



EFTA SURVEILLANCE AUTHORITY

Doc.No. 94-17901 I
Dec.No. 340/94/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 30 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO NORWAY
WITH REGARD TO STATE AID TO BANKS

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Protocol 26 and Articles 61 to 63 of the Agreement,

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(1) of Protocol 3 thereof,

WHEREAS:

I. FACIS

1. Introduction

Article 1(1) of Protocol 3 to the Surveillance and Court Agreement provides that "The EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It

¹Hereinafter referred to as the EEA Agreement

²Hereinafter referred to as the Surveillance and Court Agreement

shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement".

By letter of 4 January (1994/469D) the EFTA Surveillance Authority requested the submission of information on existing State aid in Norway, i.a. by reference to the above provision of Protocol 3 to the Surveillance and Court Agreement. No information on state aid to banks was submitted by the Norwegian authorities.

On 31 January 1994 an informal meeting on bank support was held at the EFTA Surveillance Authority. At this meeting representatives from the Surveillance Authority, the Swedish, Norwegian, Finnish and Austrian authorities participated.

At a meeting in the Ministry of Finance in Oslo 4 June 1994, representatives of the Authority asked the Norwegian authorities questions concerning state aid to banks.

By letter of 22 June 1994 (Doc. no. 94-9535A) the Norwegian authorities submitted information on existing aid to banks to the Authority.

After having carried out a preliminary assessment of the aid, further information and clarifications on existing aid were needed. At a second meeting at the Ministry of Finance in Oslo 15 September 1994, such clarifications were given by the Norwegian authorities.

In the course of the autumn 1994 additional information has informally been submitted by the Norwegian authorities to the Authority.

2. Relevant provisions of the aid

The information submitted by the Norwegian authorities on existing aid to banks relates to the Act 15 March 1991 no 2 on the Government Bank Insurance Fund (Lov om Statens Banksikringsfond).

The Fund is a separate entity with the purpose to grant support loans (støttelån) to the two private bank guarantee funds; the Savings Banks' Guarantee Fund and the Commercial Banks' Guarantee fund. Support loans to a private fund can only be granted if the private fund in question does not have sufficient resources to carry out its activity. The loans granted by the Fund to the private funds bear the same interest as state certificates. The private funds can, in their turn, grant support to banks. The private funds shall apply the support loans as support to a bank in the form of preference capital. Such capital shall have priority over share capital but after the subordinated loan capital of a bank. Repayment from the

private funds to the Government Bank Insurance Fund shall be done concurrently as the banks pay back loans to the funds.

The Fund can also give support directly to banks by acquiring share capital, primary capital certificates and other equity capital instruments of Norwegian distressed banks. It can also issue equity instrument guarantees in favour of Norwegian banks. "Norwegian banks" refer to banks with a Norwegian charter, i.e. also subsidiaries in Norway of foreign banks and overseas branches of Norwegian banks. Branches of foreign banks in Norway are excluded.

The capital of the Fund is appropriated by Parliament (Stortinget). Matters of particular importance shall be submitted to the Ministry of Finance before decision. The Fund can under certain circumstances grant interest free loans and debt write-offs. Such grants are only valid if the Parliament gives its consent.

The Fund shall attach conditions to support loans. Such conditions may apply both to the recipient of the support loan and its activity and to the bank which is to be the beneficiary of the loan.

The Fund may request the supervisory authority, Kredittilsynet, to acquire information about a bank in question when it considers the granting of a support loan. The same applies when the Fund considers acquisition of shares, primary capital certificates or deposits in other equity capital instruments.

The aid scheme for banks was introduced before the entry into force of the EEA agreement. It was introduced at a time when the Norwegian banks were making substantial losses, their share of non-performing loans were increasing and they faced problems with fulfilling capital adequacy requirements. Since then the situation for the banks has improved markedly. The legislation providing for the possibility of further aid is, however, still in force as no decision has been taken to dismantle it.

II. APPRECIATION

The Act on the Government Bank Insurance Fund provides a framework for a wide range of measures to support banks directly or via the two private insurance funds existing in Norway. Such measures include granting support loans, different forms of equity capital instruments as well as guarantees.

Support under the Act can be given under conditions which may constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The provisions

of the Act are general and broad in scope and do not lay down exact criteria or limit the aid to certain maximum aid intensities. Therefore, by examining the legal provisions governing the aid, it is not possible for the EFTA Surveillance Authority to assess whether individual awards of aid disbursed under the Act would be compatible with Article 61 of the EEA Agreement.

In view of the general principles of state aid control, the EFTA Surveillance Authority considers basically three ways of adjusting the provisions at hand to the requirements of the EEA-Agreement. The required adjustment could be effected by

- (a) abolishing the Act in question,
- (b) introducing criteria for the aid in accordance with the principles reflected in the relevant parts, e.g Chapter 15 on Aid for Rescue and Restructuring of the Procedural and Substantive Rules in the Field of State Aid, or
- (c) notifying all individual awards of aid, including conditions which may be attached to such aid, based on the Act prior to implementation pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

Decisions to grant new aid under the act are to be done in circumstances where major difficulties in the banking sector have occurred. According to the information submitted by the Norwegian authorities the situation in the banking sector has improved considerably and new aid would be granted rarely, if at all. Therefore, the EFTA Surveillance Authority considers option (c) to be the most appropriate means of adjusting aid under the Act on Government Bank Insurance Fund to the principles of State aid control under the EEA Agreement.

Aid which may be granted to banks outside the existing schemes falls under the normal state aid control by virtue of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement by obliging the Norwegian authorities to notify individually such awards, if any.

In order to enable the EFTA Surveillance Authority to fulfil its review obligation under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, it is proposed that a detailed annual report on the aid under the Act on the Government Bank Insurance Fund shall be submitted.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Norway, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the support measures based on the Act on the Government Bank Insurance Fund (Lov av 15. mars 1991 nr. 2 om Statens Banksikringsfond).

- (i) The Norwegian authorities are obliged to notify all individual awards of aid under the Act prior to implementation pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.
- (ii) The Norwegian authorities are obliged to submit a detailed annual report in accordance with chapter 30 of and Annex III to the Procedural and

Substantive Rules in the Field of State Aid on the application of aid awarded under the Act.

2. Norway shall signify its agreement to the above proposal or otherwise submit its observations by 31 January 1995.

3. The Norwegian Government is reminded of its obligation to notify all individual awards of aid to banks outside existing aid schemes prior to implementation pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

Done at Brussels, 30 December 1994

For the EFTA Surveillance Authority

Knut Almestad
President

Heinz Zourek
College Member