission, taking particular account of the continuous co-operation of the Norwegian authorities throughout the process. This position, however, does not prejudge the position of the Authority in future notifications of evaluation plans.

(28) The Authority considers that the notified evaluation plan contains the minimum elements outlined in Article 2(16) GBER. It provides a brief description of the key objectives of the measures concerned, which is to stimulate R&D investment in the business sector. The Authority notes the positive externalities that the R&D scheme carries along, which would not have been produced by the private sector alone. The target beneficiaries and the form of the measure are also described.

(29) In general, the Authority considers the questions that the evaluation seeks to answer to be appropriate and relevant, covering both direct and indirect effects of the measure as well as proportionality and appropriateness of the instrument. Given these evaluation questions, the evaluation plan identifies relevant result indicators, and briefly explains the data available and the sources and frequency of this data. The Authority particularly notes that the evaluation plan refers to "additional" results that need to be achieved in comparison to what the situation would be without the aid. This is a key tool for assessing the effectiveness of the aid scheme.

(30) As regards the structure of the evaluation and the evaluation methodology to be used, the Norwegian authorities have briefly described potential methods (panel data regressions) and possible control groups for the study (firms with R&D investment below and above the scheme threshold before the thresholds were introduced or increased). However, the evaluation plan states that other methods may be relevant, and different methods may be applied for the various evaluation questions.

(31) The Authority considers the proposed timing of the evaluation to be reasonable, allowing appropriate time for the proper implementation of each task envisaged.

(32) In particular, the Norwegian authorities have proposed a seven stage procedure as described in table 1 above. In stage 1, a comprehensive methodology and data feasibility study following the Staff Working Document will be completed by a researcher/consultant that

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[4] See the best practices outlined in the Staff Working Document cited in footnote 1 (footnote 3, section 2, second paragraph).

will be selected through an open tender procedure. During this stage, it is possible that the evaluation questions or the result indicators will be adjusted, based on the methodological choice and/or availability of data. In stage 2, the feasibility study will be published and presented in a dialogue/workshop where the study will be subject to critical feedback from other researchers, as well as relevant stakeholders identified by the Norwegian authorities.

(33) During stage 3, the Norwegian authorities will tender out the evaluation in an open, objective and transparent tender procedure on the basis of the relevant applicable rules, and select the evaluator(s). Stage 4 produces a draft report in line with the Staff Working Document. A reference group consisting of representatives of the Norwegian authorities and the evaluator(s) will follow the progress of the evaluation and ensure that the methods selected and the quality offered are in line with the tender specifications. At stage 5, the draft evaluation report is completed and is then subjected to independent peer review by researchers from *inter alia* national and foreign universities, colleges and Statistics Norway. During stage 6, the Norwegian authorities will assess the results of the final evaluation report. Finally, as part of stage 7, the Authority notes that the Norwegian authorities have undertaken the obligation to transmit the final evaluation report by 15 May 2018.

(34) The Norwegian authorities will choose the financially most favourable tender based on the following weighting ctriteria: i) understanding of the task (40%), ii) competence offered (30%) and iii) price (30%). The criteria for selecting the body to perform the evaluation in the proposed tender process are appropriate in terms of ensuring both independence from the granting authority and the necessary skills to perform the evaluation.

(35) The Authority also takes note of the modalities undertaken by the Norwegian authorities to ensure publicity of the evaluation, as mentioned above in paragraphs (17) and (18). This is considered an appropriate mechanism to guarantee the transparency and openness of the whole procedure.

(36) In view of the above, the Authority finds that the relevant requirements of the GBER concerning the evaluation plan for the Skateffunn aid scheme are fulfilled, and that the evaluation plan is established in line with the common methodology proposed in the Staff Working Document.

(37) The Authority notes the commitments made by the Norwegian authorities to conduct the evaluation according to the plan described in the present decision and to inform the Authority of any element that might seriously compromise the implementation of the plan.

III. CONCLUSION

(38) In conclusion, pursuant to Article 1(2)(a) of the GBER, the Authority decides that the exemption for the aid scheme for which the evaluation plan was submitted is prolonged beyond the initial six months until 31 December 2020.

HAS ADOPTED THIS DECISION:

Article 1

The exemption from the notification requirement under the General Block Exemption Regulation for the Skattefunn aid scheme is prolonged until 31 December 2020.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, on 24 June 2015.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member