

Case No: 64333  
Event No: 485753  
Dec. No: 785/08/COL

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 17 December 2008  
on the innovation aid scheme administered by the Norwegian Industry Development  
Corporation (SIVA SF)

(Norway)

**THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>**

Having regard to the Agreement on the European Economic Area<sup>2</sup>, 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<sup>3</sup>, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement<sup>4</sup>,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>5</sup>, and in particular the chapter on aid for research and development and innovation<sup>6</sup>,

Having regard to Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3<sup>7</sup>,

Whereas:

## **I. FACTS**

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<sup>1</sup> Hereinafter referred to as "the Authority".

<sup>2</sup> Hereinafter referred to as "the EEA Agreement".

<sup>3</sup> Hereinafter referred to as "the Surveillance and Court Agreement".

<sup>4</sup> Hereinafter referred to as "Protocol 3".

<sup>5</sup> 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 Authority on 19 January 1994, published in the Official Journal of the European Union (OJ L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1). Hereinafter referred to as "the State Aid Guidelines". The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>

<sup>6</sup> Hereinafter referred to as the "R&D&I Guidelines".

<sup>7</sup> Decision 195/04/COL of 14 July 2004 published in OJ L 139 of 25.05.2006 p. 37 and EEA Supplement No 26 of 25.05.2006 p. 1, as amended by Decision 319/05/COL of 14 December 2005 published in OJ C 286 of 23.11.2006 p. 9 and EEA Supplement No 57 of 23.11.2006 p. 31.

## 1 Procedure

The Norwegian authorities notified an innovation aid scheme administered by the Norwegian Industry Development Corporation (SIVA SF), pursuant to Article 1(3) of Part I of Protocol 3 by letter of 7 March 2008 (Event No 468742).<sup>8</sup>

By letter dated 25 April 2008 (Event No 474967), the Authority requested additional information concerning the notified aid scheme. The questions were discussed in a meeting between the Authority and the Norwegian authorities in Oslo on 2 June 2008. The Norwegian authorities replied to the first information request by letter dated 16 June 2008 (Event No 481722).

By letter dated 14 August 2008 (Event No 485751), the Authority requested further information concerning the scheme. The questions raised were answered by the Norwegian authorities in a letter dated 17 September 2008 (Event No 491781).

By letter dated 7 October 2008 (Event No 493372), the Authority requested further information concerning the scheme. The questions raised were answered by the Norwegian authorities in a letter dated 6 November 2008 (Event No 497658).

The Norwegian authorities have provided the Authority with further information about the scheme via e-mail.

## 2 Description of the proposed measures

### 2.1 Introduction

The Norwegian Industry Development Corporation (*Selskapet for industrivekst - SIVA SF*)<sup>9</sup> is a fully state owned company founded in 1968 with the aim to improve the national infrastructure for innovation. The Minister of Trade and Industry constitutes the company's general meeting. SIVA receives budgetary allocations from the Ministry of Trade and Industry and the Ministry of Local Government and Regional Development.

The SIVA aid scheme was initially reported to the Authority as an existing aid scheme which has been in force since before the entry into force of the EEA Agreement. On 23 November 1994, the Authority adopted Decision No 170/94/COL proposing appropriate measures to Norway with the intention of bringing the scheme into conformity with the State Aid Guidelines on aid to small and medium sized enterprises in force at that time. After the introduction of the block exemption regulation for state aid to small and medium sized enterprises in 2001, the Norwegian authorities considered that the aid scheme was covered by the block exemption.

However, after the introduction of the R&D&I Guidelines, SIVA adopted new internal guidelines modifying the scheme by tightening certain criteria (see section II-2). Consequently, the Norwegian authorities have notified the SIVA scheme under the R&D&I Guidelines as new aid.

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<sup>8</sup> Hereinafter referred to as "the SIVA aid scheme" or "the scheme".

<sup>9</sup> Hereinafter referred to as "SIVA".

## 2.2 The objective of the aid measure

According to the notification, SIVA is a national policy instrument with the objective of contributing to increased innovation, business development and employment in Norway. SIVA's aim is to help offset market imperfections in areas with a modest or uniform economic life, in particular in rural areas.

To this end, SIVA builds networks and facilitates the exchange and diffusion of knowledge, research results and innovation. SIVA's primary aim is to arrange for the establishment of structures which enable SMEs and start up enterprises to get access to consultancy and support services.

In addition, SIVA invests in innovative companies on commercial terms, working to develop business environments and foster innovation. This aspect of SIVA's activities is not part of the notification.

## 2.3 National legal basis for the aid measure

The national basis for the notified scheme can be found in the annual budget proposition to the Parliament (Parliamentary Bill No 1 (2007-2008)) and in the annual allocation letters/letters of intent from the Ministry of Trade and Industry and the Ministry of Local Government and Regional Development. In addition, the administration of the scheme is further determined by instructions for public financial management ("*Regler for økonomistyring i staten*"), in regulations for public financial management ("*Bestemmelser om økonomistyring i staten*"), the articles of association of SIVA and by SIVA's new internal guidelines for the scheme.

## 2.4 Eligible applicants

The eligible applicants for aid under the scheme are SMEs as defined in Section 2 of the Authority's guidelines on aid to micro, small and medium-sized enterprises (SMES). The aid is not granted directly by SIVA, but rather through so-called Business Gardens and Incubators.<sup>10</sup> These provide the services (listed below under section I-2.5) at reduced prices to the SMEs covered by the scheme.

## 2.5 Form of aid and eligible expenses

The eligible costs under the scheme are the following:

Aid for innovation advisory services:

- management consulting;
- technological assistance;
- technology transfer services;
- training;

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<sup>10</sup> Hereinafter referred to as "service providers".

- consultancy for acquisition, protection and trade in intellectual property rights and for licensing agreements; and
- consultancy on the use of standards.

Aid for innovation support services:

- office space;
- data banks;
- technical library services;
- market research;
- quality labelling; and
- testing and certification.

The Norwegian authorities have confirmed that the maximum aid amount per beneficiary under the scheme will not exceed EUR 200 000 within any three year period.

The aid is granted in the form of services offered at a reduced price. According to the notification, the service providers are obliged to keep separate accounts for the part of their activities which relates to the notified scheme. The activities of the service provider relating to the notified scheme are to be non-profit.

Furthermore, it follows from the guidelines of the scheme that the accounts of the service provider must ensure transparency about the full costs of the services provided as well as the price paid for these services by the beneficiaries of aid under the scheme. Hence, the aid received by the individual beneficiary can be measured and monitored.

## **2.6 Aid intensities**

The aid granted under the notified scheme will according to the notification cover maximum 75% of the eligible costs.

## **2.7 Incentive effect**

The Norwegian authorities have confirmed that when granting aid under the notified scheme, it will be ensured that the relevant R&D&I activities of the individual beneficiaries do not commence prior to their aid application.

## **2.8 Cumulation with other forms of aid**

According to the notification, applicants for aid under the scheme must report on other public aid received when applying for aid under the scheme.

Furthermore, SIVA is supplied with annual reports containing an overview of the totality of public aid received. Should the report show that an aid recipient has received aid from various sources implying that the allowed aid intensities under the scheme are not

complied with, any illegal aid must be repaid. Furthermore, grants exceeding the allowed aid intensities may result in the termination of the aid recipient's contract.

## **2.9 Budget and duration**

The annual budget of the scheme is approximately NOK 75 million (approximately EUR 8,6 million).

The duration of the scheme is until 31 December 2013.

## **2.10 Application procedure, administration and monitoring of the scheme**

SIVA is the body responsible for administering the notified aid scheme. However, aid under the scheme is not granted directly from SIVA to the beneficiaries, but from SIVA to the service providers which again offer innovation advisory and support services at a reduced price. The actual aid granted to the individual aid beneficiary is the difference between the price paid for the service provided and the market price (or a price which reflects full costs plus a reasonable margin).

SIVA has delegated parts of its powers regarding the administration of the scheme to the service providers offering services covered by the scheme. Hence, aid beneficiaries will apply for aid under the scheme directly to the service provider. However, the service providers are obliged to provide detailed annual reports to SIVA on the aid granted. SIVA monitors the scheme by reviewing the reports.

According to the notification, the funding ministries undertake evaluations in order to assess the incentive effect of the scheme over time. These evaluations have, according to the notification, shown that the scheme has had a positive effect on the level of innovation activity in the undertakings benefiting from aid under the scheme compared to other undertakings.

## **2.11 Reporting to the Authority**

The Norwegian authorities will submit annual reports to the Authority containing, for each measure, information as to: the name of the beneficiary; the aid amount per beneficiary; the aid intensity; the sectors of activity where the aided projects are undertaken, including also the information necessary to demonstrate the incentive effect of aid.

Furthermore, the Norwegian authorities will publish the full text of the final aid scheme on the internet and will communicate the internet address of the publication to the Authority.

Detailed records regarding the granting of aid under the scheme will be kept for 10 years.

# **II. ASSESSMENT**

## **1 The presence of state aid within the meaning of Article 61(1) EEA**

Article 61(1) EEA reads as follows:

*“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”*

SIVA is a fully state owned company. The notified scheme is administered by SIVA and funded through the Norwegian State Budget, and therefore using state resources. It favours certain SMEs which take part in innovation activities by providing them with certain services below market prices. Hence, the measure is selective. The aid under the scheme makes it possible for the beneficiaries to improve their overall financial condition and to strengthen their market position. Since the innovation activities cover a broad range of sectors and types of enterprise, it is likely that at least some of the beneficiaries of the scheme are engaged in intra-EEA trade. It must therefore be concluded that the aid under the scheme may distort competition and affect trade between EEA States.

Against this background, the Authority has come to the conclusion that the scheme constitutes state aid within the meaning of Article 61(1) EEA.

## **2 Procedural requirements**

The notified aid scheme was an existing scheme authorised by the Authority in 1994 (see above section I-2.1). However, changes to the internal guidelines regulating the scheme were introduced by the Norwegian authorities when the new R&D&I Guidelines were introduced.

The Norwegian authorities have informed the Authority of the following changes to the scheme stipulated in the new internal guidelines regulating the scheme. The new internal guidelines impose an obligation on SIVA to ensure that the funds must be channelled in their entirety to the affiliated undertakings; the service providers have an obligation to document that the aid has an incentive effect on the undertakings covered by the scheme; separate accounts have to be kept for other activities undertaken by the service providers; and the service providers must submit annual reports to SIVA ensuring transparency about the full costs of the services provided as well as the price paid by the affiliated undertakings. The duration of the scheme is limited to 2013.

As these changes involved an alteration of the existing scheme in a way that the scheme must be considered as “new aid” in accordance with Article 1(c) of Part II of Protocol 3, the Authority has assessed the scheme in accordance with the procedure in Articles 2 and 4 of Part II of Protocol 3.

### **3 Compatibility of the aid**

#### **3.1 Introduction**

Article 61(3)(c) EEA stipulates that aid to facilitate the development of certain economic activities may, where such aid does not adversely affect trading conditions to an extent contrary to the common interest of the Contracting Parties to the EEA Agreement, be found compatible with that Agreement.

The Authority has assessed the compatibility of the notified SIVA aid scheme with Article 61(3)(c) EEA read in conjunction with the R&D&I Guidelines.

#### **3.2 Eligible applicants**

The eligible applicants for aid under the scheme are SMEs as defined in Section 2 of the Authority's guidelines on aid to micro, small and medium-sized enterprises (SMEs). Hence, the delimitation of the possible beneficiaries under the scheme is in line with condition number one of paragraph (105) in Section 5.6 of the R&D&I Guidelines.

#### **3.3 Form of aid and eligible expenses**

The eligible costs under the scheme are in line with paragraph (106) in Section 5.6 of the R&D&I Guidelines and include the following:

Aid for innovation advisory services: management consulting; technological assistance; technology transfer services; training; consultancy for acquisition, protection and trade in intellectual property rights and for licensing agreements; and consultancy on the use of standards.

Aid for innovation support services: office space; data banks; technical library services; market research; quality of labelling; and testing and certification.

The Norwegian authorities have confirmed that the maximum aid amount per beneficiary under the scheme will not exceed EUR 200 000 within a three year period. This is in accordance with the second condition of paragraph (105) in Section 5.6 of the R&D&I Guidelines.

As envisaged in paragraph (107) in Section 5.6 of the R&D&I Guidelines, aid under the scheme is granted in the form of services offered at a reduced price.

It follows from paragraph (107) that when aid is granted from a not-for-profit entity in the form of reduced prices, a system must be set up in order to ensure transparency about the full costs of the innovation advisory and innovation support services provided, as well as about the price paid by the beneficiary, so that the aid received can be measured and monitored.

The Norwegian authorities have confirmed that the service providers keep accounts where the full costs of the services provided as well as the price paid by the beneficiaries will appear. The accounts will therefore contain an overview of the exact amount of aid received by the individual beneficiaries and thus satisfy the transparency obligation set out in paragraph (107).

### 3.4 Aid intensities

The aid granted under the notified scheme will according to the notification not cover more than 75% of the eligible costs. This complies with the third condition of paragraph (105) in Section 5.6 of the R&D&I Guidelines.

It should be noted that since the aid under the scheme is limited to 75% of eligible costs, the condition that the service provider must benefit from a national or European certification does not apply to the notified scheme.

### 3.5 Incentive effect

Section 6 of the R&D&I Guidelines provides that “[s]tate aid must have an incentive effect, i.e. result in the recipient changing its behaviour so that it increases its level of R&D&I activity: as a result of the aid, the R&D&I activity should be increased in size, scope, amount spent or speed”.

Furthermore, Section 6 provides that the Authority will consider that “the aid does not present an incentive for the beneficiary in all cases in which the R&D&I activity has already commenced prior to the aid application by the beneficiary to the national authorities”.<sup>11</sup>

The Norwegian authorities have confirmed that the distribution of aid will not commence prior to the aid application of the beneficiary to the authorities.

Section 6 distinguishes between cases where there is an automatic presumption that an incentive effect is present and cases where there is no presumption and the incentive effect of the aid measure must be established.

An automatic presumption of incentive effect will operate in relation to project aid and feasibility studies where the aid beneficiary is an SME and where the aid amount is below EUR 7.5 million for a project per SME, provided always that the project has not started before the application for aid is made.<sup>12</sup>

It follows from the above that the automatic presumption of incentive effect will apply for aid granted under the notified scheme.

The Authority therefore concludes that the notified scheme complies with the provisions on incentive effect set out in Section 6 of the R&D&I Guidelines.

### 3.6 Cumulation

Aid for R&D&I shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in R&D&I Guidelines.

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<sup>11</sup> However, footnote 40 of the R&D&I Guidelines provide that feasibility studies carried out prior to the application for aid do not count in this respect.

<sup>12</sup> See paragraph (124) of the R&D&I Guidelines.



The service providers are responsible for ensuring that cumulation of aid under the scheme and other aid measures does not lead to maximum aid intensities being exceeded, SIVA is responsible for controlling this by reviewing the annual aid reports. As described above in Section I-2.10, applications for aid under the scheme shall include a financial plan giving information *inter alia* on other public financing granted to the project. The applicants are obliged to notify aid from other public sources concerning the same project.

Moreover, the Norwegian authorities have committed to ensuring that the rules on cumulation of the R&D&I Guidelines will be respected.

### **3.7 Reporting and monitoring**

Pursuant to Section 9.1.1 of the R&D&I Guidelines, the EFTA States must submit annual reports to the Authority on their R&D&I schemes. Beyond the requirements set out in Protocol 3 and Decision No 195/04/COL of 14 July 2004, such reports must contain, for each measure, information as to: the name of the beneficiary; the aid amount per beneficiary; the aid intensity; the sectors of activity where the aided projects are undertaken, including also the information necessary to demonstrate the incentive effect of aid. The annual reports, as indicated in Section I-2.11 above, will be submitted in accordance with the R&D&I Guidelines.

Section 9.1.2 of the R&D&I Guidelines requires the full text of all final aid schemes to be published on the internet and the internet address of the publication to be communicated to the Authority. In accordance with Section 9.1.3 of the R&D&I Guidelines, detailed records regarding the granting of aid for all R&D&I measures must be maintained for 10 years. The reporting and monitoring provisions of the notified scheme, as described in Section I-2.11 above, are in line with the provisions of Section 9 of the R&D&I Guidelines.

Hence, the Authority considers that the conditions related to reporting and monitoring are satisfied.

## **4 Conclusion**

On the basis of the foregoing assessment, the Authority considers that the SIVA aid scheme which the Norwegian authorities are planning to implement is compatible with the functioning of the EEA Agreement within the meaning of Article 61 EEA.

The Norwegian authorities are reminded of the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme, and the additional requirement stipulated in section 9.1.1 of the R&D&I Guidelines.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority. The Authority draws the Norwegian authorities' attention to the fact that the Authority intends to review the R&D&I Guidelines, under which the notified scheme has been approved, three years after their entry into force. In case the rules of the R&D&I Guidelines change, this may have an effect on all existing aid schemes falling under the guidelines, including the scheme authorised by this decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the innovation aid scheme administered by the Norwegian Industry Development Corporation (SIVA SF) on the basis of Article 61(3)(c) EEA and the R&D&I Guidelines.

The scheme is compatible with Article 61(3)(c) of the EEA Agreement and the R&D&I Guidelines.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 17 December 2008.

For the EFTA Surveillance Authority,

Per Sanderud  
President

Kristján Andri Stefánsson  
College Member