

Event No: 373391
Case No: 59745
Dec. No: 147/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION
OF 17 MAY 2006
ON THE WOOD SCHEME
("VERDISKAPNINGSPROGRAMMET FOR TRE")
NORWAY

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, 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 Justice², in particular to Article 24 thereof and Article 1(2) in Part I of Protocol 3 thereof,

Having regard to the Authority's Guidelines³ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapters 14 and 25 thereof as well as to the block exemption Regulations on aid for training and aid to small and medium-sized enterprises, respectively, as well as to the Regulation on *de minimis* aid,⁴

¹ Hereinafter referred to as the "EEA Agreement" or "EEA".

² Hereinafter referred to as the Surveillance and Court Agreement.

³ 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 L 231, 3.9.1994, p. 1, EEA Supplement No. 32, 3.9.1994, p. 1, last amended by the Authority's Decision No. 69/06/COL of 22 March 2006 on reference and discount rates (hereinafter referred to as the "State Aid Guidelines").

⁴ Commission Regulation (EC) No. 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ L 10, 13.1.2001, p. 20 as amended by OJ L 63, 28.2.2004, p. 20); Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33 as amended by OJ L 63, 28.2.2004, p. 22); and Commission Regulation (EC) No. 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30). The latter Regulation replaces the previous Chapter 12 in the State Aid Guidelines (adopted by the Authority's Decision No. 54/96/COL of 15 May 1996, OJ L 245, 25.9.1996, p. 28). All Regulations have been incorporated into Annex 15 (in Sections 1(d)-(f)) to the EEA Agreement by means of Joint Committee Decision No. 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Suppl. No. 49, 3.10.2002, p. 42) and Joint Committee Decision No. 131/2004 (OJ L 64, 10.3.2005, p. 67 and EEA Supplement No. 12, 10.3.2005, p. 49).

Whereas:

I. FACTS

1. Procedure

By letter dated 1 February 2005 (Event no: 307555) the EFTA Surveillance Authority (the “Authority”) received a complaint (the “Complaint”) from a trade association for the Norwegian masonry and concrete industry, “byggutengrenser.no” (the “Complainant”). In the Complaint, which was both received and registered by the Authority on 3 February 2005, the Complainant alleges that the Norwegian state is granting state aid to the wood construction industry on the basis of “Verdiskapningsprogrammet for tre”, also referred to as “Treprogrammet” (hereinafter referred to as the “Wood Scheme”).

By letter dated 27 April 2005 (Event No: 313418), the Authority requested information from the Norwegian authorities. The Norwegian authorities responded by letter dated 27 May 2005, enclosed in a letter from the Norwegian Mission to the European Union dated 1 June 2005, received and registered by the Authority on 1 June 2005 (Event no: 323464).

The Authority requested further information by letter dated 31 August 2005 (Event no: 323451) to which the Norwegian authorities responded by letter dated 29 September 2005, enclosed in a letter dated 3 October 2005 from the Norwegian Mission to the European Union, received and registered by the Authority on 5 October 2005 (Event no: 345465).

In addition hereto, during the months of November and December 2005 and January 2006 the Authority and the Norwegian authorities have had informal contact both via telephone and electronic mail regarding the Wood Scheme. Information received by the Authority in this context has been consolidated by the Norwegian authorities in a letter dated 3 March 2006, enclosed in a letter dated 8 March 2006 from the Norwegian Mission to the European Union, received and registered by the Authority on 9 March 2006 (Event no: 365992).

2. Description of the measures

2.1 Objective and administration of the Wood Scheme described in preparatory legislative works

The White Paper of 1998-99

The aim of the Wood Scheme is set out in a White Paper from the Government to the Parliament on the creation of value and opportunities within the forest sector (St. meld. nr. 17 (1998-99 “Verdiskapning og miljø – muligheter i skogssektoren”) – hereinafter referred to as the “White Paper”.

The aim of the White Paper was to establish a general policy for a rational and sustainable utilization of forest resources and to increase the forest sectors’ contribution to the national economy and the general development of the Norwegian society. The White Paper proposed the introduction of various measures in order to achieve this goal – one of which was the Wood Scheme. In this respect the White

Paper proposed the establishment of a five-year scheme for purposes of creating value within the sector of woodwork and the (wood) processing business. More specifically, the White Paper foresaw that the aim of the Wood Scheme should be to increase the creation of value in forestry and the (wood) processing business as well as to increase the contribution of the forest sector to achieve a more sustainable production and consumption.⁵ Within these objectives, focus of the Wood Scheme should be on (i) improving the processing of woodwork; (ii) increasing the use of woodwork; and (iii) improving relations on different levels of trade between the forest sector and the market.⁶ The White Paper also stated that focus of the new scheme should be on identifying possibilities in the areas of product development, design and architecture and that the scheme should pave the way for enabling woodwork to be considered as an attractive building material with a wide range of utilization purposes to a higher extent than up until presently.⁷ Finally, on a more general level the White Paper pointed out that the aim of increasing value in the processing business for woodwork should be achieved internally (i.e., within Norway).⁸

Recommendation (1998-1999) and Working Group Report

The framework for the establishment of the Wood Scheme was laid down in further detail in a recommendation from a Parliamentary standing committee addressed to the Parliament (Innst. S. nr. 208 (1998-1999)), dated 3 June 1999 (hereinafter referred to as the “Recommendation”). The Recommendation suggests, amongst others, that a working group should be established in order to lay down the strategies, implementation and financing needs of the new scheme.

Shortly afterwards in July 1999 a “Working Group” was established, composed of, amongst others, representatives from the Ministry of Agriculture, trade associations for producers of timber and forest owners (respectively), research and development institutions as well as companies in the sector. The Working Group issued a report (the “Working Group Report”) on 14 April 2000 on the content, organisation and financing of the Wood Scheme as well as on the issue of inviting for cooperation from sector relevant organisations.

The Working Group Report recalls the objectives of the Wood Scheme referred to in the White Paper and the aims at which the Wood Scheme should be focused (of improving the processing of woodwork; increasing the use of woodwork; and improving relations on different levels of trade between the forest sector and the market).⁹ The Working Group Report further specifies that the scheme should be

⁵ Section 7.3.3 of the White Paper.

⁶ Section 7.3.3 of the White Paper.

⁷ Section 2.4.1 of the White Paper.

⁸ Section 6.1.1 of the White Paper. Regarding the focus on Norwegian industry Section 6.1.1 of the White Paper also states that (translated by the Authority): *For purposes of increasing the creation of value it is important to consider both the possibility of reducing costs on the levels of processing as well as sales and to increase and improve the use/exploitation of woodwork produced in Norway.*

⁹ Section 2.1 of the Working Group Report defines the forest based value chain (or the forest sector) as all operators involved from the stump to the end-user. “Forest” covers the supply side (forest owners and associations of such) and the commercial level (forest entrepreneurs, including terrain transport, timber measurement and turnover, forest culture work, operational planning etc.). “Production” covers all processing of timber into products suitable for end-users but with a focus on the wood mechanical processing chain (covering traditional work in sawmills and carpentry and further processing into doors, windows, staircases and other building elements as well as the production of wood furniture, wooden houses and manually produced productions). The “market” covers the end-users but includes

limited to the processing chain between the forest sector and the mechanical wood processing industry but should also include the supply of raw material to the wood processing industry (e.g. to improve quality, precision and steady deliveries).¹⁰ The Working Group Report also states that it is an objective that the Wood Scheme is focused on Norwegian wood resources and that improvements are achieved within the Norwegian (wood) processing business.

The Working Group Report places the responsibility for administration and implementation of the Wood Scheme with (i) “*Statens nærings- og distriktsutviklingsfond*”, generally referred to as “*SND*” (which was reorganised and renamed “*Innovasjon Norge*” as of 1 January 2004); and (ii) a management group (the “*Management Group*”) composed of market operators, appointed by the Ministry of Agriculture.¹¹

The tasks of the Management Group is to ensure engagement from the value chain; verify that the activities within the scheme correspond to its aim and strategies; develop and turn the strategies into concrete actions; decide on overall priorities (such as with regard to areas to be focused on or target groups); and to contribute to the development of new strategic initiatives and active communication in order to obtain initiatives and engagement. The Management Group shall also cater for the interests of the businesses participating in the scheme. In the Working Group Report it is explained how the businesses - by means of the Management Group – will enjoy a central role in the strategic development of the scheme thereby ensuring active participation by business in the development and execution of the scheme. The Management Group must prepare annual reports on the implementation of activities and development of the scheme. The reports are forwarded to the Ministry of Agriculture and constitute the basis both for the process of preparing the budget within the Ministry and the preparation of guidelines to SND.¹²

Finally, it appears from the Working Group Report that while during an initial phase initiatives are taken on the basis of funding under the Wood Scheme, later on, initiatives should come from the operators who must assume responsibility for the projects.¹³ All actions are to be realised in the form of projects, and proposals for projects are evaluated by reference to financing and the relevant objectives and criteria of the Wood Scheme.

2.2 Legal basis and annual budgets

It appears from the state budgets that the Wood Scheme is financed by the Ministry of Agriculture (renamed the “*Ministry of Agriculture and Food*” as of 30 September 2004) via annual awards over the state budget. Specific details on the financing of the Wood Scheme were laid down in the Government proposal to the Parliament,

also different trading levels and other operators in the forest based production system, such as subcontractors of goods and services to forestry and the forest based industry.

¹⁰ Section 1.4 of the Working Group Report which also states that the Wood Scheme does not cover forest culture, infrastructure, transport, fields, forest products for green decoration purposes and bio energy which are to be addressed via other measures by the Government.

¹¹ Sections 1.5, 6.2 and 6.3 of the Working Group Report. The Ministry of Agriculture also defines the mandate of the Management Group.

¹² Sections 1.5, 6.2 and 6.3 of the Working Group Report.

¹³ Section 4.7 of the Working Group Report.

containing the state budget for the year 2000 (St. prp. nr. 1 (1999-2000)) where funding for the Wood Scheme was included in Chapter 1142 as item 71.¹⁴

The state budgets for the following years earmarked amounts for the years 2001, 2002, 2003, 2004 and 2005 for the Wood Scheme.¹⁵ In the first four years (2000-2003, both inclusive) funding for the Wood Scheme was earmarked under item 71 in Chapter 1142 of the state budget, whereas in the last two years (2004 and 2005) funding for the Wood Scheme was earmarked under item 71 in Chapter 1149 of the state budget.

In a letter dated 29 September 2005 the Norwegian authorities have informed the Authority that the budgets for the Wood Scheme for the financial years from 2000 to 2005 have been as follows:

Table 1 Annual budget

Year	Budget mill. NOK	Consents mill. NOK
2000	17	8,8
2001	25	25,7
2002	20	18,0
2003	36	39,4
2004	35	28,3
2005	33	(not available yet)
Total	166	-

Grants have been paid out within three years after the year that a consent (“*tilsagn*”) was given and upon completion of the project by the recipient. If a budget of a certain year would not be fully spent the remaining amount could be carried over to the subsequent year. Hence the total amount covering consents given in any one year may be higher than the budget amount in the same year.

Co-financing

Grants under the Wood Scheme to projects are conditional upon contributions by the recipients in the form of financing and work force.¹⁶ There is no general minimum requirement for co-financing; rather the share of it differs depending on the objectives and character of the project. However, the Norwegian authorities have stated that as aid under the Wood Scheme is granted in accordance with the aid intensities set forth in the State Aid Guidelines – which according to a table prepared by the Norwegian authorities – provide for a maximum rate of 75% of eligible costs, the co-financing consists in the remaining percentage. Nonetheless, projects may also be fully financed by the Wood Scheme, namely those which are addressed to the wood sector in general and where (according to the Norwegian authorities) the measure cannot be attributed

¹⁴ See also revised budget (St. prp. nr. 61 (1999-2000)). The Wood Scheme has been referred to in different manners including “*Treprogrammet*” and “*Verdiskapningsprogrammet for tre*” or by means of the original Recommendation from the Standing Committee to the Parliament (Innst. S. nr. 208 (1998-1999)).

¹⁵ 2001: St. prp. nr. 1 (2000-2001) and revised budget (St. prp. nr. 84 (2000-2001)); 2002: St. prp. nr. 1 (2001-2002) and revised budget (St. prp. nr. 1 Tillegg nr. 4 (2001-2002)); 2003: St. prp. nr. 1 (2002-2003) and revised budget (St. prp. nr. 65 (2002-2003)); 2004: St. prp. nr. 1 (2003-2004) and revised budget (St. prp. nr. 63); 2005: St. prp. nr. 1 (2004-2005) and revised budget (St. prp. nr. 65 (2004-2005)).

¹⁶ Sections 1.4 and 7.1 of the Working Group Report.

to individual undertakings and results in a modest benefit only to an individual undertaking. An example of this, which has been referred to by the authorities, is the grant of NOK 125.000 to Norsk Treteknisk Institutt to a project for the product development of planed panels for internal use. The Norwegian authorities stated that results are accessible for its member companies, but that, in any event, much of Norsk Treteknisk Institutt's information is generally accessible via its library.

The Norwegian authorities have pointed out that although projects are co-financed, it is clear that the relevant activities/projects would not have taken place had it not been for the grants awarded under the Wood Scheme. The grants under the Wood Scheme are precisely aimed at triggering (or encouraging) contributions and resources from those operators who might pursue projects covered by the objectives of the Wood scheme.¹⁷

2.3 Recipients of support under the Wood Scheme

The Working Group Report provides that the Wood Scheme should be directed towards companies and other operators with concrete projects, falling within the strategies and work areas of the scheme and which contribute to increased value creation.¹⁸

The Norwegian authorities have further specified that the Wood Scheme is open to all relevant industries (referred to as “*mechanical wood-based industries and a variety of companies*”) and industries which can contribute to goal achievement within the Wood Scheme, such as industries exploring the use of wood in combination with other materials. Within these parameters the scheme is open to private persons, companies, authorities, unions, research and educational institutions, irrespectively of their country of establishment.

The Norwegian authorities have provided the Authority with two lists on the allocation of amounts granted under the Wood Scheme. The first list contains an overview of the amounts granted to recipients by consent over the period 2000-2004 (“List 1 of Overview of Grants”). The second list also includes the consents given during 2000-2004 but contains further details, such as the amounts that have been “annulled” and the amounts actually paid out to recipients (“List 2 of Overview of Grants”).

2.4 Eligible costs and aid intensity

General

In general the Norwegian authorities have stated that grants under the Wood Scheme have been awarded in compliance with the State Aid Guidelines such as Chapter 14 on aid for research and development and Chapter 25 on regional aid, or in accordance with the block exemptions for small and medium-sized enterprises (“block exemption Regulation on SMEs”) or training aid (“block exemption Regulation on training aid”) unless the grant would qualify to be considered as *de minimis* under the previous

¹⁷ Section 7.1 of the Working Group Report. See also bullet point 3 in Section 7.2 of the Working Group Report and the third paragraph of Section 4.7 where it is stated that the financing by the Wood Scheme must function as a trigger for projects.

¹⁸ Section 4.6 of the Working Group Report.

Chapter 12 in the State Aid Guidelines or the subsequent Regulation on *de minimis* aid (the “*de minimis* Regulation”).¹⁹

More specifically, the Norwegian authorities have stated that the Wood Scheme does not fund “...*investments in fixed or intangible assets nor ordinary day-to-day operations.*” but that “*The Wood Scheme may fund consultancy services for competence building and network building; product- and process-development etc.*” In this regard it appears from the Working Group Report that “*The Wood Scheme shall finance ‘soft’ investments, that is, development of skills, networking, product- and process development (but not for machines) communication solutions, including IT-infrastructure (but not machinery) market development and the like. The scheme should normally not contribute support to physical investments.*”²⁰

Eligible costs

As regards eligible costs the Norwegian authorities have stated that grants under the Wood Scheme are awarded to eligible projects that “... *contribute to goal achievement within the strategies and work areas of the program*” and which trigger innovation. As regards strategies it appears from the Working Group Report that the following three strategies should be employed in order to achieve the objectives of the Wood Scheme. Each of the strategies should be implemented by means of the activities specified below each strategy.²¹ The costs of such activities are therefore eligible for funding under the Wood Scheme.

- (i) Profile making & communication strategy (that is, to create engagement and willingness to develop the value chain, attract competence, people and capital, increase the visibility and active profiling of the forest and woodwork, focus on the advantages of wood as a material and information dissemination).

Measures to be used to implement this strategy include campaigns which represent the forest/wood business in a positive manner, information dissemination via design/architecture journals with wood as a profile and the provision of information to professional users, universities and teaching institutions and consumers. Other measures include the establishment of an Internet wood portal and a network for purposes of channelling information throughout the value chain while also functioning as a general information resource as well as the establishment of meeting points both nationally and regionally to cater for research & development groups, architects, designers, IT oriented groups, trend researchers, innovators and investors etc.

- (ii) Product development & novelties strategy (covering the realisation of new possibilities, ideas and initiatives, contributing to innovation and new creations).

¹⁹ Regulation Nos. 68/2001 (on training aid), 70/2001 (on small and medium-sized enterprises); and 69/2001 (on *de minimis* aid). The *de minimis* Regulation replaced the previous Chapter 12 of the State Aid Guidelines. See references to all Regulations and Chapter 12 of the State Aid Guidelines in footnote 4.

²⁰ Translation (by the Authority) of the second bullet point in Section 7.2 of the Working Group Report. The Norwegian authorities have added that “*These principles have been followed and communicated to the beneficiaries.*”

²¹ Sections 4.1- 4.4 and 5 of the Working Group Report.

Measures to be used include structural development programs, the establishment of business fora directed at small companies, innovation projects connected to different teaching institutions, design/architect competitions, development of new products within new market segments (such as the recreation market; facilities/infrastructure for “public areas”; wood products for health care etc.) and development projects which focus on generating profits in the value chain (such as raw materials, side products, wood trade and electronic trade). Other measures include the establishment of a forum and structures for developing novelties & innovation, student projects for innovation and architect & design competitions to increase the use of specific wood materials.

- (iii) Cooperation and efficiency strategy (covering the improvement in the channelling of goods and processes in the value chain and in cost efficiency, value creation and profitability as well as the optimal use of human resources and infrastructure).

Measures include the development of an integrated system of logistics to improve the timing for distribution of goods and the quality and price of products, information technology to save costs on the sale/distribution level and the development of IT systems for communicating throughout the value chain to improve quality. Other measures include competitions, preparatory studies on the development of an integrated IT system and the digitalisation of information on goods throughout the value chain, competence programmes on cost efficiency in value development as well as (measures for) the generation of profits in the field of forest, wood industry and trade.

Specifically as regards research and development, the Norwegian authorities have stated that as the documents on which the Wood Scheme is based do not set forth any conditions which must be met in order for a research and development project to be eligible for support, case handlers have assessed projects on a case-by-case basis by reference to the project description given by applicants and Chapter 14 of the State Aid Guidelines. In this context the Norwegian authorities have stated that eligible costs could include personnel costs (researchers, technicians & assistance personnel, exclusively used for the research and development activity), instruments, equipment, working space and buildings (permanently and exclusively used for the research and development activity); consultancy assistance and corresponding services (exclusively used in the context of the research and development activity) and administration directly related to the research and development activity. Other eligible costs could be operating expenses such as materials, supplies and similar products which are directly related to the research & development activity.

Aid intensity

The Norwegian authorities have stated that: “*When aid to consultancy services is granted, the aid intensity lies within 50% of eligible costs, development projects (R&D) are funded within 35/25% of eligible costs depending on the size of the recipient.*”. The authorities have subsequently added that it is assumed that the aid intensity must be 50% when financing projects are addressed to undertakings, and that to the extent that grants have exceeded 50% it has been for purposes of projects with a general and common purpose in which case the Norwegian authorities have

considered that the grant does not constitute illegal state aid under Article 61 of the EEA Agreement, or that the amount qualifies as *de minimis*. However, the Norwegian authorities have also (in the context of co-financing) referred to a maximum aid intensity of 75% albeit without linking this aid intensity to a specific set of guidelines.²²

The Norwegian authorities have maintained that grants under the Wood Scheme have been implemented on the basis of the ceilings referred to in the following table (translated by the Authority) which according to the Norwegian authorities contains an overview of previously notified and approved schemes.

Attachment No. 3 Overview – funding rates applicable to the Wood Scheme
Maximum funding rates for schemes administered by Innovation Norway – size of enterprises and aid areas.

- () indicates that the scheme is only exceptionally relevant for the stated purposes and/or type of undertakings
- Up to 100.000 Euro may be granted under all schemes on the basis of the rules on *de minimis* aid

Measure - Scheme	Purpose	SMEs (<250 employees and two other criteria)		Large undertakings
		Small enterprises (<50 employees and two other criteria)	Medium-sized enterprises (<250 employees and two other criteria)	
Country-wide innovation scheme	Investments	15%	7,5%	0
	Soft aid	50%		0
	Training aid (shall not be given from LI for the moment)	(Specific/general - 35% / 70%)		(specific/general - 25 % / 50%)
	R&D:			
	• Development activities for commercialisation	35%		25%
	Technical preparatory studies	75%		50%
	• (Individual Research, Technical preparatory studies)	(60% / 75%)		(50% / 75%)
OFU/IFU	R&D:			
	• Development activities for commercialisation	35% (regional area + 5%)		25% (regional area + 5%)
	Technical preparatory studies	75%		50%
	• (Individual research, Technical preparatory studies)	(60% / 75%)		(50% / 75%)
Contribution to county municipalities for regional development	Investments:			
	• Zone A	30%		25%
	B	25%		20%
	C	20% (25%)*		10% (15%)
	Soft aid	50%		0
	Training aid	Specific/general - 40% / 75%		Specific/general - 30% / 55%
	R&D:			
	• Development activities for commercialisation	40%		30%
	Technical			

²² See Section 2.2 above.

Measure - Scheme	Purpose	SMEs (<250 employees and two other criteria)		Large undertakings
		Small enterprises (<50 employees and two other criteria)	Medium-sized enterprises (<250 employees and two other criteria)	
	preparatory studies • (Individual Research, Technical preparatory studies)	75%		55% (55% 75%)
Rearrangements and new creations	Investments: • Outside reg. area • Within reg. area	15%	7,5%	0
	Soft aid: • Outside reg. area • Inside reg. area	Zone A: 30%, B: 25% and C: 20% (25%)**		Zone A: 25%, B: 20% and C: 10% (15%)
	Training aid: • Outside reg. area • Inside reg. area	50%		
	R&D: <i>Outside reg. area:</i> • Development activities for commercialisation Technical preparatory studies • (Individual research, Technical preparatory studies) <i>Inside reg. area:</i> • Development activities for commercialisation Technical preparatory studies • (Individual research, Technical preparatory studies)	Specific/general - 35% / 70%	Specific/general - 40% / 75%	Specific/general - 25% / 50%
Establishment grant	De minimis aid	Max. NOK 400 000 (in spec. cases more but not over 100 000 Euro)		

* Up to 25%/15% may be used for measures which can be expected to have a strong effect from a district policy point of view. In the counties of Vest-Agder, Rogaland and Hordaland the aid threshold may not be in excess of 20%/10%.

** Up to 25%/15% may be used for measures which can be expected to have a strong regional effect. In the counties of Vest-Agder, Rogaland and Hordaland the thresholds may not be in excess of 20%/10%.

The references to “zone” refer to the areas eligible for regional aid according to the Authority’s Decision on the regional aid map for Norway.²³

²³ The Authority’s Decision 327/99/COL of 16 December 1999 on the map of assisted areas and levels of aid (Norway).

2.5 *De minimis* aid

As regards *de minimis* aid the Norwegian authorities have submitted a list of those who in their view have received grants under the Wood Scheme that qualify as *de minimis* (the “*de minimis* List”). In this regard the Norwegian authorities have specified that it is the date that the authorities gave the consent (“*tilsagn*”) which determines whether the previous Chapter 12 of the State Aid Guidelines on the *de minimis* rule, or the subsequent *de minimis* Regulation, is applicable to the grant in question. Moreover, the authorities have explained that when aid has been granted as *de minimis* aid the consent letter, sent to the aid recipient, contains a reference to the *de minimis* threshold and time frame as well as to the obligation of the aid recipient to inform of aid received from other sources within three years from the point in time at which the consent to be granted aid was given.²⁴

2.6 Commencement of scheme and duration

The Norwegian authorities have stated that the Wood Scheme was operational as of 1 July 2000 (i.e., the date as of which applications for support could be made) and should remain in force for five years.²⁵ This is also stated in the comments to the proposal for the State Budget in St. prp. nr. 1 (2000-2001) from which it appears that the Wood Scheme entered into force in the second quarter of 2000.

2.7 Trade in wood products

It appears from the White Paper from the Government to the Parliament on the creation of value and opportunities within the forest sector that Norway exports its wood products to the EU. In this regard it is specifically stated in Section 4.3 of the White Paper that “*Norway exports approximately 85-90% of the wholesale production of wood and paper products and approximately 35% of the timber production. Supplies to EU countries amount to 70% and 90% of total exports. Any strategies or political interventions within the EU which can effect EUs import of forest industry products could have large consequences for the Norwegian forest sector.*”²⁶ Moreover, it appears from Eurostat statistics that wood products are extensively traded in the EU.²⁷ Finally, it appears from statistics produced by

²⁴ This information request is phrased in the following manner: “*EØS-regelverket - opplysningsplikt Tildelingen av tilskuddet skjer i henhold til reglene for bagatellmessig støtte. Ved eventuelle nye søknader om offentlig støtte (uansett støttekilde) har støttmottaker plikt til å opplyse om dette tilskuddet. Opplysningsplikten gjelder i 3 år fra tilsagnstidspunktet. Støttmottakeren må ikke motta mer enn til sammen 100.000 Euro (ca. kr 815.000,-) i støtte etter reglene for bagatellmessig støtte over et tidsrom på 3 år.*”

²⁵ The Working group Report also states that the Wood Scheme should be operational from the second quarter in the year of 2000 and remain in force for five years onwards.

²⁶ Translation by the Authority of the following quote: “*Norge eksporterer ca 85-90% av produksjonen av tremasse og papirprodukter og ca 35% av trelast-produksjonen. Leveransene til EU-land utgjør henholdsvis 70% og 90% av eksporten. Eventuelle strategier eller politiske vedtak innen EU som kan påvirke EUs import av skogindustriprodukter vil kunne få store konsekvenser for den norske skogsektoren.*”

²⁷ Statistics produced by EUROSTAT for the years between 1999 and 2004, covering both imports and exports of various varieties of refined wood and timber within the EU (where value is expressed either in thousands of cubic meters or tons), shows that there is extensive trade within the EU of wood products. The relevant statistics are (i) intra EU-25 imports and exports of round wood; “table fores51”; (ii) intra EU-25 imports of wood pulp and paper and paperboard; “table fores62”; (iii) intra-EU 25 exports of woodpulp “table fores62”; (iv) intra-EU 25 imports of sawnwood and wood based panels;

“Statistics Norway” (“*Statistisk sentralbyrå*”) that Norway also imports substantial amounts of timber, processed wood and wood products (“*Tømmer, trelast og kork...*”) from the EU into Norway.²⁸

II. APPRECIATION

1. The presence of state aid

As a preliminary point, the Authority considers that the Wood Scheme falls within the scope of the EEA Agreement. This view is based on the fact that it appears from Article 8(3) of the EEA Agreement that the EEA Agreement applies to the products listed in Chapters 25 to 97 of the Harmonised Commodity Description and Coding System, and the fact that wood and articles of wood are covered by Chapter 44 thereof. As support under the Wood Scheme is granted to the woodwork processing business and related wood industries the Authority takes the position that the scheme is within the scope of the EEA Agreement.

1.1 State aid within the meaning of Article 61(1) EEA

Article 61(1) of the EEA Agreement provides 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.*”

To be termed state aid, within the meaning of Article 61(1) EEA a measure must meet the following four cumulative criteria: The measure must (i) confer on recipients an economic advantage which is not received in the normal course of business; (ii) the advantage must be granted by the State or through State resources and must (iii) be selective by favouring certain undertakings or the production of certain goods; and (iv) distort competition and affect trade between Contracting Parties. In the following it is examined whether the four cumulative criteria are met in the present case.

1.2 Economic advantage

The measure must confer on recipients an economic advantage which is not received in the normal course of business.

Under the Wood Scheme the Norwegian authorities award financial grants to companies, authorities, unions, etc. which can contribute to the objectives under the scheme. The undertakings receiving such grants receive an economic advantage, i.e., a grant, which they would not have received in their normal course of business.

1.3 Presence of State resources

“table fores61”; and (v) intra-EU exports of sawnwood “table fores61”. All available at <http://europa.eu.int/comm/eurostat> or via contacting EUROSTAT via their web-site.

²⁸ See the webpage: <http://www.ssb.no/muh/tab15-01.shtml> which shows table 15, entitled, “*Trade with selected countries by two-digit SITC. Jan - mar 2006. Million kroner*”.

The advantage must be granted by the state or through state resources.

The grants awarded under the Wood Scheme are financed by the Ministry of Agriculture (renamed the “Ministry of Agriculture and Food” as of 30 September 2004) and is therefore financed by the state.

1.4 Favouring certain undertakings or the production of certain goods

The measure must favour certain undertakings or the production of certain goods.

It appears from various legislative preparatory works (such as the White Paper, the Recommendation and the Working Group Report), leading up to the state budgets and the establishment of the Wood Scheme, that the scheme is aimed at improving value in (i) the wood processing business; and (ii) the relations on different levels of trade between the forest sector and the market (which includes the supply of raw material to the wood processing industry) along with a general aim of increasing the actual use of woodwork.

Thus grants under the Wood Scheme are awarded only where it is considered that they may benefit the wood processing sector and related wood industries as well as the supply of raw material to such industries. The Wood Scheme favours therefore undertakings within the wood industry sector and is hence selective in nature. In this respect the European Court of Justice has held that a measure may be selective even if it covers (undertakings in) an entire sector.²⁹

It should be noted that although grants under the Wood Scheme may also be awarded to undertakings in other industries (for example where industries explore the use of wood in combination with other materials), this option is open only for such industries which can contribute to the overall aim of the Wood Scheme of generally improving value in the wood processing business. The Authority therefore considers that even this option is ultimately aimed at favouring undertakings in the wood processing industries and related wood industries.

1.5 Distortion of competition and effect on trade between Contracting Parties

The measures must distort competition and affect trade between the Contracting Parties.

Under the Wood Scheme the Norwegian authorities award grants to undertakings in the wood processing (and related) industries. Moreover, the Norwegian industry exports a large share of its wholesale timber and refined wood products (up to 90%) to other EEA countries where wood products are extensively traded. In addition, Norway also imports timber, processed wood and wood products from the EU. In such circumstances, the grant of support to undertakings under the Wood Scheme will strengthen the position of the recipients compared to other undertakings which are located in Norway or in other EEA countries and competing in the wood processing (and related) businesses. Moreover, since wood is merely one of the raw materials

²⁹ Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 33, Case C-66/02 *Italy v Commission* of 15 December 2005, not yet published, paragraph 95, Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finn fjord, Pil and others and The Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, page 121, paragraphs 77-79.

used in the construction business, grants received by construction companies under the Wood Scheme will strengthen and reinforce their position compared to other undertakings competing in the construction business.³⁰

On this basis, the Authority considers that the grant of financial support to undertakings under the Wood Scheme will distort competition and affect trade.

1.6 Conclusion

In the light of the above, the preliminary conclusion of the Authority is that the Wood Scheme satisfies the test of Article 61(1) of the EEA Agreement and hence involves state aid. The Authority also takes the view that as the Wood Scheme is an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner, it qualifies as an aid scheme within the meaning of Article 1(d) in part II of Protocol 3 to the Surveillance and Court Agreement.

2 Compatibility of the aid

As the preliminary conclusion of the Authority is that the Wood Scheme satisfies the test of Article 61(1) of the EEA Agreement and hence involves state aid, it has to be examined whether the Wood Scheme may be considered compatible with the functioning of the EEA Agreement under Article 61(2) or (3) of the EEA Agreement.

2.1 Compatibility with Article 61(2) EEA

It appears that none of the exceptions under Article 61(2) EEA apply in this case as the Wood Scheme is not aimed at the objectives listed in those provisions.

2.2 Compatibility with Article 61(3) EEA

A state aid measure is considered compatible with the functioning of the EEA Agreement under Article 61(3)(a) EEA when it is designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. However, as there are no such areas defined by the Norwegian regional aid map, this provision is not relevant.³¹

Moreover, the exception in Article 61(3)(b) EEA does not apply since the state aid granted under the Wood Scheme is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Norway.

However, the exception laid down in Article 61(3)(c) EEA which provides that state aid may be considered compatible with the common market where it facilitates the development of certain economic activities or of certain economic areas and does not

³⁰ See in this respect Case 730/79 *Philip Morris v Commission* [1989] ECR 2671, at paragraph 11 where it is stated that “When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid.”

³¹ The Authority’s Decision 327/99/COL of 16 December 1999 on the map of assisted areas and levels of aid (Norway).

adversely affect trading conditions to an extent contrary to the common interest, may be applicable.

Regional aid

Undertakings become eligible for aid under this provision when they are established in certain regions defined by the Norwegian regional aid map, referred to above, and when the conditions set out in Chapter 25 of the State Aid Guidelines are met. However, the documents which establish the Wood Scheme (e.g. the state budgets, White Paper, Working Group Report etc.) do not contain any provisions which refer to the regional aid map for Norway or the conditions set out in Chapter 25 of the State Aid Guidelines.

The Norwegian authorities have, however, stated that the Wood Scheme has (in practice) been implemented on the basis of the (regional aid) ceilings referred to in the table entitled “Attachment No. 3 Overview – funding rates applicable to the Wood Scheme” (included in Section 2.4 in Part I on “Facts”). However, the Authority observes that this table does not contain any supplementing information on the application of the ceilings, such as a description of eligible costs. The Authority can therefore not reassure itself that grants awarded under the Wood Scheme are in accordance and compatible with Chapter 25 of the State Aid Guidelines on regional aid.

Aid for research and development in Chapter 14 of the State Aid Guidelines

In Chapter 14 of the State Aid Guidelines aid granted to firms for research and development may be regarded as compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) EEA. Chapter 14 sets out the definition of different types of research and development, such as “*fundamental research*”, “*industrial research*” and “*pre-competitive development activity*” and the aid intensities which apply.

However, the documents which establish and implement the Wood Scheme do not contain any definition or requirements as regards the type of research and development for which support may be granted, nor do they describe the costs which are considered as eligible or set out any ceilings on the maximum amount of aid which may be granted.

The Norwegian authorities have stated that aid for research and development activities have (in practice) been granted in accordance with the rules set forth in Chapter 14 of the State Aid Guidelines and that research and development projects are funded within 35/25% of eligible costs, depending on the size of the recipient. However, the Norwegian authorities have also provided statements referring to other aid intensities, such as 50% when financing projects are addressed to undertakings; and 100% where the grant was assumed not to qualify as aid either because the activity could not be attributed to individual undertakings or qualified as *de minimis*.³² Moreover, in the context of co-financing the Norwegian authorities have referred to a maximum aid intensity of 75%.

³² See Sections 2.4 and 2.2 above.

As regards the eligible costs the Norwegian authorities have stated that they could include personnel costs, instruments, equipment, working space & buildings, etc. While these are costs referred to as eligible costs in Chapter 14.6 of the State Aid Guidelines, the Authority recalls that grants under the Wood Scheme may also be awarded to support the costs of a range of other elements such as campaigns, information dissemination, establishment of Internet portals & networks, meeting points for specific groups, development projects with focus on value generation and systems of logistics and on digitalisation.

On the basis of the above the Authority cannot reassure itself that grants awarded under the Wood Scheme are in accordance with Chapter 14 of the State Aid Guidelines for research and development.

Compliance with the block exemption Regulations on SMEs and training aid

Aid granted in compliance with the block exemption Regulations on SMEs and/or on training aid is considered compatible with the functioning of the EEA Agreement and is exempt from the notification requirement provided that the scheme fulfills all the conditions of the relevant block exemption Regulation and contains an express reference to it (by citing its title and publication reference in the Official Journal of the European Communities; now the Official Journal of the European Union).³³

However, neither the state budgets nor the Working Group Report or any of the other legislative preparatory works regarding the Wood Scheme include a reference to the application of the block exemption Regulation on SMEs nor to the block exemption Regulation on training aid. Moreover, the Authority has not received any information from the Norwegian authorities on the application of any of the block exemption Regulations for publication in the Official Journal of the European Union.

On this basis the Authority takes the preliminary view that the Norwegian authorities have not complied with the formal requirements in the block exemption Regulations with respect to the Wood Scheme.

Compatibility directly under Article 61(3)(c) EEA on the basis of the material principles in the block exemption Regulations.

The Authority may assess the Wood Scheme directly under Article 61(3)(c) EEA in the light of the material principles established in the block exemption Regulations on SMEs and training aid for purposes of determining whether the Wood Scheme may be considered compatible with the functioning of the EEA Agreement.

However, neither the state budgets or any of the other legislative preparatory works regarding the Wood Scheme provide that support must be granted to companies qualifying as SMEs, or contain a definition of this term. Nor do they provide that support must be granted to training aid or contain a definition of the latter.

The Norwegian authorities have, on the other hand, stated that the Wood Scheme has (in practice) been implemented on the basis of the ceilings referred to in the table entitled “Attachment No. 3 Overview – funding rates applicable to the Wood Scheme” (included in Section 2.4 in Part I on “Facts”). However, this table does not

³³ See Article 3(3) in the block exemption Regulations on SMEs and on training aid, respectively.

contain any supplementing information on the application of the ceilings, such as a description of eligible costs. The Authority can therefore not reassure itself that grants awarded under the Wood Scheme have been based on a practice which are in accordance with the material principles on the grant of aid to SMEs.

On this basis the Authority takes the preliminary view that even taking into account the material principles set out in the block exemption Regulations the Authority has doubts that the Wood Scheme is compatible with the functioning of the EEA Agreement under Article 61(3)(c) EEA.

2.3 Conclusions

In view of the fact that the Authority cannot establish that the Wood Scheme qualifies for any of the exemptions provided for in the EEA Agreement, the Authority therefore has doubts that the Wood Scheme could be considered compatible with the functioning of the EEA Agreement.

The documents submitted to the Authority which establish and implement the Wood Scheme do not contain sufficiently specific definitions of the type of projects for which support may be granted, descriptions of eligible costs or ceilings on the maximum amount of aid which may be granted. However, the Norwegian authorities may have an administrative practice to implement the Wood Scheme in accordance with the State aid Guidelines and the material principles in the block exemption Regulations. In the light of this the Norwegian authorities are invited to submit any information showing that internal instructions or other authoritative orders have been issued for purposes of implementing the Wood Scheme in compliance with the principles set out in the State Aid Guidelines or material principles in the block exemption Regulations.

However, the Authority wishes to point out that even if such an administrative practice could be demonstrated the Authority reserves its right to take a position on whether the Wood Scheme may be considered compatible under Article 61(3)(c) in view of the existence of the practice under the Wood Scheme to grant 100% support to projects where the grant was assumed by the administering authority not to qualify as aid because the activity could not be attributed to individual undertakings and considered to result in a modest benefit only to an *individual* undertaking. Indeed in the example given in Section 2.2 (in Part I on “Facts” under “*co-financing*”) where the Wood Scheme financed 100% of the costs of a development project, the presence of state aid cannot be excluded merely because the results were made available to “member companies”. The Norwegian authorities are invited to submit any further information it may have in respect of this practice, including on the existence of any eventual internal instructions to implement the Wood Scheme in this manner.

3. *De minimis* aid

The Norwegian authorities have submitted that grants awarded on the basis of specific provisions under the Wood Scheme fulfil the conditions for qualifying as *de minimis* aid. In other words, according to the Norwegian authorities the Wood Scheme contains provisions setting out conditions which, when they are met, ensure that grants qualify as *de minimis* aid.

The grant of aid may qualify as *de minimis* under the previous Chapter 12 of the State Aid Guidelines or the subsequent *de minimis* Regulation (which replaced Chapter 12 as of 1 February 2003)³⁴ with the consequence that the measure does not contain state aid within the meaning of Article 61(1) of the EEA Agreement and that there is no obligation to notify.³⁵ As the Wood Scheme was implemented between 1 July 2000 and the end of 2005 both sets of *de minimis* rules are relevant for the scheme. According to the Norwegian authorities it is the date that the Norwegian authorities gave their consent (“*tilsagn*”) which determines whether the previous Chapter 12 of the State Aid Guidelines or the subsequent *de minimis* Regulation is applicable to the grant in question.

It appears from Article 3(1) of the *de minimis* Regulation that the national authorities can only grant *de minimis* aid after first having verified that the total amount of *de minimis* aid received by the company is not raised by virtue of other *de minimis* aid having been received during the previous three years. The previous Chapter 12 of the State Aid Guidelines contained a provision to the same effect by providing that it must be ensured that any additional aid granted to the same recipient does not raise the total amount of aid granted beyond the *de minimis* threshold. Under the *de minimis* Regulation one manner of verifying the *de minimis* threshold is by obtaining full information from the recipient on this matter. Under the previous Chapter 12 of the State Aid Guidelines the *de minimis* rule should be verified by means of a control modality (e.g. control “*machinery*”). In the view of the Authority this could likewise consist of obtaining complete information from the recipient on the matter.

Under the Wood Scheme, Innovasjon Norge has made reference to the *de minimis* rules and informed recipients of an obligation to inform the authorities of other *de minimis* aid received three years after the consent to receive *de minimis* aid was given. However, this information obligation only concerns *de minimis* aid received *after* aid has been received under the Wood Scheme, and recipients have therefore not been required to submit information on whether any *de minimis* aid has been received *prior* to receiving *de minimis* aid under the Wood Scheme. As a consequence it cannot be excluded that recipients have received other *de minimis* aid prior to the grants received under the Wood Scheme with the result that total aid may exceed the *de minimis* threshold. The Authority can therefore not be certain that aid which has been stated by the Norwegian authorities to qualify as *de minimis* aid under the Wood Scheme does indeed qualify as such. The Authority is therefore of the preliminary opinion that the provisions under the Wood Scheme, potentially constituting a *de minimis* scheme, does not comply with the *de minimis* rules.

4. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, “*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.

³⁴ The previous Chapter 12 of the State Aid Guidelines was deleted by the Authority’s Decision No. 198/03/COL of 5 November 2003, but as stated above Chapter 12 was superseded by the *de minimis* Regulation already as of 1 February 2003.

³⁵ The second paragraph of the previous Chapter 12 of the State Aid Guidelines on *de minimis* and Article 2(1) of the *de minimis* Regulation.

The Norwegian authorities have not notified the Wood Scheme to the Authority prior to implementing the scheme. The Authority observes that it has not received information from the Norwegian authorities showing that the Wood Scheme is a continuance of a previous scheme which is similar to that of the Wood Scheme in terms of substance and structure. Moreover, the Wood Scheme is not covered by any other aid scheme notified by the Norwegian authorities to the Authority. In view of the fact that the preliminary conclusion of the Authority is that the Wood Scheme involves state aid within the meaning of Article 61(1) EEA it is the preliminary opinion of the Authority that the Norwegian authorities have not respected its obligation to notify pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement. Any state aid within the meaning of Article 61(1) of the EEA Agreement which is not notified will be treated as “unlawful aid” within the meaning of Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian authorities are invited to confirm that the Wood Scheme has been terminated by referring to the specific date of its termination.

5. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority is of the preliminary opinion that the Wood Scheme constitutes aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that the Wood Scheme can be regarded as compatible with Article 61(3)(c) of the EEA Agreement in combination with the requirements laid down in Chapters 14 and 25 of the Authority’s State Aid Guidelines. Moreover, the Authority’s preliminary view is that the Norwegian authorities have not complied with the block exemption Regulations on aid to SMEs and training aid, and that the Wood Scheme cannot be approved directly under Article 61(3)(c) EEA in the light of the material principles of the block exemption Regulations. Consequently, the Authority has doubts that the Wood Scheme is compatible with the functioning of the EEA Agreement.

In addition, the Authority has doubts that the provisions under which *de minimis* aid allegedly is granted is in compliance with the previous Chapter 12 of the State aid Guidelines and the *de minimis* Regulation.

Consequently, and in accordance with Article 13(1) cf. Article 4(4) in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the Wood Scheme is compatible with the functioning of the EEA Agreement.

As the Wood Scheme has not been notified to the Authority, any aid within the meaning of Article 61(1) EEA granted under the Wood Scheme constitutes unlawful aid within the meaning of Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement. It follows from Article 14 in Part II of Protocol 3 to the Surveillance and Court Agreement that the Authority shall decide that unlawful aid which is incompatible with the state aid rules under the EEA Agreement must be recovered from the beneficiaries.

In the light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement as well as Articles 6(1) in Part II thereof, requests the Norwegian authorities to submit its comments and to provide all such information as may help to assess the aid granted under the Wood Scheme within one month of the date of receipt of this decision.

HAS ADOPTED THIS DECISION:

Article 1

The Authority has decided to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement against Norway with regard to the Wood Scheme.

Article 2

The Norwegian authorities are requested, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this decision and to provide all such information which may help to assess the Wood Scheme.

Article 3

Other EFTA States, EC Member States, and interested parties shall be informed by means of publication of this decision in its authentic language version, accompanied by a meaningful summary in languages other than the authentic language version, 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.

Article 4

This Decision is authentic in the English language.

Article 5

This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 17 May 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kurt Jaeger
College Member