EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 1 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO NORWAY ON FOUR AID SCHEMES FOR RESEARCH AND DEVELOPMENT

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area[1], in particular to Articles 61 to 63,

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

WHEREAS:

I. FACTS

1. Introduction

Article 1(1) of Protocol 3 to the Surveillance and Court Agreement provides that the EFTA Surveillance Authority shall, in co-operation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

By letter dated 4 January 1994 (ref. 94-469 D) the EFTA Surveillance Authority requested information on all existing aid measures in Norway. By letters of 4 and 24 March 1994 the Norwegian authorities provided information on such measures. As agreed in meetings held between officials from the State Aid and Monopolies Directorate of the EFTA Surveillance Authority and Norwegian authorities in Oslo 12 and 13 June 1994 additional information on aid for research and development[3] in Norway was submitted to the Authority by letter 19 August 1994.

An initial examination of the schemes covered by this decision, all listed in Annex 1, indicated that the legal provisions were not altogether compatible with the Surveillance

[1]Hereinafter referred to as the EEA Agreement.
[2]Hereinafter referred to as the Surveillance and Court Agreement.
[3]Hereinafter referred to as R&D

Authority's rules on State aid for R&D laid down in Chapter 14 of the Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994[4]. For this reason the matter was taken up at the meeting between officials from the Norwegian Ministry of Industry and Energy and the EFTA Surveillance Authority in Oslo on 11 October 1994.

2. Relevant provisions of the schemes and aid programmes covered by this decision

2.1 Case no 93-183 Industrial R&D Programmes (Brukerstyrte forsknings-programmer)

Case no 93-183 Industrial R&D Programmes is administered by the Research Council of Norway[5]. The scheme is funded over State budget chapter 920 post 70 with a total budget for 1994 amounting to NOK 623 million. The background information submitted by Norway covers relevant parts of the State budget[6], the society rules of the Research Council, the Government white paper on the Research Council[7] and information enclosed in the standard form for the Authority's inventory on existing aid.

The scheme covers awards of aid in the form of direct grants to research programmes of 3-5 years duration which are either thematic or sector-oriented and implemented through a variable number of projects. The users define which areas are of importance and set the scope for the projects.

According to descriptive information enclosed in the standard form for the Authority's inventory on existing aid submitted by Norway, current practice is broadly in line with the principles for aid to R&D laid down in Chapter 14 of the State Aid Guidelines.

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.

2.2 Case no 93-181 Industrial Projects (Brukerstyrte forskningsprosjekter)

Case no 93-181 Industrial Projects is also administered by the Research Council of Norway and funded over the same State budget line as case no 93-183 above. Total budget for 1994 is NOK 149 million.

Projects under case no 93-181 Industrial projects are typically of a relatively short duration (1-3 years) and do not have a clear thematic orientation compatible with the existing industrial R&D-programmes. The objective of case no 93-181 is to stimulate new activity in established industry and in newly established enterprises. Projects financed by this scheme comprise both national and international projects, i.a. EUREKA-projects.

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[4]Hereinafter referred to as the State Aid Guidelines
[5]Norges Forskningsråd
[6]St.prp. nr. 1 Nærings- og energidepartementet (1994-95), pages 78-93
[7]St.meld. nr. 43 (1991-92) Om endringer i forskningsrådstrukturen

Case numbers 93-183 and 93-181 appear otherwise to be administered according to the same basic principles although awards of aid are not granted on the basis of specific provisions.

2.3 Case no 93-182 Public R&D Contracts (Offentlige FoU-kontrakter)

Case no 93-182 Public R&D Contracts is administered by the Norwegian Industrial and Regional Development Fund[8]. The scheme covers awards of aid in the form of direct grants financed over State budget chapter 923 post 70. Total budget for 1994 is NOK 137 million. The background information submitted by Norway covers relevant parts of the State budget[9], information on contract terms[10], the invitation for applications by SND and information enclosed in the standard form for the Authority's inventory on existing aid.

A public R&D contract is a contract between an enterprise and a public entity for the purpose of developing a new advanced product or system. The objectives of the scheme are two-fold;

-to improve the quality and efficiency of services supplied by public entities by providing an incentive for applying new and improved technology and

-to improve the competitive edge of Norwegian enterprises by promoting R&D activities.

Individual projects may be initiated by either party to a contract and include stages of R&D activities up to i.a. the testing of a first prototype. Awards of aid shall as a rule not be granted for the purpose of developing products or services that may enter into competition with products or services already available on the market.

According to descriptive information enclosed in the standard form for the Authority's inventory on existing aid submitted by Norway, current practice is broadly in line with the principles for aid to R&D laid down in Chapter 14 of the State Aid Guidelines;

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 society rules of SND.

Officials from the EFTA Surveillance Authority remarked in the meeting with the Norwegian authorities held in Oslo 11 October 1994 that the descriptive information published by SND only refers to R&D activities which normally fall under the definition of applied industrial research and development, while awards of aid may cover up to 50 % of the eligible costs. It was held by the Norwegian authorities that practice is in line with the principles concerning aid for R&D laid down in Chapter 14 of the State Aid Guidelines and that awards of aid up to 50 % of the eligible costs is only granted for basic industrial research in accordance with these principles.

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[8]Statens nærings- og distriktsutviklingsfond, hereinafter referred to as SND

[9]St.prp. nr. 1 Nærings og energidepartementet (1993-94), pages 68-70

[10]"Alminnelige kontraktvilkår" (Forsknings og utviklingskontrakter) and "Standard kontraktvilkår for tilskudd til offentlige forsknings og utviklingskontrakter" (SND)

2.4 Case no 93-147 Industrial R&D Contracts (Industrielle FoU-kontrakter)

Case no 93-147 Industrial R&D Contracts is also administered by SND. The scheme covers awards of aid in the form of direct grants financed over State budget chapter 923 post 71. Total budget for 1994 is NOK 28 million. The background information submitted by Norway covers relevant parts of the State budget[11], information on contract terms[12], product sheet no 15 published by SND and information enclosed in the standard form for the Authorities inventory on existing aid.

Awards of aid under this scheme are primarily directed at SMEs for the purpose of developing products in co-operation with larger firms. Aid is provided for stages of R&D activities up to i.a. testing of a prototype or production of small test series. Priority is given to SMEs without established R&D activities. The proprietary rights to project results remain with the participating enterprises. Awards of aid may be granted up to a recommended maximum of NOK 2 million per project and may cover up to 35 per cent of the total costs related to the following;
-the R&D related costs carried by the firms involved in a project,
-bought in consultancy services and
-supplies for the production of i.a. a first prototype.

The Norwegian authorities hold that practice is in line with the principles laid down in Chapter 14 of the State Aid Guidelines, although binding provisions have not been developed for this purpose.

II. APPRECIATION

1. Principles for assessment

The schemes covered by this decision, as listed in Annex 1, cover aid for R&D. The activities carried out under the schemes constitute aid in the meaning of Article 61(1) of the EEA Agreement either by providing direct financial support to individual enterprises or through measures by which the benefiting enterprises do not pay the full cost of the services supplied. The EFTA Surveillance Authority has therefore been obliged to assess, as part of its constant review of existing aid under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, whether the relevant provisions of the schemes listed in Annex 1 are in line with the principles laid down in Chapter 14 of the State Aid Guidelines.

If the principles laid down in Chapter 14 are observed, aid for R&D may qualify under Article 61(3)(c) of the EEA Agreement to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

In accordance with its obligation under Article 62(1) of the EEA Agreement to keep all existing systems of aid under constant review as to their compatibility with Article 61 of

[11] St.prp. nr. 1 Nærings og energidepartementet (1993-94), pages 70-71
[12] "Alminnelige kontraktvilkår" (Forsknings og utviklingskontrakter) and "Standard kontraktvilkår for tilskudd til offentlige forsknings og utviklingskontrakter" (SND)

the EEA Agreement, the Authority aims at obtaining the highest possible degree of transparency in the application of aid schemes. This means that the legal provisions or guidelines of aid schemes must provide clear statements of the objectives to be achieved, the beneficiaries, and all different categories of costs the aid schemes are designed to reduce. In addition the aid must be given in a form which allows the aid intensity to be calculated in relation to the cost categories eligible for aid.

For the purpose of this decision, a brief outline of the basic principles on aid for R&D under the EEA Agreement laid down in Chapter 14 of the State Aid Guidelines and the aid intensities generally accepted by the Authority for aid to R&D activities is provided under point II.2 below.

2. Basic principles

Definitions

As explained in Chapter 14 of the State Aid Guidelines the EFTA Surveillance Authority's basic approach to assessing aid for R&D is to examine the nature of the R&D activities involved and to classify these activities depending on their proximity to the market place. For this purpose the Authority uses certain indicative definitions related to the following groups of R&D activities;
-fundamental research,
-basic industrial research and
-applied research and development.

In general the intensity levels of aid, which can be approved, are lower the closer the R&D activity is to the market place.

Cost categories

In order to determine the relative intensity of awards of aid for R&D, such aid schemes must include provisions which clearly indicate how the aid intensities are to be calculated with reference to the eligible costs. In accordance with section 14.5 of the State Aid Guidelines, the following cost categories are considered eligible for State aid and must therefore be identified for the purpose of calculating the intensity of aid for R&D activities:

- 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. These costs may be taken into consideration only in so far as the assets are used exclusively for R&D. Where necessary, the costs must be assessed *pro rata* between these and other projects or activities for which the assets may be used,

- consultancy and equivalent services including bought-in research, technical knowledge, patents, etc. and

- additional overhead costs incurred directly as a result of the R&D project or programme being promoted.

Aid intensities

As a general rule the level of aid for basic industrial research should not exceed 50 % of the gross costs of a project. As the activity gets nearer to the market-place, aid levels should be progressively lower. Thus, the EFTA Surveillance Authority generally accepts 25 % as the maximum aid intensity for applied research and development. If aid is given not in the form of grants, but in the form of conditional repayment credits, which can be written off only if a project has proved to be a failure, an aid ceiling of 40 % can be approved. In relevant cases of application, these ceilings can be enhanced by a 10 % top-up for small and medium-sized enterprises (SMEs), provided the enhancement is restricted to SMEs in accordance with the SME definition of the State Aid Guidelines (Chapter 10).

Reporting obligations

The EFTA Surveillance Authority aims at obtaining the highest possible degree of transparency in the application of aid schemes. For this reason and in accordance with practice established by the Commission, it is necessary for the Authority to be assured on a regular basis that existing aid schemes are operated in accordance with the rules on State aid under the EEA Agreement by way of a system of annual reporting. For this purpose, two different formats for annual reporting are enclosed as Annex III (detailed annual report) and Annex IV (simplified annual report) in the State Aid Guidelines. The annual reporting formats, enclosed as Annex 2 to this decision, comprise specific entries for schemes covered by the rules on State aid for R&D.

3. Assessment

As may be seen from points I.2.1 - 4 above, awards of aid under the schemes listed in Annex 1 are granted at the discretion of the respective responsible authorities and not subject to specific provisions. The descriptive background information concerning case numbers, 93-181, 93-182 and 93-183 has no formal status and has only been compiled by the responsible ministry for the purpose of informing the Authority. This information is therefore considered to be inadequate for the purpose of State aid control. The Authority can therefore not be assured that the responsible authorities administer the schemes listed in Annex 1 in accordance with the principles laid down in Chapter 14 of the State Aid Guidelines.

With reference to case no 93-182 Public R&D Contracts, certain background information indicates that applied research and development may be aided beyond the generally acceptable maximum of 25 per cent up to 50 per cent of the eligible costs.

Although the observations above suggest certain problems, it cannot be established whether practice in Norway concerning aid for R&D under the schemes listed in Annex 1 is in line with the rules on aid for R&D under the EEA Agreement or not. In the present situation a clear conclusion may only be drawn on the basis of an examination of individual awards of aid under each scheme.

The Authority does not aim at individual examination of awards of aid for R&D, but rather to ensure that the responsible authorities operate the aid schemes falling under their responsibility subject to provisions under which it may be expected that the rules on State aid under the EEA Agreement are observed. The Authority is of the view that the necessary degree of transparency can only be achieved if awards of aid are granted on the basis of provisions which adequately reflect the principles laid down in Chapter 14 of the State Aid Guidelines. An account of the generally accepted aid intensities is provided under point II.2 above. The Norwegian authorities must therefore lay down guidelines for this purpose with respect to all four schemes listed in Annex 1. In addition annual reports on the operation of the schemes must be submitted to the Authority.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Norway, on the basis of Article 1(1) of Protocol 3 of the Surveillance and Court Agreement, the following appropriate measures with regard to the schemes listed in Annex 1.

(i) The Norwegian authorities shall introduce detailed provisions for the schemes listed in Annex 1 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 eligible costs for the purpose of calculating the aid intensity in compliance with the definitions in paragraph 14.5.(1) of the State Aid Guidelines.

(ii) In addition, Norway must submit annual reports on the operation of the schemes listed in Annex 1. Detailed annual reports (see format marked as Annex III enclosed in Annex 2 to this decision) are requested for case numbers 93-181 and 93-183, while simplified annual reports (see format marked as Annex IV) are requested for case numbers 93-147 and 93-182. The annual reports are to be submitted to the Authority within a period of 6 months following the end of each calendar year.

2. The Norwegian authorities must inform the EFTA Surveillance Authority on the adoption of such provisions, insofar as these involve State aid, before they are put into effect.

3. The amendments are to be put into effect as soon as possible and not later than 31 March 1995.

4. The Norwegian authorities must inform the Surveillance Authority of the acceptance of the above measures by 20 December 1994.

Done at Brussels, 1 December 1994

For the EFTA Surveillance Authority

Knut Almestad
President

Heinz Zourek
College Member

Annex 1

NORWAY- AID SCHEMES COVERED BY COLLEGE DECISION 217/94/COL

Case no.	English title	Norwegian title
93-147	Industrial R&D Contracts	Industrielle FoU kontrakter (SND[13])
93-181	Industrial R&D Projects	Brukerstyrte forskningsprosjekter (NFR[14])
93-182	Public R&D Contracts	Offentlige FoU-kontrakter (SND)
93-183	Industrial R&D Programmes	Brukerstyrte forskningsprogrammer (NFR)

[13]Statens nærings- og distriktsutviklingsfond
[14]Norges Forskningsråd

Annex 2

19 January 1994

ANNEX III

FORMAT OF DETAILED ANNUAL REPORT

1. Name of scheme:

2. Date of most recent approval by the EFTA Surveillance Authority:

3. Expenditure under the scheme:

Separate figures should be provided for each form of aid in the scheme (e.g. grant, low-interest loans, guarantees). Provide figures on expenditure or commitments, revenue losses and other financial factors relevant to the granting of aid (e.g. period of loan, interest subsidies, default rates on loans net of sums recovered, default payments on guarantees net of premium income and sums recovered).

These expenditure figures should be provided on the following basis:

3.1 For year n, provide expenditure forecasts or estimated revenue losses due to tax expenditure.

3.2 For year n-1, indicate:

3.2.1 Expenditure committed, or estimated revenue losses due to tax expenditure, for new assisted projects and actual payments for new and current projects.[1]

3.2.2 Number of new recipients and number of new projects assisted, together with total amount of eligible investments and estimated number of jobs created or maintained.

3.2.3 Regional breakdown of amounts at 3.2.1 (NUTS level 2 or below).[2]

3.2.4 For each major project (estimated investment in excess of ECU 3 million) for which a commitment was made but which was subsequently shelved: amount of investment and aid proposed, and number of jobs concerned.

[1] If the figures for actual tax expenditure are not yet available, estimates should be provided and the final figures sent with the next report.

[2] The EFTA Surveillance Authority reserves the right to ask for more information at a higher level of disaggregation.

3.2.5.1 Sectoral breakdown of total expenditure by recipients' sectors of activity (according to NACE two-digit classification or equivalent national nomenclature, to be specified).

3.2.5.2 Complete only if schemes are covered by the rules for state aids for R&D:

- Breakdown of total expenditure by R&D stage (fundamental, basic industrial, applied, etc.)
- Specify the number of projects involving EEA or international cooperation
- Give breakdown of expenditure by enterprise, research centre and university.

3.2.6 To be completed only for schemes:

- not reserved exclusively for SMEs;

- not involving the automatic granting of aid. Aid is granted automatically where it is necessary only to satisfy all the eligibility conditions in order to qualify for aid or where it is shown that a public authority is not exercising its statutory discretionary right to select recipients.

Provide the following information for each of those recipients, starting with the one receiving the most aid, which account for 30% of total commitments in year n-1 (with the exception of budget appropriations earmarked for fundamental research by universities and other scientific institutions not covered by Article 61 of the EEA Agreement provided such research is not carried out under contract or in co-operation with the private sector):

- name
- address
- recipient's sector of activity (following classification referred to in question 3.2.5.1)
- amount of aid committed (or authorized where tax is involved)
- eligible cost of project
- total cost of project.

The list must contain at least 10, but not more than 50 recipients. This rule takes precedence over the 30% rule. If there are fewer than 10 recipients in the report year, they must all be listed. If there are several assisted projects per recipient, the information requested should be broken down by project. The information is not required in the case of aid subject to a ceiling where more than 50 recipients reach the ceiling. Only the level of the ceiling and the number of recipients reaching it need be given.

3.2.7 Changes (administrative or other) introduced during the year.

ANNEX IV

FORMAT OF SIMPLIFIED ANNUAL REPORT

For new aid schemes covered by the arrangement for aids covered by the accelerated clearance procedure or schemes with an annual budget of not more than ECU 5 million, give only the information requested in points 1, 2.1, 2.2.1 and 2.2.2 (very simplified report).

1. Name of scheme:

2. Expenditure under scheme:

Separate figures should be provided for each form of aid in the scheme (e.g. grant, low-interest loans, guarantees). Provide figures on expenditure or commitments, revenue losses and other financial factors relevant to the granting of aid (e.g. period of loan, interest subsidies, default rates on loans net of sums recovered, default payments on guarantees net of premium income and sums recovered).

These expenditure figures should be provided on the following basis:

2.1 For year n, provide expenditure forecasts or estimated revenue losses due to tax expenditure.

2.2 For year n-1, indicate:

2.2.1 Expenditure committed, or estimated revenue losses due to tax expenditure, for new assisted projects and actual payments for new and current projects.[1]

2.2.2 Number of new recipients and number of new projects assisted, together with estimated number of jobs created or maintained.

2.2.3 Complete only if schemes are covered by the rules for state aids for R&D:

- Breakdown of total expenditure by R&D stage (fundamental, basic industrial, applied, etc.);
- Specify the number of projects involving EEA or international cooperation;
- Give breakdown of expenditure by enterprise, research centre and university.

[1] If the figures for actual tax expenditure are not yet available, estimates should be provided and the final figures sent with the next report.

2.2.4 To be completed only for schemes:

- not reserved exclusively for SMEs;

- not involving the automatic granting of aid. Aid is granted automatically where it is necessary only to satisfy all the eligibility conditions in order to qualify for aid or where it is shown that a public authority is not exercising its statutory discretionary right to select recipients.

Provide the following information for each of the five recipients to which the largest amounts of aid were committed:

- name
- address
- recipient's sector of activity (following classification referred to in question 3.2.5.1)
- amount of aid committed (or authorized where tax is involved)
- eligible cost of project
- total cost of project.

If there are fewer than five recipients in the report year, they must all be listed. If there are several assisted projects per recipient, the information requested should be broken down by project. The information is not required in the case of aid, subject to a ceiling where more than five recipients reach the ceiling. Only the level of the ceiling and the number of recipients reaching it need be given.

2.2.5 Changes (administrative or other) introduced during the year.