

Case No: 60221
Event No: 410552
Dec. No: 38/07/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 27 FEBRUARY 2007
on the notification of Norwegian 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 Article 1(3) in Part I and Article 4(3) in Part II of Protocol 3 to the Surveillance and Court Agreement,

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 14, State Aid for Research and Development and Innovation ("R&D&I") thereof,

Whereas:

I. FACTS

1. Procedure

By letter of 15 June 2006 from the Royal Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Education and Research dated 14 June 2006, both received and registered by the Authority on 16 June 2006 (Event Nos. 378362, 378369, 378374, 378380, 378389, 378392, 378394, 378396, 378398 and 378408), the Norwegian authorities notified the scheme called Centres for Research-based Innovation ("CRIs") pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

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 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. The Guidelines were last amended on 7 February 2007. Hereinafter referred to as "the State Aid Guidelines".

By letter dated 24 July 2006 (Event No.: 381523), the Authority requested additional information.

By letter dated 28 August 2006 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Education and Research dated 28 August 2006, both received and registered by the Authority on 28 August 2006 (Event No.: 385573), the Norwegian authorities replied to the information request.

By letter dated 27 October 2006 (Event No.: 387877), the Authority requested additional information.

By letter dated 27 November 2006 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Education and Research dated 24 November 2006, both received and registered by the Authority on 27 November 2006 (Event No.: 4000-14), the Norwegian authorities replied to the information request.

By letter dated 18 January 2007 (Event No.: 406576), the Authority requested an extension of the two-month period for taking a decision, according to Article 4(5) in Part II of Protocol 3 to the Surveillance and Court Agreement.

On 26 January 2007, the Norwegian authorities confirmed, by way of an email (Event No.: 407652), that they agreed to such an extension.

2. Description of the proposed measures

2.1 General presentation of the scheme regarding CRIs

The Norwegian authorities have notified a scheme concerning the setting up of CRIs involving the co-operation of private and public bodies with financial support from the Research Council of Norway (RCN) in the form of grants.

The CRI grants are based on an open call where a host institution and partners apply for CRI status. The scheme is open to participation of large, internationally oriented enterprises as well as research-intensive small and medium-size enterprises. Any undertaking, irrespective of its size or field of activity may participate in the scheme. Furthermore, in order to take part in a CRI, it is not necessary to have headquarters located in Norway; any foreign company, even without operations in Norway, may take part⁵.

The host institution in which the CRI will be based can be a university, a non-profit research institute or an undertaking with a strong research activity. It must be situated in Norway. A foreign research institution/undertaking with operations in Norway may thus serve as a host institution for a CRI. The general rule is that the CRI will consist of research groups located in the same place. There may, however, be some cases of “virtual centres”, based on collaboration between groups, which are not located in the same place and which have effective communication systems and systems for exchanging personnel between the various parts of the virtual centre.

The scheme is non sector-specific and grants may be awarded for any field of research.

Selection of the CRIs has already taken place. Applications were assessed on the basis of two criteria: scientific quality and potential for innovation and value creation. The experts

⁵ This will for example be the case of a CRI specialised in materials technology in which three foreign auto manufacturing companies with no operations in Norway will participate (Audi, BMW and Renault).

who participated in the selection process were appointed by the RCN after having ensured that they offered the required guarantees regarding independence (i.e., that they had no common publications or any common interest or formal relations to the applicant).

Each CRI will involve several projects which can cover different fields of research.

The RCN will cover up to a maximum 50% of the CRIs' annual budget. The host institution with partners undertake to contribute at least 50% of the centres' annual budget. At least 25% of the CRIS' budget must come from undertaking partners.

The CRIs will dedicate the greatest part of their resources to fundamental research. Indeed, in general, 75% of the research carried out is to be fundamental research and the remaining 25% is to cover industrial research. No pre-competitive research is to be carried out in the CRIs. Most projects will cover both fundamental and industrial research but there may be some projects which will consist of industrial research exclusively.

CRIs will not be constituted as legal entities; the centres will be organised as projects administratively based within the premises of one of the parties to the consortium, the host institution. The host institution will act as the manager of the CRI and will be receiving the funds from the various sources (RCN, other non-profit organisations and undertakings).

The setting up of the CRIs entails the signing of two contracts:

- a consortium agreement between the parties that will be participating in the CRI (i) and
- a contract between the host institution and the RCN, "Agreement for Centre for Research-based Innovation" (which also includes the following documents: "RCN: General Terms of Contract", "CRI- Requirements and Guidelines" and "Project Description") (ii).

Re (i): Before the contract with the RCN is signed, a Consortium agreement must have been signed by the parties involved in the CRI. The consortium agreement should be based on the guidance document "Template for Consortium Agreements between Collaborating Participants in CRI Consortium".

Re (ii): The host institution⁶ will sign the Agreement for Centre for Research-based Innovation on behalf of the consortium consisting of research institutions and enterprise partners and will receive the funding from the RCN. The host institution is responsible for ensuring that the consortium agreement complies with the applicable terms and guidelines. In the event changes in the consortium agreement mean that key conditions for the establishment of the CRI are no longer met, or have been altered significantly, the RCN is entitled to cancel the agreement with the host institution.

The CRI will not operate with a separate bank account; the host institution will keep a separate project account for the CRI specifying actual expenses and incomes for all projects. The document "RCN – General Terms of Contract" provides that project accounts may only be debited for expenses which are directly related to the performance

⁶ The contract with the RCN is signed by the host institution which is named "*Project Owner*" in the agreement with the RCN. In order to avoid confusion, the Authority will only use the term "*host institution*".

of the project and within the parameters of the project plan. The RCN is entitled to verify that funds are being spent in accordance with the contract.

The Board of Directors of a CRI consortium shall consist of representatives of the consortium participants, i.e., the host institution and the other partners. The Board's main responsibility will be to help ensure that the intentions and plans underlying the agreement for the establishment of the centre are fulfilled. The Board of Directors shall ensure that co-operation proceeds smoothly between the host institution and the partners to the CRI.

2.2 The objective of the aid measure

Current financing of research and development ("R&D") projects in Norway amounts to 1,53% of GDP which is considered to be insufficient. It is believed that the notified scheme will contribute to an increase in the level of R&D which would further lead to innovation and higher growth. According to the Lisbon goals, and as set out by the 2002 Barcelona European Council, the European Union's ambition is that overall spending on R&D should be increased with the aim of approaching 3% of GDP by 2010 with 2% expected to come from the private sector. Norway shares the same ambition.

The Norwegian CRI scheme has been developed in order to support long-term R&D activities.

The main objectives of the scheme are as follows:

- 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.

2.3 National policy basis for the aid measure

The national policy basis for the granting of the aid by the RCN is the Government White Paper on Research 2005, "*Commitment to Research*" (St. meld. no. 20, 2004-2005). The successive Budgets from the Ministry of Education and Research will provide for the allocations to be paid to the RCN.

2.4 Eligible applicants

The recipients of the aid will be the parties to the CRIs.

Two types of eligible applicants must be distinguished: the undertakings and the research organisations such as universities and non profit research bodies.

2.5 Form of the aid and eligible expenses

The aid will take the form of direct grants from the RCN to the host institution in the following manner:

- 80% of the funds from the RCN will be paid to the host institution in three instalments. The first payment will take place after research has been carried out

for four months. The second and third payments will be subject to satisfactory Progress Reports. The two first payments will be one third of the approved annual financing from the RCN and the third payment will be 13%;

- 20% will be paid subject to an approved accounting report.

The grants paid by the RCN will be transferred to a dedicated account held by the host institution. The CRIs, as they are not legal entities, are fiscally transparent. In the vast majority of cases, the host institution will be a non profit research organisation not subject to corporate tax. However, the share of the grant paid by the RCN which will be benefiting a corporation will be subject to corporate tax as any taxable income paid to a private undertaking. Where the host institution is a private undertaking, the grant paid by the RCN will be subject to corporate tax.

In some cases, the aid can also potentially take the form of indirect benefits corresponding to research results. Parties to the CRIs may, in addition to the grant from the RCN, also gain some additional benefits in the form of intellectual property rights generated by the research carried out by the CRIs.

Regarding fundamental research, which will be the main activity of the CRIs, results are to be published in international scientific journals and presented in papers at international conferences.

Regarding industrial research, the RCN recommends that intellectual property rights (“IPRs”) be allocated to the parties in proportion to their contributions. It should be stressed that the RCN will never be the owner of any of the IPRs which result from the research carried out by the CRIs. The parties to the consortium are however free to provide for a different method for allocating IPRs. If IPRs are allocated in a different manner, the allocation of IPRs will be taken into account when determining the level of the aid intensities.

Eligible costs will include costs of personnel employed exclusively for the research activity and costs of 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. Normally, at least 25% of the budget will be spent on Ph.D scholarships and post-doctorate positions.

Each year, the CRI will provide for a “**CRI Annual Work Plan – Funding and Cost**”, which will set out in detail how funds from the partners and funds from the RCN contribute to finance **each project**. The Work Plan will specify for each project:

- (i) a classification of the type of research for each project (fundamental research or industrial research);
- (ii) whether the contribution from a non profit research organisation should be considered as amounting to state aid;
- (iii) an assessment of the value of IPRs generated for each project if such IPRs are not allocated to the participating parties in proportion to their contributions;
- (iv) an assessment of the value of resources made available to a project by a consortium member and used in a project if it is not paid a reasonable compensation to the rights holder;

- (v) the nature of the collaboration in each of the industrial projects to determine whether some bonuses could be applicable;
- (vi) status of each of the enterprise partners with regard to size (small, medium or large) to determine whether some of the participating undertakings may benefit from bonuses;
- (vii) for each project, a demonstration of the incentive effect of the project with regard to increase in project size, increase in scope, increase in speed and increase in total amount spent on R&D&I;
- (viii) the funding from each of the partners in the form of in-kind and cash contributions and the manner in which funding from the RCN contributes to funding each project;
- (ix) report from the participating undertakings as to whether they are benefiting from the SkatteFUNN scheme⁷ as tax deduction from the SkatteFUNN scheme will be taken into account when calculating the total public support;
- (x) income from licensing the project results at the disposal of the CRI as part of the funding base for achieving the CRI's objectives may also in part be accounted for as part of the public funding.

The Annual Budget which is a part of the Annual Work Plan for each CRI must describe each partner's financial contribution to the planned activity (in form of in-kind contributions and cash) and how each research project will be funded. For the in-kind contributions the following costs categories will apply:

- personnel costs including normal overhead;
- research equipment dedicated to the CRI; and
- other operating expenses incurred directly as a result of the research activity.

2.6 Aid intensities

Aid intensity assessed at the level of the CRI

The CRI scheme provides for a direct support from the RCN corresponding to 50% of the eligible costs borne by the CRI. However, aid may also be passed on to the undertakings by the other public bodies participating in the consortium (universities, other non-profit bodies). In total a maximum of 75% of the costs of the CRI could potentially be borne by public bodies.

Aid intensity assessed at the level of each party to the consortium

The actual aid intensity for each party to the consortium will vary for each project.

The aid to be taken into account can be both of a direct character (i.e., corresponding to the grant paid by the RCN) or of an indirect character (i.e., corresponding in part to

⁷ See decision of 25 September 2002, Dec. No. 171/02/COL, decision of 5 February 2003, Dec. No. 16/03/COL and decision of 29 November 2006, Dec. No. 366/06/COL.

intellectual property rights that may have been generated by the research carried out by the CRIs).

When approving the Work Plan, the RCN will assess the permitted level of public support. If the applicable aid intensities are exceeded, the support from the RCN to the host institution will be reduced accordingly. Should the host institution have received more public support than authorised by way of the first, second and third payments, the amounts received in excess will have to be paid back including interests⁸.

2.7 Cumulation

Some undertakings involved in the CRIs may be eligible to benefit from the SkatteFUNN scheme. The RCN is responsible for ensuring that cumulation of the aid granted under the CRI scheme and under the SkatteFUNN scheme does not lead to aid intensities that exceed the maximum ceiling set in Chapter 14 of the State Aid Guidelines (see Section 3.1.2 below).

Participating companies will be asked to indicate whether their contribution to a CRI has been reported as a SkatteFUNN project. Should a situation arise where an accumulation of support is found, this will be taken into account when the level of state aid is controlled. If the public aid exceeds the maximum allowable level, the public financing of the project will be reduced accordingly by the RCN.

2.8 Budget and duration

A budget of NOK 100 million (approximately EUR 12,5 million) per year is foreseen to be allocated to the scheme.

The Norwegian authorities have indicated that the proposed duration of the scheme is of eight years, starting in 2007 and ending in 2015. The CRIs will be established for up to a maximum of five plus three years. After four years, each CRI will be evaluated on the basis of criteria drawn up by the RCN. The evaluation will serve as the basis for a decision about whether the CRI should be continued for another three years. After a maximum of eight years, the CRIs will in any event be discontinued.

Where the CRIs are discontinued either at the end of the eight years or after five years in case the mid-term review is negative, the centres will lose their status as CRIs and will not receive further grants from the RCN.

Where the CRIs are terminated because of a breach of contract by the host institution, the RCN may claim reimbursement of payments made. Section 12.2 of the General Terms of Contract provides that the RCN may cancel the contract with the host institution if the latter has committed a serious breach or is unwilling/unable to complete the project. It provides furthermore that *“provided the cancellation is not due to a serious breach of contract on the part of the Research Council, in the event of cancellation, the Research Council has the right to claim reimbursement for disbursed allocations. When under an obligation to forfeit all or part of the allocation, the [host institution] shall be liable for interest on the amount from the date of the breach. This interest shall be equivalent to the late payment interest rate pursuant to current Norwegian legislation”*.

⁸ This is expressly provided for by the document “Requirements to Annual Work Plan and reporting to ensure that activities satisfy ESA regulations for state aid for R&D&I”. The obligation to pay back illegal state aid follows from the Act of 27 November 1992 on State Aid, paragraph 5.

2.9 Application procedure, administration and monitoring of the scheme

The proposal for the research project and the research group behind it is subject to peer review by international experts. Each application will be assessed by three international experts. Based on the experts' assessment, an international scientific committee consisting of 10 prominent researchers will give advice as to which applications qualify with regard to scientific quality.

The monitoring of the nature of the research to be carried out will cover different aspects of the life of the CRIs: firstly, it will apply to the question of verifying that the research carried out is indeed fundamental research and industrial research when it is claimed that it is. There will also be a need to verify that no pre-competitive research is carried out. It is the RCN that will be responsible for this.

The RCN will be responsible when approving the Annual Work Plan for verifying that the support for the project is a real incentive for (i) increase in project size, (ii) increase in scope, (iii) increase in speed and (iv) increase in total amount spent on R&D&I.

In addition, the monitoring carried out by the RCN will take the following forms:

- A **Progress Report** will be submitted for each CRI on 1 June and 1 December. The aim of these short reports is to present the deviations from the Annual Work Plan.
- An **Accounting Report** to be submitted on 20 January will provide a complete report of the activities carried out the preceding year in the same form as the Annual Work Plan.
- An **Annual Report** which is a much more comprehensive report of activities including highlights from the research activities directed towards RCN will also be presented.

II. APPRECIATION

1. The presence of state aid

Article 61(1) of the EEA Agreement reads as follows:

“[s]ave 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 Authority when applying the four conditions set out in Article 61(1), has reviewed both the measures consisting of the payment of the grants by the RCN and the potential indirect state aid that may take the form of the profit that may be generated by the IPRs resulting from the research carried out by the CRIs.

1.1 Presence of state resources

The aid measure must be granted by the State or through state resources.

The CRI scheme provides for the payment by the RCN to undertakings and research organisations of a grant representing 50% of the costs generated by a CRI for its entire duration. The grant paid by the RCN is provided for by the Norwegian annual fiscal budget.

The criterion of the use of state resources is therefore fulfilled regarding the direct grants paid by the RCN.

Finally, the CRIs may also be receiving funds from other sources such as Community funds. In such cases, the Authority will take into account the payments made out of those funds in order to verify that the applicable aid intensities are complied with.

1.2 Favouring certain undertakings or the production of certain goods

In general, the support under the CRI scheme grants an advantage to the parties to the CRIs in the form of the payment of an amount corresponding to a maximum of 75% of the costs of running the CRI. Under normal market conditions, these costs would be borne by the CRIs on their own.

The support constitutes a selective measure as it is only addressed to those establishments that will participate in the scheme. If such establishments qualify as undertakings, they are favoured, within the meaning of Article 61(1) of the EEA Agreement.

Research organisations may be defined as undertakings. What is decisive for their qualification as an undertaking is whether the research organisations carry out an economic activity⁹ which is an activity consisting of offering goods and/or services on a given market.

However, where the measure benefits public research institutions it does not necessarily amount to state aid. Indeed, where R&D is carried out by public non-profit making, higher education or research establishments on behalf of or in collaboration with industry, state aid within the meaning of Article 61(1) is generally not involved under the condition that the results which do not give rise to IPRs are widely disseminated and any IPRs to the R&D results are fully allocated to the public non profit making establishments¹⁰.

Where public research institutions are involved, a clear separation of costs is required if such bodies are also involved in economic activities as set in Section 3.1.1 of Chapter 14 of the State Aid Guidelines.

The Norwegian authorities have confirmed that a clear separation of costs will be applied where public research bodies are involved.

Section 3.2 of Chapter 14 of the State Aid Guidelines clarifies under which conditions undertakings obtain an advantage within the meaning of Article 61(1) of the EEA Agreement in cases of collaboration contracts with research organisations.

Where fundamental research is involved, the results which do not give rise to IPRs widely disseminated will not amount to state aid.

⁹ See in particular, Case C-237/04 *Enirisorse SpA and Sotacarbo SpA* and Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21; Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 77, Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-000 (not yet reported), paragraph 107.

¹⁰ See decision in R&D Programme “Profit”, OJ C 177, 19.7.2005, p. 27.

Where industrial research is involved, there will be state aid where the results of the research are not fully allocated to the research organisation or where the research organisation does not receive from the undertakings compensation equivalent to the market price for the IPRs.

Section 3.2.2 of Chapter 14 of the State Aid Guidelines provides furthermore that if the conditions here above are met, thus leading to the preliminary conclusion that state aid is indeed involved, the Norwegian authorities may rely on an individual assessment of the collaboration project.

In addition, Section 3.2.2 of Chapter 14 of the State Aid Guidelines provides that there may also be no state aid where the assessment of the contractual agreement between the partners leads to the conclusion that any IPRs to the R&D&I results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the project. If those conditions are not fulfilled and the individual assessment of the collaboration project does not lead to the conclusion that there is no state aid, the Authority will consider the full value of the contribution of the research organisation to the project as aid to undertakings.

On the basis of the information the Authority has been provided with, it cannot be excluded that some of the projects will entail indirect state aid in the form of the research results.

It results from the above that the notified scheme is selective in the meaning of Article 61(1) of the EEA Agreement.

1.3 Distortion of competition and effect on trade between Contracting Parties

The Authority cannot exclude that the undertakings involved in CRIs compete with other goods and service providers in different sectors across Europe. Also the research organisations that carry out economic activities may compete with the private undertakings and the research organisations that carry out economic activities which benefit from the CRI scheme carry out an economic activity in competition with other companies from other countries of the EEA and the support afforded strengthens their position. The support therefore distorts or threatens to distort competition and affects trade between the Contracting Parties.

1.4 Conclusion

Based on the above findings, the Authority comes to the conclusion that the notified scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2. 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 the notification of the Centres for Research Based Innovation (Event Nos: 378362, 378369, 378374, 378380, 378389, 378392, 378394, 378396, 378398 and 378408), the Norwegian authorities have complied with the notification requirement. The

Norwegian authorities have furthermore confirmed that no payment will be made to the CRIs before the scheme is formally approved by the Authority.

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.

3. Compatibility of the aid

The assessment of the aid measure will be carried out with reference to Article 61(3)(c) of the EEA Agreement in combination with Chapter 14 of the State Aid Guidelines.

In assessing whether an aid measure can be deemed compatible with the market covered by the EEA Agreement, the Authority balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects by distortion of trade and competition. This balancing test is explained in Section 1.3.1 of Chapter 14 of the State Aid Guidelines and its methodology is reflected in the following steps of the Authority's assessment of the notified scheme.

In that respect, the conditions set out in Section 5 of Chapter 14 of the State Aid Guidelines, described below (**3.1**), must be met in all cases irrespective of the potentially distortive effect of the aid measure.

Regarding the required incentive effect of the aid, Chapter 14 of the State Aid Guidelines provides for different levels of assessment depending on the amount of the aid and its potentially distortive effect; in some cases, a legal presumption of the existence of incentive effect will be applicable, in others, a more detailed assessment will be required (see below, **3.2**).

3.1 Conditions applicable to all aid measures under review irrespective of the potentially distortive effect of the measure

3.1.1 Research categories

Section 5.1.1 of Chapter 14 of the State Aid Guidelines provides that the aided part of the project must completely fall within one or more of the following research categories: fundamental research, industrial research, experimental development¹¹.

The Norwegian authorities have stated that the CRIs will only be involved in two types of research activities: fundamental research for the greatest part (75%) and industrial research for the remaining (25%).

The Norwegian authorities have confirmed that no experimental development will take place in the CRIs.

The RCN will be responsible for ensuring that no experimental development activities will be carried out and that the research carried out within the CRIs is indeed fundamental research or industrial research according to how these categories are defined in Chapter 14 of the State Aid Guidelines. The RCN will also be responsible for verifying that the 75%-25% ratio is complied with.

¹¹ For a definition of “fundamental research”, “industrial research” and “experimental development”, see Section 2.2 (e), (f) and (g) of Chapter 14.

The Authority finds that the condition set in Section 5.1.1 of Chapter 14 of the State Aid Guidelines is fulfilled.

3.1.2 Basic aid intensities

Section 5.1.2 of Chapter 14 of the State Aid Guidelines provides that the aid intensity as calculated on the basis of the eligible costs of the project, shall not exceed:

- 100% for fundamental research;
- 50% for industrial research, and
- 25% for experimental development.

Section 5.1.2 furthermore provides that *“the aid intensity must be established for each beneficiary of aid, including in a collaboration project. In the case of state aid for an R&D project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each benefiting undertaking”*. (emphasis added)

The authorised maximum aid intensity for fundamental research being of 100%, there is no need to review in detail the manner in which the aid will be granted to the private undertakings participating in the CRIs.

Regarding industrial research, where the aid intensity is capped, it is essential that the aid levels are not exceeded and a careful review must be carried out in order to ensure that such aid intensities are not exceeded.

In assessing whether the maximum aid intensities are not exceeded both the grants paid by the RCN (and where they constitute aid, contributions from research organisations to that project) and the potential IPRs will have to be taken into account. As indicated above (see Section 2.2), where the criteria set out in Section 3.2 of Chapter 14 of the State Aid Guidelines, lead to the conclusion that there is no indirect state aid involved, only the grants directly paid by the RCN (and by the research organisations where applicable) will be taken into account.

Where, on the contrary, the IPRs are not allocated between the partners in proportion to their contributions, the share of the IPRs distributed in excess will be taken into account in order to determine whether the aid intensity caps are complied with. In such a case, the support from RCN to the host institution shall be reduced accordingly. In the case that the host institution through the first, second and tertiary payments has received more public support than acceptable, money will have to be paid back including interests. This may occur where the research actually carried out evolved in such a manner that it entailed more industrial research than originally planned, thus leading to the applicable aid intensities being exceeded.

Where income generated by IPRs resulting from the research carried out by the CRIs is paid onto the account of the host institution in charge of the CRI, an adjustment will be made to ensure that the applicable aid intensities are not exceeded.

The RCN will be responsible for verifying, on the basis of the Annual Work Plan, the Progress Report and the Annual Report that, regarding industrial research, no project benefits from public support – whether direct or indirect – exceeding 50% before bonuses.

The Authority finds that the conditions regarding aid intensities are fulfilled in light of the commitment made by the RCN to verify that the applicable ceilings are never exceeded.

3.1.3 Bonuses

Section 5.1.3 of Chapter 14 of the State Aid Guidelines provides for the possibility to increase the ceilings fixed for industrial research in certain circumstances amongst which where the aid is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

The Authority finds that by requesting that the parties to the consortium specify in the Annual Work Plans the nature of the collaboration project¹² and the size of the undertakings parties to the CRIs (small, medium or large enterprises), the RCN has offered sufficient assurance that the applicable maximum aid intensities will be complied with.

3.1.4 Eligible costs

Section 5.1.4 of Chapter 14 of the State Aid Guidelines provides that “[t]he aid intensity will be calculated on the basis of the costs of the research project to the extent that they can be considered as eligible. All eligible costs must be allocated to a specific category of R&D. The following costs shall be eligible:

- (a) *personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project).*
- (b) *Costs of instruments and equipment to the extent and for the period used for the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible.*
- (c) *Costs for building and land, to the extent and for the duration used for the research project. With regards to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible.*
- (d) *Costs of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm’s length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity.*
- (e) *Additional overheads incurred directly as a result of the research project.*

¹² Higher bonuses may be granted to small and medium-sized enterprises in the conditions set out in Section 5.1.3 of Chapter 14 of the State Aid Guidelines.

- (f) *Other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.*

The RCN has confirmed that it will be responsible for verifying that the aid intensities are calculated on the basis of the eligible costs as laid down in the Guidelines.

3.2 Assessment of the incentive effect and necessity of the aid measure depending on the potentially distortive effect of the aid measure

Section 6 of Chapter 14 of the State Aid 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”¹³. (emphasis added)

Chapter 14 distinguishes between two cases when assessing the incentive effect of an aid measure:

- cases where there is an automatic presumption that the incentive effect condition is met (3.2.1);
- cases where there is no automatic presumption and the incentive effect of the aid measure will have to be established (3.2.2).

3.2.1 Cases where there is an automatic presumption that the incentive effect condition is met

Section 6 of Chapter 14 provides that: “[i]f the aided R&D&I project has not started before the application, the Authority considers that the incentive effect is automatically met for the following aid measures: 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 (...)”.

It cannot be excluded that some of the projects will comply with the first conditions set out here above thus triggering the automatic presumption.

3.2.2 Cases where there is no automatic presumption and the incentive effect of the aid measure will have to be demonstrated

Section 6 of Chapter 14 continues: “[f]or all other measures, the Authority will require that an incentive effect is demonstrated by the notifying EFTA State”.

When carrying out its assessment of the incentive effect of the aid measure, the Authority distinguishes between two situations depending on the potentially distortive effect of the aid measure: cases where there will be no need for a detailed assessment (3.2.2.1), and cases where a detailed assessment will have to be carried out (3.2.2.2).

¹³ Footnote 36 of Chapter 14 of the State Aid Guidelines provides however that if the aid proposal is to grant aid for an R&D&I project, this does not exclude that the potential beneficiary has already carried out feasibility studies which are not covered by the request for state aid.

3.2.2.1 Cases where the incentive effect will have to be demonstrated without the need to carry out a detailed assessment

Section 6 of Chapter 14 provides that, when assessing an aid scheme, the conditions relating to the incentive effect shall be deemed to be satisfied if the national authorities have committed themselves to grant individual aid under the approved aid scheme **only after** it has verified that an incentive effect is present. The assessment of whether an incentive effect is present should be based on the following quantitative and qualitative indicators:

- *“increase in project size: increase in the total project costs (without decreased spending by the aid beneficiary by comparison with a situation without aid); increase in the number of people assigned to R&D&I activities;*
- *increase in scope: increase in the number of the expected deliverables from the project; more ambitious project illustrated by a higher profitability of a scientific or technological breakthrough or a higher risk of failure (notably linked to the higher risk involved in the research project, to the long-term nature of the project and uncertainty about its results);*
- *increase in speed: shorter time before completion of the project as compared to the same project being carried out without aid;*
- *increase in total amount spent on R&D&I: increase in total R&D&I spending by the aid beneficiary; changes in the committed budget for the project (without corresponding decrease in the budget of other projects); increase in R&D&I spending by the aid beneficiary as a proportion of total turnover.*

If a significant effect on at least one of these elements can be demonstrated, taking account of the normal behaviour of an undertaking in the respective sector, the Authority will normally conclude that the aid proposal has an incentive effect.”

The Norwegian authorities have indicated that they will be granting the aid only after the incentive effect as set out above for each project has been established.

3.2.2.2 Cases where a detailed assessment of the aid measure will have to be carried out

Section 7.1 of Chapter 14 of the State Aid Guidelines provides that a more detailed assessment for measures covered by Chapter 14 will have to be carried out where the aid amount exceeds for project aid and feasibility studies:

- if the project is predominantly fundamental research, EUR 20 million per undertaking, per project;
- if the project is predominantly industrial research, EUR 10 million per undertaking, per project;
- for all other projects, EUR 7,5 million per undertaking, per project.

The Norwegian authorities have confirmed that none of the projects will exceed the aid amounts listed here above. The Authority therefore concludes that the conditions set out in the methodology regarding detailed assessment will not need to be applied in order to demonstrate the incentive effect of the scheme.

3.2.3 Conclusion

Under the notified scheme, some cases will arise where the automatic presumption will be applicable, however this will not always be the case. For this reason, the Norwegian authorities have agreed that the incentive effect will have to be systematically demonstrated for each project as set out in 3.2.2.1 above before individual aid is granted.

The Authority is therefore satisfied that the incentive effect condition will be met as the Norwegian authorities will only grant the aid after it has verified that the incentive effect is demonstrated as laid down in the Guidelines. The detailed assessment of the aid measure will never have to be carried out as the triggering thresholds will never be met.

3.3 Cumulation

The Norwegian authorities are reminded that the aid ceilings fixed under the new Chapter 14 of the State Aid Guidelines shall apply regardless of whether the support for the aided project is financed entirely from state resources or is partly financed by the Community, except in the specific and limited context of the conditions established for Community funding under the RTD Framework programmes.

Where the expenditure eligible for aid for R&D&I is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under applicable rules. This limitation does not apply to aid granted in accordance with the Guidelines on state aid to promote risk capital investment in SME (cf. Section 8 of the State Aid Guidelines).

Aid for R&D 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 Chapter 14 of the State Aid Guidelines.

The Norwegian authorities have committed to ensuring that the rules on cumulation of the Chapter 14 of the State Aid Guidelines will be respected.

The RCN, as the granting authority, is responsible for ensuring that cumulation of aid under the scheme and other aid measures do not imply that maximum aid intensities are exceeded.

All applications 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 inform the RCN if they receive aid from other public sources concerning the same project.

4. Conclusion

On the basis of the foregoing assessment, the Authority concludes that the notified CRI scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement, but does not raise doubts as to the compatibility with 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 14 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 in conjunction with Article 6 of decision 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 Chapter 14 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 will 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 scheme for Centres for Research-based Innovation.

The scheme is compatible with Article 61(3)(c) of the EEA Agreement and with Chapter 14 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, 27 February 2007

For the EFTA Surveillance Authority,

Bjørn T. Grydeland
President

Kurt Jaeger
College Member