



---

# *EFTA SURVEILLANCE AUTHORITY*

Doc.No. 98-1776-I  
Dec.No. .78/98/COL  
Ref. No. SAM030.98014

## EFTA SURVEILLANCE AUTHORITY DECISION

OF 12 MAY, 1999

ON THE NEW AID SCHEME "THE NORWEGIAN ENVIRONMENT FUND"  
("STATENS MILJØFOND")

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area<sup>1</sup>, in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>2</sup>, in particular Article 1 of Protocol 3 thereof,

WHEREAS:

### I. FACTS

#### 1. The notification

By letter dated 22 October 1998, received and registered by the Authority on 26 October 1998 (Doc.No.98-7259-A), the Norwegian authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a new aid scheme: The Norwegian Environment Fund ("Statens Miljøfond" (SMF)).

By letter dated 20 November 1998 (Doc. No. 98-7898-D), the EFTA Surveillance Authority acknowledged the receipt of the letter dated 22 October 1998 and requested additional information.

---

<sup>1</sup> Hereinafter referred to as the EEA Agreement.

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement.

By letter of 11 January 1999, received and registered by the Authority on 12 January 1999 (Doc.No. 99-275-A), the Norwegian Authorities submitted additional information.

## **2. The contents of the proposed aid scheme**

### **2.1 Background and legal basis**

SMF is a new loan scheme, which the Norwegian Government proposed to establish in its Fiscal Budget for 1998<sup>3</sup>. The Fiscal Budget was presented to the Parliament on 13 October 1997 and adopted 15 December 1997. The scope of the loans for 1998 was limited to NOK 500 million with a capital stock of NOK 100 million. The purpose of the capital stock is to cover losses. SMF is in principle of indefinite duration, but the budgetary appropriations are decided upon by the Norwegian Parliament each year.

The scheme is financed by the Ministry of the Environment on the State budget Chapter 2422, Posts 50 (capital stock) and 90 (loans). SMF will be administered by the Industrial and Regional Development Fund (SND). The activity of SND, which is a wholly state owned fund, is regulated by the Law on SND of 3 July 1992 no. 97 and the Regulations for SND of 4 January 1993.

The Government proposed on 15 May 1998<sup>4</sup> new budget appropriations for SMF. The scope of the loans was reduced to NOK 250 million (EUR 28.5 million), while the capital stock was reduced to NOK 50 million (EUR 5.7 million). These proposals were adopted by the Parliament<sup>5</sup> on 19 June 1998.

Regulations for SMF were adopted by Royal Decree of 22 May 1998<sup>6</sup>, while SND was informed about the regulations and the budgetary allocations by a letter of instruction ("Tildelingsbrev") from the Ministry of the Environment dated 24 June 1998. SND has laid down internal procedural rules and specified the Regulations in Case handler's Guidelines ("Produkttrundskriv") of 22 October 1998.

### **2.2 Objectives and terms of the loans**

The objective of SMF is to stimulate the use and development of new technology, which can improve the environment. Projects that go beyond mandatory environmental standards, or projects in fields where there are no mandatory standards, reducing the emissions of greenhouse gases and other discharges harmful to the environment, can be subsidised by SMF through loans with lower interest rates than can be achieved in the capital markets.

According to the notification, projects that fall within the target category for the SMF as an environment policy instrument tend to have a marginal profitability. To promote

---

<sup>3</sup> "St.prp. nr. 1 (1997-98) for Miljøverndepartementet."

<sup>4</sup> "St.prp. nr. 65 (1997-98) Omprioriteringer og tilleggsbevilgninger på statsbudsjettet 1998."

<sup>5</sup> "Innst.S.nr.252 (1997-98) Innstilling fra finanskomiteen om omprioriteringer og tilleggsbevilgninger på statsbudsjettet 1998."

<sup>6</sup> "Retningslinjer for Statens Miljøfond (fastsatt ved kgl.res. av 22. Mai 1998)."

implementation of projects targeting environmental effects that go beyond mandatory environmental standards, special loan conditions are therefore deemed necessary. According to the notification, interest terms should, after coverage of administration costs, be competitive in the sense that they are sufficiently favourable to lift the project's profitability and actually make it possible for the investment to take place.

Rates of interest vary in the interval from 1.0% to 4%, depending on the project's environmental effects, in the following way:

- 1.0%: Projects resulting in a high reduction of greenhouse gas emissions
- 2.5%: Projects resulting in intermediate reduction of greenhouse gas emissions
- 4.0%: Projects giving reduction of other discharges harmful to the environment

The lowest interest rate will be used for projects that give a very high reduction in the greenhouse gas emissions. The normal interest rate shall be 2.5% p.a. The decision on which interest rate to apply is based primarily on the assessment of the project's environmental effects made by The State Pollution Control Authority ("Statens forurensningstilsyn"). The first category of interest rates will not be applied for projects with a very short repayment period.

The loans will be granted without collateral and may be granted with a grace period. The maximum grace period is not specified. The repayment period may be adapted to the requirements of each project. The maximum repayment period is not specified. The maximum proportion of the investment financed by SMF shall normally be 50%, but when this limit can be exceeded is not specified. However, SND has provided calculation examples of the aid intensities with "normal" terms for the loans from SMF (see point II.4).

Loans from SMF may be combined with grants or other relevant support schemes from SND or other sources. The accumulated aid intensity will in such cases, according to the notification, be carefully considered to ensure compliance with the Authority's State Aid Guidelines<sup>7</sup>.

## **II. APPRECIATION**

### **1. The presence of State aid and notification formalities**

The notified scheme is being 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 the scheme may benefit enterprises that actually or potentially will be in competition with similar undertakings in Norway and other EEA states, and the proposed aid hence threatens to affect trade and distort competition, the scheme therefore involves State aid in the meaning of Article 61(1) of the EEA Agreement.

---

<sup>7</sup> Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in Official Journal L 231, 03.09.1994. The Guidelines were last amended 16 December 1998, published in Official Journal C 111, 22.4.1999.

The Norwegian authorities have notified, by the letters dated 22 October 1998 (Doc.No.98-7259-A) and 11 January 1999 (Doc.No. 99-275-A), plans to grant or alter aid. 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. Procedural obligations**

Article 1(3) of Protocol 3 to the Surveillance and Court Agreement states that *"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. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision."* Sufficient time in this context means two months as from the date when the Authority has received a complete notification<sup>8</sup>.

The Norwegian Government proposed to establish SMF in its Fiscal Budget for 1998, which was presented to the Parliament on 13 October 1997 and adopted on 15 December 1997. Regulations for SMF were adopted by Royal Decree of 22 May 1998. SND was informed about the regulations, and the scope of the loans and capital stock, through a letter of instruction ("Tildelingsbrev") from the Ministry of the Environment dated 24 June 1998. SMF was notified to the EFTA Surveillance Authority by letters dated 22 October 1998 (Doc.No.98-7259-A) and 11 January 1999 (Doc.No.99-275-A).

In view of the above facts, it must be concluded that the notification was submitted late, i.e. notified after being "put into effect". By "putting into effect" is meant not only the action of granting aid to the recipient. It is sufficient that the conferment of powers enabling the aid to be granted without further formality has taken place.<sup>9</sup> The transfer of powers took place by the letter of instruction ("Tildelingsbrev") from the Ministry of the Environment dated 24 June 1998. This means that the Norwegian authorities have failed to fully respect the procedural obligations. Under such circumstances, while the Authority endeavours to take a decision within two months after receiving complete information, it does not, as in the case of aid timely notified, consider as its obligation to take a decision on a notification within a time limit of two months.<sup>10</sup>

## **3. Application of the relevant State aid rules**

Articles 73-75 of the EEA Agreement impose obligations on the Contracting Parties in the environmental field. These provisions confirm the "polluter pays" principle but go further calling for the requirements of environmental protection to be included in implementation of other policies of the Contracting Parties and stressing the need for

---

<sup>8</sup> According to provisions on time limits in Part II of the State Aid Guidelines.

<sup>9</sup> State Aid Guidelines Chapters 6 and 3.3.

<sup>10</sup> State Aid Guidelines Chapter 4.1 and 6.2.2

prevention. Subsidies may be a second best solution in situations where the polluter pays principle is not yet fully applied. However, such aid may distort competition, create trade barriers and jeopardise the functioning of the EEA Agreement.

Chapter 15 of the State Aid Guidelines, on aid for environmental protection, aims to strike a balance between the requirements of competition and environment policy, given the widespread use of state aid in the latter policy field. Such aid is normally only justified when adverse effects on competition are outweighed by the benefits for the environment.

Aid for investment that allows significantly higher levels of environmental protection than those required by mandatory standards may be authorised up to a maximum of 30% gross of the eligible costs. The level of aid actually granted for exceeding standards must be in proportion to the improvement of the environment that is achieved and to the investment necessary, for achieving the improvement.

If the investment is carried out by Small and Medium-sized Enterprises (SMEs), an extra 10 percentage points gross of aid may be allowed. In assisted areas<sup>11</sup>, aid can be granted up to the prevailing rate of regional aid authorised by the Authority for the area, plus, where appropriate, the supplements for SMEs referred to above. Aid in the absence of mandatory standards can be granted at the same levels as for going beyond existing standards.

Within the limits and on the conditions set out in sections 15.4.1 to 15.4.4 of the State Aid Guidelines, aid for the environmental purposes specified in Chapter 15 of the State Aid Guidelines will be authorised by the EFTA Surveillance Authority under the exemption provided for in Article 61(3)(c) of the EEA Agreement for "aid to facilitate the development of certain activities....., where such aid does not adversely affect trading conditions to an extent contrary to the common interest." The EFTA Surveillance Authority considers SMF to fall within the limits and purposes specified in Chapter 15 of the State Aid Guidelines.

#### **4. Assessment of the aid intensity in loans from SMF**

To assess the aid intensities in subsidised loans, the Authority uses a method described in Annex X of the State Aid Guidelines. The limits for the aid intensities as a gross percentage of the eligible costs contained in Chapter 15 of the Guidelines (gross grant equivalent) multiplied with the non-taxable portion of the aid, equals the Net Grant Equivalent (NGE) described in Annex X.

A reference rate of interest is used to adjust aid to present values and to calculate aid elements of loans. The reference rate shall reflect the average rate of interest in the market concerned. The reference/ discount rate for Norway is the average interest rate

---

<sup>11</sup> Areas eligible for regional aid by virtue of Article 61(3)(a) or 61(3)(c) of the EEA Agreement.

of secured loans (categories 1 and 2) by SND<sup>12</sup>. From 1 January 1999 the reference rate is fixed at 8.49% p.a<sup>13</sup>.

The EFTA Surveillance Authority will draw the Norwegian Authorities' attention to the fact that the calculation of the aid intensities shall be done in accordance with the provisions of Annex X of the State aid Guidelines, and on the basis of the reference rate of interest fixed by the Authority.

The loans from SMF are not secured. It can therefore be argued that the existing reference rate of interest for Norway does not properly reflect the risk associated with the loans from SMF, and that a risk premium should be added when the aid intensity is calculated.

With reference to the considerations made by the EU Commission in its notice on the method for setting the reference and discount rates<sup>14</sup>, which in the Authority's view is equally valid in the context of the EEA, and in light of the current reference rate of interest in Norway, the Authority has assumed that a risk premium of 3 percentage points reflects the additional risk associated with the loans from SMF (i.e. a reference rate of interest/discount factor of 11.49%).

Based on the above mentioned calculation method and reference rates of interest, the Authority has calculated what the aid intensities (gross) of the total investment will be, depending on different proportions of the investment financed by SMF, interest rates, grace periods and periods of repayment. Table 1 below gives the results of this.

Table 1: Calculated gross aid intensities

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6
Financed by SMF	10%	20%	25%	30%	40%	50%
Rate of interest charged	4.0%	2.5%	2.5%	2.5%	1.0%	1.0%
Grace period	0 yr.	1 yr.	2 yrs.	0 yr.	1 yr.	2 yrs.
Period of repayment	7 yrs.	10 yrs.	18 yrs.	7 yrs.	10 yrs.	18 yrs.
Gross aid intensity - reference rate of interest 8.49%	1.4%	5.3%	9.6%	5.7%	13.2%	24.0%
Gross aid intensity- reference rate of interest 11.49%	2.2%	7.2%	12.5%	7.9%	16.7%	29.2%

Table 1 shows that the aid intensity stays below the maximum level of aid of 30% gross in all the calculation examples, also with a reference rate of interest of 11.49%.

The calculation examples in table 1 are based on what seems to be the most probable terms for loans granted by SMF (see point I.2.2 above). This indicates that there is

<sup>12</sup> State Aid Guidelines Chapter 33.2.

<sup>13</sup> Letter of 3 February 1998 from the EFTA Surveillance Authority to the Norwegian Mission to the European Union (Doc.No: 98-660-D).

<sup>14</sup> Official Journal C 273, 9.9.1997, p.3.

consistency between the possible terms of the loans from SMF and the maximum aid intensities contained in the State Aid Guidelines.

However, the possible terms of the loans from SMF are in the Authority's view not particularly well defined in the legal provisions for the scheme. The maximum proportion of the investment financed by SMF shall normally be 50%, but under what circumstances this upper limit can be exceeded is not specified. The maximum period of repayment and the maximum grace period are also not specified. If the terms of the loans were set more favourably than illustrated by example 6 in table 1, the aid intensity could exceed the maximum limit of 30% gross.

However, the Case handler's Guidelines ("Produktrundskriv") of SND set a limit of 30% gross (plus 10 percentage points gross for SMEs) for the participation from SMF. This means for example that if the maximum normal proportion financed by SMF in example 6 in Table 1 is increased beyond 50%, the interest charged has to be increased, or the grace period or the period of repayment reduced, in order to stay below the maximum allowable limit. The provision in the Case handler's Guidelines ("Produktrundskriv") implies in other words that the terms of individual loans must be fixed so as to ensure that aid is within the limits prescribed in Chapter 15 of the State Aid Guidelines.

## **5. Cumulation of aid**

Loans from SMF can, according to the notification, be combined with grants or other relevant support schemes from SND or other sources.

Chapter 13 of the State Aid Guidelines contains rules applicable to cases of cumulation of aid for different purposes. Cumulation of aid is defined as the application of more than one aid scheme to a given investment project. The EFTA States are obliged to notify projects where the investments exceeds Euro 12 million (NOK 105.3 million) or where the cumulative intensity of the aid exceeds 25% NGE (significant cases of cumulation). Cases where the investment does not exceed Euro 3 million, the cumulative aid intensity of the aid does not exceed 10% NGE or the intensity of all the aid to be granted remains below the ceiling for any one of the aid schemes under which aid is being awarded to the project, are exempt from this additional notification requirement.

The EFTA Surveillance Authority draws the Norwegian Authorities' attention to the fact that the implementation of the scheme is subject to the provisions set forth in the State Aid Guidelines concerning the cumulation of aid.

## **6. Reporting**

With reference to the reporting obligations outlined in Chapter 32 (see also Annex IV) of the State Aid Guidelines, the Authority finds it appropriate to request the Norwegian Authorities to submit simplified annual reports on the application of SMF. 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.

## **7. Conclusions**

Loans from SMF involve State aid in the meaning of Article 61(1) of the EEA Agreement.

Due to the fact that the new scheme was notified after being put into effect, loans from SMF have, until the date of this decision, been unlawful on procedural grounds.

The criteria and the intensities foreseen in the provisions for SMF<sup>15</sup> reflect the criteria set out in the State Aid Guidelines (Chapter 15) for aid under Article 61(3)(c) of the EEA Agreement. This means that the aid intensities laid down in Chapter 15.4.1.2 and 15.4.1.3 apply (30% gross, plus 10 percentage points gross for SMEs). The Case handler's Guidelines ("Produkttrundskriv") states that the aid intensities must be within the above mentioned limits laid down in Chapter 15 of the State Aid Guidelines.

Aid awards from SMF may therefore be justified with reference to aid to facilitate the development of certain economic activities without adversely affecting trading conditions between the Contracting Parties to an extent contrary to the common interest. It is concluded that aid in the form of loans from SMF qualify for exemption under Article 61(3)(c) of the EEA Agreement.

The EFTA Surveillance Authority requests the Norwegian Authorities to submit simplified annual reports on the application of SMF.

---

<sup>15</sup> The Ministry of Environment's letter of instruction ("Tildelingsbrev") of 24 June 1998 and the Case handler's Guidelines ("Produkttrundskriv") of 22 October from SND.

**HAS ADOPTED THIS DECISION:**

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed new aid scheme: The Norwegian Environment Fund ("Statens Miljøfond") as notified by the Norwegian authorities by letters dated 22 October 1998 (Doc.No.98-7259-A) and 11 January 1999 (Doc.No. 99-275-A).
2. The Norwegian Government is obliged to submit simplified annual reports to the EFTA Surveillance Authority on the application of the Norwegian Environment Fund ("Statens Miljøfond") scheme, in accordance with Chapter 32 and Annex IV of the State Aid Guidelines.
3. The Norwegian Government is reminded that the calculation of the aid intensities shall be done in accordance with the provisions of Annex X of the State aid Guidelines, and on the basis of the reference rate of interest fixed by the Authority.
4. The Norwegian Government is reminded that the application of this scheme is subject to the rules on the cumulation of aid, whether such cumulation involves aid for different purposes or aid for the same purpose under schemes adopted by the same entity or by different entities (central, regional, and/or local).

Done at Brussels, 12 May 1999

For the EFTA Surveillance Authority

Knut Almestad  
President

Bernd Hammermann  
College Member