

EFTA SURVEILLANCE AUTHORITY DECISION
of 13 July 2017
on a prolongation and modification of the Charter Fund Scheme for Northern Norway
from 1.11.2017 to 31.12.2020
(Norway)

The EFTA Surveillance Authority (“the Authority”),

Having regard to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) By letter dated 25 May 2017, the Norwegian authorities notified a prolongation (until 31 December 2020) and modification of the Charter Fund Scheme for Northern Norway (“the Scheme”), pursuant to Article 1(3) of Part I of Protocol 3.¹

2 Background

- (2) The Authority approved the original version of the Scheme by Decision No 303/13/COL of 10 July 2013 (“the Original Decision”).² In the Original Decision, the Authority required the Norwegian authorities to submit an evaluation of the effects of the Scheme on the development of tourism and the prevention of depopulation in the Northern region, as

¹ Document No 857910.

² Available at: <http://www.eftasurv.int/media/decisions/303-13-COL.pdf>.

well as its effects on competition. The Authority received the evaluation on 20 January 2017 (“the 2017 evaluation”).³

- (3) The Authority approved an extension of the duration of the Scheme (until 31 October 2017) and an adjustment of the conditions for eligibility by Decision No 468/15/COL of 4 November 2015 (“the Prolongation Decision”).⁴

3 The Scheme

- (4) In the following, the Authority presents the basic tenets of the Scheme that remain unchanged under the notified measure. A more detailed description is set out in the Original Decision.
- (5) The objective of the Scheme is to prevent depopulation in Northern Norway through the creation of jobs in the tourist industry by supporting tour operators organising charter flights (*i.e.* not scheduled flights) to airports in Nordland, Troms and Finnmark (“the Counties”). The geographical areas of the Counties are for the purposes of this decision referred to as “Northern Norway”. The beneficiaries do not have to be located in Northern Norway.
- (6) The Scheme is managed by the Northern Norway Tourist Board (the “Tourist Board”).
- (7) The aid takes the form of grants covering up to 25% of the total charter costs (*i.e.* financial obligations under the contract between the tour operator and the airline).
- (8) The aid is calculated with reference to the “average cabin factor” of the flights operated under the charter series, excluding empty legs, which are flights operated in order to position an aircraft at the start and at the end of a charter series. The return flight on the first departure will be empty and the flight to pick up the last passengers will be empty. Empty legs represent a considerable cost for charter series. The cabin factor is determined according to the actual number of departing passengers divided by the maximum seat capacity of the aircraft. Empty legs are not taken into account when calculating the average cabin factor, but are included when the total eligible costs for the charter series are calculated.
- (9) Tour operators are required to set a break-even point at 80% of the cabin factor (which, according to the Norwegian authorities, is the break-even standard for the industry). If sales only reach a cabin factor of 60% or less, the Scheme reimburses the tour operator 25% of the charter costs, which is the maximum aid intensity. The aid decreases to zero when the cabin factor reaches 80%. This is illustrated in the following table.

Cabin factor	Sales revenue (NOK)	Aid from the Scheme (NOK)
50%	187 500	75 000
55%	206 250	75 000
60%	225 000	75 000
65%	243 750	56 250
70%	262 500	37 500
75%	281 250	18 750
80%	300 000	0

Table 1. Gives an example of how the Scheme will work with flights from London to Northern Norway with a Boeing 737-800. It is estimated that the net cost quoted by the airline to the tour

³ Document No 862531.

⁴ Available at: <http://www.eftasurv.int/media/esa-docs/physical/468-15-COL.pdf>.

operator will be NOK 300 000 per flight rotation. 149 persons must purchase tickets to reach the break-even point (80% of an aircraft capacity of 186 persons).

- (10) The aid is disbursed after the charter series have been completed and the Charter Fund's administration confirms that all award criteria are fulfilled.
- (11) Aid under the Scheme may be cumulated with other forms of aid. Funding of the same eligible costs under other schemes are coordinated by the Scheme and the aid ceilings in the applicable state aid guidelines will not be exceeded.
- (12) The legal basis of the Scheme is set out in the budgetary decisions taken by the Counties. The annual budget is NOK 10 million.

4 The 2017 evaluation

- (13) According to the 2017 evaluation, there have been 41 flights planned and 34 flights completed under the Scheme. In addition, 30 more flights are planned at this stage. The flights were operated in and are scheduled for both winter and the summer seasons. So far, the tour operators applying for aid from the Scheme have only operated flights to the airports of Bodø, Evenes, Tromsø and Alta.
- (14) By 31 December 2016, the Scheme had received twelve applications. One application was declined on the grounds that it did not meet the Scheme's criteria. From the remaining applications six package programmes⁵ were concluded by the time of the 2017 evaluation, one of which was not realised due to lack of sales.
- (15) The Scheme is designed to reduce the risk of deficit when the load factor is between 60% and 80%. The evaluator recommends to keep this limit. However, the 2017 evaluation suggests that the criteria concerning airplane size could be modified (see paragraph 21, below).
- (16) The data shows that hotel bookings are seasonally affected and that the relatively low number of flights generated from the project makes it difficult to draw a conclusion on the impact that the Scheme has had on the local hotels.⁶
- (17) However, the practical experience with the Scheme indicates that it works as intended, and that it effectively leads to increased economic activity in the target areas. The 2017 evaluation suggests that each NOK disbursed by the Scheme induces tourist spending in the target areas of NOK 10.⁷ By December 2016, the rotations (trips comprising outward and return flights) conducted under the Scheme had induced sales in the local travel industry of NOK 24.1 million, while the total payouts to the charter operators amounted to a mere NOK 2.5 million.⁸ Moreover, feedback from the involved players⁹ likewise confirms that the Scheme does indeed induce additional rotations which would not have been carried out in its absence.

⁵ Applicants for aid from the Charter Fund are tour operators, *i.e.* the charter operator. All applications to the Charter Fund must be supported by three parties; The tour operator, the destination provider and the airline. See Authority Decision 303/13/COL, paragraph 20.

⁶ See below, para 22.

⁷ See section 6.3 of the 2017 evaluation.

⁸ This rose to NOK 4 682 550 by the time of the notification in May 2017, due to more rotations having been carried out after the 2017 evaluation.

⁹ Interviews were taken with travel agents that make bookings for international tour operators, as well as tour operators.

- (18) The 2017 evaluation confirmed that the Scheme triggers additional rotations to the areas, and therefore that the level of economic activity would be reduced in the absence of the Scheme. In particular, the tour operators confirmed that the Scheme has indeed contributed to an increase in the number of tourists to Northern Norway. One interviewee stated that, had it not been for the Scheme, most operators would not undertake the risk of arranging tours to Northern Norway.
- (19) As the Norwegian authorities see it, the report and operational experiences of the managing entities indicates that the Scheme must be prolonged in order for it to achieve its objectives. The Scheme has led to additional economic activity contributing to a temporary stabilisation of the basis for employment. Due to the long-term perspective of charter operators, and the reactive nature of the local service industry, however, the Scheme has not been in place for long enough to induce a more permanent stabilisation or increase in the basis for employment. A prerequisite for the Scheme to fulfil its potential in this respect is that it remains operational for long enough for charter operators to commit to and conduct a number of rotations making the target area an established destination in the eyes of travellers, thereby establishing a viable commercial basis for a continued higher level for rotations. This is strictly necessary for charter operators to continue operating rotations with a higher frequency than they would have done in the absence of the scheme, and for the local service industry to consider it rational to make labour investments on the basis of an expectation of the increased level of demand.

5 The notified measure

- (20) In light of the findings of the 2017 evaluation, the Norwegian authorities have notified a prolongation of the Scheme until 31 December 2020 and a modification of three conditions under the Scheme. The proposed modifications are the following.
- (21) The Scheme as originally approved only accepted large aircrafts for charter flights. Now, the Norwegian authorities propose that the minimum requirement concerning the capacity of airplanes should be repealed. The reason is that landing conditions are more challenging for large than for smaller airplanes. This will allow for charter operators to make rational decisions on what planes to employ, and facilitate rotations in periods with more difficult weather conditions when smaller planes are safer and, in some cases, the only option.
- (22) The Norwegian authorities intend to increase the minimum requirement on the length of stay from two to three days. The feedback from charter operators suggests that the requirement pertaining to the length of stay can viably be extended. This will ensure that the Scheme contributes even more effectively to inducing increased tourist spending in the target areas.
- (23) The Norwegian authorities intend to raise the minimum limit of the value of the land arrangement from NOK 800 to NOK 1500 per tourist.¹⁰ The operative experience indicates that the requirements pertaining to the land arrangement can be strengthened. This will support the aim of inducing demand from tourists in the target areas, thereby improving the basis for job creation and retention.

¹⁰ The “*land arrangement*” comprises the on-land element of the tour package (e.g. a hotel stay). See, further, para 77 of the Original Decision.

II. ASSESSMENT

1 The presence of state aid

(24) Article 61(1) of the EEA Agreement 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.”

- (25) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.
- (26) The notified measure concerns the prolongation of an existing aid scheme that Authority has already assessed in the Original Decision. The notified modifications do not affect the Authority’s finding that the Scheme involves state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

- (27) Pursuant to Article 1(3) of Part I of Protocol 3: *“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.”*
- (28) By submitting a notification¹¹ on 25 May 2017, the Norwegian authorities have complied with the notification requirement in Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (29) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (30) In the Original Decision,¹² the Authority concluded that the Scheme constitutes regional operating aid. Such aid can be held to be compatible with the Article 61(3)(c) of the EEA Agreement if it meets the requirements of the Authority’s Regional Aid Guidelines for 2014–2020 (the “RAG”).¹³ The Norwegian authorities have confirmed that the factual description in the Original Decision still reflects how the Scheme is applied.
- (31) Operating aid may be declared compatible with the functioning of the EEA Agreement if it aims to prevent or reduce depopulation in very sparsely populated areas. The RAG

¹¹ Document No 857910.

¹² Decision No 303/13/COL, paragraphs 36 to 47.

¹³ The Authority’s Guidelines on Regional State Aid for 2014–2020, OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p.1, also available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>. The Original Decision was made with reference to the Authority’s Guidelines on National Regional Aid for 2007 – 2013, OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 42. However, the differences between the present RAG and the 2007-2013 RAG do not affect the outcome of the current assessment.

define “*very sparsely populated areas*” as Statistical Regions at level 2 for Norway with less than 8 inhabitants per km².¹⁴

(32) The latest available data¹⁵ for the three Counties shows the following population density:

Finnmark: 48.616 kvm2, 75.758 inhabitants, 1.55 inhabitants per km²
 Troms: 25.869 kvm2, 162.050 inhabitants, 6.46 inhabitants per km²
 Nordland: 38.241 kvm2, 241.906 inhabitants, 6.32 inhabitants per km²

Therefore, the Counties constitute very sparsely populated areas in the meaning of the RAG.

(33) The Authority’s assessment is based on the following common assessment principles:

- contribution to a well-defined objective of common interest;
- need for state intervention;
- appropriateness of state aid as a policy instrument;
- existence of an incentive effect;
- proportionality of the aid amount (aid limited to minimum necessary);
- avoidance of undue negative effects on competition and trade; and
- transparency.

3.1 Need for state intervention, incentive effect and transparency

(34) A compatibility assessment was made for the Scheme by the Authority in Decision 303/13/COL and further in Decision 468/15/COL. The notified measure does not entail any modifications to the Scheme that would affect the Authority’s prior assessment of the need for state intervention, incentive effect and transparency requirement fulfilment.

(35) The Authority notes that the 2017 evaluation highlights that the Scheme is necessary to incentivise charter flights to Northern Norway.

(36) On the basis of these considerations, the Authority is of the view that the above mentioned criteria of Article 61(3)(c) of the EEA Agreement are fulfilled.

3.2 Objective of common interest

(37) State aid must be aimed at a well-defined objective of common interest. An objective of common interest is an objective that has been recognised by the Contracting Parties as being in their common interest.

(38) In the Original Decision, the Authority found that the Scheme pursues the objective of preventing or reducing depopulation in the target area.

(39) In the notification, the Norwegian authorities provide updated information concerning depopulation. It is stated that the challenges concerning depopulation have indeed

¹⁴ RAG, paragraph 20(1)(x).

¹⁵ Source: Store norske leksikon. Figures as of 31 December 2015.

persisted in the target area. The most recent figures, which are based on data from 2015, show that Northern Norway experienced a significant net emigration that year.

- (40) The Authority therefore confirms its prior assessment that the Scheme addresses an objective of common interest.
- (41) To ensure that the funds invested in the Scheme contribute to the realisation of the objective of common interest to an even higher degree in the future, the Norwegian authorities intend to introduce certain adjustments based on the 2017 evaluation, as described in Section I.5 of this Decision.
- (42) The notified measure entails a repeal of the requirement for a minimum capacity for airplanes. According to the Norwegian authorities, this will allow for charter operators to make rational decisions on what planes they use, and facilitate rotations in periods with more difficult weather conditions, when smaller planes are safer. Minimum capacity requirements are not conducive to supporting the objectives of the Scheme, as they exclude rotations that could viably have been carried out with smaller planes.
- (43) The Authority agrees with the Norwegian authorities that repealing the requirement for a minimum capacity will further contribute to the objective of common interest as it brings more flexibility to what airports can operate under the Scheme and that seasonal conditions will have a less distortive effect.

3.3 Appropriateness of the aid

- (44) In the Original Decision, the Authority concluded that the Scheme is an appropriate policy instrument to achieve the objective of preventing or reducing depopulation in Northern Norway.
- (45) Paragraph 55 of the RAG states that the results of ex-post evaluations may be taken into account to assess the appropriateness of the proposed aid instrument. The 2017 evaluation shows that prolonging the Scheme is appropriate to pursue the objective of preventing or reducing depopulation in the target area.¹⁶
- (46) In light of the above, the Authority considers that a prolongation of the Scheme until 31 December 2020 is appropriate.

3.4 Proportionality

- (47) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest.
- (48) Paragraphs 26(e) and 73 of the RAG provide that the amount of regional aid must be limited to the minimum needed to induce additional investment or activity in the areas concerned. In its Original Decision, the Authority considered that the Scheme is proportionate to its objective.
- (49) Following the 2017 evaluation, the Norwegian authorities have uncovered some areas where the objective and proportionality of the Scheme could be supported even more effectively if the requirements are strengthened.
- (50) In light of the recommendations from the evaluator, the feedback from interviewees and the managing entity's own experience, the Norwegian authorities propose to modify the

¹⁶ See paragraph (19) of this Decision.

Scheme by increasing the value of the land agreement from NOK 800 to NOK 1500 and increase the minimum requirement on the length of stay from two to three days. These modifications will guarantee a higher minimum level of spending from each tourist in the target area.

- (51) Further, it should be noted that the risk reducing nature of the Scheme entails that the average aid amounts are in fact very low. At the time of the notification, 68 eligible rotations have been performed under the Scheme and a total of NOK 4 682 550 has been paid out for these flights.
- (52) Based on the above, the Authority considers that its assessments in the Original Decision of the proportionality of the Scheme is still valid and that the Scheme is proportionate to its objectives (to prevent or reduce depopulation).

3.5 Avoidance of undue negative effects on competition and trade

- (53) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (54) The Norwegian authorities estimated that the total payments made under the Scheme would be well below 10 million NOK per year. This estimate is reflected in the payments made: only NOK 4 682 550 have been paid out for the 68 rotations completed thus far.
- (55) Neither the evaluator nor the Norwegian authorities have received any feedback suggesting that the Scheme has more severe impacts on competition and trade than expected at its inception.
- (56) The Scheme is designed so that tour operators cannot “profit” from the Scheme as the Scheme only reimburses the tour operators’ losses to the break-even cabin factor point of 80%.
- (57) On this basis, the Authority considers that the potential effects on trade and competition are negligible and in any event offset by the positive effects of the Scheme.

4 Conclusion

- (58) On the basis of the foregoing assessment, the Authority considers that the prolongation and modification of the Scheme constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Pursuant to the derogation provided in Article 61(3)(c) of the EEA Agreement, this aid is compatible with the functioning of the EEA Agreement.

Has adopted this decision:

Article 1

Not to raise objections to the notified Charter Fund Scheme for Northern Norway from 1.11.2017 to 31.12.2020 on the grounds that it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, on 13 July 2017.

For the EFTA Surveillance Authority, acting under Delegation Decision No 068/17/COL.

Sven Erik Svedman
President

For Carsten Zatschler
Director

This document has been electronically signed by Sven Erik Svedman, Catherine Howdle.