

Case No: 59033  
Event No: 353851  
Dec. No. 36/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION  
OF 8 FEBRUARY 2006  
ON PROPOSED AMENDMENTS TO THE NATIONAL  
DIRECT TRANSPORT AID SCHEME

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>,

HAVING REGARD TO the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof and Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines<sup>4</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 25 on regional aid<sup>5</sup>,

HAVING REGARD TO the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, and in particular Article 4 thereof<sup>6</sup>,

HAVING REGARD TO the Authority's Decision of 19 December 2001 on the regional direct transport aid scheme<sup>7</sup>,

HAVING REGARD TO the Authority's Decision of 12 November 2003 concerning state aid in the form of regionally differentiated social security contributions<sup>8</sup>,

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<sup>1</sup> Hereinafter referred to as the "Authority".

<sup>2</sup> Hereinafter referred to as the "EEA Agreement".

<sup>3</sup> Hereinafter referred to as the "Surveillance and Court Agreement".

<sup>4</sup> Procedural and Substantive Rules in the Field of State Aid - Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplement No 32, 03.09.1994, last amended by the Authority's Decision of 30 November 2005, hereinafter referred to as the "State Aid Guidelines".

<sup>5</sup> Hereinafter referred to as the "Regional Aid Guidelines".

<sup>6</sup> Decision No 195/04/COL, not yet published in the OJ. The Authority's state aid decisions are available on the Authority's website: [www.eftasurv.int](http://www.eftasurv.int).

<sup>7</sup> Decision No 418/01/COL, OJ 2002 C 65, 14.03.2002, p. 15, EEA Supplement No 14, 14.03.2002.

HAVING REGARD TO the Authority's Decision of 25 February 2004 concerning a notification of a new direct transport aid scheme<sup>9</sup>,

Whereas:

## I. FACTS

### 1. Procedure

By letter of 7 December 2005 from the Norwegian Mission to the European Union, forwarding letters from the Ministry of Modernisation dated 6 December 2005 and the Ministry of Local Government and Regional Development dated 6 December 2005, received and registered by the Authority on 8 December 2005 (Event No 353738), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, amendments to the existing Norwegian "national direct transport aid scheme"<sup>10</sup> ("*Nasjonal transportstøtte*"). The Norwegian authorities proposed to amend the rules on cumulation between aid granted under the national scheme and aid granted under the existing Norwegian "regional direct transport aid scheme"<sup>11</sup> ("*Regional transportstøtte*").

By letter of 2 January 2006 from the Norwegian Mission to the European Union, forwarding letters from the Ministry of Modernisation dated 22 December 2005 and the Ministry of Local Government and Regional Development dated 22 December 2005, received and registered by the Authority on 3 January 2006 (Event No 356177), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, further amendments to the NDTA scheme. By this notification the Norwegian authorities proposed to extend the geographic area of the scheme by adding four municipalities. The Norwegian authorities furthermore proposed to increase the budget of the scheme.

### 2. Background

#### 2.1 The regional direct transport aid scheme

On 5 December 2001, the Norwegian authorities notified the RDTA scheme with duration until 31 December 2006. In its decision of 19 December 2001<sup>12</sup>, the Authority decided not to raise objections to the RDTA scheme.

The RDTA scheme was operated by the county municipalities. It covered the counties Finnmark, Troms, Nordland and Nord-Trøndelag (except the municipalities Stjørdal, Frosta and Levanger), all within the approved regional aid map.

<sup>8</sup> Decision No 218/03/COL, published in OJ 2005 L 145, 09.06.2005, p. 25, EEA Supplement No 29, 09.06.2005.

<sup>9</sup> Decision No 22/04/COL, published in OJ 2005 L 168, 30.06.2005, p. 36, EEA Supplement No 33, 30.06.2005.

<sup>10</sup> Hereinafter referred to as the "NDTA scheme".

<sup>11</sup> Hereinafter referred to as the "RDTA scheme".

<sup>12</sup> Decision No 418/01/COL.

The purpose of the RDTA scheme was to offset additional transport costs of firms located in the northernmost low population density areas of Norway.

Transport compensation was given on the basis of applications from the firms the year after the transport costs occurred. A firm could not receive more than 35 % of the total transport costs eligible for aid as regional transport aid. The budget for 2001 was approximately NOK 16 million (some Euro 2 million).

## 2.2 The national direct transport aid scheme

On 26 March 2003, the Norwegian authorities notified the NDTA scheme with duration until 31 December 2006. The geographical scope of the scheme was extended by notification dated 22 October 2003.

As certain municipalities eligible for aid under the notified scheme were outside the regional aid map for Norway<sup>13</sup>, the Authority on 16 July 2003 decided to initiate the formal investigation procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement<sup>14</sup>.

On 25 February 2004, the Authority approved the NDTA scheme covering the notified area, except for the municipalities falling outside the scope of the regional aid map<sup>15</sup>.

The aim of the NDTA scheme was to offset competitive disadvantages resulting from extra transport costs for firms located in peripheral areas and within sparsely populated regions and thus situated long distances away from their markets. The scheme was administered by the state owned company “Innovation Norway”, and the budget for 2005 was NOK 200 million (approximately Euro 26 million).

The approved NDTA scheme covered 148 municipalities in the counties Troms, Nordland, Nord-Trøndelag, Sør-Trøndelag, Møre og Romsdal, Sogn og Fjordane, Hedmark and Oppland.

Under the NDTA scheme, the aid intensity was differentiated according to two geographical transport zones and according to transport distance. The maximum aid intensity was 40 % of the eligible transport costs.

If undertakings benefited from a reduced social security contribution in the same period as they received aid under the NDTA scheme, the advantages of this reduction had to be deducted from the transport aid grant. Furthermore, an undertaking could not receive more in transport aid under the transport aid scheme and from reduced social security contributions, altogether, than the amount equivalent to what it would have received under the former scheme on differentiation of social security contributions. Finally, an undertaking could not receive transport aid both under the NDTA scheme and the RDTA scheme within the same calendar year.

<sup>13</sup> Decision No 327/99/COL of 17 December 1999 approving a map of assisted areas for Norway.

<sup>14</sup> Decision No 141/03/COL.

<sup>15</sup> Decision No 22/04/COL.

### **3. Description of the proposed amendments**

#### **3.1 Introduction**

The Norwegian authorities have notified three amendments to the existing NDTA scheme. Firstly, the Norwegian authorities have notified an amendment to the rules on cumulation between aid granted under the NDTA scheme and aid granted under the RDTA scheme, allowing undertakings to receive aid under both schemes for the same calendar year. Secondly, the Norwegian authorities have proposed to implement the NDTA scheme in four new municipalities in addition to the municipalities already covered by the scheme. Thirdly, the Norwegian authorities have notified an increase of the budget of the NDTA scheme.

#### **3.2 The amendments to the rules on cumulation**

The notification implies that undertakings could receive aid under both the NDTA scheme and the RDTA scheme for the same calendar year. Cumulation of transport aid from both schemes would, according to the notification, occur where aid to an undertaking under the NDTA scheme, calculated on the basis of the total transport costs, would be reduced because it would exceed the aid the undertaking would have received under the former scheme concerning differentiated social security tax.

It follows from the present guidelines of the NDTA scheme that an undertaking cannot receive aid under this scheme exceeding the amount of aid it would have received under the former scheme concerning differentiated social security tax. The Norwegian authorities want to keep this cap under the NDTA scheme, but at the same time allow undertakings to receive additional transport aid under the RDTA scheme. Thus, on top of the national transport aid, an undertaking might be eligible for aid under the RDTA scheme up to the maximum aid intensity under this scheme, which is 35 %. According to the notification, the abovementioned cumulation rule will function as follows:

$$\text{aid amount NDTA} + \text{aid amount RDTA} \leq \text{max aid allowed under RDTA (int.} \leq 35 \%)$$

Innovation Norway would ensure that grants under the NDTA scheme and the RDTA scheme respect the rules on cumulation of aid under the schemes and that the maximum aid intensity of 35 % would not be exceeded. Hence, Innovation Norway would ensure that the aid granted under the RDTA is in compliance with the estimated difference between undertakings' advantage of the previous differentiated social security contributions (equal to the maximum aid under the NDTA scheme) and the maximum aid intensity level under the RDTA scheme. On the one hand, Innovation Norway would check the difference and submit the information to the county authorities responsible for the granting of regional direct transport aid. On the other hand, county authorities granting regional direct transport aid in cumulation with national direct transport aid would provide information to Innovation Norway on the amounts of aid granted.

#### **3.3 The extension of the geographical scope of the scheme**

The aim of the extension of the area eligible for national direct transport aid is, according to the notification, to offset the competitive disadvantages due to extra transport costs for companies located in the municipalities covered by the extension.

The Norwegian authorities have proposed an extension of the area eligible for aid under the scheme by including the following four municipalities:

- In Hedmark County: Stor-Elvdal;
- In Oppland County: Nord-Fron, Sør-Fron, and Vang.

The four municipalities are all within the scope of the regional aid map. They furthermore have a population density of less than 12.5 inhabitants per square kilometre, and they are contiguous with the existing area eligible for transport aid.

The NDTA scheme will last until 31 December 2006. The four additional municipalities could be eligible from 1 January 2005 to 31 December 2006.

### **3.4 The budget increase**

The Norwegian authorities have furthermore proposed to increase the budget of the NDTA scheme. The budget of the existing scheme was NOK 200 million (approximately Euro 25 million) for 2005. In their notification, the Norwegian authorities have proposed to increase the budget of the NDTA scheme by NOK 175 million (approximately Euro 22 million). The total budget for the amended NDTA scheme would thus be NOK 375 million (approximately Euro 47 million) for 2005 and 2006.

The budget increase is an effect of the gradual phasing out of the scheme concerning differentiated social security contribution. It follows from the rules on cumulation of the NDTA that grants under the scheme are reduced if the recipient also receives aid under the scheme concerning differentiated social security contribution. Thus, as the latter scheme is phased out, it is expected that amount of aid granted under the NDTA will increase. There will then be a need for larger budgetary means for the NDTA scheme.

## **II. APPRECIATION**

### **1. Procedural requirements**

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“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”*.

The Norwegian authorities have notified amendments to the NDTA scheme to the Authority before putting them into effect. Therefore, the Norwegian authorities have fulfilled their obligation according to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

### **2. The existence of state aid**

#### **2.1 State aid within the meaning of Article 61(1) EEA**

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.”*

In its decision of 25 February 2004, the Authority concluded that the NDTA scheme constituted state aid within the meaning of Article 61(1) of the EEA Agreement. Under the notified amended NDTA scheme, the aid paid in the form of grants by the Norwegian State under the scheme is to be increased and aid is to be provided to certain undertakings located in the notified four new municipalities. The aid will strengthen the position of the beneficiaries in relation to their actual or potential competitors in the EEA. In view of the fact that the scheme is not limited to sectors or undertakings that are not involved in trade between the EEA States, there is a risk that the aid distorts competition and is capable of affecting trade between the Contracting Parties to the EEA Agreement. Consequently, the notified amendments to the NDTA scheme constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

## **2.2 New aid**

According to Article 1(3)(c) in Part II of Protocol 3 to the Surveillance and Court Agreement, *“new aid shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid”*.

Alterations to existing aid are defined in the first paragraph of Article 4 of the Authority’s decision of 14 July 2004 as *“any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market”*.

By way of the present notification, the Norwegian authorities want to amend the cumulation rules of the NDTA scheme, expand the geographical scope and increase the budget of the scheme. These amendments can affect the evaluation of the compatibility of the aid measure with the EEA Agreement and are not of a purely formal nature. According to Article 1(3)(c) in Part II of Protocol 3 to the Surveillance and Court Agreement, the notified amendments to the NDTA scheme must therefore be regarded as new aid.

## **3. Compatibility of the aid**

### **3.1 Introduction**

The Authority has assessed the compatibility of the proposed amendments to the NDTA scheme with Article 61(3)(c) of the EEA Agreement and in light of the Regional Aid Guidelines. Article 61(3)(c) of the EEA Agreement concerns aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the interest of the Contracting Parties to the EEA Agreement, as compatible with the EEA Agreement. Aid granted for regional development is assessed under Chapter 25 of the Authority’s State Aid Guidelines.

Transport aid is operating aid, and is thus normally prohibited under EEA state aid law, cf. paragraph (26) of Chapter 25.3 of the Regional Aid Guidelines.

However, paragraph (27) of Chapter 25.4 of the Regional Aid Guidelines states that: *“In the regions of low population density qualifying either for exemption under Article 61(3)(a) or under 61(3)(c) on the basis of the population density test referred to in*

*Chapter 25.3, paragraph (17), aid intended partly to offset additional transport costs<sup>1</sup> may be authorised under special conditions<sup>11</sup>. It is up to the EFTA State to prove that such additional costs exist and to determine their amount.”*

It is specified that additional transport costs mean the extra costs occasioned by movements of goods within the borders of the country concerned. Under no circumstances may such aid constitute export aid, nor must it constitute measures having an equivalent effect to quantitative restrictions on imports, within the meaning of Article 11 of the EEA Agreement.

Paragraph (17) of Chapter 25.3 of the Regional Aid Guidelines defines low population density regions as regions with a population density below 12.5 inhabitants per square kilometre.

With regard to the special conditions for regions qualifying for the Article 61(3)(c) derogation under the population density criterion, paragraph (27) of Chapter 25.4 of the Regional Aid Guidelines refers to Annex XI to the State Aid Guidelines, which sets out the conditions to be met for aid to qualify for exemption as follows:

- *“Aid may serve only to compensate for the additional cost of transport. The EFTA State concerned will have to show that compensation is needed on objective grounds. There must never be overcompensation. Account will have to be taken here of other schemes of assistance to transport.*
- *Aid may be given only in respect of the extra cost of transport of goods inside the national borders of the country concerned. It must not be allowed to become export aid.*
- *Aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios.*
- *The estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets.*
- *Aid may be given only to firms located in areas qualifying for regional aid on the basis of the new population density test. Such areas will be made up essentially of NUTS<sup>16</sup> level III geographic regions with a population density of less than 12.5 inhabitants per square kilometre. However, a certain flexibility is allowed in the selection of areas, subject to the following limitations:*
  - *flexibility in the selection of areas must not mean an increase in the population covered by transport aid;*
  - *the NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometre;*
  - *they must be contiguous with NUTS III regions which satisfy the low population density test;*
  - *their population must remain low compared with the total coverage of the transport aid.*
  - *No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.).*

<sup>16</sup> Nomenclature of Statistical Territorial Units in the European Communities.

- *Transport aid given to firms in industries which the EFTA Surveillance Authority considers sensitive (motor vehicles, synthetic fibres, shipbuilding and steel) must always be notified in advance and will be subject to the industry guidelines in force.”*

The Authority will in the following examine whether the proposed amendments to the NDTA scheme are in line with the abovementioned provisions.

### 3.2 The amendments to the rules on cumulation

According to indent one of Annex XI to the State Aid Guidelines, transport aid may only compensate for the additional cost of transport, and overcompensation must not take place. It is furthermore specified that in this respect, account has to be taken of other schemes of assistance to transport.

The present notification implies that undertakings could receive aid under both the NDTA scheme and the RDTA scheme for the same calendar year. According to the amended cumulation rules of the NDTA scheme, aid under this scheme may, in certain situations, be cumulated with aid received under the RDTA scheme. However, aid will only be granted up to the maximum aid intensity under the latter scheme, which is 35 % of the extra transport costs. Innovation Norway will be responsible for ensuring that the cumulation does not lead to overcompensation. The amended rules on cumulation of the NDTA scheme are laid down in the regulation on the NDTA scheme<sup>17</sup> and in the revised guidelines to the scheme<sup>18</sup>.

On this basis, the Authority concludes that the condition, with regard to cumulation, in indent one of Annex XI to the State Aid Guidelines is fulfilled.

### 3.3 The extension of the geographical scope of the scheme

The Norwegian authorities have proposed a geographical extension to the NDTA scheme whereby four municipalities in Hedmark and Oppland counties are made eligible for aid under the scheme.

According to paragraph (27) in Section 25.4 of the Regional Aid Guidelines, it is up to the EFTA State to prove that additional transport costs exist and to determine their amount.

The Norwegian authorities have submitted a study prepared by the Institute of Transport Economics (TØI)<sup>19</sup>, documenting additional transport costs *inter alia* for the proposed four new municipalities. According to the study, undertakings in the region of the proposed eligible municipalities, namely the northern parts of Hedmark and Oppland counties, have significantly higher transport costs on average than undertakings in the reference area of the study<sup>20</sup>. On this basis, the Authority concludes that the Norwegian authorities have established the existence and amount of the extra transport costs for the four notified municipalities. The conditions in paragraph (27) in Section 25.4 of the Regional Aid Guidelines are met.

<sup>17</sup> Forskrift av 24. juni 2004 om nasjonal transportstøtte.

<sup>18</sup> Nasjonale retningslinjer for transportstøtte, revidert utgave oversendt ESA 6. desember 2005.

<sup>19</sup> Industribedrifters avstandskostnader i aktuelle transportstøttesoner, Arbeidsdokument av 05.07.2004.

<sup>20</sup> The relevant basis of comparison can be found in Table 1 and Table 2 of the study. The reference area of the study is zone 1 of the geographically differentiated social security contributions scheme, which covers Oslo and the surrounding areas.

Furthermore, the Authority notes that, in line with paragraph (27) in Section 25.4 of the Regional Aid Guidelines and indent five of Annex XI to the State Aid Guidelines, the population density in the proposed municipalities is lower than 12.5 inhabitants per square kilometre. The proposed municipalities are also within the regional aid map, and they form a contiguous area to the existing area covered by the NDTA. These conditions in paragraph (27) in Section 25.4 of the Regional Aid Guidelines and sub-indent two and three to indent five of Annex XI to the State Aid Guidelines are met.

Moreover, the notified extension of the geographical area of the NDTA must not result in an increase in the population covered by the scheme contrary to what is allowed in the flexibility mechanism set out in indent five of Annex XI to the State Aid Guidelines.

When the Authority in its decision of 25 February 2004 approved the existing scheme for national direct transport aid, it applied the flexibility mechanism as outlined in indent five of Annex XI to the State Aid Guidelines, quoted above. When deciding on the geographical scope of the scheme, it referred to the fact that the notification entailed that certain municipalities (NUTS V areas) in low population density counties were excluded, while certain municipalities in counties with more than 12.5 inhabitants per square kilometre were included in the scheme. These latter municipalities constituted low population areas within the respective counties. The population in municipalities within the low population density counties but notified not to be eligible for transport aid was at that time 172 322 persons<sup>21</sup>. The population in municipalities notified to be eligible for aid, but forming part of counties with more than 12.5 inhabitants per square kilometre (in that notification Sør-Trøndelag, Møre og Romsdal), was 156 948 persons.

Thus, the “swapping” of municipalities implied that the population in low population density counties living in municipalities not eligible for transport aid was higher than the population in those municipalities in high population density counties that was included in the scheme. Hence, it was ensured that the flexibility in the selection of areas did not increase the population covered by the transport aid, cf. first sub-indent of the fifth indent of Annex XI to the State Aid Guidelines, quoted above.

Based on the population statistics on 1 January 2005<sup>22</sup>, the population within the regional aid map in counties with low population density that is not eligible for transport aid is 170 601 persons before the inclusion of the four new municipalities. On the other hand, the population in municipalities notified to be eligible for transport aid, but forming part of counties with more than 12.5 inhabitants per square kilometre, is 155 941 persons.

By including four new municipalities in the low population density counties Hedmark and Oppland in the NDTA, the population in the low population density counties eligible for transport aid will increase by 13 612 persons. Thus, after the inclusion of the four new municipalities, the population in low population density counties living in municipalities not eligible for transport aid is still higher than the population in municipalities in high population density counties that was included in the scheme. On this basis, the Authority concludes that the proposed geographical extension of the NDTA is in line with indent five of Annex XI to the State Aid Guidelines.

<sup>21</sup> The figures in the Authority’s decision of 25 February 2004, referred to in this paragraph, are based on the population statistics on 1 January 2002.

<sup>22</sup> The figures in this paragraph and the following are based on the population statistics on 1 January 2005 referred to in the letter from the Norwegian authorities to the Authority dated 2 January 2006 (Event No 356177).

### **3.4 The budget increase**

The Authority notes that Norwegian authorities propose to increase the budget of the NDTA scheme from NOK 200 million (approximately Euro 25 million) in 2005 to NOK 375 million (approximately Euro 47 million) for 2005 and 2006. The Authority does not have any objections to the proposed budget increase.

### **4. Conclusion**

The Authority concludes that the notified amendments to the NDTA scheme constitute state aid within the meaning of Article 61(1) of the EEA Agreement, but that these amendments can be declared compatible with the EEA Agreement. The Authority has accordingly decided that the aid is compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with the Regional Aid Guidelines.

The Norwegian authorities are reminded that they must provide the Authority with a report on the implementation of the aid annually and that any changes in the modalities of the scheme have to be notified.

### **HAS ADOPTED THIS DECISION:**

1. The Authority has decided not to raise objections to the notified amendments to the national direct transport aid scheme.
2. This decision is addressed to the Kingdom of Norway.
3. This decision is authentic in the English language.

Done at Brussels, 8 February 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland  
President

Kurt Jäger  
College Member