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# *EFTA SURVEILLANCE AUTHORITY*

Doc.No. 99-8084 I  
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Ref. No. SAM030.99007

## EFTA SURVEILLANCE AUTHORITY DECISION

OF 10 NOVEMBER 1999

ON THE NEW AID SCHEME "PROJECT DEVELOPMENT GRANT"  
("PROSJEKTUTVIKLINGSTILSKUDD")  
(AID No. 99-007)

(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 of 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,

WHEREAS:

### **I. FACTS**

#### **1. The notification**

By letter of 18 June 1999 from the Mission of Norway to the European Union, received and registered on 22 June 1999 (Doc. No: 99-4580 A), the Norwegian

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<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> 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 30 June 1999, not yet published.

authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a new aid scheme: "Project Development Grant" ("Prosjektutviklingstilskudd") (hereinafter referred to as PDG).

By letter dated 13 July 1999 (Doc. No: 99-5252 D), the EFTA Surveillance Authority acknowledged the receipt of the letter dated 18 June 1999 and requested additional information.

By letter of 31 August 1999 from the Mission of Norway to the European Union, received and registered on 3 September 1999 (Doc. No: 99-6521 A), the Norwegian authorities submitted additional information.

## **2. The contents of the proposed aid measure**

### **2.1. Background and legal basis**

PDG is a new grant scheme, which the Norwegian Government proposed to establish in its Fiscal Budget for 1999<sup>4</sup>. The Fiscal Budget was presented to the Parliament on 5 October 1998 and adopted on 15 December 1998. The scope of the grants is limited to NOK 100 million (EUR 11.4 million) for the four-year period 1999-2002, but the budgetary appropriations are decided upon by the Norwegian Parliament each year.

The scheme is financed by the Ministry of Trade and Industry on the State budget Chapter 2420, Posts 54. PDG will be administered by the Industrial and Regional Development Fund (SND). The activity of SND, which is a wholly state owned fund, is regulated by the Law on SND of 3 July 1992 no. 97 and the Regulations for SND of 4 January 1993.

In the first notification letter (Doc. No: 99-4580 A), the Ministry of Trade and Industry submitted draft regulations for PDG<sup>5</sup>. The draft regulations contain i.a. specifications of eligible costs, additional rules on cumulation of aid and methods for assessing the aid intensities. In the second notification letter (Doc. No: 99-6521 A), the Ministry had revised the aid intensities contained in the draft regulations.

### **2.2 Objectives**

PDG is primarily directed towards pre-competitive development activities, but also industrial research and technical feasibility studies will be supported. The main objective of the scheme is to support the preparation of new technology (developed by universities and research and development institutions) for commercialisation, i.e. up to a point where commercial investors are ready to provide venture capital. Small and medium-sized enterprises (SMEs) and start-up businesses will have priority on aid awards. SMEs may also apply for aid for consultancy services, training and dissemination of knowledge.

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<sup>4</sup> "St.prp. nr. 1 (1998-99) for Nærings- og handelsdepartementet".

<sup>5</sup> "Regelverk for prosjektutviklingstilskudd for statens Nærings- og Distriktsutviklingsfond (SND)"

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;
- additional overheads incurred directly as a result of the research activity;
- other operating expenses (e.g. costs of materials, supplies and similar products) incurred directly as a result of the research activity.

According to the notification, the eligible costs must be consistent with the following principles in order to fall under the notion of aid to SMEs for consultancy services, training and dissemination of knowledge, ref. Chapter 10.3.2.1 of the Authority's State Aid Guidelines:

- they may involve the transfer of knowledge, information and advice, but on the other hand be distinguished from investment i.a. in computer software, secret technological know-how or other intellectual property;
- they must meet one-off requirements for up-to-date knowledge i.a. for training, expertise or increased capability which arise in connection with changes in a firm's management, production methods, products or markets, which distinguish them from service supplied on a routine basis;
- the services must not be compulsory;
- aid for promotion of co-operation or establishment of networks between SMEs or similar justified purposes for aid to SMEs fall under the notion of soft aid.

### **2.3. Aid intensities**

The aid can be given in the form of grants or grants which can be converted to loans. Grants which can be converted to loans will be treated as ordinary grants when calculating the aid intensities. The Norwegian authorities propose that the aid intensities should be increased for SMEs and enterprises eligible for regional aid (i.e. located in assisted areas (Article 61(3)(c) EEA regions)).

Table 1 gives an overview of the proposed maximum aid intensities for the scheme.

Table 1: Proposed maximum aid intensities for PDG

	Large companies		SMEs	
	Outside assisted areas	Article 61(3)(c) regions	Outside assisted areas	Article 61(3)(c) regions
Industrial research	50%	55%	60%	65%
Technical feasibility studies	50%	50%	50%	50%
Precompetitive development aid	25%	30%	35%	40%
Consultancy services, training and dissemination of knowledge	0%	0%	50%	50%

The maximum aid intensities will usually not be applied, according to the notification.

The projects receiving aid are not excluded from receiving aid from other sources. PDG may be combined with grants or other relevant support schemes from SND or other sources. The accumulated aid intensity will in such cases, according to the draft regulations, be considered to ensure compliance with the Authority's State Aid Guidelines (Chapter 13).

## 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 notifications dated 18 June 1999 (Doc. No: 99-4580 A) and 31 August 1999 (Doc. No: 99-6521 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).

### 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 and to SMEs may be regarded compatible with the functioning of the EEA Agreement by

virtue of one of the derogations provided for in Article 61(3). The relevant derogation in question is contained in Article 61(3)(c).

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**

Two Chapters of the Authority's State Aid Guidelines are relevant for assessing the new scheme: Chapter 14 on Aid for Research and Development and Chapter 10 on Aid to SMEs.

Concerning R&D, the Authority draws a distinction between fundamental research, industrial research and precompetitive development activity (Chapter 14.2.1 of the Guidelines).

By fundamental research is meant an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives. 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.

Concerning aid to SMEs, Chapter 10.3.2.3 (1) of the Guidelines states i.a. that: "*Aid of up to 50% gross will generally be allowed for consultancy services provided by outside consultants to new or established SMEs or for the training given to their staff in such fields as management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or the like, or for the purpose of assessing the feasibility of new ventures.*"

In the notification of PDG, the Norwegian authorities state that support for R&D under the new scheme can be given to fundamental research, industrial research and precompetitive development activity. Furthermore, the draft regulations for the new scheme explicitly refers to Chapter 14.2.1 of the Guidelines where these activities, as referred above, are defined. The EFTA Surveillance Authority finds that the criteria

foreseen for aid to R&D under the new scheme reflect the criteria set out in the State Aid Guidelines (Chapter 14).

Concerning aid to SMEs, the Authority finds that the objectives of the PDG (referred in point I. 2.2. above) are in accordance with the purpose of aid to SMEs outlined in Chapter 10.3.2.3. of the Guidelines (Consultancy services, training and dissemination of knowledge). The draft regulations for the new scheme also explicitly refers to this part of the Guidelines.

### **2.3. Aid intensities**

The proposed maximum aid intensities of the PDG are shown in table 1, point I. 2.3 above.

Chapter 14.5.1. paragraph (5) of 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."*

Finally, 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 situations:

- *"Where the aid is to be given to SMEs: an extra 10 percentage points;*
- *Where the research project is carried out in an Article 61(3)(c) region: an extra 5 percentage points."*

Chapter 10.3.2.3 (1) of the Guidelines states i.a. that aid of up to 50% gross will generally be allowed for consultancy services, training and dissemination of knowledge to new or established SMEs.

The EFTA Surveillance Authority finds that the proposed maximum aid intensities for PDG (see table 1 above) are in accordance with the permissible maximum aid intensities set out in the State Aid Guidelines (Chapters 10 and 14 respectively).

### **3. Cumulation of aid**

Grants from PDG can, according to the notification, be combined with grants or other relevant support schemes from SND or other sources. The Authority has noted that the

accumulated aid intensity will, in such cases, be considered to ensure compliance with the Authority's State Aid Guidelines (Chapter 13).

Chapter 13 of the State Aid Guidelines contains rules applicable to cases of cumulation of aid for different purposes. Cumulation of aid is defined as the application of more than one aid scheme to a given investment project. The EFTA States are obliged to notify projects where the investments exceeds Euro 12 million (NOK 105.3 million) or where the cumulative intensity of the aid exceeds 25% Net Grant Equivalent (NGE). Cases where the investment does not exceed Euro 3 million, the cumulative aid intensity of the aid does not exceed 10% NGE or the intensity of all the aid to be granted remains below the ceiling for any one of the aid schemes under which aid is being awarded to the project, are exempted from this additional notification requirement.

This exemption is without prejudice to the obligation of the EFTA States to remain within the ceiling for each individual scheme.

The EFTA Surveillance Authority draws the Norwegian authorities' attention to the fact that the implementation of the scheme is subject to the provisions set forth in the State Aid Guidelines concerning the cumulation of aid.

#### **4. Conclusion**

The criteria and the intensities foreseen for PDG reflect the requirements set out in the State Aid Guidelines (Chapters 14 and 10, respectively) for aid under Article 61(3)(c) of the EEA Agreement. Aid awards may therefore be justified with reference to aid to facilitate 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 "Project Development Grant" ("Prosjektutviklingstilskudd") 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 "Project Development Grant", ("Prosjektutviklingstilskudd") scheme as notified by the Norwegian authorities by letters dated 18 June 1999 (Doc. No: 99-4580 A) and 31 August 1999 (Doc. No: 99-6521 A).
2. The EFTA Surveillance Authority draws the Norwegian authorities' attention to the fact that the implementation of the scheme is subject to the provisions set forth in the State Aid Guidelines concerning the cumulation of aid.
3. The Norwegian authorities are obliged to submit a separate simplified annual report to the EFTA Surveillance Authority on the application of the "Project Development Grant" scheme (in accordance with Chapter 32 and Annex IV of the State Aid Guidelines).

Done at Brussels, 10 November 1999

For the EFTA Surveillance Authority

Knut Almestad  
President

Hannes Hafstein  
College Member