

Case No: 62756
Event No: 435366
Dec. No: 376/07/COL

EFTA SURVEILLANCE AUTHORITY DECISION
OF 12 SEPTEMBER 2007
on the modification of the scheme on Centres for Research-based Innovation
(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 thereof,

HAVING REGARD TO the Protocol 3 to the Surveillance and Court Agreement, in particular to Article 1(3) in Part I and Article 4(3) in Part II thereof,

HAVING REGARD TO the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement⁴, and in particular Chapter on State Aid for Research and Development and Innovation⁵ thereof,

HAVING REGARD TO the Authority's Decision No 195/04/COL of 14 July 2004⁶ on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement, in particular Article 4(2) thereof,

HAVING REGARD TO the Authority's Decision No 38/07/COL of 27 February 2007⁷,

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 Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 in Part I 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 of 03.09.94, EEA Supplement No 32, last amended by the Authority's Decision No 154/07/COL of 3 May 2007, hereinafter referred to as 'the State Aid Guidelines'. The State Aid Guidelines are accessible on <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>.

⁵ Hereinafter referred to as 'R&D&I'.

⁶ Hereinafter referred to as 'the Authority's Decision No 195/04/COL'.

⁷ Available online on the Authority's State Aid Register:
<http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/sadecnor07/>.

WHEREAS:

I. FACTS

1. Procedure

By letter of 25 July 2007 from the Norwegian Ministry of Government Administration and Reform, received and registered by the Authority on the same date (Event No 431056), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, modifications to the scheme on Centres for Research-based Innovation (hereinafter referred to as 'the CRIs'). The notification was made under the simplified procedure, set out in Article 4(2) of the Authority's Decision No 195/04/COL.

By letter dated 10 August 2007 (Event No 432905), the Authority requested additional information from the Norwegian authorities.

By letter dated 27 August 2007 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Education and Research, dated 22 August 2007, both received and registered by the Authority on 27 August 2007 (Event No 436614), the Norwegian authorities replied to the information request.

2. Description of the scheme

2.1 *Short description of the original scheme*

On 27 February 2007, the Authority adopted Decision No 38/07/COL approving the scheme notified by the Norwegian authorities concerning the setting up of CRIs involving the co-operation of private and public bodies with financial support from the Research Council of Norway (hereinafter referred to as 'the RCN') in the form of direct grants.

The scheme has been developed in order to support long-term R&D activities in Norway, in particular to create a knowledge-base that will give enterprises an incentive to innovate, to facilitate active alliances between research active enterprises and research groups at research institutions, to support industrially oriented research groups doing frontier research and to stimulate researcher training and transfer of research-based knowledge.

Each CRI is a consortium consisting of a host institution and partners. The host institution, which can be a university, a non-profit research institute or an undertaking with strong research activities, acts as manager of the CRI. It signs the agreement with the RCN in order to receive the funds and it is responsible for ensuring that the applicable terms and guidelines are complied with. The scheme is open to any foreign entities wishing to participate, with or without a location in Norway. However, the host institutions must be situated (not the headquarters) in Norway.

The granting authority is the RCN who is also in charge of the administration and monitoring of the scheme. The selection process of CRIs - based on an open call - was also carried out by the RCN with participation of independent experts appointed

by the RCN. Applications were assessed on the basis of two criteria: scientific quality and potential for innovation and value creation.

It is foreseen that around 75% of the research carried out by CRIs is dedicated to fundamental research and the remaining 25% covers industrial research. Most projects will cover both fundamental and industrial research but there might be some projects which will consist of industrial research exclusively. No pre-competitive research is to be carried out in the CRIs.

As regards the fundamental research, results are to be widely disseminated, i.e. published in international scientific journals and presented in papers at international conferences. In cases of industrial research, the results giving rise to intellectual property rights shall be allocated to the parties in proportion to their contributions, unless a different method for allocation is decided by the parties to the consortium.

Every CRI can carry out several projects in different fields of research. The RCN contributes up to a maximum of 50% of the eligible costs borne by the CRI. The rest should be covered by the host institution with partners, whereas at least 25% must come from undertakings in their capacity as partners to the CRI. This means that, in cases where a public body acts as a host institution (i.e. a university), a maximum of 75% of the eligible costs could potentially be funded by public sources.

Eligible costs will include costs for personnel employed exclusively for the research activity, costs for durable assets used solely and on a continual basis for the research activity, support services from subcontractors which are exclusively dedicated to research activities and normal overhead expenses. At least 25% of the budget will be spent on Ph.D. scholarships and post-doctorate positions.

The funds of RCN will be provided directly from the state budget. A budget of NOK 100 million per year was originally foreseen to be allocated to the scheme. The duration of the scheme is eight years, starting in 2007 and ending in 2015, with an evaluation of each CRI after five years from its establishment.

2.2 *The proposed amendments*

In the notification form of the original CRI scheme, the Norwegian authorities stated that the selection of the CRIs has already taken place and that 10 centres were planned to be established with a total budget of NOK 100 million per year. In the current notification, the Norwegian authorities informed the Authority that, based on a very strong portfolio of applications, the RCN decided to establish 14 centres. At the same time, the average annual budget for the CRI scheme has been increased to NOK 140 million as of 2008. In 2007, the total budget will not exceed NOK 100 million.

II. APPRECIATION

3. 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 a notification for the modification of the CRI scheme by way of a letter dated 25 July 2007, the Norwegian authorities have complied with the notification requirement. Since the increase of the annual scheme budget will only take effect as of 2008, the modification has not yet entered into force.

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

4. Applicability of the simplified procedure

The so-called simplified notification procedure, as stipulated by Article 4(2) and (3) of the Authority’s Decision No 195/04/COL, applies *inter alia* in cases of an increase of the budget of an authorised aid scheme exceeding 20%, provided that the EFTA State concerned has complied with its duty to submit annual reports on the implementation of the scheme.

In the case under investigation, the increase of the annual budget from NOK 100 million to NOK 140 million constitutes a raise exceeding 20%. As regards the requirement to duly submit the implementation reports, the CRI scheme was approved on 27 February 2007. The first annual report is therefore expected in early 2008. Thus, it was not relevant for the Norwegian authorities to comply with this condition at the time of the current notification.

Consequently, the Authority considers that the current notification is eligible to be dealt with under the simplified procedure, as requested by the Norwegian authorities.

5. The presence of State aid within the meaning of Article 61(1) EEA

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 measures under assessment involve state resources, as they will be financed through the budget of the state. Secondly, the scheme confers a financial benefit on recipients that they would not have obtained in the normal course of business. The scheme is considered to be of a selective nature, as it is only addressed to those establishments that will participate in the scheme. Further, it cannot be excluded that the research organisations and undertakings involved in CRIs compete with other goods and service providers in different sectors and with other research organisations or undertakings carrying out research projects. Thus, it distorts, or threatens to distort, competition between the Contracting Parties to the EEA Agreement. Finally, the host institutions and parties to the consortia might be present in the international exchange of goods and services; thereby the public support provided to them may affect trading conditions across the EEA.

In compliance with the previous assessment of the scheme by the Authority in its Decision No 38/07/COL, the Authority considers that the scheme in question constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

6. Compatibility of the aid

The Authority carried out its assessment of the original scheme in its Decision No 38/07/COL with reference to Article 61(3)(c) of the EEA Agreement in combination with the Chapter on State Aid for Research and Development and Innovation of the State Aid Guidelines. Based on the commitments of the Norwegian authorities to comply with the R&D&I Guidelines, in particular as regards the maximum allowed aid intensities, the cumulation rules, eligible costs, allocation of intellectual property rights and the assessment of the incentive effect, the Authority found the CRI scheme to be compatible with the functioning of the EEA Agreement. Consequently, it did not raise any objections to the scheme.

The modifications of the scheme as described in the current notification do not influence the previous assessment made by the Authority. The increase of the exact number of beneficiaries and, directly related to a higher number of aid recipients, the increase of the maximum nominal expenditure from the state budget do not alter the main characteristics of the approved scheme. The Norwegian authorities have not informed the Authority of any other changes in the scheme's conditions as described in the Decision No 38/07/COL. Moreover, it has been confirmed by the Norwegian authorities that the commitments provided for the purpose of the prior approved scheme are still valid in their entirety after the modifications. Consequently, the Authority maintains the reasoning set out in its previous assessment of the compatibility of the CRI scheme.

7. Conclusion

On the basis of the foregoing assessment and with reference to the Authority's Decision No 38/07/COL, the Authority concludes that the notified amendments to the CRI scheme do not raise doubts as to the compatibility of the scheme with the functioning of the EEA Agreement. The Authority has accordingly decided that the aid is compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with the Chapter on State Aid for Research and Development and Innovation of the State Aid Guidelines.

The Norwegian authorities are reminded of the obligation resulting from Article 21 in Part II of Protocol 3 to the Surveillance and Court Agreement read in conjunction with Article 6 of the Authority's Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

The Norwegian authorities are also reminded that any 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 Chapter on State Aid for R&D&I of the State Aid Guidelines, under which the above measures have been approved, three years after its 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 notified modification of the scheme on Centres for Research-based Innovation on the basis that the scheme is compatible with Article 61(3)(c) of the EEA Agreement and with the Chapter on State Aid for Research and Development and Innovation of the State Aid Guidelines.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 12 September 2007

For the EFTA Surveillance Authority

Per Sanderud
President

Kristján Andri Stefánsson
College Member