Case No: 59548
Event No: 364880
Dec No: 60/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 8 March 2006

on R&D aid granted by the Research Council of Norway
in connection with the development
of the software programme
Turborouter

(Norway)

THE EFTA SURVEILLANCE AUTHORITY[1],

Having regard to the Agreement on the European Economic Area[2], 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[3], in particular to Article 24 thereof,

Having regard to Article 1(2) and (3) in Part I and Articles 1, 4, 6, 10, 13, 14, 16 and 20 in Part II of Protocol 3 to the Surveillance and Court Agreement[4],

Having regard to the Authority's Guidelines[5] on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 14 thereof, "Aid for Research and Development",

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[6],

Having regard to the Authority's Decision No 217/94/COL of 1 December 1994 to propose appropriate measures to Norway on, amongst others, the aid scheme Industrial R&D Programmes,

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[1] Hereinafter referred to as "the Authority".
[2] Hereinafter referred to as "the EEA Agreement".
[3] Hereinafter referred to as "the Surveillance and Court Agreement".
[4] Hereinafter referred to as "Protocol 3".
[5] 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 EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended on 14 December 2005, hereinafter referred to as "the Guidelines".
[6] Not yet published in the OJ or the EEA Supplement. Available at: http://www.eftasurv.int/fieldsofwork/fieldstateaid/legaltexts/ms2decision.DOC. This Decision has been last amended by the Authority's Decision No 329/05/COL of 20.12.2005.

Having regard to Norway's acceptance of the proposed appropriate measures by letter dated 19 December 1994,

Whereas:

I. FACTS

1. Procedure

By letter dated 5 March 2002 (Doc. No. 02-1733-A), the Authority received a complaint alleging that state aid had been granted by Norway through the Research Council of Norway (hereinafter: "the RCN") to various research projects in connection with the development of the software programme Turborouter.

The Authority requested information from the Norwegian authorities by letter dated 26 April 2002 (Doc. No. 02-2605-D). The Ministry of Trade and Industry replied by letter dated 3 June 2002 (Doc. No 02-4177-A), which included RCN's comments on the so-called Turborouter project.

In October 2002, a meeting between representatives from the Authority and the Norwegian authorities took place in Oslo in order to clarify some technical aspects.

On 28 February 2003, the Authority requested further clarification and documentation on certain aspects raised during the above-mentioned meeting (Doc. No 03-1159-D). The required information was supplied by the Norwegian authorities by letter dated 11 April 2003 (Doc. No 03-2338 A) and completed by letter of 20 June 2003 (Doc. No 03-4083-A).

Representatives of the Authority and the Norwegian authorities discussed the case at a meeting in the framework of the package meeting which took place in Oslo on 23 September 2004. Some of the issues raised during this meeting were later addressed by the Authority in a letter dated 11 November 2004 (Event No. 294194). The Norwegian authorities answered by letter of 31 January 2005 (Event No. 307137).

The Authority lastly requested information in a letter dated 7 July 2005 (Event No. 323594). The Authority furthermore stated that should the response from the Norwegian authorities not dispel the remaining doubts of the Authority, the formal investigation procedure would have to be opened with respect to the granting of R&D aid in connection with the development of the software programme Turborouter.

The Norwegian authorities replied in a letter dated 22 August 2005 (Event No. 331615).

The complainant contacted the Authority on various occasions during the preliminary investigation and submitted additional information.

2. The complaint

In March 2002, the Authority received a complaint alleging that the RCN had granted R&D aid to *"projects in the maritime sector that violate the EEA rules. The projects that have received state aid are commercial software programs that are marketed and sold in the international markets. We refer specifically to the software program called TURBOROUTER"*.

According to the complainant, the Turborouter programme is distorting the competition with other European or international companies which develop software programmes for the maritime industry. The complainant, who has software products in the same sector, has stated to have invested important sums of money in developing mathematical algorithms, which seem to be similar to the ones used in Turborouter.

The complaint concerns not only the projects that led to the development of a commercial software programme called Turborouter but also its development in several sub-projects. Although the complainant identified Project 136171 Algopt and Project 144214 Optimisation routines, it explicitly stated that the complaint is not limited to these projects but concerns *"all of these projects that have been targeting the development of a commercial software program called Turborouter"*.

The complainant mainly argued that (1) the projects that received aid were too close to the market to be eligible for R&D aid and had been marketed for sale to third companies in Norway and abroad; (2) the research results had not been disseminated but the research institute Marintek, which developed the software programme Turborouter, had received the property rights to sell the programme; (3) the maximum aid intensities had not been respected due to the fact that the own capital contribution from the concerned companies was in reality lower than stated in the application form. The complainant brought forward the following arguments to support the complaint:

(1) *"The RCN has given aid to projects which are very close to the market. Turborouter has for more than two years been actively marketed for sale both domestically in Norway and abroad. This marketing has been done partly by the research institute Marintek and partly by Shipnet, a privately owned commercial vendor of software systems for the maritime industry with which, according to the information submitted by the complainant, Marintek has an agreement. The Turborouter projects cannot be classified into "fundamental research" nor "industrial research" according to the definitions laid down by the EEA."* In view of the complainant, the projects are even far beyond pre-competitive development activity. *"Turborouter projects are aimed at developing software programs that are developed in close co-operation with a limited number of users, and in parallel is actively marketed towards any maritime company in need of such program."*

(2) *"As the Turborouter projects have received public aid and where in the R&D programs it has been stated that reports will be made available for any party interested, it is a breach of the regulations to give Marintek the proprietary rights to sell and market the program.* In view of the complainant *"this confirms the argument that Turborouter is a commercial product far beyond any R&D stage."*

(3) *"In calculating the aid intensities, the RCN has used the pro forma funding assumed in the R&D application to be given by the aid receiving firm."* The complainant claimed neither to have seen any documentation that the firms actually contributed with their own resources to the alleged funds, nor any audited reports where such contribution is proven. *"For many projects in the maritime sectors the aid receivers are supposed to chip in their own contribution, but quite often there is in actual fact very little man time hours or any other costs that the receivers chip in."*

3. The four projects related to the software programme Turborouter supported with RCN funds

a) Description of the projects

(1) Project 40049 – Strategic activities within maritime transport and logistics (The first version of the software programme Turborouter)

Together with the Centre for International Economy and Shipping (*SIØS*), which is an integral part of the Norwegian School of Economics and Business Administration, Marintek applied to the RCN for support for the project *"Strategic activities within maritime transport and logistics"* under the *"Strategic Institute Programme"* (SIP) in 1995. SIP was a programme for long term research, characterised by a large proportion of fundamental research, but strategic in its orientation to serve future needs of industry. Under SIP, research projects could receive public financing up to 100%.

According to the information provided by the Norwegian authorities, due to limited funds available under this programme, the RCN re-classified the project as a "three-year strategic competence development project" under the sub-programme *"Short Sea Shipping"* (1995-1998) within the Industrial R&D Programme. The whole project was re-classified as industrial research although some activities constituted fundamental research.

Project 40049 *"Strategic activities within maritime transport and logistics"* was broad in concept and covered several sub-projects. The first version of the pilot software Turborouter was developed in the first year of research of one of the sub-projects called *"Methods and analytical tools for design and operation of integrated transport and logistics chains"*.

Nowadays, Turborouter is a tool[7] for optimising vessel fleet scheduling, *i.e.* to decide which vessels to assign different cargoes to. The design philosophy has been to combine the knowledge and experience of the planners with the calculating capabilities of the computer. Optimisation software implemented on a computer can calculate millions of alternatives in only a few seconds but tend to have restricted ability to handle all practical constraints that occur in real life. Turborouter is based on electronic sea charts where scheduling information can be displayed. Other key elements of Turborouter include a database for vessels, ports, cargoes, etc; automatic calculation of port-to-port distances; vessel position reports and automatic update of estimated time of arrival; sophisticated optimisation routines for fleet scheduling; schedule visualisation or schedule calculator for manual planning.

According to the information provided by the Norwegian authorities, out of the total NOK 10.5 million budget for Project 40049, the RCN contributed NOK 4.6 million, the Norwegian Ship-owners' Association (NSA) NOK 1.4 million and Marintek NOK 4.5 million.

[7] The following information has been obtained from the brochure TurboRouter Vessel schedule optimizing software, available at the website of Marintek: http://www.marintek.no

The table below recapitulates the costs of the project and its financing of the project in NOK[8]:

Costs	
Personal and indirect costs	8 700 000
Purchase of R&D	600 000
Equipment	450 000
Other operating costs	750 000
Total	10 500 000

Financing	
Own financing	4 500 000
RCN	6 000 000
Total	10 500 000

According to the information provided by the Norwegian authorities, the project costs for the sub-project *"Methods and analytical tools for design and operation of integrated transport and logistics chains"* amounted to NOK 5.1 million. The state support for it amounted to NOK 2.24 million.

Further development of the software programme Turborouter

According to the information provided by the Norwegian authorities, the RCN selected several projects related to the development of the software package Turborouter for R&D support. According to the RCN, even though they had elements of industrial research, these projects were classified as "pre-competitive development activity". The RCN considered that the results from each of these projects were company specific prototype demonstrators which would need considerable further in-house development to become day-to-day tools in the companies' operations.

(2) Project 138811 – AlgOpt

The aim of this project[9] was to develop and carry out practical tests of algorithms to calculate the optimal utilisation of a fleet of ships, given the obligations to load cargoes for several customers, the requirements as to when cargoes must be loaded and discharged in the destination port, the possibility of carrying joint cargoes of a limited number of bulk goods on each voyage as well as limitations that mean that not all the vessels involved are suitable for serving all customers or all ports.

The overreaching objective of AlgOpt was that the algorithms should be integrated into a software concept that would offer users full control and the possibility of overriding the suggestions made by the algorithms. The software should help decision-makers to combine their own experience with the ability of the numerical processes to test a number of possibilities rapidly and in a manner that offers the best possible basis for making decisions.

The principal activities of the Project AlgOpt were the definition of user dialogues and criteria for good capacity utilisation; the development of algorithms for working out

[8] These figures have been obtained from the form submitted to the RCN for the application for a grant.
[9] Information obtained from Marintek's website: http://www.marintek.no.

optimal voyage combinations; the testing of algorithms and the follow-up and documentation of benefits.

According to the information submitted by the Norwegian authorities, the Project AlgOpt was only a pre-study defining the user requirements and investigation of the feasibility of using Turborouter for the contract partner, the company Beltship Management AS. Total costs amounted to NOK 925 000. The project was classified as pre-competitive research. The financing was split between the RCN (NOK 300 000) and private funds from participating companies (NOK 625 000). The table below recapitulates the costs of the project as well as its financing[10]:

Costs	
Personal and indirect costs	545 000
Purchase of R&D	380 000
Other operating costs	
Total	925 000

Financing	
Own financing	625 000
RCN	300 000
Total	925 000

(3) Project 144265 – Shiplog II

The Shiplog project mainly dealt with transport at sea. This project[11] should use the results of a previous project called Shiplog (which did not involve the use of Turborouter) to focus on the requirements for door-to-door delivery of goods, when transport at sea is a key element. The objectives of the project were:

- to support interaction between parties involved in door-to-door transport. This objective was shared by the EU proposal "D2D", which aimed at demonstrating an integrated management and communication system for door-to-door intermodal freight transport operation.

- to demonstrate the communication of information between software systems by using XML[12] messages.

- to demonstrate how TurboRouter could be integrated in a door-to-door transport service.

The project should utilise the results obtained in other projects such as Intermodal Portal, Themis, D2D, INTRA, INFRATRANS, TRANSDATA or INFOLOG.

The activities of the project included:

[10] These figures have been obtained from the form submitted to the RCN for the application for a grant.
[11] Information obtained from Marintek's website.
[12] XML (Extensible Mark-up Language) is a flexible way to create common information formats and share both the format and the data on the World Wide Web, intranets, and elsewhere. XML is a formal recommendation from the World Wide Web Consortium (W3C) similar to the language of today's Web pages, the Hypertext Mark-up Language (HTML).

1. Methodology for modelling business processes which concerned the evaluation of business processes required in door-to-door transport.
2. The use of XML messages in system communication, which should specify the requirements for system communication and will implement XML messages supporting the exchange of information.
3. Development of demonstrator of door-to-door transport, which should implement an Internet application demonstrating a door-to-door transport operation.
4. Integrating Transport Chain Management System (TCMS) and TurboRouter, which should specify the interface and demonstrate the exchange of information between TurboRouter and the TCMS demonstrator.

According to the information provided by the Norwegian authorities, this project failed to achieve its objective because TCMS and Turborouter could not be satisfactorily integrated.

The RCN classified this project as pre-competitive development and awarded it state aid for an amount of NOK 2.15 million out of the NOK 6.2 million of the total project costs. The project received funds from the NSA for an amount of NOK 750 000 which were channelled through the RCN. The remainder was financed by the contract partner of this project, the company United European Car Carriers AS (UECC), and other participating companies. The table below recapitulates both the costs and the financing of the project[13]:

Costs	
Personal and indirect costs	800 000
Purchase of R&D	2 150 000
Equipment	100 000
Other operating costs	3 150 000
Total	6 200 000

Financing	
Own financing	800 000
Other private means	3 250 000
RCN	2 150 000
Total	6 200 000

(4) Project 144214 – Library of optimisation routines for scheduling in shipping

The pre-competitive research project "Library of optimisation routines for scheduling in shipping" aimed at developing algorithms for advanced optimisation and scheduling of very complex shipping operations. The Norwegian authorities have explained that the library of algorithms is very trade and company specific and must thus be company-owned and not part of the standard Turborouter "tool kit". Nevertheless, it may give rise to development of additional Turborouter functionalities demanded by the applications development.

The overall project costs amounted to NOK 7 million, of which NOK 1.5 million were covered by the RCN, NOK 805 000 by the NSA and the remaining amount of NOK 4.7 million by private funds. The company Beltship Management AS was the contract partner of this project.

[13] These figures have been obtained from the form submitted to the RCN for the application for a grant.

The table below recapitulates the costs and the financing of the project[14]:

Costs	
Personal and indirect costs	4 100 000
Purchase of R&D	2 900 000
Equipment	
Other operating costs	
Total	7 000 000

Financing	
Own financing	1 950 000
Other private means	2 750 000
RCN	2 300 000
Total	7 000 000

b) The beneficiaries

The projects addressed in the current Decision have been developed in cooperation between the research institute Marintek and several private companies. Two of the private companies were the contract partners of the concerned projects and are therefore addressed in the following. In this context the other companies involved in the said projects could also be considered as potential beneficiaries for the purposes of this Decision.

(1) Marintek

Marintek is a research institution, 56% owned by the SINTEF group, a private research foundation, 26% by the Norwegian Shipowners' Association, 9% by Det Norske Veritas, an independent foundation, and the rest by several shareholders in the maritime community.

Marintek delivers marine technology research and development services. Together with the Department of Marine Technology at the Norwegian University of Science and Technology (NTNU), it constitutes the Marine Technology Centre in Trondheim. The Norwegian Marine Technology Research Institute does research, development and technical consulting in the maritime sector for industry and the public sector. The Institute develops and verifies technological solutions for the shipping and maritime equipment industries and for offshore petroleum production. Marintek's business areas include shipping, shipbuilding, offshore marine industry and marine industry[15].

According to the information provided by the Norwegian authorities, Marintek has developed several software packages. Most of them are only for "internal use" but others are made available as commercial products through marketing alliances.

[14] These figures have been obtained from the form submitted to the RCN for the application for a grant.
[15] Information issued from Marintek's website: http://www.sintef.no/Content/page2____690.aspx.

(2) United European Car Carriers (UECC)

UECC[16] is a provider of logistics and sea transportation services for the vehicle manufacturing industry in Europe with an extensive route network to transport all sorts of rolling cargo to most destinations in Europe.

According to current figures, UECC is a short sea operator which transports approximately 1,8 million new vehicles a year on behalf of the global automotive industry. As a major logistics provider, UECC is able to offer total management solutions, which encompass the full transport chain, from the manufacturing plant through to the final retail destination. In addition to a fleet of over 20 specially-designed vessels, UECC also operate the own vehicle handling centres and provide full tracking information at unit level using the latest IT-systems.

UECC is owned in equal shares by Nippon Yusen Kabushiki Kaisha (NYK) of Tokyo, one of the world's largest shipping companies, and by Wallenius Lines of Stockholm, a Swedish shipping enterprise.

(3) Beltship Management AS

Beltship Management is a company which operates a highly specialised fleet of so-called self-unloading bulk carriers. Beltship Management was established in 1997 as a 50/50 partnership between Jebsens Shipping Company and Heidelberger Zement Group of Germany. The company is located in Bergen, Norway. Beltships has 9 vessels at their disposal, mainly with independently operated belt self-unloaders. Most of the vessels operate in the North Sea basin and in the Mediterranean. Beltship Management has been involved in the development of TurboRouter since 1999, and has used the tool for optimizing fleet scheduling in the North Sea basin since then[17].

4. Description of the relationship between the four grants of aid and the Norwegian aid scheme for industrial R&D programmes

According to the information provided by the Norwegian authorities, the four grants of aid covered by the present Decision received aid within the framework of the aid scheme "Industrial R&D Programmes" (*brukerstyrte forskningsprogrammer*).

a) The aid scheme Industrial R&D Programmes

Prior to the entry into force of the EEA Agreement, the Norwegian authorities established an aid scheme called "Industrial R&D Programmes" (*brukerstyrte forskningsprogrammer*) which was administered by the RCN. According to the information provided by the Norwegian authorities, this scheme covered awards of aid in the form of direct grants to research programmes of 3-5 years duration, either thematic or sector-oriented, implemented through a variable number of projects.

In December 1994, the Authority adopted a Decision on several aid schemes for research and development existing in Norway prior to the entry into force of the EEA Agreement, amongst others, the aid scheme Industrial R&D Programme (*brukerstyrte forskningsprogrammer*, case no 93-183). In this Decision, the Authority proposed

[16] Information issued from UECC's website: www.uecc.com.
[17] Information issued from "TurboRouter, Vessel schedule optimizing software", a publication from Marintek.

appropriate measures to bring the scheme in line with the state aid rules of the EEA Agreement[18]. In this Decision, the Authority noted that:

"Clear guidelines or specific provisions of a binding nature have not been developed for the scheme. Awards of aid are granted at the discretion of the responsible authorities within the framework of the Research Council's society rules."

In order to bring the scheme in line with the state aid rules, the Authority proposed to Norway, in particular, the introduction of detailed provisions which would ensure that awards of aid were granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines.

The Decision reads as follows:

"1.(i) The Norwegian authorities shall introduce detailed provisions for the schemes listed in Annex I to this decision which ensure that awards of aid are granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines. This means that the provisions must

- *distinguish between the different types of R&D activities by providing definitions for basic industrial research as well as for applied research and development in line with the provisions of paragraph 14.1(2) of the State Aid Guidelines,*

- *define the aid intensities in such a way that as a general rule aid for basic industrial research does not exceed 50% and that aid for applied research and development does not exceed 25% of the eligible costs. These intensities can, if so desired, be adjusted according to the principles laid down in the State Aid Guidelines and*

- *define the eligibility costs for the purpose of calculating the aid intensity in compliance with the definitions in paragraph 14.5(1) of the State Aid Guidelines."*

Norway accepted the appropriate measures proposed by the Authority by letter dated 19 December 1994. The acceptance of appropriate measures implied that the award of aid under the Industrial R&D Programme would be done in accordance with the provisions of the Authority's R&D Guidelines as they were drafted in 1994. Following the wording of the Authority's Decision No 217/94/COL, this is in particular the case when it concerns the definition of the different types of R&D activities, the aid intensities and the eligible costs.

In the framework of the current preliminary investigation, the Norwegian authorities have stated that, as a follow-up of the acceptance of the appropriate measures, the RCN developed provisions to ensure that aid was awarded in compliance with Chapter 14 of the State Aid Guidelines on R&D aid. This set of rules is called DOKSY, *"Aid intensities in accordance with EEA rules"*. According to the information provided by the Norwegian authorities, Doksy is a set of provisions adopted by the RCN which correspond mainly to the R&D Guidelines of the Authority. It serves as the basis guidelines for the granting of R&D aid by the RCN.

[18] Decision of the EFTA Surveillance Authority No 217/94/COL of 1.12.1994. The schemes covered by this decision were: Industrial R&D Contracts (case 93-147) and Public R&D Contracts (case 93-182) granted by the SND and Industrial R&D Projects (case 93-181) and Industrial R&D Programs (case 93-183) granted by the RCN.

It is regrettable that the Norwegian authorities did not provide the amended version of the scheme Industrial R&D Programmes to the Authority for its review[19]. Notwithstanding this, it is the understanding of the Authority that the Norwegian authorities amended the set of rules called Doksy in accordance with the amendments of Chapter 14 of the Authority's State Aid Guidelines.

b) The Research Council of Norway

The aid granted to the undertakings for the four projects was granted by the RCN, which is the responsible body in charge of the aid scheme Industrial R&D Programmes.

According to its own statement[20], the RCN is a national strategic body and funding agency for research and innovation activities. The RCN covers all fields of research and innovation and works together with research institutions as well as the private and public sectors to reach the national financial goals and quality targets set in this area.

The RCN plays a vital role in developing and implementing the country's national research strategy. It acts as

- a government adviser, identifying present and future needs for knowledge and research, and recommending national priorities;

- a funding agency for research programmes and independent projects, strategic programmes at research institutions, and Norwegian participation in international research activities. The RCN has an annual budget of some NOK 4,5 billion and utilises specifically-targeted funding schemes to help translate national research policy goals into action;

- a co-ordinator, initiating networks and promoting co-operation between research institutions, ministries, business and industry, public agencies and enterprises, other sources of funding, and users of research.

II. APPRECIATION

1. Introduction: the applicable legal framework

According to the information submitted by the Norwegian authorities, the four projects which are assessed in this Decision were granted R&D aid in the framework of the Industrial R&D Programme (*brukerstyrte forskningsprogrammer*, case no 93-183). As mentioned above, the Industrial R&D Programme was already in place before 1994. Following the entry into force of the EEA Agreement in Norway, the Authority assessed the Industrial R&D Programme together with other existing aid schemes and adopted Decision No 217/94/COL in December 1994. In this Decision, the Authority proposed appropriate measures with respect to the Industrial R&D Programme to mainly require that awards of aid would be granted in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines.

19 According to the Decision, "The Norwegian authorities must inform the EFTA Surveillance Authority on the adoption of such provisions [the appropriate measures], insofar as these involve state aid, before they are put into effect."

20 Information taken from the website of the RCN at http://www.forskningsradet.no/english/

The Norwegian authorities accepted the proposed appropriate measures. Thus, thereafter, any grant of aid under the Industrial R&D Programme had to be done in accordance with the R&D rules applicable when the Authority adopted Decision No 217/94/COL.

The R&D rules applicable when the Authority adopted Decision No 217/94/COL were Chapter 14 of the State Aid Guidelines as adopted in 1994 (hereinafter referred to as the R&D Guidelines of 1994[21]).

Hence, by definition, any aid granted under the scheme Industrial R&D Programmes which does not comply with the provisions of the version of the R&D Guidelines applicable in 1994, when the Authority proposed the appropriate measures which Norway accepted, falls outside the scope of application of the scheme. Accordingly, such a measure would constitute new individual aid and would as such need to be notified to the Authority individually.

In this context it is important to note that the present decision only concerns the application of the scheme Industrial R&D Programmes to the four concrete projects identified as relating to the development of the software programme Turborouter on which a complaint was lodged in 2002.

Should the granting of aid to the four questioned projects not be covered by the scheme Industrial R&D Programmes as explained above, each of the projects would need to be assessed individually. In this assessment, the Authority would have to determine whether state aid was granted in each of the projects and whether this aid could have been considered compatible aid on the basis of the provisions of the R&D Guidelines applicable at the time where the grants were given or directly on the basis of the rules of the EEA Agreement.

As far as Project 40049 *"Strategic activities within maritime transport and logistics"*, which led to the development of the first software programme Turborouter, is concerned, the aid was granted by a decision of the RCN of December 1995. The applicable rules governing the granting of R&D aid were Chapter 14 of the Authority's State Aid Guidelines as originally adopted in Decision No 4/94/COL. In other words, the provisions of the scheme Industrial R&D Programmes as amended following the appropriate measures of the Authority should correspond to the provisions of the generally applicable R&D Guidelines in 1995, when aid was granted to Project 40049. Thus, should the granting of aid to this project not have been done in compliance with these rules, the aid will have to be considered incompatible aid, unless its compatibility can be established on the basis of the state aid provisions in Article 61(3) (a), (b) or (c) of the EEA Agreement directly.

As far as the other three projects assessed in this Decision are concerned, they received aid on the basis of decisions taken by the RCN in 2000. Prior to that date, the Authority had amended Chapter 14 of the Guidelines with Decision No 53/96/COL adopted on 15.05.1996 to incorporate the amended Community Framework for state aid for research and development[22]. Thus, an individual assessment of the granting of aid to Projects

[21] In January 1994, the Authority had taken Decision No 4/94/COL on the adoption and issuing of the 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). Chapter 14 thereof deals with Aid for research and development, which mainly corresponded to the Community framework for state aid for research and development. This Decision was published on the Official Journal L 231 of 03.09.1994, pages 1 to 84.

[22] Published in the OJ No C 45 of 17.02.1996, pages 5 to 16.

138811 *"AlgOpt"*, 144265 *"Shiplog II"* and 144214 *"Library of optimisation routines for scheduling in shipping"* as individual aid should be done in accordance with the provisions of the version of Chapter 14 of the Guidelines existing since May 1996 or directly on the basis of the state aid rules in Article 61(3) (a), (b) or (c) of the EEA Agreement.

2. State aid assessment of the projects

Article 61(1) of the EEA Agreement states that:

"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.´

Thus, in order for a measure to be considered state aid, it must constitute a selective advantage in favour of certain undertakings, be granted through state resources, distort competition and affect trade between the Contracting Parties to the EEA Agreement.

Firstly, the measure must confer on certain undertakings an advantage that reduces the costs they normally bear in the course of business and relieves them of charges that are normally borne from their budgets. By paying grants to support certain R&D projects, the RCN confers an economic advantage only on the promoters of the selected R&D projects.

Secondly, the advantage must be granted by the State or through state resources. The RCN develops and implements the country's national research strategy and specially acts as a funding agency for research. In particular, for the development of the Maritime research programme, the RCN managed funds received from the Ministries of Trade and Industry and of Finance. Thus, the public funds channelled through the RCN and which were obtained from the above-mentioned ministries constitute state resources within the meaning of Article 61(1) of the EEA Agreement.

Thirdly, the measure must distort competition. Since there are other Norwegian undertakings which compete with the promoters of the selected R&D projects that may not receive support from the RCN to carry out their R&D projects, the granting of aid has the effect of distorting competition.

Moreover, the beneficiaries of the financing are active in sectors open to competition within the EEA. Therefore, the funds granted by the RCN for the development of R&D projects affect trade between the Contracting Parties to the EEA Agreement.

For these reasons, the grants given by the RCN to the projects related to the development of the software programme Turborouter constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

Whether the four projects fall within the existing aid scheme will be assessed under a).

Under b), the Authority will assess whether the aid grants, if outside the existing aid scheme, nevertheless are in compliance with the state aid rules.

a) Assessment of the projects on the basis of the aid scheme Industrial R&D Programmes

The RCN granted financing to the above-mentioned projects in the framework of the aid scheme Industrial R&D Programmes, which the Authority classified as state aid within the meaning of Article 61(1) of the EEA Agreement in its Decision No 217/94/COL of 1 December 1994.

As mentioned above, the Norwegian authorities accepted the appropriate measures proposed by the Authority to bring the aid scheme Industrial R&D Programmes in line with the rules of the EEA Agreement in a letter dated 19 December 1994. They accordingly committed to amend the aid scheme Industrial R&D Programmes in accordance with the R&D Guidelines of 1994.

In the following, the Authority will assess whether the granting of aid to the four projects in question falls within the provisions of the scheme Industrial R&D Programmes as amended in accordance with R&D Guidelines of 1994.

As a preliminary remark, the Authority would like to point out that, in general terms, according to the information available to the Authority at this stage, the RCN does not seem to control how the own contributions of the beneficiaries are distributed to various activities and whether they are effectively disbursed. This type of control seems crucial in the determination of whether the beneficiaries receive aid in the amount they are entitled to or whether, on the contrary, they are misusing the RCN's research grants.

(1) The development of the first version of the software programme Turborouter

On the basis of the information provided by the Norwegian authorities, the RCN classified Project 40049 Strategic activities within maritime transport and logistics as industrial research. According to Point 14.1.(2) of the R&D Guidelines of 1994, basic industrial research is defined as *"original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular enterprise."*

Although, according to the information submitted by the RCN, the project consisted of activities which were classified as fundamental research as well as other activities which were classified as industrial research, the project as a whole was considered as industrial research.

The development of the first software programme Turborouter, a tool useful for companies to optimise vessel fleet scheduling, was developed as the result of one of the sub-projects covered by Project 40049. Further, the project was exclusively carried out by the research institute Marintek.

Although Turborouter has become a software tool which seems to be appreciated on the market, the RCN funds allocated to Project 40049 devoted to the sub-project "Methods and analytical tools for design and operation of integrated transport and logistics chains" only led to the development of the first software programme Turborouter, in the application of industrial research. Obviously since the first software was developed in the first phase of the sub-project back in early 1996, the software has been further improved and also marketed. However, it seems that the granting of aid to project 40049 which resulted, amongst others, in the development of the first software Turborouter, cannot by

this fact be considered in relation to market proximity to be beyond the stage of industrial research as it was classified by the RCN.

As industrial research, Project 40049 was granted aid from the RCN for an amount corresponding to 43.8% of the costs of the project. This intensity is below the maximum aid intensity allowed by the Guidelines which read *"the level of aid for basic industrial research should not be more than 50% of the gross costs of the project or programme."*

For the purpose of calculating the intensity of aid from R&D activities, Section 14.5.1 of R&D Guidelines of 1994 foresaw the following eligible costs:

> *"- personnel costs (researchers, technicians, other supporting staff) calculated as a sum of the total amount needed to carry out the project;*
>
> *- other running costs calculated in the same way (costs of materials, supplies, etc.)*
>
> *- instruments and equipment, land and buildings.*
>
> *- consultancy and equivalent services including bought-in research, technical knowledge, patents, etc*
>
> *- additional overhead costs incurred directly as a result of the R&D project or programme being promoted."*

It seems that the costs of the projects, as they were taken into account in the determination of the granting of aid, are *a priori* covered by the definition of eligible costs provided in the R&D Guidelines of 1994.

Therefore, it appears that the RCN had classified Project 40049 as basic industrial research in accordance with the provisions of the R&D Guidelines of 1994.

It is the preliminary opinion of the Authority that the granting of aid to Project 40049 falls within the scheme Industrial R&D Programme as amended on the basis of Chapter 14 of the Authority's R&D Guidelines of 1994. This preliminary opinion is however without prejudice to the Authority's final conclusion.

The complainant has further claimed that the research results had not been disseminated but the research institute Marintek, which developed the software programme Turborouter, had received the property rights to sell the programme.

The Authority would like to point out that under the R&D Guidelines of 1994, and accordingly under the provisions of the aid scheme Industrial R&D Programmes, there was no written obligation to disseminate the results of research as is the case for fundamental research under the currently applicable R&D Guidelines.

(2) The projects relating to the further use of the software programme Turborouter

In 2000, the RCN authorised the granting of R&D aid to three R&D projects which concerned the use and further development of the software programme Turborouter: Project 138811 *"AlgOpt"*, Project 144265 *"Shiplog II"* and Project 144214 *"Library of optimisation routines for scheduling in shipping"*.

The Norwegian authorities have however indicated that there were other projects which involved the use and further development of the software programme Turborouter which did not receive any support from the RCN[23].

The RCN classified all three projects as pre-competitive research.

The complainant has claimed that these projects were far beyond pre-competitive development activities. In his opinion, the so-called Turborouter projects were aimed at developing software programmes developed in close co-operation with a limited number of users while in parallel being marketed towards other maritime companies in need of such programmes.

What in later versions of the R&D Guidelines has been named pre-competitive research largely corresponds to the definition of applied research and development within the meaning of the R&D Guidelines of 1994.

Point 14.1.(2) of the R&D Guidelines of 1994 distinguished between three categories of research: fundamental, basic industrial and applied research and development. According to this provision, applied research *"covers investigation or experimental work based on the results of basic industrial research to acquire new knowledge to facilitate the attainment of specific practical objectives such as the creation of new products, production processes or services. It could normally be said to end with the creation of a first prototype."* Development is considered to cover *"work based on applied research aimed at establishing new or substantially improved products, production processes or services up to but not including industrial application and commercial exploitation."*

On the basis of the information available to it at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as applied or pre-competitive research as will be shown below. In the following, the Authority will use the term "pre-competitive research" when referring to applied research and pre-competitive research.

The complainant also claimed that the maximum aid intensities had not been respected due to the fact that the own capital contributions from the concerned companies were in reality lower than stated in the application forms.

The Authority will address these allegations below for each of the projects concerned.

(a) Project 138811 – AlgOpt

- Doubts concerning the classification of the project

The Norwegian authorities explained that the AlgOpt project was a pre-study defining the user requirements and investigation of the feasibility of using Turborouter for Beltship Management, the contract partner of the project. According to the information provided by the Norwegian authorities, this project was considered as a sort of "pre-project" to Project 144214, Library of Optimisation routines for scheduling in shipping, which will be addressed below.

[23] See chart "Projects involving development of Turborouter" handed over by the RCN during the meeting with representatives of the Authority held in Oslo in September 2004.

On the basis of the information available at Marintek's website, the aim of the project was to develop and carry out practical tests of algorithms to calculate the optimal utilisation of a fleet of ships.

It is questionable whether this project goes beyond the stage of applied or pre-competitive research to constitute a commercial product. This application has been developed on the basis of the software programme Turborouter incorporating algorithms to calculate the optimal utilisation of Beltship Management's fleet. It is not clear to the Authority what would make the difference between the pre-competitive phase of the product and the final commercial product. The Authority has doubts as to what is the borderline between a prototype and a commercial product in the case at hand. It is not clear from the information provided whether the result of the project financed with aid granted by the RCN was developed further before it could be used in the daily operation of the company.

- Doubts concerning the financing of the project and the aid intensities

The Authority would like to point out that there is a slight discrepancy between the figures provided by the Norwegian authorities in the written information submitted to the Authority concerning the financing of the AlgOpt project and the information presented in the application forms for grant to the RCN also forwarded by the Norwegian authorities as follows:

Table 1: Information provided by the Norwegian authorities on their letter of 11.04.2003

Costs	
Personal and indirect costs	545 000
Purchase of R&D	380 000
Other operating costs	100 000
Total	1 025 000

Financing	
Own financing	625 000
Other private means	75 000
RCN	325 000
Total	1 025 000

Table 2: Information provided by the Norwegian authorities in the annex to their letter of 11.04.2003

Costs	
Personal and indirect costs	545 000
Purchase of R&D	380 000
Other operating costs	-
Total	925 000

Financing	
Own financing	625 000
RCN	300 000
Total	925 000

The Norwegian authorities are invited to comment on these figures. They are also invited to provide the correct information concerning the amount of money which the Norwegian Shipowners' Association invested in the AlgOpt project which is included in the amount granted through the RCN in the table above. This information is of the essence when it comes to assessing the aid intensity of the project.

Following the arguments of the complainant, there is a doubt as to whether the real research cost of the project corresponded to NOK 380 000 instead of the amount claimed by Beltship Management in its application for a grant from the RCN, *i.e.* NOK 925 000.

This doubt is substantiated by comparing the figures concerning the costs of the project and its financing. Beltship Management contributes with own means amounting to NOK 625 000 to the financing of the project. According to the information contained in the application form to the RCN, this sum is divided as NOK 80 000 in cash and NOK 545 000 as contribution in kind. The later corresponds exactly to the personnel and indirect costs of the project whereas the cash contribution together with the aid granted by the RCN (NOK 300 000) pays the purchase of R&D which costs NOK 380 000.

It seems that it is Marintek, the research institute that developed the first software programme Turborouter, which had the necessary know-how and technological competence to do the project. Therefore, it appears rational to assume that most of the work would have been carried out by its own staff. This would imply, in principle, that the participation of the staff of Beltship Management, which was the final user of the software, would have most probably been related to the definition of the users needs and/or to some degree of testing.

Although it seems questionable to what extent the staff of the company can carry out activities classified as research activities, the R&D Guidelines of 1994 did not require that staff be employed solely on the research activities for these costs to be eligible for aid.

Notwithstanding this, comparison of the costs of the project shows that the total contribution of Beltship Management's staff to the project which amounted to 545 000 NOK is more important and costly than the development of the R&D which was acquired from Marintek for a total of 380 000 NOK. It seems questionable to what extent the staff of the company has carried out research activities or whether these costs rather concerned normal operational activities of the company. The Authority would appreciate documentary evidence which can substantiate that the hours behind these research costs were actually used in the project.

To the extent that Beltship's contribution in kind may not have corresponded to research costs, the overall costs of the research project would be lower and the aid intensities accordingly higher.

(b) Project 144265 – Shiplog II

<u>- Doubts concerning the classification of the project</u>

According to the information provided by the Norwegian authorities, the main objective of Shiplog II was to develop a pilot demonstrator of door-to-door logistics management in the shipping of chemicals and cars.

According to Point 14.1.(2) of the R&D Guidelines of 1994, applied research covers investigation or experimental work based on the results of basic industrial research which

could normally be said to end with the creation of a first prototype. The Authority has doubts whether the definition of applied research covers cases such as this where the pilot demonstrator or prototype seems to be very close to what the final product would have been. According to the information submitted by the Norwegian authorities, the integration of the Transport Chain Management System (TCMS) and Turborouter, the main objective of this project, failed.

- Doubts concerning the financing of the project and the aid intensities

A comparison of the figures corresponding to the project costs and its financing shows that the amount granted by the RCN equals the sum necessary to purchase R&D. Further, the contribution of UECC's (own financing), the company in charge of the project, corresponds to the personnel and indirect costs. The rest of the gross costs of the project covers equipment and other operating costs and equals the financing brought by the other companies participating in the project.

The Norwegian authorities have contended in their letter dated 22 August 2005 that *"in order to promote cooperation [between private companies and public R&D institutions] we may in some calls for proposals for industry-driven projects, state that the application will be evaluated favourably if the external purchases of R&D from research institutes (institutes or universities) are at least as high as the support given by the RCN."*[24]

The Authority questions whether the figures for the total project costs have been inflated to seemingly obtain more financing. It is questionable whether this approach has led beneficiaries to include part of their normal operating costs in the R&D costs allocated to the research projects financed with support from the RCN.

Should this be the case and should the R&D project in reality only correspond to the purchased R&D, the intensity of the aid granted would have to be revised. It would then be necessary to assess whether the revised aid intensity falls within the parameters of the Industrial R&D Programme.

(c) Project 144214 – Library of optimisation routines for scheduling in shipping

- Doubts concerning the classification of the project

According to the information provided by the Norwegian authorities, in this specific project the requirements of Beltship Management and another company, Iver Ships, were used as an example to gain some more experience from this kind of scheduling software in shipping organisations. This could have been of great value to Marintek's further development of Turborouter. Even if the requirements of these two companies would not be the same as for other shipping companies, it would be possible to build on some main principles in the used algorithms.

The Authority has difficulties in understanding which are the determining features of this project in classifying it as applied research and not as a commercial project.

During the preliminary investigation, the Norwegian authorities have argued that the result of the activities in any of the projects classified as applied or pre-competitive research cannot be exploited commercially and sold to other users because they are company-specific applications. According to the information provided by the Norwegian authorities,

[24] See page 1 in the letter from the Norwegian authorities dated 22.08.2005.

Turborouter will never be an “off-the-shelf” product but will always need, by definition, further adaptations.

The Norwegian authorities acknowledge the difficulty in distinguishing between a commercial and a pre-competitive product where the result of the activity is not a physical product but a new, altered or improved process, service or procedure to be used internally. In their opinion, the activity that has created these results may be classified as a pre-competitive development activity if it is not part of the day-to-day operation of the company and not part of routine or periodic changes or improvements.

The borderline between a pilot project, which could not be used commercially, and a commercial final product seems very diffuse in the case at hand because the software needs to be adapted anew for each new application specific to each final user. The Authority questions to what extent the further development of the software programme Turborouter for use in developing applications which serve concrete needs for the final users can be covered by the definition of applied research. It is not clear to the Authority what would be considered as a commercial product and what would fall under a prototype regarding the concrete application of the software programme Turborouter to the specific needs of a given company.

The Authority doubts whether, due to the specific characteristics of the software programme Turborouter, the development of each new application necessarily goes beyond the stage of pilot project to be a new commercial product or whether, on the contrary, it constitutes applied research.

Furthermore, although the project as such was considered pre-competitive research, the RCN classified certain activities within Project 144214 “Library of optimisation routines for scheduling of shipping” such as map chart status or the writing and publishing of articles as industrial research. The correctness of this classification seems doubtful.

- Doubts concerning the financing of the project and the aid intensities

As was the case of the previously mentioned projects, the comparison of the figures provided for as the cost and financing of the project raises doubts as to whether the project only concerns research activities or whether it covers part of the operational costs of the company, in this case of Beltship Management and Iver Ships.

From the information provided by the Norwegian authorities, it seems that the object of the project was to allow Marintek to use the two companies as an example to gain some more experience from this kind of scheduling software in shipping organisations. In principle, this would imply that the majority of the research work will be done by Marintek itself. It is the understanding of the Authority that this research done by Marintek is covered by the rubric “Purchase of R&D” in the costs of the project and amounts to NOK 2 900 000. It follows logically that the work of the personnel has an auxiliary function, to provide the researchers with the experiences acquired “on the job” while using the software tool Turborouter. In the understanding of the Authority, this information should serve as a basis for the research of Marintek and should be processed into new algorithms for advanced optimisation and scheduling of shipping operations. It does not seem that the aim of the project was the development of a given prototype or pilot demonstrator. In such a situation, it seems unusual that the costs of personnel and indirect costs are higher than the cost of purchasing R&D.

The Authority welcomes any comment regarding this issue.

(3) The necessity to open the formal investigation procedure

On the basis of the information available at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as pre-competitive development activities or whether, on the contrary, they were already too close to the market to be eligible for state aid.

Furthermore, the Authority has doubts concerning the financing of the projects, in particular regarding the effective disbursement of the own contributions in kind of the beneficiaries of the projects.

In light of the above, the Authority has doubts both as to whether the above-mentioned projects have received aid in compliance with the R&D Guidelines of 1994 and as to whether the beneficiaries have used the aid in contravention of the accepted appropriate measures on the scheme Industrial R&D Programmes. On the basis of the definition in Article 1(g) in Part II of Protocol 3, aid used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) or Article 7(3) or (4) constitutes misuse of aid. This definition covers, in the Authority's view, individual aid awards within a scheme approved by the Authority by means of appropriate measures.

According to Article 4(4) in Part II of Protocol 3, the Authority shall decide to initiate the formal investigation procedure where, after a preliminary investigation, it finds that doubts are raised as to the compatibility of a measure with the functioning of the EEA Agreement. Furthermore, according to Article 16 in Part II of Protocol 3, the Authority may in cases of misuse of aid open the formal investigation procedure pursuant to Article 4(4) in Part II of Protocol 3.

With regard to the correct classification of the projects and the respective aid intensities, should the Authority find out in the course of this formal investigation that the above-mentioned projects have received aid which was not awarded on the basis of the aid scheme Industrial R&D Programmes, it will consider these projects as individual aid awards which were not notified to the Authority in due time. Any aid which is put into effect in contravention of Article 1(3) in Part I of Protocol 3, *i.e.* that was not notified and authorised by the Authority prior to being put into effect, is considered unlawful aid by virtue of Article 1(f) in Part II of the same Protocol.

Both in the case of misuse of aid and of the granting of unlawful aid which is incompatible with the state aid rules of the EEA Agreement, the aid will have to be recovered from the beneficiaries.

b) Assessment of the projects as individual aid grants

(1) Introduction

Should the granting of financial support by the RCN to the projects concerning the development of the software programme Turborouter not be covered by the aid scheme Industrial R&D Programmes, as assessed above, these measures will constitute individual aid and should have been notified in accordance with Article 1(3) in Part I of Protocol 3 and will have to be assessed individually.

(2) Compatibility

At this stage of the procedure, the Authority is not in the position of determining whether the granting of aid to the projects related to the further development of the software programme Turborouter can be considered compatible on the basis of the provisions of the R&D Guidelines as amended by the Authority with Decision No 53/96/COL[25]. For this reason, in the following, the Authority will only recall provisions which may seem relevant for a possible assessment of these grants in light of the R&D Guidelines.

On the basis of the provisions of Chapter 14 of the State Aid Guidelines *"Aid for research and development"*, aid granted to firms for R&D may be regarded as compatible with the functioning of the EEA Agreement by virtue of Article 61(3)(c) of the EEA Agreement which provides a derogation for aid that facilitates the development of certain economic activities as long as it does not adversely affect trading conditions to an extent contrary to the common interest.

State aid for R&D should serve as an incentive for firms to undertake research activities in addition to their normal day-to-day operations[26]. In order to verify that the planned aid will induce firms to pursue research which they would not otherwise have pursued, the Authority takes particular account of quantifiable factors such as changes in R&D spending or in the number of people assigned to R&D activities, market failures, other additional costs connected with cross-border cooperation and other relevant factors.

When examining the compatibility of an aid for research and development, under the R&D Guidelines, the Authority pays special attention to the type of research carried out, the beneficiaries, the aid intensity or the accessibility to the results. The closer the aid is to the market, the more significant the distortive effect of the state aid may be.

In order to determine the proximity to the market of the aided R&D, the Authority makes a distinction between fundamental research, industrial research and pre-competitive development activity. By pre-competitive development activity is meant[27] *"the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. It may include conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation*". The permissible gross aid intensity for such activities is fixed at 25 % of the eligible costs.

According to Point 14.5.9 of the R&D Guidelines, in cases of R&D activity spanning industrial research and pre-competitive development activities, the permissible aid intensity will not normally exceed the weighted average of the permissible aid intensities applicable to the two types of research.

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[25] Should the granting of R&D aid to Project 40049 fall outside the scheme Industrial R&D Programmes, its compatibility as individual aid can only be established on the basis of the EEA Agreement directly (see page 12 of this Decision).

[26] See Section 14.7 Incentive effect of R&D aid in Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

[27] See Annex I to Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

However, in the event of failure of the research concerned, the Authority, in line with past practice, may allow a higher level of aid intensity since the project's failure reduces the risk of competition and trade being distorted[28].

Under Annex II to Chapter 14, the R&D Guidelines, the Authority revised the concept of eligible costs for the purpose of calculating the aid intensity to cover:

- personnel costs (researchers, technicians and other supporting staff employed solely on the research activity)

- cost of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity

- cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources

- additional overheads incurred directly as a result of the research activity

- other operating expenses (e.g. cost of materials, supplies and similar products) incurred directly as a result of the research activity.

Should the granting of aid to any of these projects not be considered compatible on the basis of the R&D Guidelines of 1996 or on another state aid provision of the EEA Agreement, any illegally granted aid will have to be recovered from the beneficiaries, pursuant to Article 14 of Protocol 3.

3. Conclusion

In light of the above, the Authority has doubts as to whether all or any of the above-mentioned four projects have received aid in compliance with the R&D State Aid Guidelines.

In particular regarding the projects related to the further development of the software programme Turborouter, on the basis of the information available to it at this stage of the procedure, the Authority is not in the position of ascertaining whether these projects were correctly classified as pre-competitive development activities or whether, on the contrary, they were already too close to the market to be eligible for state aid.

The Authority has doubts regarding the real research costs of the projects. Should the Authority, in the framework of the current investigation, find out that they were lower than alleged in the application for funding to the RCN, the aid intensities will have to be reviewed.

Furthermore, the Authority also has doubts regarding the effective disbursement of all contributions in kind from the beneficiaries.

The two concerns mentioned above with respect to the pre-competitive research projects may lead to the conclusion that aid could have been granted for an amount exceeding 25% of the real costs of the project. As far as the industrial research project is concerned, this percentage can reach 50%. Any amount exceeding this figure not covered by the state aid rules on R&D aid might need to be recovered.

[28] See Section 14.5.6 in Chapter 14 of the State Aid Guidelines, R&D Guidelines, as amended in 1996.

The Authority also doubts whether the beneficiaries have used the aid in contravention of the accepted appropriate measures on the scheme Industrial R&D Programmes.

Therefore, in accordance with Articles 4(4), 10 and following and 16 in Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3. The decision to open proceedings is without prejudice to the final decision of the Authority.

The Norwegian authorities should inform Marintek, Beltship Management, UECC and any other beneficiary of possible state aid by means of a copy of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure pursuant to Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement regarding the R&D aid granted by the Research Council of Norway in connection with the development of the software programme Turborouter.

Article 2

The Norwegian Government is invited, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement to submit its comments on the opening of the formal investigation procedure within one month from the notification of this decision.

Article 3

Other Contracting Parties to the EEA Agreement and interested parties shall be informed by the publishing of a meaningful summary and the full text of this Decision in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication of this Decision.

Article 4

The Authority requests the Norwegian authorities to forward a copy of this letter to the recipients of the aid immediately.

Article 5

This Decision is addressed to the Kingdom of Norway.

Article 6

This Decision is authentic in the English language.

Done at Brussels, 8 March 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kurt Jaeger
College Member