


EFTA SURVEILLANCE AUTHORITY

Doc.No. 98-8426-I
Dec.No. 375/98/COL
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EFTA SURVEILLANCE AUTHORITY DECISION

OF 16 DECEMBER 1998

ON A MERGER AND AMENDMENTS OF TWO EXISTING AID SCHEMES, "REGIONAL INVESTMENT GRANTS" (EX AID NO 93-143) AND "GRANTS FOR DEVELOPMENT OF BUSINESS AND INDUSTRY" (EX AID NO 93-153) INTO A NEW SCHEME, "REGIONAL DEVELOPMENT GRANTS".

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular Articles 61 to 63,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. The notification

By letter of 3 June 1998 (Doc.No.98-3866-A), the Mission of Norway to the European Union submitted to the Authority a notification, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, of plans to amend and merge two existing schemes, Ex Aid No 93-143, "Regional investment grants", (Investeringstilskudd) and Ex Aid No 93-153, "Grants for development of business and industry", (Bedriftsutviklingstilskudd) into one scheme; "Regional development grants" (Distriktsutviklingstilskudd).

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

By letter of 22 July 1998 (Doc. No. 98-4855-D), the EFTA Surveillance Authority acknowledged the receipt of the letter dated 3 June 1998 and requested additional information.

By letter of 28 August 1998 (Doc. No. 98-5520-A) the Mission of Norway to the European Union submitted to the Authority additional information regarding the notification. By fax of 3 December 1998 the Royal Ministry of Local Government and Regional Development submitted a new version of Annex 1 to the notification (Doc. No. 98-8242-A).

2. Existing schemes

2.1. Ex Aid No 93-143 "Regional investment grants" (Investeringsstilskudd)

Regional investment grants (Investeringsstilskudd) is a regional aid scheme administered partly by the Industrial and Regional Development Fund (SND) and partly by the county municipality authorities. The grants can be given to enterprises located in areas eligible for regional investment aid. The scheme is funded over State budget chapter 2425, post 51. The legal basis for the scheme is laid down in the Law on SND of 3 July 1992, no. 97, and the Regulations for SND of 4 January 1993. The objective of the scheme is to develop competitive and profitable businesses in the regions. The scheme covers aid for tangible investment within areas eligible for regional investment aid in the form of direct grants. Investment in intangible assets may not be aided. Priority is given to tangible investments in new enterprises and restructuring of existing enterprises. Information on the scheme was submitted to the EFTA Surveillance Authority in 1994 together with information on other existing aid schemes in Norway. Being an existing aid scheme in conformity with the State aid provisions of the EEA Agreement, the Authority found no reason to react.

2.3. Ex Aid No 93-153 "Grants for development of business and Industry" (Bedriftsutviklingstilskudd)

Grants for development of business and industry (Bedriftsutviklingstilskudd) is also a regional aid scheme administered partly by SND and partly by the county municipality authorities. The grants can be given to Small and Medium-sized Enterprises (SMEs) located in areas eligible for regional investment aid. The scheme is funded over State budget chapter 2425, post 51. The legal basis for the scheme is laid down in the Law on SND of 3 July 1992, no. 97 and the Regulations for SND of 4 January 1993. The scheme covers aid for intangible investment within areas eligible for regional investment aid in the form of direct grants. Investment in tangible assets may not be aided. The cost categories covered by the scheme are planning, research and initiation costs for the start-up of a new enterprise, development of new products, market research and marketing, training programmes for development of in-house skills and reallocation of enterprises to areas eligible for regional investment aid. The EFTA Surveillance Authority decided in 1994 to address appropriate measures to the

Norwegian authorities concerning this scheme³. The measures were accepted by the Norwegian authorities⁴.

2.3. Conformity with regional aid map for Norway and State aid Guidelines

The two schemes described above are in conformity with the system for regional investment aid in Norway, as notified by the Norwegian authorities in 1997/98 and approved by the Authority 28 April 1998⁵, and comply otherwise with the applicable State Aid Guidelines⁶.

3. The contents of the proposed merger and amendments.

The notification concerns a merger of Ex Aid No 93-143 "Regional investment grants" (Investeringsstilskudd) and Ex Aid No 93-153 "Grants for development of business and industry" (Bedriftsutviklingstilskudd) into one scheme; "Regional development grants" (Distriktsutviklingstilskudd). In addition, the Norwegian authorities have notified some alterations compared to the previous schemes:

- a) Extended possibilities to grant aid to R&D. In accordance with the State aid rules on Aid for Research and Development, the Norwegian authorities, in exceptional cases, want to open up for support to industrial research.
- b) Support to transfer of enterprises to an assisted region in accordance with the rules of regional aid.
- c) Support to intangible investments, such as the costs of acquiring patent rights, know-how or not patented technical knowledge, in accordance with the State aid rules of aid to SMEs

The notified amendments imply that the scheme may also be used to finance studies and evaluations of the development in specific regions and businesses, initiated by the Ministry, SND or the county municipalities. It may also be granted aid from this scheme in accordance with the de minimis rules.

³ Dec.No. 170/94/COL of 23 November 1994.

⁴ Letter of 19 December 1994 from the Ministry of Industry and Energy (our ref. 95-147-A) received by the Authority on 9 January 1995.

⁵ Dec.No. 110/98/COL.

⁶ Initially adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in OJ No. L 231, 03.09.1994.

II. APPRECIATION

1. Notification formalities

The Norwegian authorities have, by the notification received by the Authority on 4 June 1998 (Doc. No. 98-3866-A), additional information received 31 August 1998 (Doc. No. 98-5520-A) and 3 December 1998 (Doc. No. 98-8242A), fulfilled their obligation under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement in notifying plans to grant or alter aid.

Aid under the notified scheme will be 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 benefiting enterprises actually or potentially will be in competition with similar undertakings in Norway and other EEA states, and as aid under the proposed scheme will threaten to affect trade and to distort competition, provisions under the scheme will constitute State aid in the meaning of Article 61(1) of the EEA Agreement.

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 measure from the general prohibition of aid under Article 61(1).

2. Application of the relevant State aid rules

On 4 November 1998 the EFTA Surveillance Authority adopted new Guidelines for national regional aid, and proposed to the EFTA States appropriate measures with regard to national regional aid⁷. In point 25.6 (1) of the new Guidelines, it is stated that "aid proposals which are notified before these Guidelines are communicated to the EFTA States and on which the EFTA Surveillance Authority has not yet adopted a final decision will be assessed on the basis of criteria in force at the time of notification".

This means that the Authority's current assessment of the new scheme, "Regional development grants", is based on the Regional aid Guidelines in force before the Authority's decision of 4 November.

Point 25.6 (4) of the new Guidelines adopted on 4 November 1998 states that "The EFTA Surveillance Authority will also propose, as an appropriate measure under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that the EFTA States amend all existing regional aid schemes which will be in force after 31 December 1999, so as to make them compatible with these Guidelines from 1 January 2000, and that they communicate the proposed changes within six months."

⁷ Dec.No.316/98/COL.

This means that the Norwegian authorities are asked to make sure that the new scheme, like all other regional aid schemes, is in accordance with the new Guidelines from 1 January 2000, and that proposed changes are communicated to the EFTA Surveillance Authority before 4 May 1999.

3. Legal provisions for the scheme

The Authority has examined the new legal provisions for the scheme. By the provisions introduced in the draft Royal Decree ((Forskrift om de bedriftsrettede distriktpolitiske virkemidler forvaltet av Statens Nærings- og Distriktsutviklingsfond og fylkeskommunene), and the Guidelines (Utfyllende retningslinjer for forvaltningen av distriktsutviklingstilskudd og distriktsrettede risikolån (S.nr.98/243)) by the Royal Ministry of Local Government and Regional Development, the Norwegian authorities have laid down transparent and legally binding guidelines which fully comply with the measures proposed by the Authority in its decisions 170/94/COL of 23 November 1994, 110/98/COL of 28 April 1998 and the Regional Aid Guidelines in force before 4 November 1998. Provisions for aid to research and development (R&D) are in accordance with Chapter 14 of the State Aid Guidelines. Support to transfer enterprises to an assisted region is in accordance with the Regional Aid Guidelines in force before 4 November 1998 (but not according to the new Regional Aid Guidelines). SMEs are defined in accordance with the definition in Chapter 10.2 of the State Aid Guidelines, and the new provisions include detailed principles for awards of soft aid for consultancy services, training and dissemination of knowledge in accordance with Chapter 10.3.2.3 of the State Aid Guidelines. Provisions for application of the "de minimis" rule are in accordance with Chapter 12 of the State Aid Guidelines.

On the above basis, the Authority considers that Aid No 98-008 (merger and amendment of Ex Aid No 93-143 and 93-153) "Regional development grant" (Distriktsutviklingstilskudd), will facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest. The aid scheme therefore qualifies for exemption under Article 61(3)(c) of the EEA Agreement. The exemption is not valid beyond 31 December 1999.

4. Reporting obligations

In accordance with Chapter 32 of the State Aid Guidelines, the Norwegian Authorities are required to submit an annual report on the scheme according to the format indicated in Annex IV to the State Aid Guidelines. The submission of annual reports is considered necessary for the Authority to fulfil its obligation under Article 1(1) of Protocol 3 of the Surveillance and Court Agreement to keep all existing systems of State aid under constant review in co-operation with the EFTA States.

HAS ADOPTED THIS DECISION:

1. Without prejudice to the Authority's Decision No.316/98/COL of 4 November 1998, the EFTA Surveillance Authority has decided not to raise objections to the amendments and merger of two existing aid schemes, the "Regional investment grants" scheme (Ex Aid No 93-143) and the "Grants for development of business and industry" scheme (Ex Aid No 93-153), into the "Regional development grants" scheme, as notified by the Norwegian authorities by letters of 3 June 1998 (Doc. No. 98-3866-A), 28 August 1998 (Doc. No. 98-5520-A) and 3 December 1998 (Doc. No. 98-8242-A).
2. The Norwegian Government is obliged to submit to the EFTA Surveillance Authority a simplified annual report (according to Chapter 32 of and Annex IV to the Procedural and Substantive Rules in the Field of State Aid) on the "Regional development grants" scheme.

Done at Brussels, 16 December 1998

For the EFTA Surveillance Authority

Knut Almestad
President

Hannes Hafstein
College Member