

Case No: 77887
Document No:771363
Decision No: 468/15/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 4 November 2015

concerning an adjustment to the duration and the conditions for eligibility of the Charter Fund Scheme for Northern Norway

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61 and Protocol 26 thereof,

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 Charter Fund Scheme was approved by the Authority by Decision No 303/13/COL of 10 July 2013 for a duration of three years from the date of the Decision and on the condition that Norway would submit, upon expiry of the three year period, an evaluation report to the Authority regarding the effects of the Scheme on the development of tourism and the prevention of depopulation in the Northern region and its effects on competition.
- (2) In a letter dated 1 September 2015,¹ registered by the Authority on 7 September 2015, and following pre-notification discussions with the Authority, the Norwegian authorities notified an adjustment to the duration and the conditions for eligibility of the Charter Fund Scheme for Northern Norway, pursuant to Article 1(3) of Part I of Protocol 3.

¹ Document Nos 772012, 772013 and 772014.

- (3) By email dated 1 October 2015,² the Authority requested additional information from the Norwegian authorities who replied by letter of 7 October 2015.³

2. Description of the notified measures

2.1. Decision No 303/13/COL of 10 July 2013

- (4) For a detailed description of the approved aid measure, reference is made to Chapter 2 of Decision No 303/13/COL of 10 July 2013.⁴ In the following, the Authority will merely provide a short summary as well as a description of the alteration to the duration and the other minor alterations that are made to the Charter Fund Scheme.

2.2. The Charter Fund Scheme

- (5) As described in Decision No 303/13/COL, the measure consists of a Charter Fund Scheme (the “Charter Fund” or the “Scheme”) which grants aid to tour operators flying air charter flights⁵ to three counties in Northern Norway: Nordland, Troms and Finnmark (the “Counties”). The Charter Fund is a non-profit undertaking acting as a vehicle for granting aid. It is managed by the Northern Norway Tourist Board (the “Tourist Board”), a limited liability company jointly owned by the Counties contributing to the Scheme’s funding. The Tourist Board transfers the funds received from the Counties to successful applicants, who comply with the conditions enumerated by the Norwegian authorities and approved by the Authority in its Decision No 303/13/COL.
- (6) The Scheme covers charter flights to all airports in Northern Norway. All airports in Northern Norway have excess capacity.
- (7) The aid will take the form of a payment of up to a maximum of 25% of the total charter costs (i.e. financial obligations pursuant to the contracts with airlines) incurred by the tour operator for the eligible flights and will be limited to cover only such costs.⁶ A cabin factor of 60%⁷ is the “*worst case scenario*” which will lead to the highest aid intensity.⁸ Even assuming an average cabin factor of 60%, the total annual amount of aid from the Charter Fund is estimated to far below NOK 10.000.000.⁹
- (8) The Scheme is part of a coherent regional development strategy for Northern Norway. The Norwegian authorities’ policy for Northern Norway focuses specifically on tourism, aiming to prevent depopulation by creating jobs in the tourist industry. The tourism strategy of the Norwegian Government also makes reference to the Charter Fund.¹⁰ Focusing on tourism

² Document No 774978.

³ Document No 775439.

⁴ EFTA Surveillance Authority Decision No 303/13/COL of 10 July 2013 concerning a Charter Fund Scheme for Northern Norway, available at <http://www.eftasurv.int/media/decisions/303-13-COL.pdf>.

⁵ A charter flight is defined as a non-scheduled flight.

⁶ See Section 2.8 below.

⁷ The cabin factor is the percentage of sold seats in a flight. The cabin factor will be determined according to the actual number of departing passengers, divided with the maximum seat capacity for the aircraft.

⁸ Charter series with an average cabin factor of less than 60% are eligible for aid; however, the maximum aid that can be granted is still 25% of the charter costs incurred with a cabin factor of 60%. With a cabin factor of less than 60%, the aid will not cover all of the charter operator’s loss.

⁹ Document No 772013, Notification of 1 September 2015, Section 4.2.6.

¹⁰ See the Norwegian Government’s tourism strategy: “*Avinor is establishing ‘Northern Light Airports’ as a unified brand for the largest airports in Northern Norway [...] Avinor supports the Charter Fund for Northern Norway [...] This kind of charter fund is intended to promote charter tours to the region. Feedback from the industry indicates that this will be an important initiative to encourage new traffic*” (“*Destination Norway – National strategy for the tourism industry*”, p. 76). (http://www.regjeringen.no/pages/37646196/Lenke_til_strategien-engelsk.pdf).

to prevent depopulation is an important policy of the regional authorities in the Counties of Nordland, Troms and Finnmark.¹¹

2.3. The alteration to the duration of the Scheme

- (9) The Authority's approval of the Charter Fund Scheme was given for a period of three years from the date of Decision No 303/13/COL, and thus remains effective until 10 July 2016. The three years were meant to allow the authorities to gain sufficient experience to evaluate whether the Scheme had in fact contributed to the objectives set. To that end, the authorities were required to submit an evaluation report at the expiry of the three years period.
- (10) The Norwegian authorities now request the Authority to extend the approval granted by Decision No 303/13/COL until 31 October 2017. The reason for this request is that the Scheme only became operational on 31 October 2014 due to the fact that the Counties made the necessary funding available only by September 2014.¹² If the deadline of 10 July 2016 is upheld, the authorities' evaluation report would only span 20 months of operative experience, which is too short to allow for a meaningful evaluation, according to the Norwegian authorities. The authorities therefore request to prolong the approval with a period corresponding to the delay with which the Scheme entered into effect.
- (11) In addition, as requested by the Authority during the pre-notification discussions, the Norwegian authorities propose to undertake the evaluation ahead of the expiry date of the approval of the Scheme and suggest to make an evaluation report approximately 10 months before the expiry date.

2.4. The alteration to the conditions for eligibility under the Scheme

- (12) The Norwegian authorities have assured the Authority that the details of the Scheme largely remain the same as the one notified and approved by the Authority by Decision No 303/13/COL, but for a tightening of the conditions to receive aid and a minor clarification.
- (13) The conditions for eligibility under the Scheme were set out in the original notification of 30 April 2012,¹³ requiring that all applications are supported by the tour operator, as well as the destination provider (which could be a destination management company, a hotel, a tourist office or any other commercial provider of tourist services) and the airline. With respect to the requirement regarding the destination provider, the Scheme provided that aid under the Charter Fund would not be granted to "*air only packages*". Indeed, proof had to be provided that the tour package would also include a "*land arrangement*" in the target area of the Scheme with a value of at least NOK 800 per tourist. The Norwegian authorities have now added the condition that tourists are required to stay at least two nights in the target area. In addition, the Norwegian authorities have clarified that a charter series should contain at least two flights.

2.5. The objective and possible effects of the aid measure

- (14) The Counties are low density population areas with a population density of less than 8 inhabitants per square kilometre, thereby falling within the definition of "*very sparsely*

¹¹ For instance, the County of Nordland has prepared a "*Strategy for Tourism in Nordland for the period 2011 until 2015*" (<http://www.nfk.no/Filnedlasting.aspx?MId1=1266&FilId=11230>).

¹² Document No 772013, Notification of 1 September 2015, Section 2.

¹³ Document No 632837, Original notification of 30 April 2012, Section 2.3.6.

populated areas” as set out in the Authority’s Regional Aid Guidelines for 2014 – 2020 (the “RAG”),¹⁴ which also face the problem of depopulation.

- (15) The objective of the Charter Fund is to increase the use of airports in Northern Norway and thereby contribute to economic development in the region and boost the tourism sector. The aid measure intends to reduce the economic risk involved in operating air charters (non-scheduled flights) to Northern Norway.
- (16) A limited number of charter routes have been operated to Northern Norway in the past, though unsuccessfully.¹⁵ A reason for this may be the cancellation rules that apply to air charters. Cancellation at a late stage is very expensive. The deadline for deciding whether to cancel a charter flight is several months before the operation of the charter series. If the sale of tickets at that date is limited, the charter series is often cancelled. The tour operator would otherwise risk having to pay a cancellation fee or bear the loss corresponding to the empty seats. The tourist industry believes that, if that risk is reduced, many flights would go ahead. Such flights could even be profitable. However, tour operators seem to prefer to cancel flights due to the risk of empty seats rather than to wait and hope that late sales make the flight profitable.
- (17) The hotel industry in Northern Norway suffers from overcapacity and low operating margins. In addition, the utilization of capacity varies considerably throughout the year. A challenge for the tourist industry is the many seasonal jobs. The Norwegian authorities assume that the Scheme will lead to increased tourism in the low season, with a particularly positive effect on year-round employment in the tourist industry. The Norwegian authorities also assume that a low level of aid from the Charter Fund will trigger a high amount of spending by tourists in the target area of the Scheme. This can be illustrated by the following table.¹⁶

Average cabin factor	Number of tourists year one	Aid from the Charter Fund	Tourist spending	Charter Fund cost/tourist spending
60 %	10 714	8 400 000	96 422 400	8.7 %
61 %	10 892	7 980 000	98 029 440	8.1 %
62 %	11 071	7 560 000	99 636 480	7.6 %
63 %	11 249	7 140 000	101 243 520	7.1 %
64 %	11 428	6 720 000	102 850 560	6.5 %
65 %	11 606	6 300 000	104 457 600	6.0 %

¹⁴ The Authority’s Guidelines on Regional State Aid for 2014 - 2020, OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p.1, also available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>. The Guidelines correspond to the Communication from the European Commission “*Guidelines on regional state aid – 2014-2020*”, adopted on 28.6.2013 and published in OJ C 209, 23.7.2013, p. 1 (the “*Regional Aid Guidelines*”). The three Counties are Level 2 statistical regions.

¹⁵ In 2009, the Authority approved an aid scheme for route development from the second largest city in Northern Norway, Bodø, see the Authority’s Decision No 179/09/COL (“the Route Development Fund Bodø”). The Route Development Fund has not yet granted any aid under the scheme. SAS operates a periodical route between Stockholm and Tromsø and a seasonal summer route between Stockholm and Bodø. In addition, Norwegian operates a seasonal winter route between London and Tromsø and Finnair operates a seasonal summer route between Helsinki and Tromsø. Finally, NextJet also operates a regular year-round route between Luleå-Oulu and Tromsø. Given the limited number of international routes, there is a presumption that routes between Northern Norwegian airports and European cities are of little commercial interest for air carriers (Document Nos 632837 and 775439).

¹⁶ The Norwegian authorities have submitted that the figures are only estimates made for the purposes of preparing a budget for the Charter Fund. Due to rounding of numbers, the figures in the table are not accurate.

66 %	11 785	5 880 000	106 064 640	5.5 %
67 %	11 964	5 460 000	107 671 680	5.1 %
68 %	12 142	5 040 000	109 278 720	4.6 %
69 %	12 321	4 620 000	110 885 760	4.2 %
70 %	12 499	4 200 000	112 492 800	3.7 %
71 %	12 678	3 780 000	114 099 840	3.3 %
72 %	12 856	3 360 000	115 706 880	2.9 %
73 %	13 035	2 940 000	117 313 920	2.5 %
74 %	13 213	2 520 000	118 920 960	2.1 %
75 %	13 392	2 100 000	120 528 000	1.7 %
76 %	13 571	1 680 000	122 135 040	1.4 %
77 %	13 749	1 260 000	123 742 080	1.0 %
78 %	13 928	840 000	125 349 120	0.7 %
79 %	14 106	420 000	126 956 160	0.3 %
80 %	14 285	0	128 563 200	0.0 %

2.6. National legal basis for the aid measure

- (18) As the Counties provide capital injections to the Charter Fund, the legal basis for the aid granted are budgetary decisions taken by the Counties.¹⁷
- (19) The Charter Fund will be entitled to make grants of aid based on its statutes (by-laws); the standard agreements will be entered into between the Tourist Board and the aid beneficiaries.

2.7. Aid beneficiaries

- (20) The aid beneficiaries will be tour operators operating air charter series to Northern Norway, whether they are located in or outside Northern Norway or in or outside the EEA.
- (21) The aid applications must be supported by three parties, i.e. the tour operator, the destination provider and the airline. For more details on the aid applications, see Section 2.4 of Decision No 303/13/COL.

2.8. Aid intensity, eligible costs, overlap with other schemes

- (22) The aid takes the form of a maximum payment of up to 25% of the total charter costs and is limited to such costs only (*i.e.* financial obligations under the contract between the tour operator and the airline). These costs must be specified according to generally accepted project accounting principles. Other costs borne by tour operators are not eligible costs under the Scheme.
- (23) The aid is calculated with reference to the “*average cabin factor*” of the flights operated under the charter series, excluding empty legs.¹⁸ The cabin factor is determined according to the actual number of departing passengers divided by the maximum seat capacity of the aircraft. Passenger data is based on the official numbers recorded by the Norwegian airport

¹⁷ Although Decision No 303/13/COL mentioned that the Norwegian State as well as private undertakings may provide funding to the Charter Fund (see paragraph 50 and footnotes 25 and 42), the Norwegian authorities have confirmed that neither the state nor private undertakings have contributed with cofinancing of the Fund. The Fund’s capital base is exclusively comprised of funds transferred by the Counties (Document No 775439).

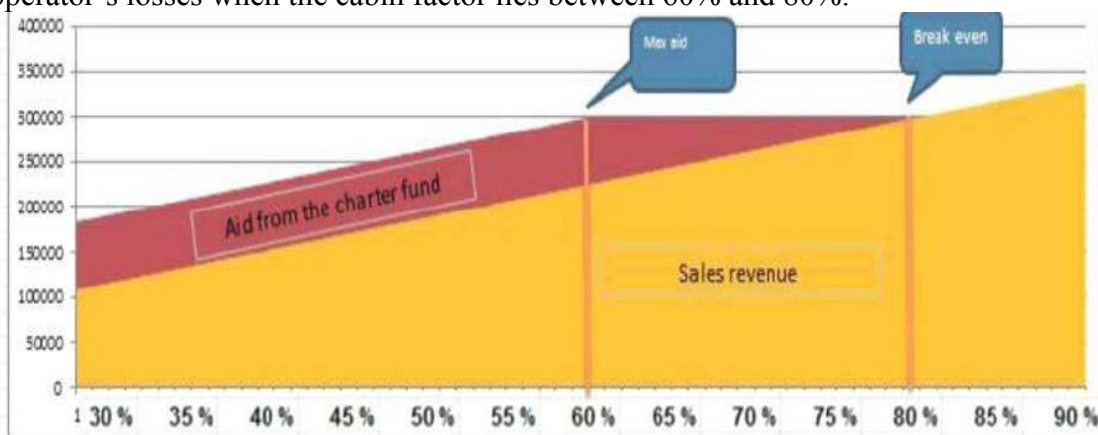
¹⁸ “*Empty legs*” are flights operated in order to position an aircraft at the start and at the end of a charter series. The return flight on the first departure will be empty and the flight to pick up the last passengers will be empty. Empty legs represent a considerable cost for charter series.

authorities. Empty legs are not taken into account when calculating the average cabin factor, but are included when the total eligible costs for the charter series are calculated.

- (24) Tour operators are required to set a break-even point at 80% of the cabin factor.¹⁹ If sales only reach a cabin factor of 60% or less, the Charter Fund reimburses the tour operator 25% of the charter costs, which is the maximum aid intensity. Thus, the maximum support (25%) is given to cabin factors of 60% or less. The aid decreases to zero when the cabin factor reaches 80%. This is illustrated in the following table.²⁰

Cabin factor	Sales revenue (NOK)	Aid from the Charter Fund (NOK)
50 %	187 500	75 000
55 %	206 250	75 000
60 %	225 000	75 000
65 %	243 750	56 250
70 %	262 500	37 500
75 %	281 250	18 750
80 %	300 000	0

- (25) If the aircraft operated under a charter series reaches a cabin factor of 60% - 80%, the contribution paid by the Charter Fund covers the losses incurred by the tour operator in connection with the charter series. As is demonstrated by the graph below, if flights are operated with a cabin factor of less than 60%, the tour operator will lose money, as the combination of sales revenues and an aid intensity of 25% will not be enough to reach the break-even point. The financial aid granted by the Charter Fund will only cover the tour operator's losses when the cabin factor lies between 60% and 80%.



- (26) The aid is paid by the Charter Fund to the tour operators after the charter series to Northern Norway have been completed and after the approval group of the Charter Fund²¹ has evaluated and confirmed that all award criteria are fulfilled.

¹⁹ A cabin factor of 80% is deemed to be the industrial break-even standard.

²⁰ The table is prepared by the Charter Fund and gives an example of how the Scheme will work with flights from London to Northern Norway with a Boeing 737-800. It is estimated that the net cost quoted by the airline to the tour operator will be NOK 300 000 per flight rotation. 149 persons must purchase tickets to reach the break-even point (80% of an aircraft capacity of 186 persons).

²¹ The approval group is a group which has been appointed by the Board of Directors in the Tourist Board. The approval group consists of Arne Trengereid (CEO, Northern Norway Tourist Board), John-Steve Linløkken (Marketing Director, Northern Norway Tourist Board), Iver Holter-Andersen (Route Development Manager, Avinor) and Gunnar Nilssen (CEO Reiseliv i Nord AS).

- (27) Aid under the Charter Fund may be cumulated with other forms of aid. Funding of the same eligible costs under other schemes are coordinated by the Charter Fund and the aid ceilings in the applicable guidelines will not be exceeded.

2.9. Monitoring and advertising

- (28) The Charter Fund is published on a subpage on Avinor AS' webpage¹⁸ and on www.nordnorge.com. Taking into account that the Charter Fund only became operational on 31 October 2014 and charter operators plan their rotations far ahead, only few eligible rotations have been carried out. The Tourist Board is therefore still in the process of preparing an electronic list of tour operators receiving aid, in each instance indicating the source of public funding, the recipient company, the amount of aid paid out and the number of passengers concerned. The list will be published on the following address: www.nordnorge.com/en/corporate.
- (29) In the event that a tour operator fails to comply with the criteria fixed by the Charter Fund when aid is granted, penalty mechanisms are applied, meaning that the rotation will not be regarded as eligible, and that the charter operator's costs are not reimbursed.²²
- (30) As indicated in Section 3.11 below, as of 1 July 2016, the list of aid beneficiaries will be published on a comprehensive state aid website in line with the transparency requirement laid down in Section 3.8 of the RAG. The Norwegian authorities are still discussing the format of the register.

2.10. Budget and duration

- (31) The budget of the Charter Fund for the first three years of operation amounts to approximately NOK 30 million. Thereafter, further capital will be injected only if necessary. The maximum capital base will not exceed NOK 30 million. The maximum possible grant of aid from the Charter Fund will be NOK 15 million per year (the absolute aid ceiling). However, it is estimated that the amount of aid granted by the Charter Fund will be appreciably below NOK 10 million per year.
- (32) The Norwegian authorities have indicated that they will assess the long-term relevance of the Scheme based on, inter alia, the evaluation report that is to be submitted to the Authority (see Section 3.12 below). If the Norwegian authorities consider that the Scheme should be prolonged in the future, such an alteration will be duly notified to the Authority. Thus, the authorities may decide that the Scheme should be upheld for a longer period than the initially approved three years, depending on the market conditions prevailing at the time.

²² Document No 775439.

II. ASSESSMENT

1. The presence of state aid

(33) 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.”

(34) This implies 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 to the beneficiary; (iii) is liable to have an impact on trade between Contracting Parties and to distort competition.

(35) The Authority is of the view that the detailed assessment in Decision No 303/13/COL of whether the Scheme entails state aid is still valid. The Authority maintains the conclusion in Decision No 303/13/COL that all the conditions set out in Article 61(1) of the EEA Agreement are met and that the notified Scheme thus grants state aid to the beneficiaries. State aid is only compatible with the functioning of the EEA Agreement if it qualifies for one of the derogations in Article 61(3) of the EEA Agreement.

2. Procedural requirements

(36) The aid measure envisaged by the Scheme is considered as regional aid. The new RAG provide that *“In principle, EFTA States must notify regional aid pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, with the exception of measures that fulfil the conditions laid down in a block exemption regulation incorporated in the EEA Agreement through Annex XV”*.²³

(37) 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”*.

(38) According to paragraph 163 of the RAG, schemes approved on the basis of the Regional Aid Guidelines 2007-2013 (“the former RAG”),²⁴ such as the Charter Fund Scheme, expired at the end of 2013 and any prolongation of such schemes needed to be re-notified. Indeed, paragraph 167 of the RAG further provides that the Authority proposes as an appropriate measure that the EFTA States re-notify all existing regional aid schemes which are not covered under a block exemption regulation before the expiry of the former RAG. By letter dated 19 December 2013 and after informal discussions and agreement from the Authority, the Norwegian authorities accepted the above-mentioned appropriate measure, but explicitly provided that the Charter Fund was not subject to the re-notification obligation and would thus continue as an existing aid scheme after 30 June 2014.²⁵ The Counties, however, confirmed that they would undertake any necessary adjustments to the Scheme in order to ensure its compatibility with the new RAG.

²³ RAG, paragraph 21.

²⁴ The former RAG were extended until 30 June 2014. See RAG, paragraph 162.

²⁵ Document No 694093.

- (39) By submitting a notification on 1 September 2015²⁶ in relation to the adjustment of the duration of the Charter Fund from 10 July 2016 until 31 October 2017 as well as the amendment of its eligibility conditions, the Norwegian authorities have complied with the notification requirement in Article 1(3) of Part I of Protocol 3. By not implementing the Charter Fund Scheme beyond the initial approved date of 10 July 2016 and by being exempted, as mentioned above, from the re-notification obligation prior to 30 June 2014, they have also complied with the standstill obligation provided for under Article 3 of Part II of Protocol 3, except it appears that the tightened eligibility conditions are already in force.

3. Compatibility of the aid

3.1. Assessment of the aid measure under Article 61(3) of the EEA Agreement in conjunction with the new Regional Aid Guidelines

- (40) According to Article 61(3)(c) of the EEA Agreement, the following aid measures may be considered compatible with the functioning of the EEA Agreement:

“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.

- (41) The RAG provide that:

“On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, the EFTA Surveillance Authority may consider compatible with the internal market state aid to promote the economic development of certain disadvantaged areas within the EEA. This kind of state aid is known as regional aid.”²⁷

- (42) In order to assess the compatibility of the aid measure described above, it should be recalled that it constitutes operating aid. Operating aid releases an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities.²⁸ According to the RAG, operating aid is defined as *“aid aimed at reducing an undertaking’s current expenditure that is not related to an initial investment. This includes costs categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration etc. but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting regional investment aid.”²⁹* Operating aid is in principle prohibited.

- (43) The RAG provide that:

“Regional aid can further be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas. In certain very limited, well-identified cases, the obstacles that these particular areas may encounter in attracting or maintaining economic activity may be so severe or permanent that investment aid alone may not be sufficient to allow the development of that area. Only in such cases may regional investment aid be supplemented by regional operating aid not linked to an investment” (emphasis added).³⁰

²⁶ Document No 772013.

²⁷ RAG, paragraph 1.

²⁸ Judgment in *SIDE v Commission*, T-348/04, EU:T:2008:109, paragraph 99; judgment in *Kronoply GmbH v Commission*, T-162/06, EU:T:2009:2, paragraph 75.

²⁹ RAG, paragraph 20(1)(p).

³⁰ RAG, paragraph 6.

(44) The RAG further provide that:

*“Regional aid aimed at reducing the current expenses of an undertaking constitutes operating aid and will not be regarded as compatible with the internal market, unless it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions. Operating aid may be considered compatible if it aims to reduce certain specific difficulties faced by SMEs in particularly disadvantaged areas falling within the scope of Article 61(3)(a) of the EEA Agreement, or to prevent or reduce depopulation in very sparsely populated areas” (emphasis added).*³¹

3.2. The formal investigation procedure preceding Decision No 303/13/COL

(45) Prior to the adoption of Decision No 303/13/COL, the Authority opened the formal investigation procedure with Decision No 246/12/COL because the Authority had doubts as to whether operating aid could be granted to direct recipients located outside the region of Northern Norway.

(46) As indicated in Decision No 303/13/COL,³² the Authority received comments from eight interested parties as well as from the Norwegian authorities. The Authority assessed these comments and came to the conclusion that, even though the direct beneficiaries of the Scheme may be located outside Northern Norway, the Scheme contains a sufficient link to the region where the intended effects are aimed to be produced.³³

3.3. The Counties belong to very sparsely populated areas

(47) As mentioned above, operating aid may be compatible if it aims to prevent or reduce depopulation in very sparsely populated areas. The RAG define “*very sparsely populated areas*” as Statistical Regions at level 2 for Norway with less than 8 inhabitants per km².³⁴

(48) The three Counties have a population density of between 4.25 and 4.5 inhabitants per km², depending on whether freshwater areas are included. Therefore, these Counties constitute very sparsely populated areas in the meaning of the RAG.

3.4. Common assessment principles

(49) To assess whether a notified aid measure is compatible with the EEA Agreement, the Authority analyses whether the aid measure is designed so that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition.³⁵

(50) For this purpose, the Authority considers an aid measure compatible with the EEA Agreement only if it complies with the following criteria:

- (i) Contribution to a well-defined objective of common interest
- (ii) Need for State intervention
- (iii) Appropriateness of the aid measure
- (iv) Incentive effect
- (v) Proportionality of the aid (aid to the minimum)

³¹ RAG, paragraph 16.

³² Decision No 303/13/COL, paragraphs 36 to 47.

³³ Decision No 303/13/COL, paragraphs 74 to 79.

³⁴ RAG, paragraph 20(1)(x).

³⁵ RAG, paragraph 25.

- (vi) Avoidance of undue negative effects on competition and trade between EEA States
- (vii) Transparency of aid³⁶

3.5. Contribution to an objective of common interest

3.5.1. Challenges facing disadvantaged areas must be clearly identified in advance

- (51) A state aid measure must aim at an objective of common interest in accordance with Article 61(3) EEA Agreement. In the case of operating aid, the RAG specify that “*operating aid schemes will promote the development of disadvantaged areas only if the challenges facing these areas are clearly identified in advance. The obstacles to attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient to allow the development of those areas*” (emphasis added).³⁷
- (52) Accordingly, the Guidelines require that the challenges facing very sparsely populated areas that will benefit from the aid scheme must be clearly identified in advance.
- (53) The Authority is of the opinion that the Norwegian authorities have clearly identified in advance a number of challenges facing the Counties benefitting from the Scheme. In particular, a challenge that was identified in the original notification of 30 April 2012, and also in the notification of 1 September 2015, is that the northern parts of Norway suffer from a continuing trend of depopulation, as many sparsely populated arctic areas. A second related challenge presented in the original and subsequent notifications is the fact that the Counties are characterized by a narrow and little diversified industrial base and are highly dependent on employment in the primary industries and in the public sector. Therefore, the Norwegian authorities identified in their White Paper “The High North. Vision and Policy Instruments” that one of the key objectives of their High North Policy is to “... *strengthen the basis for employment, value creation and welfare throughout the country by means of a regional and national effort ...*”. The Charter Fund is meant to address these challenges by creating jobs in the tourist industry and thus stimulate permanent settlement and prevent depopulation.
- (54) The Authority is therefore of the opinion that the Norwegian authorities have complied with the requirement that the challenges facing the Counties have been clearly identified.

3.5.2. Demonstration of a risk of depopulation

- (55) According to paragraph 43 of the RAG, as regards operating aid aimed at preventing or reducing depopulation in very sparsely populated areas, the EFTA State concerned must demonstrate the risk of depopulation of the relevant area in the absence of the operating aid. According to this paragraph, the Norwegian authorities thus must clearly demonstrate the risk of depopulation in the absence of the Charter Fund Scheme.
- (56) In the original notification of 30 April 2012³⁸ and the current notification of 1 September 2015,³⁹ the Norwegian authorities provided a map with the pattern of movements in Norway in 2009, indicating that there is a continuing trend of internal migration whereby young people tend to move away from these northern counties towards cities and other more

³⁶ RAG, paragraph 26.

³⁷ RAG, paragraph 41.

³⁸ Document No 632837, Original notification of 30 April 2012, Section 2.2.1.

³⁹ Document No 772013, Notification of 1 September 2015, Section 4.2.3.2.

central areas. In their letter of 7 October 2015,⁴⁰ the Norwegian authorities provided updated information demonstrating that a similar domestic net-migration from the Counties to more central and southern areas still occurs today. In the absence of countervailing measures to mitigate this trend, the Counties will continue to suffer from depopulation.

- (57) The Authority is therefore of the view that the Norwegian authorities have demonstrated the risk of depopulation in the absence of the operating aid under assessment.

3.6. Need for state intervention

- (58) In order to assess whether state aid is necessary to achieve the objective of common interest, it is necessary to first diagnose the problem to be addressed. A state aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself.⁴¹ The Norwegian authorities therefore must demonstrate that there is a need for state intervention in order to achieve the objective of preventing or reducing continuing depopulation.
- (59) In their original notification of 30 April 2012 and in the current notification of 1 September 2015, the Norwegian authorities have highlighted that Northern Norway, one of Europe's least populated areas, has always been extremely sparsely populated and has suffered from depopulation for decades. The Norwegian authorities therefore consider that it is necessary to take further measures to stabilise settlement in the region and to prevent further depopulation. The Scheme is one of the tools necessary to achieve that objective. The Norwegian authorities recognise that the establishment of the Charter Fund will not on its own solve the problem of depopulation, but consider that it will, as a part of a general policy, increase economic activity in the region and maintain and create new jobs. Employment opportunities and expected income are the most decisive factors influencing an individual's choice of residence.

3.7. Appropriateness of the regional aid

3.7.1. Introduction

- (60) Paragraph 47 of the RAG provides that:
“The notified aid measures must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development.”
- (61) With respect to operating aid schemes, paragraph 52 further provides that:
“The EFTA State must demonstrate that the aid is appropriate to achieve the objective of the scheme for the problems that the aid is intended to address. To demonstrate that the aid is appropriate, the EFTA State may calculate the aid amount ex ante as a fixed sum covering the expected additional costs over a given period, to incentivise undertakings to contain costs and develop their business in a more efficient manner over time” (emphasis added).

⁴⁰ Document No 775439.

⁴¹ RAG, paragraphs 26(b) and 44.

3.7.2. The appropriateness of the Charter Fund to prevent depopulation and encourage settlement in Northern Norway

- (62) In line with paragraph (61) above, the Norwegian authorities must demonstrate that the Scheme is an appropriate policy instrument to achieve the objective of preventing or reducing depopulation in Northern Norway, which is the problem the Scheme aims to address.
- (63) In point 3.4 of the original notification of 30 April 2012⁴² and in point 4.2.4 of the current notification,⁴³ the Norwegian authorities indicated that the creation of employment possibilities in Northern Norway is key in order to prevent or reduce depopulation. In particular, tourism is a growing sector in Northern Norway and is both labour-intensive and dependent on a local work force. Amongst the challenges, however, in developing a tourist industry in Northern Norway are profitability and the seasonal nature of the tourism sector. The Norwegian authorities argue that the Charter Fund is appropriate as it is the best measure available with which to increase tourism also in the low season, create year-round jobs and thus contribute to a reduction in depopulation in the region. The Norwegian authorities have provided figures to demonstrate the importance of the economic effects generated by the increased tourism in the target area (see paragraph (17) above).
- (64) The Norwegian authorities argue that there is a clear link between the aid to the tour operators and the regional development of Northern Norway. Although the Charter Fund contains no limitations on the location of the tour operator chartering the aircraft, the tour operator will only receive aid if it operates a charter series to a regional airport in Northern Norway. By clarifying that a charter series should consist of at least two flights, tour operators can thus not receive aid when they merely operate one flight to Northern Norway. In addition, tour operators must demonstrate that the tour package includes a so-called “land-arrangement” in the target area with a value of at least NOK 800 per tourist and a requirement that tourists stay at least two nights and finally, the aid will be paid from the Charter Fund to tour operators after the flights to the target area have been conducted. These mechanisms should ensure that the positive effects of the aid will benefit the target area.
- (65) As regards the use of other aid instruments, the Norwegian authorities argue that, in their view, traditional investment aid alone is not always the most adequate instrument to address the specific problems in the region. The Norwegian authorities argue that an aid instrument limiting the potential aid beneficiaries to local companies in the region, would not result in an increase in the number of flights to relevant airports (and thereby in tourism in the area) or prevent depopulation. In their view, the Charter Fund is the instrument with the highest chance of success and minimal distortive effects. In that light, they consider that the Scheme is appropriate.
- (66) In line with the Authority’s conclusion in paragraph 93 of Decision No 303/13/COL, the Authority still considers that the establishment of the Scheme is only appropriate for a limited period of time in order to help establish a viable tourist industry in the very sparsely populated regions of Norway. As the three-year start-up period approved by the Authority in Decision No 303/13/COL did not effectively enter into effect until 31 October 2014, the Authority therefore approves a prolongation of the Scheme corresponding to the delay the Scheme incurred to enter into effect, i.e. until 31 October 2017.

⁴² Document No 632837, Original notification of 30 April 2012.

⁴³ Document No 772013, Notification of 1 September 2015.

- (67) In addition, and as further outlined below under Chapter 3.12, the Authority is of the view that the Norwegian authorities should endeavour to evaluate the effects of the Scheme not upon its expiry (as was requested in Decision No 303/13/COL), but a number of months prior to its expiry in order to be able to assess both the positive and negative effects on competition well ahead of its expiry date.

3.8. Incentive effect

- (68) Paragraph 56 of the RAG provides that:
“Regional aid can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity. (emphasis added)”
- (69) Paragraph 71 and 72 of the RAG further detail the requirement of an incentive effect in the case of operating aid schemes:
“For operating aid schemes, the incentive effect of the aid will be considered to be present if it is likely that, in the absence of aid, the level of economic activity in the area or region concerned would be significantly reduced due to the problems that the aid is intended to address.
The Authority will therefore consider that the aid induces additional economic activity in the areas or regions concerned, if the EFTA State has demonstrated the existence and substantial nature of those problems in the area concerned (see paragraphs (42) and (43)) (emphasis added).”
- (70) The Authority has in the past taken the view that the aid induces economic activity in the eligible areas only if the Norwegian authorities demonstrate the existence and substantial nature of the problems in the areas concerned.
- (71) As demonstrated above in paragraphs (55) and (56), the Counties suffer from depopulation challenges, in particular the migration, often of younger people, to the south and more central areas where they find greater prospects of employment. The depopulation has an add-on effect in the sense that people leaving the Counties as a result of limited employment opportunities leads to fewer new businesses and skilled entrepreneurs and thus to even fewer employment opportunities.
- (72) The Charter Fund aims to reduce the costs of tour operators in order to induce them to operate charter series to airports in Northern Norway and thus stimulate tourism. The increased tourism should lead to the creation of new jobs and thus to higher economic activity. It is likely that the Counties would suffer from a higher degree of depopulation and significantly less economic activity in the absence of the Charter Fund. The Authority therefore concludes that the Norwegian authorities have demonstrated that the Scheme has an incentive effect.

3.9. The proportionality of the Scheme

- (73) Paragraphs 26(e) and 73 of the RAG provide that the amount of regional aid must be limited to the minimum needed to induce additional investment or activity in the areas concerned.

With respect to operating aid schemes, paragraph 104 further provides that the EFTA State must demonstrate that the level of the aid is proportionate to the problem that the aid is intended to address. In particular, the following conditions must be fulfilled:

“(a) the aid must be determined in relation to a predefined set of eligible costs that are fully attributable to the problems that the aid is intended to address, as demonstrated by the EFTA State;

(b) the aid must be limited to a certain proportion of those predefined set of eligible costs and must not exceed those costs;

(c) the aid amount per beneficiary must be proportional to the level of the problems actually experienced by each beneficiary.”

- (74) With regard to the fulfilment of letter a), the Scheme is designed to cover the tour operator's charter costs only, that is the financial obligations of the tour operators pursuant to the agreements concluded with airlines. The eligible costs are thus clearly defined. In addition, these costs must be fully attributable to the problems that the Charter Fund Scheme intends to address, i.e. increase employment opportunities in the tourism industry and reduce depopulation. As mentioned above, the Scheme aims to induce tour operators to operate charter flights to Northern Norway even if the cabin factor is low (60%), thus stimulating tourism to Northern Norway, increasing economic activity and employment opportunities and preventing depopulation. The Authority is therefore of the view that the Norwegian authorities have demonstrated that the Charter Fund Scheme relates to a predefined set of eligible costs (the tour operators' charter costs) that are fully attributable to the problems that the Charter Fund Scheme intends to tackle (prevent or reduce depopulation by stimulating the tourism industry and thus create employment opportunities).
- (75) With regard to the fulfilment of the letter b), the Scheme provides that the maximum aid intensity (25%) will only be given at a cabin factor of 60% or less. The aid intensity will gradually decrease to zero when the cabin factor reaches the industry break-even point of 80%. The Scheme thus aims to cover the tour operators' losses when the cabin factor lies between 60% and 80%, which is the break-even point where tour operators start making a profit. No aid will thus be given when the cabin factor reaches or exceeds the industry break-even standard of 80%, nor will aid be given to cover additional costs incurred by the tour operator that are not linked to their charter costs (as defined above). The aid is thus limited to a proportion only of the predefined set of eligible costs (the charter costs).
- (76) With respect to letter c), it should be recalled that tour operators are inclined to cancel their charter flights because of the cancellation rules and rates applied by airlines operating these charter flights. In particular, the tour operator risks paying an important cancellation fee if its cancels the charter flight at a late stage, thus inducing these tour operators to cancel planned tours several months before departure when they notice that the sale of tickets is limited. The Scheme addresses these challenges directly by reimbursing the tour operators' losses when the cabin factor lies between 60% and 80%. By reducing the tour operators' risks in operating the charter flights, more charter flights will be operated to Northern Norway, thus stimulating tourism and further economic activity (see paragraph (17) above on the effects of increased cabin factors on the number of tourists and tourist spending).
- (77) As a general point, the design of the Scheme ensures that the grants of aid under the Scheme are limited to what is absolutely necessary to attain the objectives of the Scheme. Indeed, the maximum support of 25% of the charter costs will only be provided when the cabin factor is 60% or less. The aid intensity will gradually decrease to zero when cabin factors

reach 80%. The Norwegian authorities stress that a cabin factor of 60% with the highest aid intensity of 25% is a worst case scenario and that they estimate that the risk reducing element of the Scheme will generally generate considerably higher cabin factors, thus leading to lower aid intensities.

- (78) The Authority is therefore of the view that the Scheme is proportionate to its objectives (prevent or reduce depopulation), thereby satisfying the condition of proportionality in the RAG.

3.10. Avoidance of undue negative effects on competition and trade between EEA States

- (79) For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between EFTA States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.⁴⁴
- (80) With respect to operating aid schemes, such as the Charter Fund, the RAG further provide that:
“if the aid is necessary and proportional to achieve the common objective, the negative effects of the aid are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the identified negative effects are unlikely to be compensated by any positive effects” (emphasis added).⁴⁵
- (81) According to the Norwegian authorities, the total capital injection into the Charter Fund will amount to NOK 30 million during the first three years of operation. In addition, the maximum aid grants from the Charter Fund will be NOK 15 million per year (if the absolute aid ceiling is reached). However, the Norwegian authorities estimate that the aid amounts granted by the Charter Fund will be far below NOK 10 million per year. Indeed, due to the risk reducing effect of the Scheme, higher cabin factors are expected so that aid intensities of 25% will be unlikely.
- (82) Although the Authority recognises that the tourist industry is an important economic sector in the EEA, the Scheme only disburses relatively small amounts of aid which have a potential important impact on the number of tourists and tourist spending in the area. In addition, the beneficiaries of the Scheme can be located inside or outside Northern Norway and finally, the Scheme is designed so that tour operators cannot “profit” from the Scheme as the Scheme only reimburses the tour operators’ losses to the break-even cabin factor point of 80%.
- (83) The Authority therefore concludes that the potential negative effects the Scheme may have on competition and trade in the EEA are negligible and are offset by the positive effects the Scheme has on the objective of preventing depopulation and increasing economic activity in Northern Norway.

⁴⁴ RAG, paragraphs 26(f) and 106.

⁴⁵ RAG, paragraph 134.

3.11. Transparency of aid

- (84) In order to be compatible with the functioning of the EEA Agreement, the notified Scheme must meet certain transparency standards in line with paragraph 135 of the RAG. The EEA States, the Authority, economic operators and the public must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder. The Norwegian authorities have committed to comply with this refined transparency requirement by 1 July 2016.

3.12. Duration and evaluation

- (85) Decision No 303/13/COL made the approval of the Scheme conditional upon a limited duration of three years as well as upon the delivery of an evaluation report on the effects of the Scheme on the development of tourism and the prevention of depopulation in the region, to be delivered upon the expiry of the Scheme. The RAG also explicitly provides that the overall balance of certain categories of schemes may be made subject to the requirement of an ex post evaluation as well as to a limited duration in time.⁴⁶
- (86) As already mentioned, the Scheme only entered into effect on 31 October 2014 due to political discussions. The Norwegian authorities now request to extend the three year duration of the Scheme with a period corresponding to the delay incurred by the Scheme to enter into effect, i.e. until 31 October 2017. Taking into account the above-mentioned assessment as to the compatibility of the Charter Fund Scheme with Article 61(3)(c) and the RAG, the Authority approves this extension.
- (87) In addition, during the pre-notification discussions, the Authority and the Norwegian authorities agreed that it may be advisable to undertake the evaluation prior to the expiry of the Scheme in order to avoid that the Norwegian authorities would need to discontinue the operation of the Scheme while the Authority assesses the necessity and appropriateness of the Scheme in light of the evaluation report.
- (88) The Authority agrees with the Norwegian authorities that such evaluation should be carried out and submitted 10 months prior to the expiry of the Scheme, in the case at hand by 31 December 2016.

4. Conclusion

- (89) In line with its conclusion in Decision No 303/13/COL, and on the basis of the foregoing assessment, the Authority considers that the Charter Fund Scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.
- (90) Pursuant to the derogation provided in Article 61(3)(c) of the EEA Agreement and the RAG, the Charter Fund Scheme, as well as the extension of the duration of the Charter Fund Scheme, are compatible with the functioning of the EEA Agreement. The approval of the Charter Fund is therefore extended until 31 October 2017.
- (91) The Norwegian authorities shall prepare an evaluation report of the Scheme, documenting its effects on the development of tourism and the prevention of depopulation in Northern Norway, as well as its effects on competition. The evaluation report shall be made by an independent expert and shall be submitted to the Authority at the latest by 31 December 2016.

⁴⁶ RAG, paragraph 27 and Chapter 4.

- (92) The Norwegian authorities are reminded of the obligation under Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of the Implementing Provisions Decision⁴⁷ to provide annual reports on the implementation of the Scheme.
- (93) The Norwegian authorities are also reminded that all plans to modify this Scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Charter Fund Scheme, as notified on 1 September 2015 and registered by the Authority on 7 September 2015, is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The conditional approval of the Charter Fund Scheme for a period of three years as provided by Decision No 303/13/COL is accordingly extended until 31 October 2017.

Article 3

Norway shall submit a report to the Authority with an evaluation of the effects of the Charter Fund Scheme on the development of tourism and the prevention of depopulation in the region and its effects on competition at the latest by 31 December 2016.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 4 November 2015.

For the EFTA Surveillance Authority

Sven Erik Svedman
President

Helga Jónsdóttir
College Member

⁴⁷ Available at: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>