

Case No: 61274
Event No: 415728
Dec. No.: 143/07/COL

EFTA SURVEILLANCE AUTHORITY DECISION
OF 24 APRIL 2007
ON THE NOTIFIED REGIONAL TRANSPORT AID SCHEME
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY¹,

HAVING REGARD TO the Agreement on the European Economic Area², 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 Justice³, in particular to Article 24 and Article 1 in Part I of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 25B, "National Regional Aid 2007-2013" thereof,

HAVING REGARD TO the Authority's Decision No 418/01/COL of 19 December 2001 on the Regional direct transport aid scheme⁵,

HAVING REGARD TO the Authority's Decision No 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid (Norway),

WHEREAS:

I FACTS

1 PROCEDURE

By letter of 14 December 2006 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Local Government and Regional

¹ Hereinafter referred to as the "Authority".

² Hereinafter referred to as the "EEA Agreement".

³ Hereinafter referred to as the "Surveillance and Court Agreement".

⁴ Procedural and Substantive Rules in the Field of State Aid - Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision of 7 February 2007, hereinafter referred to as the "State Aid Guidelines".

⁵ The state aid decisions of the Authority can be found at our website: www.eftasurv.int.

Development dated 14 December 2006, both received and registered by the Authority on 14 December 2006 (Event No 403269), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, a regional transport aid scheme⁶.

By letters of 15 January 2007 and of 23 February 2007 from the Ministry of Government Administration and Reform, forwarded from the Ministry of Local Government and Regional Development, received and registered by the Authority on 15 January 2006 and 27 February 2007 (Event No 406539 and 411620), the Norwegian authorities notified some amendments to the Notification. The amendments concerned the inclusion of some additional municipalities in the counties of Nord-Trøndelag, Hordaland and Sør-Trøndelag into the scheme.

2 BACKGROUND

By letter of 6 April 2006 from the Authority to the Norwegian Mission to the European Union, the Norwegian authorities were informed that the Authority had adopted new guidelines on national regional aid for 2007 – 2013 in the form of a new Chapter 25B of the State Aid Guidelines.

Furthermore, the Authority proposed, under Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement, that the Norwegian authorities adopted the appropriate measures set out in Chapter 25B.8 of the State Aid Guidelines⁷. Under these measures, the EFTA States were, *inter alia*, obliged to limit the duration of all regional aid schemes in force at the time of the entry into force of the Regional Aid Guidelines, to 31 December 2006.

By letter of 10 May 2006 from the Mission of Norway to the European Union, received and registered by the Authority on 11 May 2006, the Norwegian authorities agreed to the proposed appropriate measures.

By letter of 12 June 2006 from the Ministry of Government Administration and Reform, received and registered by the Authority on 12 June 2006, the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, a new map of assisted areas and levels of aid in Norway to be applicable from 1 January 2007 to 31 December 2013.

The new regional aid map for Norway was approved by the Authority by Decision No 226/06/COL approving the notified Norwegian map of areas eligible for regional investment aid and aid levels for the period of 2007 to 2013.

3 DESCRIPTION OF THE PROPOSED MEASURE

3.1 Introduction

By letter of 5 December 2001 from the Mission of Norway to the European Union, the Norwegian authorities notified a regional direct transport aid scheme. By Decision No

⁶ Hereinafter referred to as the “Notification”.

⁷ Cf. Paragraph (92) in Section 25B.8 of the Regional Aid Guidelines.

418/01/COL of 19 December 2001, the Authority decided not to raise objections to the scheme. The regional direct transport aid scheme was not limited in time, but as a consequence of the appropriate measures of the Regional Aid Guidelines adopted by Norway as explained above in Section I.2, the scheme expired on 31 December 2006.

3.2 The objective of the aid measure

According to the notification, the aim of the scheme is to promote regional development in regions situated far away from central areas. The objective sought is achieved partly by offsetting the competitive disadvantages resulting from additional transport costs for undertakings located in peripheral areas and within sparsely populated regions.

3.3 National Legal basis for the aid measure

The national legal basis for the scheme can be found in the National guidelines for regional transport aid ("*Nasjonale retningslinjer for regional transportstøtte (Ytre rammeverk)*"), hereinafter referred to as the "guidelines") and in the state budget for 2007 (*St.prp. nr. 1 (2006-2007) Kommunal- og regionaldepartementet*).

3.4 Geographical delimitation of the scheme

According to the notification, the following county municipalities/municipalities are eligible for regional transport aid under the scheme:

Zone 1:

- Finnmark: all municipalities;
- Troms: all municipalities;
- Nordland: all municipalities;
- Nord-Trøndelag: the municipalities of Leka, Nærøy, Vikna, Flatanger, Fosnes, Overhalla, Høylandet, Grong, Namsos, Namsskogan, Røyrvik, Lierne, Snåsa, Inderøy, Namdalseid, Verran, Mosvik, Verdal, Leksvik, Frosta, Meråker and Steinkjer.

Zone 2:

- Sør-Trøndelag: the municipality of Frøya, Midtre Gauldal, Agdenes, Bjugn, Ørland, Rissa, Meldal and Selbu;
- Sogn og Fjordane: all municipalities;
- Hordaland: the municipalities of Masfjorden, Fedje, Modalen, Vaksdal, Austevoll, Samnanger, Kvam, Voss, Granvin, Kvinnherad, Tysnes, Fitjar, Etne, Ulvik, Eidfjord, Ullensvang, Odda and Jondal;
- Buskerud: the municipalities of Hemsedal, Ål and Hol.

All eligible municipalities are within the area for regional investment aid determined by the regional aid map for Norway for 2007-2013 as defined in the Authority's Decision No 226/06/COL of 19 July 2006. According to the notification, the proposed eligible area covers 16 % of the Norwegian population.

3.5 Existence of additional transport costs

In order to demonstrate the existence of additional transport costs for undertakings located in the area proposed to be covered by the scheme, the Norwegian authorities have submitted a study prepared by the Norwegian Institute of Transport Economics

(*Transportøkonomisk Institutt (TØI)*) in 2006. Based on information obtained from 36 randomly chosen undertakings in different parts of the country, the report concluded that undertakings located in the most remote and sparsely populated parts of Norway suffer substantial competitive disadvantages compared to more centrally located undertakings, due to higher direct and indirect transport costs.

According to the notification, the proposed aid intensity levels, differentiated according to transport distance, will accurately compensate for the extra transport costs incurred in the eligible areas. In addition, in order to avoid overcompensation, only documented transport costs may form the basis for calculating the aid. The transport aid is calculated as a percentage of the total transport costs, reflecting the real extra transport costs in the assisted area. These percentages will vary according to the location of the undertaking and the transport distance.

3.6 Eligible applicants

The Regional transport aid scheme applies to undertakings located in certain regions within the area eligible for national regional aid for the period of 2007-2013 as defined in the Authority's Decision No 226/06/COL of 19 July 2006, cf. Section I.3.4 above.

The scheme applies to undertakings in the manufacturing industry. However, undertakings within certain sectors of the economy are not eligible for aid under the scheme. This concerns undertakings in sectors covered by sector specific rules, such as shipbuilding and the steel industry.

The scheme applies to large firms as well as small and medium-sized enterprises (SMEs). The Norwegian authorities estimate the number of beneficiaries under the scheme to be between 501 and 1000.

3.7 Eligible types of transport and form of aid

The eligible types of transport under the scheme will be transport of processed goods by rail, road, sea or air from undertakings located in the eligible area. To be eligible for aid under the scheme, the transport distance has to be 350 km or more.

When transporting goods to destinations in Sweden and Finland, the calculation of the total transport distance also includes the distances within Sweden and Finland. However, aid is only given to the transport costs occurred within the national borders.

Aid under the scheme will be in the form of direct grants. The aid is granted the year after the transport costs have occurred, on the basis of an application from the undertaking. According to the notification and the guidelines of the scheme, aid may only be granted as compensation for extra costs in relation to transport of goods within the national borders and must be calculated on the basis of the shortest and most economical form of transport mode between the place of production and processing sited inside the area eligible for transport aid, to a commercial outlet. The aid must not take the form of export aid.

Only documented transport costs may qualify for aid. The transport aid is calculated as a percentage of the total transport costs, and depends on the location of the undertaking and the transport distance. Transport costs are understood to be costs specified in a consignment document and which are dependent on the transport distance inside national

borders, the weight and type of goods and freight charges and other charges which may be attributed to the transport.

3.8 Maximum aid ceilings

The aid intensity will be differentiated in two geographical zones. Zone 1, which has the highest aid intensity, covers northern Norway, whereas Zone 2, with lower aid intensity, covers parts of western Norway.

Furthermore, the aid intensity will also vary according to the transport distance, as the maximum aid intensity is higher for longer transport distances.

The applicable maximum aid intensities are proposed to be the following:

Transport distance in km	Zone 1	Zone 2
350 - 700	30 %	20 %
> 700	40 %	30 %

3.9 Cumulation

According to the notification, aid granted under the scheme will not be cumulated with aid from other local, regional, national⁸ or Community schemes which cover the same costs.

3.10 Budget, administration and duration

The scheme will be financed and administered at a local level by the county municipalities in the eligible area. The annual budget for the regional transport aid scheme will, thus, depend on the budgetary allocations of the county municipalities. There is no national budget for the scheme.

The new regional transport aid scheme will also include the counties of Finnmark, Hordaland and Buskerud. These counties have not previously been operating a regional transport aid scheme nor been part of the former national transport aid scheme. Sør-Trøndelag and Sogn og Fjordane are part of the notified area for the new regional transport aid. Parts of these counties were also in the area eligible for the former national transport aid scheme (Authority's Decision No 22/04/COL). Due to these circumstances, the Norwegian authorities find it difficult to make an accurate estimate of the joint annual budget allocated for the scheme. However, the Norwegian authorities estimate that the overall annual budget for the new regional transport aid scheme will not exceed NOK 70 million (approximately EUR 9 million).

The county municipalities will develop guidelines for the regional transport aid scheme. The Ministry of Local Government and Regional Development will ensure that the scheme is operated in compliance with the national guidelines for the scheme by means of an annual reporting system. By 1 June every year, the county municipalities must submit reports to the Ministry showing that the scheme is operated in line with these guidelines. In particular, the reports should demonstrate that the transport aid granted to the individual undertaking does not exceed the maximum aid intensities allowed in the guidelines.

⁸ The Norwegian authorities previously operated a national direct transport aid scheme, cf. the Authority's Decision No 22/04/COL of 25 February 2004. However, this scheme expired on 31 December 2006 and has not been re-notified for the period 2007-2013.

The duration of the scheme will be from 1 January 2007 until 31 December 2013.

II APPRECIATION

1 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”*.

By submitting notification for the regional transport aid scheme with letters dated 14 December 2006, 15 January 2007 and 23 February 2007, and by not implementing the scheme until it has been approved by the Authority, the Norwegian authorities have complied with the notification and stand-still requirements.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2 THE PRESENCE OF STATE AID

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.”

The notified aid is being funded by State resources in the form of budget allocations from the county municipalities. State resources are thus involved. The scheme will favour certain undertakings in designated regions by relieving them of transport costs that they would normally have to bear themselves. The scheme is furthermore selective, as only undertakings located in certain of the regions in Norway that are eligible for assistance under Article 61(3)(c) of the EEA Agreement can receive aid under the scheme. Consequently, the aid strengthens the position of the beneficiaries in relation to their actual or potential competitors in the EEA, thus having an actual or potential distorting effect on competition within the EEA. In the eligible regions, the scheme applies to undertakings in the manufacturing sector. Some of these undertakings are in competition with undertakings in other EEA States. Hence, the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

3 COMPATIBILITY OF THE AID

3.1 Introduction

The Authority has assessed the compatibility of the proposed Regional transport aid scheme with Article 61(3)(c) of the EEA Agreement in light of the Regional Aid Guidelines. Article 61(3)(c) of the EEA Agreement concerns aid 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 of the Contracting Parties to the EEA Agreement. Aid granted for regional development is assessed under Chapter 25B of the Authority's State Aid Guidelines.

3.2 Geographical delimitation of the scheme

According to Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines, aid for additional transport costs may only be granted in low population density regions. The low population density regions are defined in Paragraph (22)(a) in Section 25B.3.3.2 of the Regional Aid Guidelines as the NUTS III⁹ regions or parts of the NUTS III regions with less than 12.5 inhabitants per km². The regional aid map for Norway is made up of such low population regions. It follows that transport aid may only be granted within the area covered by the regional aid map for Norway.

It appears from the notification that the areas proposed to be covered by the Regional transport aid scheme are within the regional aid map for Norway for 2007-2013. The geographical delimitation of the scheme is thus in line with Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines.

3.3 Existence of additional transport costs

Aid granted on the basis of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines must be intended to partly offset additional transport costs. Thus, the granting of transport aid presupposes the existence of such costs. It is for the EFTA State concerned to show the existence of these costs.

In order to demonstrate the existence of additional transport costs for undertakings located in the area proposed to be covered by the scheme, the Norwegian authorities have submitted a report prepared by the Norwegian Institute of Transport Economics (*Transportøkonomisk Institutt (TØI)*) in 2006.

Based on information from 36 randomly chosen undertakings in different parts of the country, the report concluded that undertakings located in the most remote and sparsely populated parts of Norway have a substantial disadvantage compared to more centrally located undertakings, due to higher direct and indirect transport costs.

The Authority has studied this report and concluded that it provides a reliable evidence of the additional transport costs incurred by undertakings operating from the areas proposed by the aid scheme. These additional transport costs place the eligible undertakings in a

⁹ As defined in "Statistical regions in the EFTA countries and in the candidate countries", 2001 edition by the Commission of the European Communities and the Statistical office of the European Communities.

competitive disadvantage vis-à-vis other undertakings located in more central and populated regions with a better transport infrastructure.

3.4 Eligible applicants

The scheme applies to undertakings in the manufacturing industry. However, undertakings in sectors covered by sector specific rules, such as shipbuilding and the steel industry are not eligible for aid under the scheme. On this basis, the Authority concludes that the eligible applicants are in line with paragraph (8) in Section 25B.2 of the Regional Aid Guidelines.

Furthermore, in accordance with indent 2 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines, the scheme does not apply to transport or transmission of products of businesses without an alternative location.

3.5 Eligible types of transport and form of aid

According to indent 2 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines, *“aid may be given only in respect of the extra cost of transport of goods produced in the low population density regions inside the national borders of the country concerned. It must not be allowed to become export aid.”*

The eligible types of transport under the scheme are transport of processed goods by rail, road, air or sea from undertakings located in the eligible area. It follows from the notification that aid under the scheme may only be granted as compensation for extra costs in relation to transport of goods within the national borders and that the scheme does not allow aid to take the form of export aid.

On this basis, the Authority concludes that the scheme complies with the condition laid down in indent 2 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines.

It follows from indent 3 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines that *“the aid must be objectively quantifiable in advance, on the basis of an aid-per-ton/kilometre ratio”*.

Aid under the scheme will be granted in the form of direct grants the year after the transport costs have occurred, on the basis of an application from the undertaking. Furthermore, only documented transport costs specified in a consignment document and which are dependent on the transport distance inside national borders, the weight and type of goods and on freight charges and other charges which may be attributed to the transport, can qualify for the aid.

On this basis, the Authority concludes that aid granted under the scheme will be quantifiable in advance as described in indent 3 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines.

Moreover, it follows from indent 4 of Paragraph (70) in Section 25B.5 of the Regional Aid Guidelines that *“the estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets using that form of transport”*.

According to the notification and the guidelines of the scheme, aid granted under the scheme must be calculated on the basis of the most economical form of transport and the shortest route between the place of production or processing and the commercial outlets. The provision in indent 4 is thus complied with.

Finally in order to supervise the transport pattern, the Norwegian authorities will request the county municipality to register the different modes of transport in each case in order to be able to supervise the transport pattern and ensure that the shortest and the most economic transport route is used. In addition, the Norwegian authorities have confirmed that the external costs to the environment will be taken into account.

3.6 Aid ceilings and cumulation

According to indent 1 of Paragraph (70) of Section 25B.5 of the Regional Aid Guidelines, transport aid must serve only to compensate for the additional cost of transport, taking into account other schemes of assistance to transport. While the amount of aid may be calculated on a representative basis, systematic overcompensation must be avoided.

According to the notification, the aid intensity under the scheme will be differentiated in two geographical zones, and will vary according to the transport distance, cf. Section I.3.8 above. For transport distances between 350 and 700 km, the aid intensity will be 30 % in Zone 1 and 20 % in Zone 2. For distances above 700 km, the aid intensities increase to 40 % and 30 % respectively.

The Norwegian authorities consider that by defining the maximum aid intensity as a percentage of the total transport costs, it will be ensured that the additional transport costs are not systematically overcompensated.

With regard to cumulation, it follows from the notification that aid under the scheme will not be cumulated with aid from other local, regional, national or Community schemes which cover the same costs. On this basis the Authority concludes that there does not seem to be any risk of overcompensation of transport costs on the basis of cumulation of aid from different sources.

3.7 Administration and duration

Indent 3 of Paragraph (70) of Section 25B.5 of the Regional Aid Guidelines requires the preparation of an annual report showing the operation of the scheme.

The Regional transport aid scheme seeks to meet this condition by introducing an annual reporting system according to which the county municipalities must submit reports, by 1 June every year, to the Ministry of Local Government and Regional Development showing that the scheme is operated in line with the national guidelines of the scheme. In particular, the reports should demonstrate that the transport aid granted to the individual undertaking does not exceed the maximum aid intensities allowed in the guidelines.

The Authority finds that this reporting obligation complies with the condition laid down in indent 3 of Paragraph (70) of Section 25B.5 of the Regional Aid Guidelines.

In order to verify the effects on trade and competition of operating aid schemes, the Norwegian authorities will be required according to Paragraph (72) of Section 25B.5 to provide each year a single report in respect of each NUTS-II region in which operating aid

is granted which provides a breakdown of total expenditure, or estimated income forgone, for each operating aid scheme approved in the region concerned and identifies the ten largest beneficiaries of operating aid in the region concerned, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each.

The Norwegian authorities are reminded that they must provide the Authority with an annual report on the implementation of the aid and that any changes in the modalities of the scheme have to be notified to the Authority. In addition, the Norwegian authorities are reminded that according to Paragraph (93) of Section 25B.5 they should ensure that economic operators, interested parties and the Authority itself should have easy access to the full text of all applicable regional aid schemes through the establishment of linked internet sites and that the internet address of the publication will be communicated to the Authority.

The duration of the scheme is from 1 January 2007 until 31 December 2013, which corresponds to the duration of the Regional Aid Guidelines.

4 CONCLUSION

The Authority concludes that the notified regional transport aid scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. The aid is compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with the Regional Aid Guidelines.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the notified regional transport aid scheme for 2007-2013.
2. This Decision is addressed to the Kingdom of Norway.
3. This Decision is authentic in the English language.

Done at Brussels, 24 April 2007

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kurt Jaeger
College Member