

Event No: 400140
Ref. No: 60970
Dec. No.: 411/06/COL

**EFTA SURVEILLANCE AUTHORITY DECISION
OF 19 DECEMBER 2006
ON A NOTIFICATION OF THE DEPRECIATION RULE OF THE
PETROLEUM TAX ACT SECTION 3B, THIRD SENTENCE, RELATING TO LARGE
SCALE LNG FACILITIES LOCATED IN FINNMARK COUNTY AND THE
MUNICIPALITIES OF KÅFJORD, SKJERVØY, NORDREISA OR KVÆNANGEN IN
TROMS COUNTY**

(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 Decision 90/02/COL of 31 May 2002 on the notifications of a proposal for amended depreciation rules of the Petroleum Tax Act for production equipment and pipelines for gas linked to new large-scale liquefied natural gas⁴ facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county and the application of these rules to the Snøhvit project⁵,

HAVING REGARD TO the Authority's Guidelines⁶ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 17B "Application of state aid rules to measures relating to direct business taxation" and Chapter 25B, "National Regional Aid 2007-2013", thereof,

HAVING REGARD TO the Authority's Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid (Norway),

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 Hereinafter referred to as "LNG".

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

⁶ 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 13 December 2006, hereinafter referred to as the "State Aid Guidelines".

WHEREAS:

I. FACTS

1 Procedure

By letter of 30 October 2006 from the Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Finance dated 30 October 2006, both received and registered by the Authority on 30 October 2006 (Event No 396144), the Norwegian authorities notified, pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, their intended continuation of the depreciation rules of Section 3b, third sentence, of the Petroleum Tax Act⁷ for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county for the period from 1 January 2007 to 31 December 2013.

2 Background

On 31 May 2002, the Authority decided, *i.a.*, not to raise objections to the amendments to the Norwegian PTA in the form of special depreciation rates for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county. The approval of the amendment to the PTA was not limited in time. The special depreciation rate of the PTA was qualified as a regional aid scheme.

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 accept the appropriate measures set out in Chapter 25B.8 of the State Aid Guidelines⁸. According to the appropriate measures, the EFTA States were, *i.a.*, 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 accepted 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.

⁷ Act 13 June 1975 No 35 relating to taxation of sub sea petroleum deposits etc (“*Lov av 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumforekomster m.v.*”), hereinafter referred to as the “PTA”.

⁸ Cf. paragraph (92) of Chapter 25B.8 of the State Aid Guidelines.

The new regional aid map for Norway was approved by the Authority by Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid.

By letter of 30 October 2006 to the Authority, the Norwegian authorities notified their intended continuation of the special depreciation rules of the PTA.

3 Description of the proposed measure

3.1 Main features of the Norwegian tax system

The Norwegian Tax Act⁹ provides the legal authority for taxation of individuals and corporations. Corporate profits are taxed at a rate of 28%. Tangible operating assets are depreciated in accordance with the declining balance method. Operating assets are divided into depreciation groups. The rate of depreciation applicable for 2002 varies from 30% of the remaining balance for office equipment down to 2% for commercial buildings. The rate of depreciation applicable to plant and equipment is 4% of the remaining balance.

The PTA sets out a tax regime that is specially adapted to income from extraction and transportation by pipeline of oil and gas on the Norwegian continental shelf. Income is subject to corporate tax on ordinary income at a rate of 28% and special tax at a rate of 50% on net income adjusted for uplift, *i.e.* a total rate of 78%. Uplift is shielding part of the income from the special tax. The PTA also contains special provisions on the calculation of income, including the use of norm prices for oil and gas for purposes of tax assessment. Expenses incurred in acquiring tangible operating assets relating to extraction and pipeline activities may be depreciated at a maximum rate of 16 2/3% per year.

3.2 The amended depreciation rule of the PTA

On 22 November 2001, the Norwegian Parliament (“*Stortinget*”) approved an amendment¹⁰ to the PTA. Under the proposal, expenses for acquisition of pipelines and production equipment would fall under the offshore tax regime (PTA) and may be depreciated for tax purposes by up to 33 1/3% per year where the object, according to an approved plan for development and operation and a plan for installation and operation in accordance with the PTA, is the production and pipeline transport of gas which is to be cooled to liquid form in a new large-scale cooling plant.

Only facilities where a plan for development and operation and a plan for installation and operation, in accordance with the PTA, have been approved after 1 January 2001 were defined as “*new*”. “*Large-scale*” was defined as a minimum production capacity of four billion standard cubic metres per year¹¹.

According to the general applicable rules in the PTA, expenses for the acquisition of pipelines and production equipment may be depreciated for tax purposes by up to 16 2/3% per year. The amendment to the PTA implied, in other words, that investment in

⁹ Act of 26 March 1999 No 4 on taxation of wealth and income (“*Lov av 26. mars 1999 nr. 4 om skatt av formue og inntekt (skatteloven)*”).

¹⁰ Ot.prp. No 16 (2001–2002) on the Act amending Act No 35 of 13 June 1975 relating to taxation of subsea petroleum deposits, etc. (“*Om lov om endringer i lov av 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumforekomster m.v. (petroleumsskatteloven)*”).

¹¹ Ot.prp. No 16 (2001–2002), Chapter 4.2.

conjunction with the production and pipeline transport of gas that is to be cooled to liquid form in a new large-scale cooling plant could be depreciated over three years instead of over six years as in the ordinary rules in the PTA. LNG-installations were deemed to constitute part of the pipeline transportation system, and were thus subject to the depreciation rule.

Changing the depreciation period would provide lower tax income for the Norwegian State in the three first years and correspondingly higher income in the next three years. This means a loss for the State at present values and a corresponding gain for the companies. The size of this present value loss depends on the discount rate used as a basis. With an approximate risk-free discount rate, the present value loss due to the amended depreciation rules seen in isolation will be something over four per cent of total investment (measured at present values), according to Ot.prp. No 16 (2001-2002).

On 27 May 2002, the Norwegian Government put forth a proposal to the Parliament¹² to amend the geographical scope of the PTA Section 3b, third sentence, to the effect that the rules on depreciation contained therein would be applicable only in cases where the large-scale LNG facility was located within the geographical areas of Finnmark County or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms County. Otherwise the increased depreciation rates and the other provisions of the PTA were the same as in Ot.prp. No 16 (2001-2002), as described above.

3.3 The Authority's Decision 90/02/COL

By Decision 90/02/COL of 31 May 2003, the Authority decided not to raise objections to the Norwegian notification of a proposal for amended depreciation rules of the petroleum tax act for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county and the application of these rules to the Snøhvit project.

In its Decision, the Authority concluded that the amendment to the PTA constituted state aid within the meaning of Article 61(1) of the EEA Agreement, but that the amendment to the PTA, as well as the application of the rule to the Snøhvit project, was compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with Chapter 17B¹³ and Chapter 26¹⁴ of the Authority's State Aid Guidelines.

The Decision implied that all new large-scale LNG facilities within the defined geographical area could benefit from the increased depreciation rates. The amendment to the PTA thus was assessed as a regional aid scheme, while the application of the rule to the Snøhvit project was considered to be individual aid (notifiable award of aid on the basis of an aid scheme)¹⁵ because Snøhvit fulfilled the notification requirement of Chapter 26 of the State Aid Guidelines on the multisectoral framework on regional aid for large investment projects¹⁶.

¹² Ot.prp. No 84 (2001–2002) on the proposed Act amending Act no 35 of 13 June 1975 relating to taxation of subsea petroleum deposits, etc. (“*Om lov om endringer i lov av 13. juni 1975 nr. 35 om skatting av undersjøiske petroleumforekomster m.v. (petroleumsskatteloven)*”).

¹³ Application of state aid rules to measures relating to direct business taxation.

¹⁴ Multisectoral framework on regional aid for large investment projects.

¹⁵ As for example defined in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty. OJ L 83, 27.03.1999.

¹⁶ At the time of the adoption of Decision 90/02/COL, the provisions on regional aid relevant for the aid scheme to be assessed were, *i.a.*, laid down in Chapter 26 of the State Aid Guidelines, concerning the multisectoral framework on regional aid for large investment projects. This Chapter was replaced on 17

3.4 The new Regional Aid Guidelines

The provisions of the multisectoral framework on regional aid for large investment projects have now been taken into the new Regional Aid Guidelines¹⁷. Thus, as a consequence of the obligation of the EFTA States, set out in the new Regional Aid Guidelines, to limit the duration of all regional aid schemes in force at the time of the entry into force of the new Regional Aid Guidelines to 31 December 2006, the Norwegian authorities have notified the depreciation rules of Section 3b, third sentence, of the PTA for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county for the period from 1 January 2007 to 31 December 2013, as this is, in line with the Authority's Decision 90/02/COL, considered to be a regional aid scheme.

The application of the rule to the Snøhvit project must be considered as individual aid and is not covered by the notification. Thus, the Authority will, in the following, only assess the general aid scheme and not its application to the Snøhvit project, which was approved by the Authority by Decision 90/02/COL, or to any other potential individual projects. However, the Authority would like to emphasize that individual projects/investments under the scheme are subject to the notification requirement set out in paragraph (53) of Section 25B.4.3.1 of the new Regional Aid Guidelines¹⁸.

II. APPRECIATION

1 The presence of State aid

1.1 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 classification as aid thus requires that all four conditions set out in Article 61(1) of the EEA Agreement be fulfilled: 1) there must be an intervention by the State and through state resources; 2) it must confer a selective advantage on the recipients; 3) this intervention must distort or threaten to distort competition and 4) the aid measure must affect trade between the Contracting Parties.

March 2004 by new provisions on regional aid for large investment projects in Chapter 26A of the State Aid Guidelines. By the adoption of the new Regional Aid Guidelines on 6 April 2006, the Authority decided to include multisectoral framework on regional aid for large investment projects in Chapter 25B of the State Aid Guidelines on national regional aid 2007-2013.

¹⁷ Cf. paragraphs (49) to (59) of Chapter 25B.4.3 of the State Aid Guidelines.

¹⁸ Cf. also paragraph (54) of Section 25B.4.3.1 of the new Regional Aid Guidelines concerning the information requirement for non-notifiable large investment projects.

In its Decision 90/02/COL, the Authority referred to Chapter 17B.3 of the State Aid Guidelines, whereby “*a loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure*”. The Authority furthermore made reference to Ot.prp. No 16 (2001-2002)¹⁹ where it was stated that: “*With an approximate risk-free discount rate, the present value loss [to the State] due to the amended depreciation rules seen in isolation will be something over four percent of total investment (measured as present values)*”, and to statements from the Norwegian authorities that this amounted to a net present loss of approximately NOK 900 million. On this basis, the Authority concluded that the aid was financed from State resources. There are no reasons to deviate from this previous assessment with regard to the current decision.

Furthermore, the Authority referred to the undertakings selling gas from the area concerned by the rule being active in a market in which there was competition among producers from various EEA States, and on this basis concluded that the conditions concerning distortion of competition and effect on trade were met. These arguments remain equally valid for the current assessment.

Finally, concerning the selectivity and advantage of the measure, the question was whether the tax measure provided an exception to the application of the general tax system in favour of certain undertakings. The Authority held that the common system applicable was the Norwegian PTA with the normal depreciation rate of 16 2/3%, which had applied to all projects falling under the scope of the PTA regardless of their profitability. Furthermore, only expenses incurred in acquiring pipelines and production facilities that include a “*new large-scale*” cooling installation located in the *county of Finnmark and the municipalities Kåfjord, Skjervøy, Nordreisa or Kvænangen in the county of Troms* would fall within the scope of the amendment to the PTA, *i.e.* benefit from increased depreciation rates. The amendment would not be applicable to field developments involving the construction of cooling installations on a smaller scale or to cooling installations that otherwise do not fall within the scope of the PTA. Furthermore, the increased rate would only apply for a specific geographical area, *i.e.* they were based on a regional criterion. The increased depreciation rate was, in the Authority’s view, therefore specific and provided for an exception to the common system and thereby created an advantage for the undertakings that fall within the scope of the amendment to the PTA. No changes have taken place in the meantime, which would lead the Authority now to a different result.

On the basis of the considerations referred to above, the Authority concluded that the amendment to the PTA amounted to state aid within the meaning of Article 61(1) of the EEA Agreement.

Again, the present notification does not imply any amendments to the scheme as it was assessed by the Authority in its Decision 90/02/COL. Hence, it is the Authority’s view that the Authority’s conclusions with regard to the classification of the scheme under Article 61(1) of the EEA Agreement apply equally to the new notification of the scheme with regard to all four cumulative criteria. On this basis, the Authority concludes that the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

1.2 New aid

¹⁹ Point 5, Financial and administrative consequences.

According to Article 2(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, “*any plans to grant new aid shall be notified to the EFTA Surveillance Authority*”.

It follows from Article 1(3)(c) in Part II of Protocol 3 to the Surveillance and Court Agreement that “*new aid shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid*”.

Existing aid is defined in Article 1(3)(b) in Part II of Protocol 3 to the Surveillance and Court Agreement. According to paragraph (ii) of this Article, existing aid is, *i.a.*, “*authorised aid, that is to say, aid schemes which have been authorised by the EFTA Surveillance Authority...*”.

As stated in Section I.3.4 above, the present scheme has already been approved by the Authority. However, the scheme can still not be qualified as existing aid as the appropriate measures of the new Regional Aid Guidelines state that the EFTA States were 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. These appropriate measures were accepted by Norway²⁰.

This implies that the present scheme expires by the end of 2006. The notified scheme for the period of 2007 to 2013 must therefore be regarded as new aid according to the definitions in Article 1(3) in Part II of Protocol 3 to the Surveillance and Court Agreement. Hence, the continuation of the scheme requires a notification to the Authority on the basis of the obligation set out in Article 2(1) in Part II of Protocol 3 to the Surveillance and Court Agreement for the EFTA States to notify any plans to grant new aid to the Authority.

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 by letter dated 30 October 2006 and by expressing the intention of not continuing the scheme after 31 December 2006 until the approval by the Authority has been obtained, the Norwegian authorities have complied with the notification and stand-still requirement in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

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 assessment

3.1 Introduction

²⁰ With regard to the consequences of the acceptance of appropriate measures for existing aid schemes, reference is also made to Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, PIL and others and the Kingdom of Norway v EFTA Surveillance Authority* [2005] Report of the EFTA Court, p. 121.

The Authority has assessed the compatibility of the proposed scheme with Article 61(3)(c) of the EEA Agreement and in light of the new 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 interest of the Contracting Parties to the EEA Agreement, as compatible with the EEA Agreement.

3.2 The Authority's assessment in Decision 90/02/COL

In its Decision 90/02/COL, the Authority referred to paragraph (5) of Chapter 17B.4 of the State Aid Guidelines, where it is stated that *“If it is to be considered by the Authority to be compatible with the functioning of the EEA Agreement, State aid intended to promote the economic development of particular areas must be in proportion to, and targeted at, the aims sought. Where a derogation is granted on the basis of regional criteria, the Authority must ensure in particular that the relevant measures contribute to regional development and relate to activities having a local impact.”* The Authority also referred to its obligation according to the same paragraph to ensure that the measures *“relate to real regional handicaps”* and *“are examined in an EEA context”²¹*. *The Authority must in this respect take account of any negative effects, which such measures may have on trade between Contracting Parties”*.

The Authority finds that these considerations, based on Chapter 17B of the State Aid Guidelines, which is unchanged since the Authority's previous decision on the present scheme, still prevail today.

Furthermore, according to paragraphs (3) and (4) of Chapter 25.2 of the State Aid Guidelines²², the Authority considered in its Decision 90/02/COL that aid confined to one area of activity could not qualify for regional aid unless it could be shown that the industrial sector envisaged has the possibility to develop the less favoured region in question.

In this context, the Authority found that the fact that an aid was confined to a certain activity did thus not preclude an assessment of that aid under the regional derogations in Article 61(3)(c) EEA. However, the Authority emphasised that in such cases it is necessary to assess the effects of such aid in the EEA context²³. Such an aid could be considered as having a regional objective and be compatible with the functioning of the EEA Agreement, if it contributed to the long-term development of the region, without adversely affecting the common interest and competition conditions within the EEA²⁴.

The Authority then assessed the PTA on the basis of the abovementioned provisions of the multisectoral framework then contained in Chapter 26 of the Authority's State Aid

²¹ Cf. Case 730/79 *Philip Morris v Commission* [1980] ECR 2671.

²² At the time of the adoption of Decision 90/02/COL, the provisions on regional aid relevant for the aid scheme to be assessed were, *i.a.*, laid down in Chapter 25 of the State Aid Guidelines, concerning national regional aid. These guidelines were replaced on 6 April 2006 by the new Chapter 25B of the State Aid Guidelines, on national regional aid 2007-2013.

²³ See for example ECJ, Joined Cases C-278/92, C-279/92 and C-280/92, *Kingdom of Spain v Commission* [1994] ECR I-4103 and Case C-169/95, *Kingdom of Spain v Commission* [1997] ECR I-135.

²⁴ See similar cases in the Community context: Commission Decision of 22 December 1999 in State aid case No C22/99 – Spain – Ayudas de Estado en favour de Ramondin S.A. y Ramondin Capsulas S.A.; Commission Decision of 14 December 2000 in State aid case No N676/2000 – Spain (Valencia) – Plan de gasificación en pequeños y medianos municipios.

Guidelines. In this regard, the Authority stated that the geographical scope of the measure was within the approved regional aid area in Norway. Furthermore, the Authority referred to the fact that, on the basis of the distance to the markets, the building of an LNG facility was necessary in order to be able to exploit the gas resources in these areas. Moreover, the Authority noted that the northern regions, because of special features deriving from their geography, *i.e.* the remote northern location, harsh weather conditions and very long distances, as well as very low population density, had a special development problem arising out of demography which was a criterion in its own right in an assessment of eligibility for aid under the Regional Aid Guidelines. Finally, the Authority pointed out that information on the regional handicaps of the areas in question submitted by the Norwegian authorities indicated that the region had a worrying age and business structure, recruitment problems and high transport costs, and that no administrative county in the Nordic Countries had a higher depopulation ratio than Finnmark. For the period 1995-2000, Finnmark's population decreased by 12.3%. The Authority furthermore observed that the aid level proposed by the Norwegian authorities was within the allowed maximum aid intensities.

The Authority concluded that the amendment to the PTA would contribute to the long-term regional development in the area in question. It found that the relevant provision clearly related to activities in the areas in question and that the amendment related to the fact that the areas (and gas fields) in question were located a long distance from the markets, *i.e.* they had a regional handicap.

Furthermore, the Authority came to the conclusion that the aid to LNG facilities was not adversely affecting trading conditions to an extent contrary to the common interest. In this regard, the Authority referred, *i.a.*, to the fact that the European Commission had acknowledged that LNG facilities could have a positive effect from an EEA perspective, and that LNG facilities could enhance diversity and security of gas supply to the rest of the EEA.

3.3 Assessment of the notified prolongation of the aid scheme

The Authority will now examine whether the abovementioned considerations still prevail after the entry into force of the new Regional Aid Guidelines, which now also include the multisectoral framework, and the new regional aid map for Norway, as set out in the Authority's Decision 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid.

According to paragraph (10) of Chapter 25B.2 of the State Aid Guidelines, regional aid should, as a general rule, *“be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. [...] Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm, or aid confined to one area of activity, it is the responsibility of the EFTA State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition.”*

On this basis, the Authority considers that the new Regional Aid Guidelines do not preclude that aid that is confined to a certain activity may be compatible with Article 61(3) of the EEA Agreement. However, the aid must contribute towards a coherent regional development strategy and must not result in unacceptable distortions of competition.

According to the Authority's Decision 226/06/COL on the regional aid map for Norway, Finnmark county and the municipalities Kåfjord, Skjervøy, Nordreisa and Kvænen in Troms county, which constitute the area covered by the notified aid scheme, are all covered by the regional aid map for Norway for the period 2007-2013²⁵. According to the notification, the area covered by the scheme has a population density of approximately 1.6 inhabitants per square kilometre. The population decrease in the region over the last ten years is of approximately 5%. Thus, the area covered by the notified scheme qualifies for regional aid in accordance with the derogation set out in Article 61(3)(c) of the EEA Agreement on the basis of low population density.

Moreover, the Norwegian authorities have, in the notification, come with additional arguments concerning the economic situation in the area which further substantiate why regional aid is needed in the area. Thus, economic activity in the region has traditionally been based on natural resources, and fishing and agriculture still dominate the economic activity in the region. In addition, a considerable part of the workforce is employed in the public sector. In general, the industry in the region is characterized by a low degree of diversification. Internal distances in the region are considerable, the distance from the eastern to the western extremity of the zone is approximately 1 000 kilometres. Travel distances to markets outside the zone are even longer, with approximately 2 300 kilometres from the region's administrative centre, Vadsø, to the Norwegian capital, Oslo. Moreover, living conditions in the region are harsh, with temperatures below 0°C for approximately 200 days a year. Two months during the year the region is exposed to the polar night.

According to the notification, an important aim of the present aid measure is the creation of jobs in the area concerned. According to the notification, the Snøhvit project, the only project that has so far been granted aid under the scheme, is expected to create 350-400 new jobs in the region. Furthermore, experience with this project also shows that the population development in the area where the project is situated is clearly more positive than in the region in general²⁶. Moreover, during the development phase (2002-2007) of the Snøhvit project, the estimated local deliveries from the northernmost counties in Norway, Nordland, Troms and Finnmark, will, according to the notification, amount to about NOK 2.9 billion (approximately EUR 364 million). Regional/local deliveries are estimated at approximately NOK 240 million (approximately EUR 30 million) per year during the production phase.

On this basis, the Authority finds that the notified aid scheme contributes towards a coherent regional development strategy of long-term regional development in the area covered by the scheme, *i.e.* by contributing to more diversified economic activity and thus to a more developed labour market in the region.

Concerning the question of whether the aid adversely affects trading conditions to an extent contrary to the common interest, the Authority refers to the considerations in Decision 90/02/COL. In the Decision, the Authority stated that the building of an LNG facility is necessary in order to be able to exploit the gas resources in these areas, due to the distance to the markets.

²⁵ Cf. Section II.2.1 of the Decision.

²⁶ As stated above the population decrease in the region in general is of approximately 5% over the last ten years, whereas the municipality of Hammerfest, where the Snøhvit project is situated has been slightly positive over the last five years.

The Authority furthermore refers to the statements by the European Commission cited in Decision 90/02/COL, whereby the Commission emphasized that LNG facilities would enhance the diversity and the security of gas supplies in the EEA, and that "[a]s long as the European Union's external supply of gas depends on 41% of imports from Russia and almost 30% from Algeria, geographical diversification of our supplies would appear desirable, particularly in LNG"²⁷.

In the years following the adoption of the Authority's Decision 90/02/COL, the Commission has *e.g.* in its Report on progress in creating the internal gas and electricity market stressed the "need to bring gas from new sources to the EU, in order to stimulate competition and strengthen security of supply"²⁸. The importance of LNG for the European market has likewise been recognised by *i.a.* the European Regulators Group for Electricity and Gas²⁹.

On the basis of the arguments above, the Authority concludes that the project contributes towards a coherent strategy of regional development of the area concerned and that it will not result in unacceptable distortions of competition.

3.4 Level of aid

The State aid Guidelines³⁰ state that: "Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified."

In Decision 90/02/COL, the Authority concluded that the Norwegian authorities had demonstrated that the upper limit of the level of aid under the accelerated depreciation scheme was in the range of 8% and thus well below the maximum general aid ceiling of 25% net grant equivalent for the geographical area in question.

This calculated maximum aid intensity was based on a discount rate of 10%, which was considered by the Norwegian authorities to reflect a theoretical upper limit for the direct gain that may be received by any single company at any point in time.

With the new Regional Aid Guidelines, the maximum aid ceiling applicable to large enterprises, which are the enterprises notified to be covered by the scheme, has been decreased. It follows from Decision 226/06/COL³¹, as well as from the new Regional Aid Guidelines³², that the aid intensity applicable to regional aid in the area covered by the scheme is 15% gross grant equivalent for large enterprises.

However, based on the affirmations of the Norwegian authorities whereby the theoretical upper limit of the level of aid under the notified scheme would be 8%, the amendments to

²⁷ COM(2000) 769 final, 29.11.00, page 46.

²⁸ COM(2005) 568 final, 15.11.2005, page 9.

²⁹ Cf. <http://www.ergeg.org>, where it, under the heading "Gas Focus Group", is stated *i.a.* that "LNG growth is important to the EU market and is likely to have a significant impact on the development of competition".

³⁰ Paragraph 3 of Chapter 17B.4 of the State aid Guidelines.

³¹ Cf. Section II.2.2 of the Decision.

³² Cf. Chapter 25.B.4.1.2 of the State Aid Guidelines.

the aid intensities do not affect the compatibility of the proposed aid measure. On this basis, the Authority concludes that the level of aid under the proposed scheme is below the maximum aid ceiling set out in Decision 226/06/COL on the map of assisted areas and levels of aid in Norway and in the new Regional Aid Guidelines.

3.5 Cumulation

The Norwegian authorities have undertaken to ensure that if undertakings that are granted regional aid in accordance with the Section 3b, third sentence, of the PTA receive aid from other sources, the combined aid will not exceed the allowed aid intensities.

4 Conclusion

The Authority concludes that the notified continuation of the depreciation rules of Section 3b, third sentence, of the PTA for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county for the period from 1 January 2007 to 31 December 2013, 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.

The Norwegian authorities are reminded that they must provide the Authority with a report on the implementation of the aid annually and that any changes in the modalities of the scheme have to be notified.

The Norwegian authorities are furthermore reminded that individual projects/investments under the scheme are subject to the notification requirement set out in paragraph (53) of Section 25B.4.3.1 of the new Regional Aid Guidelines.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the notified depreciation rules of Section 3b, third sentence, of the Petroleum Tax Act for production equipment and pipelines for gas linked to new large-scale LNG facilities located in Finnmark county or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms county for the period from 1 January 2007 to 31 December 2013.
2. This Decision is addressed to the Kingdom of Norway.
3. This Decision is authentic in the English language.

Done at Brussels, 19 December 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kristján A. Stefánsson
College Member