

Case No: 77595
Document No: 763280
Decision No: 336/15/COL



EFTA SURVEILLANCE AUTHORITY DECISION

of 16 September 2015

raising no objections to the programme for alternative fuels infrastructure

(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 Protocol 26,

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 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) The Norwegian authorities notified the programme for alternative fuels infrastructure, pursuant to Article 1(3) of Part I of Protocol 3, by letter of 3 July 2015.¹
- (2) By letter dated 6 July 2015,² the Norwegian authorities suggested to mutually agree an extension of the deadline for assessing the notification until 18 September 2015. By email dated 9 July 2015,³ the Authority agreed to the extension.

¹ Documents No 763245 and 763246.

² Document No 763772.

³ Document No 764374.

2 The aid measures

- (3) The proposed programme is intended to promote the construction of alternative fuels refuelling/recharging infrastructure in cases where such deployment will not be feasible without state support.
- (4) The programme consists of five separate aid schemes targeting different technologies and/or groups of beneficiaries: (1) electric charging infrastructure for vehicles, (2) shore-side electricity supply for ships, (3) hydrogen refuelling infrastructure for vehicles, (4) biofuels refuelling infrastructure for vehicles, and (5) LNG⁴ refuelling infrastructure for ships.

3 Enova

- (5) The notified measure will be financed from the Energy Fund, which is managed by Enova SF (“Enova”), a state enterprise fully owned by the Norwegian State via the Ministry of Petroleum and Energy. Enova was established on 1 January 2002 with the purpose of managing the Energy Fund and in order to administer several Norwegian support programmes aimed at promoting renewable energy and the use of energy-efficient technologies.⁵ The aid measures foreseen by the aid schemes under the alternative fuels programme are not covered by any of the previously authorised aid schemes administered by Enova.

4 National legal basis

- (6) The notified aid schemes are based on the following legal instruments:
- The annual state budgets, which describe the energy policy and propose the budget for the coming year.
 - 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 (*energiloven*).
 - The agreement between the Ministry of Petroleum and Energy and Enova. The latest version of the agreement, with amendment dated 30 January 2015, regulates the objectives for Enova’s administration of the Energy Fund between 28 June 2012 and 31 December 2016.
 - Regulation No 1377 of 10 December 2001 concerning the levy on the electricity distribution tariff (*forskrift om innbetalning av påslag på nettariffen til energifondet*).
 - A regulation on the Energy Fund (*vedtekter for energifondet*) places the Energy Fund under the Ministry of Petroleum and Energy and stipulates its administration.

5 Aid instrument, intensity, eligible costs, overlap with other schemes

- (7) Enova will apply a common approach to the application and assessment processes for all aid schemes under the programme.

⁴ Liquid Natural Gas.

⁵ By Decision No 248/11/COL, the Authority declared certain aid schemes financed by the Energy Fund compatible with the EEA Agreement. The aid schemes that are the object of the present decision fall outside the scope of the aid schemes as authorised by Decision No 248/11/COL.

5.1 Bidding procedure and awarding criteria

- (8) Enova intends to use an open, non-discriminatory and competitive process based on Norwegian and EEA law principles for public procurement for most of the aid disbursed under this programme.
- (9) The award criteria and their relative weighting will be stipulated in advance. The competition is intended to cost-optimize the environmental protection, through selection of the most cost-efficient bid. Enova will define the maximum aid for each project based on its knowledge about the cost of the different parts of the projects. The competitions will be published on Enova's website⁶ and in national media.
- (10) For certain measures to be adopted under the aid schemes, it may be difficult to establish a competitive bidding process. This is most likely to occur in sectors where there is not a sufficient number of industrial players willing to invest in the Norwegian market (e.g. possibly hydrogen in an early stage) or where other barriers are preventing a sufficient number of actors from competing for funds (e.g. possibly for shore-side electricity, where facilities need to be in place before ship owners decide to modify ships to be able to make use of the equipment). In this case, Enova will use an application-based competitive procedure to verify compliance with the eligibility criteria (e.g. the existence of an incentive effect) and to select the most cost-efficient projects. Calls for applications will also be published on Enova's website and in national media.
- (11) Eligible projects will be projects contributing towards basic infrastructure coverage in areas where profitability will not be reached within a reasonable time frame. All infrastructure supported by Enova under this programme will be required to be open to the general public.
- (12) The need for additional infrastructure for alternative fuels will be based on mappings of available infrastructures today and/or the assessments of further needs to make vehicles and ships able to circulate freely. Enova will ensure that the infrastructure covers the target area in a sufficient way, based on the defined criteria in the specific call/tender.

5.2 Eligible costs and aid intensities

5.2.1 Competitive bidding process

- (13) Enova will grant most of the investment aid in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. In these cases, the aid may reach 100% of the eligible cost. The bidding process will be limited to such an extent that not all participants can obtain a contract.⁷ Enova will furthermore ensure that the most cost-efficient projects are selected and will set a maximum total aid amount for every project and/or individual component.⁸

5.2.2 Application process

- (14) In the case that aid is given without a competitive bidding process, Enova will apply the methodology for identifying the eligible cost as set out in the Guidelines on State aid for

⁶ www.enova.no

⁷ For instance, the subject of a tender call in relation to electric charging stations for vehicles will be a limited number of charging stations in a defined corridor/target road. In this way the number of contracts that can be obtained will be limited.

⁸ For instance, in the case of electric charging stations for vehicles, Enova will define a number of chargers for each charging station and, based on its knowledge of prices for the necessary equipment, will define a maximum total aid amount or a maximum aid amount per component (e.g. charging station).

environmental protection and energy 2014-2020⁹ (“EEAG”). The eligible costs will thus be based on the extra cost method for achieving the common objective.

- (15) For many of the eligible projects under the programme, the most likely situation is that there is no counterfactual scenario. Enova will therefore apply the funding gap approach to these projects, as also foreseen in the EEAG.
- (16) When using the application process, Enova intends to apply the same aid intensities that are applicable to aid for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards, as set out in Annex 1 in the EEAG:

Type of undertaking	Aid intensity
Small enterprises	60%
Medium-sized enterprises	50%
Large enterprises	40%

5.3 Specific considerations for the aid schemes under the programme

- (18) Beyond these common elements, there is a number of specific considerations for the individual aid schemes under the alternative fuels programme.
- (19) The objective of the aid is to increase the sale and usage of electric vehicles in Norway. In order to ensure the free circulation of electric vehicles with the current technology, there must be charging possibilities around every 50-70 km.
- (20) Under the proposed aid scheme, eligible projects are electric charging facilities in corridors defined as “Nasjonale transportkorridorer” in the Norwegian national transport plan.¹⁰ To more clearly define target areas, an assessment will be carried out in dialogue with the Norwegian Public Roads Administration.
- (21) Information on existing charging infrastructure facilities is collected and shared by NOBIL, a publicly-owned organisation.¹¹ Most of today’s charging infrastructure is registered in this database. It is also possible to embed planned facilities into the system. The database gives certain advantages to the user and to the owner of a charging facility. Features such as live information on availability, pictures and detailed mappings with descriptions, incentivise facility owners to subscribe to the database. It will also be in the interest of developers to announce planned activities in the database.
- (22) Enova will use NOBIL’s database to assess coverage, which includes both existing and planned infrastructure projects. Where coverage is or will be sufficient through ongoing initiatives, there will be no basis for Enova support. This will ensure that private investment is not crowded out.

⁹ See EEAG section 3.2.5, paras 67 to 71. The EEAG are available at: <http://www.eftasurv.int/media/state-aid-guidelines/Guidelines-on-State-aid-for-environmental-protection-and-energy-2014-2020.pdf>.

¹⁰ See <http://wwwntp.dep.no/English>

¹¹ See <http://info.nobil.no/index.php/english>

- (23) Enova will require a technology for the chargers that will enable as many different vehicles as possible to use the charging stations.¹² There is continuous technological development, and Enova will monitor the market in order to present requirements that at all times ensure the highest degree of compatibility with the current fleet of electric vehicles.
- (24) Through the bidding process, projects will be selected based on cost efficiency. In Norway, charging infrastructure has so far mainly been established by electricity utilities, vehicle companies (production and retail) and fuel retail companies, but it is expected that owners of vehicle fleets and various retail and service companies may enter the market.

5.3.2 Shore-side electricity supply for ships

- (25) Enova does not aim at national coverage to supply electricity in all ports. The objective is to facilitate shore-side electricity in ports with significant demand, where cost is acceptable related to benefits. The need for new installations will be assessed based on actual and estimated future demand.
- (26) Shore-side electricity is very different from charging infrastructure for vehicles on land. Ships will use harbours with or without availability of shore-side electricity. However, the incentive to fit a ship with the required equipment for shore-side charging will become stronger with a larger network along the coast.
- (27) There is no competition within each harbour, but to some extent between harbours. There will be no mapping of different areas which are eligible for support. Instead, projects will compete for aid based on cost efficiency and the potential use (based on documented traffic of port calls). As a result, all harbours (public and private) with sufficient potential use but that are not profitable, are eligible for support.

5.3.3 Hydrogen refuelling infrastructure for vehicles

- (28) Enova expects that further technological development and market maturation will be needed before a large-scale roll-out of hydrogen infrastructure will be appropriate and efficient. Enova therefore aims at supporting individual projects that address some of the specific challenges within hydrogen markets. If or when the market is further developed, a more general support of hydrogen infrastructure might be envisaged.
- (29) Only hydrogen infrastructure projects that are not profitable are eligible for support. Furthermore, only areas with insufficient coverage may qualify for aid. Lastly, only projects that are cost efficient and use standardised technology will be eligible.
- (30) Through the bidding process, projects will be selected based on cost efficiency. So far, there are six hydrogen filling stations in operation in Norway, established by oil companies. Moreover, one single purpose hydrogen production and retail company and one research and development institution have established hydrogen filling stations and related hydrogen production facilities.

¹² The charging stations will have direct current (DC) and alternating current technologies. The DC technologies will be the connectors of combined charging system "Combo 2" as described in standard EN 62196-3, and CHaDeMO (which also is described in the revision of the same standard released on 31 December 2014). The AC technology will be connectors of Type 2 as described in standard EN 62196-2. The DC chargers will have a minimum requirement of delivering up to 50 kW; the AC chargers will have a minimum requirement of delivering up to 22 kW.

5.3.4 Biofuels refuelling infrastructure for vehicles

- (31) Liquid biofuel is often blended with regular fuel as part of the imposed blending requirements. In this case, liquid biofuels do not require specific distribution infrastructure as long as they are brought into the market through blending into conventional fuels at a level compatible with present vehicles (< 7% for biodiesel and < 10 % for bioethanol). For higher levels of biofuels, however, changes to the distribution infrastructure might be required, which may require support to be realised. Only infrastructure for sustainable biofuels will be eligible for aid.
- (32) The situation is different for biogas. Gas distribution infrastructure for road transport is not very well developed in Norway. Under the scheme, all infrastructure projects concerning biogas are eligible, except in areas with existing adequate minimum coverage or where acceptable profitability can be achieved without support.
- (33) Through the bidding process, projects will be selected based on cost efficiency. Biogas infrastructure has mainly been established by gas companies and common management companies for public transport in Norway. Around 20 stations are presently in operation. Infrastructure for liquid biofuels is mainly established by fuel retail companies.

5.3.5 LNG refuelling infrastructure for ships

- (34) It is challenging to assess the number of LNG facilities needed to secure the basic availability of infrastructure to stimulate ships' conversion to LNG. Some facilities will mainly support specific ship routes, others will aim at supplying a general market of Norwegian and foreign cargo ships. However, by establishing a network of facilities along the coast, ship owners may be further incentivised to convert to LNG as a source of fuel (through rebuilding or new builds).
- (35) Through the bidding process, projects will be selected on the basis of cost efficiency as well as the potential use (based on documented traffic). Enova will evaluate the business plan for LNG refuelling infrastructure before any grant is made. The main maritime LNG suppliers in Norway are gas companies, supplying LNG from around five dedicated small scale LNG-terminals, around 50 small stand-alone tanks and a number of trucks. Most, however, only support dedicated shipping routes or users.

5.4 Overlap with existing measures and incentives

- (36) There are a number of measures and incentives already in place in the transport sector to encourage low and zero-emission vehicles and ships. It is important to note, however, that none of the existing measures are likely to break the barriers for further development of alternative fuels infrastructure in current low-demand areas.
- (37) The principal existing measures are the following:
- An exemption from vehicle registration tax, reduced annual road tax and a zero VAT rating for zero emission vehicles;¹³
 - Certain mineral product taxes, such as the CO₂ tax, the sulphur tax as well as the basic tax and the auto diesel/fuel tax for different mineral sources/products;

¹³ See also the Authority's Decision No. 150/15/COL of 21 April 2015 on state aid measures in favour of electric vehicles.

- A blending obligation for biofuels of 3.5% per year and a corresponding reduction in the annual road tax, calculated by volume;
- Support for the reduction of NO_x emissions can be provided by the NO_x fund for maritime vessels.

6 Budget and duration

- (38) The duration of the programme will be until the end of 2016 and its annual budget a maximum of NOK 300 million.

7 Comments by the Norwegian authorities

- (39) The Norwegian authorities state that the alternative fuels programme involves several state aid schemes that should be declared compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

7.1 Background

- (40) The purpose of the programme is to improve the infrastructure for alternative fuels for road vehicles and ships. The programme will be based on the same premises as Directive 2014/94/EU on the deployment of alternative fuels infrastructure¹⁴ (“the Alternative Fuels Directive”).
- (41) Around 96% of the energy consumption related to transport in the EU depends on oil products. In Norway, the use of renewable energy is only moderately higher. Around 4% of the energy consumption in road transport in 2014 was biofuel, and with a growing number of electric vehicles (today around 50 000), the transport-related electricity consumption is growing. The use of hydrogen, LNG, LPG and CNG in road transport in Norway is generally very low, although the use of CNG/CBG in bus transport is gaining importance.¹⁵ Today more than 500 busses using compressed methane are in operation. Within shipping, the use of LNG in Norway is increasing. In 2011, LNG represented around 7% of the energy sold to ships in Norway, this is expected to increase to 24% by 2016.
- (42) The purpose of the proposed programme is to address one of the important market failures and barriers that hamper the deployment of infrastructure for alternative fuels in areas where the use of the infrastructure is expected to be too low, at least in the coming years, to attract commercial actors without support.

7.2 Legal basis for the assessment

- (43) According to section 1.2 of the EEAG, the guidelines do not apply to the financing of environmental protection measures relating to air, road, railway, inland waterway and maritime transport infrastructure. The Norwegian authorities therefore consider that the aid schemes in the alternative fuels programme fall outside the scope of the EEAG and thus has to be assessed directly under Article 61(3)(c) of the EEA Agreement.

¹⁴ OJ L 307, 28.10.2014, p. 1, not yet incorporated into the EEA Agreement. The directive requires Member States to develop national policy frameworks for the market development of alternative fuels and their infrastructure; foresees the use of common technical specifications for recharging and refuelling stations; and paves the way for setting up appropriate consumer information on alternative fuels, including a clear and sound price comparison methodology.

¹⁵ Liquid Petroleum Gas, Compressed Natural Gas, Compressed Biogas.

- (44) However, the Norwegian authorities also argue that, given that the programme has an environmental objective and that no other state aid guidelines are applicable, the EEAG can be used as a good proxy for the state aid assessment.

7.3 Arguments regarding compatibility

- (45) According to the Norwegian authorities, the aid schemes under the alternative fuels programme have the clear environmental objective of reducing greenhouse gas emissions from the transport sector, by overcoming the main barriers for deployment of alternative fuels infrastructure.
- (46) Reducing CO₂ emissions is a recognised objective of common interest, as can be seen from a number of legal instruments, including the EEAG and the Europe 2020 strategy.¹⁶ The importance of developing the refuelling/recharging infrastructure for zero- and low-emission technologies has been underlined in particular by the Alternative Fuels Directive.
- (47) Currently, the emissions from the Norwegian transport sector are around 17 million tons CO₂-equivalents. The aid will indirectly be an important measure to facilitate further uptake of low-emission vehicles and vessels, so that Norway may fulfil its climate policy obligations and targets.
- (48) The Norwegian authorities argue that deploying infrastructure for alternative fuels in Norway is particularly difficult due to its unevenly distributed population, long distances, and challenging natural environment. Furthermore, infrastructure for certain technologies such as hydrogen faces very low demand and cannot be built on a commercial basis yet.
- (49) The aid schemes will address this market failure by only targeting areas and technologies that require state aid. The Norwegian authorities consider that there are no less distortive instruments (other than state aid) that may reach the same results. In particular, the existing support measures and regulatory interventions, as outlined in section 5.4 above, do not address the particular issue of alternative fuels infrastructure.
- (50) Regarding the existence of an incentive effect and proportionality, the Norwegian authorities firstly note that no aid will be granted to projects that have already started at the time of application. When aid is awarded through a competitive bidding process, there is no further need to demonstrate an incentive effect. In contrast, where support is granted through an ordinary application process, Enova will assess the incentive effect and proportionality of the aid in accordance with the requirements set out in EEAG section 3.2.4.1.
- (51) Enova will check the counterfactual scenario and confirm that the aid has the required incentive effect. Where the investment in infrastructure replaces existing fossil fuel infrastructure, as could be the case for some biofuels, the eligible costs will be the extra investment costs necessary. The counterfactual scenario is then the current fossil fuel infrastructure. In the case where the relevant fuel does not substitute existing fuels, as for hydrogen, electricity or natural gas, it is difficult to establish a counterfactual scenario. As described in section 3.2.5.1 of the EEAG, in absence of a counterfactual the total cost of the project will count as the eligible cost. Enova will apply the maximum aid intensities set out in the EEAG, which further ensures proportionality.
- (52) Aid under the programme for alternative fuels for transport may be cumulated with aid from other sources to cover the same eligible cost, as long as the total aid does not exceed the

¹⁶ See e.g EEAG, para 4.

maximum aid intensities. Enova's application procedure will ensure that applicants provide the necessary information.

- (53) The Norwegian authorities note that the market penetration for alternative fuels varies with the technology and the geographical conditions. The programme is designed to address the need for support with respect to the maturity of the different technologies and the barriers for diffusion. Only projects that are not commercially viable will be eligible for support.
- (54) Most of the aid will be granted on the basis of a competitive bidding process, which reduces any distortions of trade and competition in the market. In case aid is granted through an ordinary application process, the call will be open to all interested operators and only commercially unviable projects are eligible for support. Taking this into account, the Norwegian authorities again consider any distortions of trade and competition very limited.
- (55) To ensure transparency, the programme, with its full text, will be published on Enova's website. All individual aid granted under the program will be published in accordance with the requirements in the EEAG section 3.2.7.

II. ASSESSMENT

1 The presence of state aid

- (56) 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."

- (57) This means 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; and (iii) is liable to have an impact on trade between Contracting Parties and to distort competition.

1.1 Presence of state resources

- (58) In order to constitute state aid, an aid measure must be granted by the state or through state resources.
- (59) The aid schemes under the alternative fuel programme will be financed from the Energy Fund, which was established by the Norwegian State and is administered by Enova, a public body owned by the Norwegian State via the Ministry of Petroleum and Energy. Its main source of funds is a levy on the electricity grid tariff. The level of the levy is determined by the state. The proceeds of the levy are allocated directly to the Energy Fund from where Enova, in turn, allocates them directly to the chosen projects.
- (60) With regard to revenue from the levy, state resources are involved where money is transferred by a fund which is established by the state, and the fund is fed by contributions imposed or managed by the State, and its assets are permanently under the control of public authorities. In its Decision No 248/11/COL approving the Energy Fund, the Authority concluded that the financial resources available to Enova out of the Energy Fund, as well as

disbursements from these resources, are under the permanent control of the Norwegian State and therefore qualify as state resources.¹⁷ There have been no substantial changes to the Energy Fund or the control exercised by the Norwegian State over Enova's activities since Decision No 248/11/COL.

- (61) The Authority thus concludes that the notified aid schemes involve state resources within the meaning of Article 61(1) of the EEA Agreement.

1.2 Favouring certain undertakings or the production of certain goods

- (62) Firstly, the aid measures must confer on the beneficiaries advantages that relieve them of charges that are normally borne from their budget. Secondly, the aid measure must be selective in that it favours "*certain undertakings or the production of certain goods*".
- (63) Grants under the aid schemes are aimed at undertakings that intend to install the types of alternative fuels infrastructure covered by the notified aid schemes, granting them support to cover all or part of the investment costs. The Authority considers that the notified aid schemes will confer an economic advantage on these undertakings, which they would not have obtained under normal market conditions. The owners of these alternative fuels infrastructures are therefore the direct beneficiaries of the aid. The Authority further considers this advantage to the direct beneficiaries to be selective, as only a limited number of undertakings can benefit from the aid.
- (64) The aid schemes under the alternative fuels programme also have a number of potential indirect beneficiaries.
- (65) The owners or users of vehicles or ships that use the supported alternative fuels infrastructures benefit from increased availability and (potentially) lower prices. The Authority notes, however, that private users of (in particular) electric vehicles are not subject to state aid rules as they do not qualify as undertakings. As regards undertakings using ships and vehicle powered by alternative fuels, the Authority notes that the infrastructure eligible under the aid schemes has to be open to all (public access) and would usually require payment for refuelling/recharging. Any advantage to users might therefore not be selective, or if at all be of a very limited nature.
- (66) Moreover, the measures can also stimulate the demand for vehicles and ships powered by the alternative fuels which the aid schemes support, as well as the sale of relevant refuelling/recharging equipments, compared to a reference situation in which no such aid would be granted. It follows that the measures may therefore also indirectly favour manufacturers, importers and dealers of these vehicles, ships and equipments.
- (67) Overall, the Authority considers these potential indirect advantages to be an incidental and unavoidable consequence of any aid measure aimed at encouraging the development of alternative fuels infrastructure.¹⁸

1.3 Distortion of competition and effect on trade between Contracting Parties

- (68) The aid measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

¹⁷ Decision No 248/11/COL, paras 45-47.

¹⁸ Any such indirect aid would in any event be compatible with the functioning of the EEA Agreement, see section II.3 below.

- (69) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is considered sufficient in order to conclude that the measure is liable to distort competition between undertakings established in other EEA States. For the purpose of categorising a national measure as state aid, it is not necessary that the aid has a real effect on trade between the Contracting Parties and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition.
- (70) On this issue, the Authority notes that under the alternative fuels programme, Enova may grant aid to undertakings that are or can be active in markets that are open to competition within the EEA. The selective economic advantage conferred by the aid schemes at hand is thus liable to distort or threaten to distort competition on the markets on which the direct beneficiaries are active.
- (71) Furthermore, an effect on trade can be presumed when the aid strengthens the position of an undertaking compared to other companies competing in intra-EEA trade. When an aid granted by one of the EEA states strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as affected by the aid.
- (72) The Authority notes that under each of the aid schemes in question, aid may potentially be granted to large undertakings that have activities subject to trade and competition within the EEA. For instance, electric charging stations and biofuel/biogas installations may be installed by operators of a chain of service stations with activities in other EEA states, hydrogen infrastructure may be installed by transport or logistics firm with an international profile, and LNG as well as shore-side electricity may be supplied by ports that compete with other port facilities in the EEA.
- (73) The Authority therefore concludes that the aid schemes under the alternative fuels programme are liable to affect trade and competition.

1.4 Conclusion on the presence of state aid

- (74) Based on the above, the Authority concludes that the measures under the alternative fuels programme constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

- (75) 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 alter aid. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.
- (76) By submitting a notification of the alternative fuels programme before any aid is granted, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (77) 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.
- (78) For most cases, these conditions are outlined in the Authority’s state aid guidelines. For state aid for environmental measures and energy, for instance, the EEAG set out the elements the Authority will take into account in its compatibility assessment.

- (79) The Authority concurs with the view of the Norwegian authorities that the EEAG are not directly applicable to the aid schemes under the alternative fuels programme, as they do not apply to the financing of environmental protection measures relating to air, road, railway, inland waterway and maritime transport infrastructure.¹⁹
- (80) The Authority will therefore assess these aid schemes directly under Article 61(3)(c) of the EEA Agreement, based on the following common assessment principles:
- contribution to a well-defined objective of common interest;
 - need for state intervention;
 - appropriateness of state aid as a policy instrument;
 - existence of an incentive effect;
 - proportionality of the aid amount (aid limited to minimum necessary);
 - avoidance of undue negative effects on competition and trade; and
 - transparency.
- (81) The Authority notes that the Norwegian authorities have modelled certain elements of the aid schemes on the EEAG, notably the eligible cost calculations and the maximum aid intensities. Given that the EEAG apply the common assessment principles set out above and are based on the Commission’s decision-making practice, they can provide guidance to the general approach to the Authority’s assessment. However, the Authority is not bound by the EEAG in the present case as the measures fall outside their scope of application.

3.1 Objective of common interest

- (82) Environmental protection, including the reduction of climate gas emissions, has been recognised as an objective of common interest within the EEA.²⁰
- (83) The importance of alternative fuels infrastructure in reducing the use of fossil fuels in the transport sector is underlined by the Alternative Fuels Directive. Without a significant uptake of alternative fuels, the targets of the Europe 2020 strategy and the climate goals for 2050 cannot be achieved.²¹
- (84) The Authority therefore concludes that the aid schemes under the alternative fuels programme contribute to a well-defined objective of common interest.

3.2 Need for state intervention

- (85) 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 cannot alone deliver.
- (86) The lack of refuelling/recharging infrastructure, and the inability of market forces to fill this gap, represents a fundamental barrier to the development of alternative fuels in the transport

¹⁹ See EEAG, section 1.2.

²⁰ For instance, the EEAG recognises as its aim the increase in the level of environmental protection compared to the level that would be achieved in the absence of the aid. Furthermore, they make reference to the Europe 2020 strategy, which sets “*targets and objectives for sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy*”.

²¹ See White Paper “Roadmap to a Single European Transport Area – Towards a Competitive and Resource Efficient Transport System”, COM/2011/0144.

sector.²² In particular, investing in alternative fuels infrastructure is often unprofitable in certain locations (e.g. rural areas) or for certain technologies.

(87) According to the information provided by the Norwegian authorities, this market failure in the provision of alternative fuels infrastructure affects the different technologies as follows:

- Electric recharging infrastructure for vehicles is being developed commercially in urban areas. However, there is still a market failure in more rural areas, where the lack of demand renders such installations unprofitable. A sufficiently dense network of charging stations throughout the country is however necessary in order to further promote the use of electric vehicles.
- Shore-side electricity infrastructure also suffers from a lack of demand, rendering them unprofitable. This is caused by the low number of ships with the required equipment for shore-side charging, which will only increase if there is a larger network of charging stations along the coast.
- The use of hydrogen as a transport fuel still requires further technological development and market maturation before a large scale roll out of hydrogen infrastructure can be envisaged. Hydrogen refuelling infrastructure is costly and likely to be unprofitable for the foreseeable future. The further development of this technology, however, requires the implementation of more hydrogen projects.
- The existence of a market failure in relation to dedicated refuelling infrastructure for biofuels depends on the type of biofuels. For liquid biofuels which can be distributed through existing installations (e.g. using the existing technology in service stations), there is no market failure. However, certain liquid biofuels require modifications or replacements of equipments (e.g. tanks that can withstand these biofuels). These extra costs might render these installations unprofitable. Similarly, biogas requires special refuelling infrastructure that may not be commercially viable due to the high investments required and the lack of demand.
- LNG infrastructure suffers similar problems as shore-side electricity installations, rendering it unprofitable due to lack of demand caused by the lack of LNG-powered ships. Supporting an increase in LNG refuelling infrastructure on the Norwegian shore is expected to stimulate the conversion of ships to LNG.

(88) Given the market failures identified above, the Authority concludes that there is a need for state intervention.

3.3 Appropriateness of state aid as a policy instrument

- (89) The proposed aid measure must be an appropriate instrument to address the identified objective of common interest. An aid measure will not be considered 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.
- (90) The existing measures to support alternative fuels (see Section I.5.4 above) mainly aim at encouraging the uptake of low-emission/zero-emission vehicles and ships by providing financial incentives or making fossil fuels more expensive. These measures will, over time, contribute to an increase in the use of such vehicles and ships, and therefore stimulate demand for refuelling/recharging infrastructure. At the same time, however, as described

²² See European Commission Staff Working Document - impact assessment accompanying the document “Proposal for a Directive on the deployment of alternative fuels infrastructure”, SWD/2013/05.

above, the lack of such infrastructure represents a fundamental barrier to the widespread adoption of alternative fuels vehicles and ships in the first place.

- (91) In any event, the expected increase in uptake will not directly address the identified market failure existing today for alternative fuels infrastructure, which is the lack of profitability. For instance, even for the most developed alternative fuels technology in Norway, i.e. electricity for vehicles, investments in recharging infrastructure remain unprofitable outside urban areas.
- (92) The Norwegian authorities have demonstrated that state aid is the most appropriate way of addressing this lack in profitability, and that the chosen aid instrument, i.e. grants, is the most suitable way of achieving this, as no other aid instrument has a comparable impact on profitability.
- (93) Against this background, the Authority concludes that state aid is an appropriate policy instrument to address the identified market failure.

3.4 Incentive effect

- (94) State aid can only be found 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. The aid must not subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity.
- (95) The Authority notes that Enova intends to assess the existence of an incentive effect in line with the requirements set out in the EEAG. Accordingly, no aid will be granted in cases where work on the project had already started prior to the aid application by the beneficiary. In the application process, Enova will use an application form requiring aid applicants to describe the situation without the aid, i.e. the counterfactual scenario. In addition, large undertakings must submit documentary evidence in support of the counterfactual scenario described in the application form. Where no specific counterfactual scenario is known, the incentive effect can be assumed when there is a funding gap.²³ The information submitted by the applicants will be checked by Enova. In case aid is awarded based on a competitive bidding process, no further evidence of an incentive effect is required.
- (96) Based on the above, the Authority concludes that the alternative fuels programme ensures that any aid disbursed under its aid schemes has the necessary incentive effect.

3.5 Proportionality

- (97) State aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest. The Authority generally bases its assessment of proportionality on the concepts of eligible costs and maximum aid intensities.
- (98) In case a specific counterfactual investment is known, the eligible costs are the extra investment costs²⁴ in tangible and/or in intangible assets which are directly linked to the

²³ That is to say when the investment costs exceed the net present value of the expected operating profits of the investment on the basis of an *ex ante* business plan.

²⁴ In principle, reference is made to the cost of a technically comparable investment that would credibly be realised without aid and which does not achieve the common interest objective or that only attains that objective to a lesser degree.

achievement of the common objective. The Norwegian authorities have explained that for investments in alternative fuels infrastructure, the most likely counterfactual scenario is normally that the project would not take place, due to the lack of profitability. In these cases, the total investment costs will be taken into account as eligible costs.

- (99) The Authority notes that Enova intends to grant most of the aid based on competitive bidding processes. As suggested by section 75 of the EEAG, the use of a competitive bidding process can be sufficient to ensure proportionality for aid intensities up to 100% of eligible costs if it meets the following conditions: (i) the process must be non-discriminatory and provide for the participation of a sufficient number of undertakings; (ii) the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid; and (iii) the aid must be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations. The Norwegian authorities have committed that the bidding process to be used by Enova will fulfil these conditions.
- (100) In addition, Enova will define a maximum total aid amount for every competition or a maximum aid amount per component in the bidding process.
- (101) On this basis, the Authority considers that Enova can grant aid for up to 100% of eligible costs when using a competitive bidding processes fulfilling the criteria set out above.
- (102) When using the application process, Enova will assess the investment costs of the project in detail and carry out a funding gap analysis. The maximum aid intensity will be 40%, increased to 50% for medium-sized enterprises and 60% for small enterprises. These aid intensities are similar to those set out in Annex 1 of the EEAG for aid to undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards.
- (103) The Authority notes that the aid schemes under the alternative fuels programme are intended to promote the development of environmentally-friendly infrastructure, thereby contributing to an increase in environmental protection. The application of maximum aid intensities similar to those in the EEAG is therefore a good proxy in the context of the proportionality assessment.
- (104) Finally, the Authority also notes that Enova will use a mapping exercise and other tools to ensure that aid will only be granted in areas where there is no comparable existing or planned infrastructure. This further contributes to ensuring proportionality.
- (105) Based on the above, the Authority concludes that the alternative fuels programme ensures that any aid disbursed under its aid schemes is proportionate.

3.6 Avoidance of undue negative effects on competition and trade

- (106) For 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.
- (107) In relation to the direct beneficiaries, i.e. undertakings receiving aid to create the alternative fuels infrastructure in question, the Authority notes that displacement of commercial offers is unlikely. Enova will use a mapping exercise and other tools to ensure that only projects in areas without comparable existing (or planned) infrastructure, and where such projects

cannot be realised on a commercial basis, are eligible for aid. This ensures that private investment in alternative fuels infrastructure is not crowded out by the aid.

- (108) Furthermore, Enova will use either a competitive bidding process or an application process to select beneficiaries. Both processes are designed to be non-discriminatory and to create competition for aid. Moreover, the aid is proportionate (see section II.3.5 above).
- (109) Regarding any potential location effects of the aid schemes, the Authority notes that refuelling and recharging infrastructure is mostly of a local nature. Any effect on competition and trade in relation to the direct beneficiaries is therefore limited.
- (110) Regarding the indirect beneficiaries, the Authority notes that projects have to guarantee public access to all users in order to be eligible for aid. Furthermore, all projects are obliged to use the most common technological standards in order to allow the highest number of users to be able to benefit from the infrastructure. There is therefore no discrimination between the users of these alternative fuels infrastructures. Nor do the aid schemes discriminate either regarding the other indirect beneficiaries, i.e. the manufacturers, importers and dealers of vehicles, ships and equipments for the relevant alternative fuels. The Authority considers that any benefits obtained by these indirect beneficiaries is necessary for achieving the objective pursued by the scheme.²⁵
- (111) On the basis of the above, the Authority concludes that the aid schemes do not entail undue distortions of competition and trade, and considers that the overall balancing exercise has a positive outcome.

3.7 Transparency

- (112) To ensure transparency, all individual aid granted under the alternative fuels programme will be published in accordance with the requirements in the EEAG section 3.2.7. In addition, the full text of the aid schemes under the programme will be published on Enova's website.
- (113) The Authority therefore concludes that the transparency requirements of the common assessment principles are met.

4 Conclusion

- (114) On the basis of the foregoing assessment, the Authority considers that the measures under the alternative fuels programme constitute state aid with the meaning of Article 61(1) of the EEA Agreement. The aid is compatible with the functioning of the EEA Agreement.
- (115) The Norwegian authorities are reminded that all plans to modify these aid schemes must be notified to the Authority.
- (116) The Norwegian authorities are also reminded of the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of Decision No 195/04/COL to provide annual reports on the implementation of the schemes.

²⁵ See e.g. EEAG para. 85: “*Aid for environmental purposes will by its very nature, tend to favour environmentally friendly products and technologies at the expense of other, more polluting ones and that effect of the aid will, in principle, not be viewed as an undue distortion of competition, since it is inherently linked to the very objective of the aid, that is to say making the economy greener.*”

HAS ADOPTED THIS DECISION:

Article 1

The notified programme for alternative fuels infrastructure is compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) thereof.

Article 2

The implementation of the measures is authorised accordingly.

Article 3

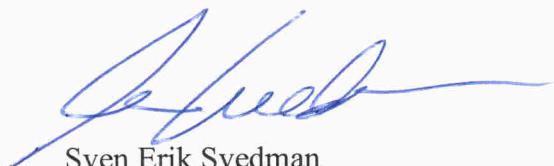
This Decision is addressed to the Kingdom of Norway.

Article 4

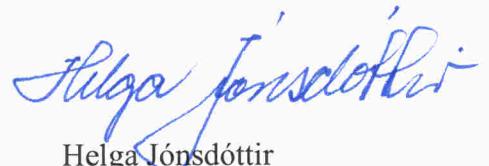
Only the English language version of this decision is authentic.

Done at Brussels, 16 September 2015.

For the EFTA Surveillance Authority



Sven Erik Svedman
President



Helga Jónsdóttir
College Member