

Case No: 62777
Event No: 471987
Dec.No: 602/07/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 28 November 2007

on the notified support in favour of Celsa Ameringsstål AS to reduce mercury emissions
(Norway)

Having regard to the Agreement on the European Economic Area¹, 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 Justice², in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Authority's Guidelines³ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the Chapter on Aid for Environmental Protection,

Having regard to the Authority's Decision No 226//06 on the map of assisted areas and levels of aid (Norway),

Whereas:

I. FACTS

1 Procedure

By letter dated 31 July 2007 the Norwegian Ministry of Government Administration and Reform notified the Authority of its intention to give aid for an investment to reduce mercury emissions at Celsa Ameringsstål AS (hereafter Celsa) located in Mo i Rana in

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ 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 31 May 2007. Hereinafter referred to as the State Aid Guidelines.

Nordland Country, Northern Norway. The notification was received and registered by the Authority on the same day (Event No 431770).

By letter dated 19 September 2007, the Authority asked for additional information (Event No 439767), to which the Norwegian authorities responded by letter from the Ministry of Government Administration and Reform dated 9 October 2007, received and registered by the Authority on the same day (Event no 446040).

2 Description of the proposed measure

2.1 Recipient and objective of the grant

The Norwegian authorities intend to grant state support to Celsa for the investment in new cleaning technology which is expected to reduce mercury emissions from Celsa by more than 98%, thereby serving the objective of environmental protection.

Celsa is a wholly owned subsidiary of Fundia Reinforcing AS and part of the Spanish Celsa Group, a distributor of long steel products. Celsa produces and sells reinforcing products such as rebar, coils and mesh wire rod. The production facility in Mo i Rana includes a scrap based melt shop for billets, a rolling mill for hot rolling of reinforcing products based on billets and equipment for respooling and straightening of coiled products. The billets are sold globally. The reinforcing products are sold to the Nordic markets. Celsa is the only Norwegian company which produces steel from scrap metal.

2.2 Description of the envisaged investment

2.2.1 The letter of the Norwegian Pollution Authority

By letter of 4 February 2003 the Norwegian Pollution Authority obliged Celsa to reduce emissions of mercury from a level of 154 kg to 30 kg per year. This obligation was subsequently withdrawn - upon appeal by Celsa - by letter from the Ministry of Environment dated 9 December 2003. The obligation shall now only apply when other scrap-based steel industries in the European Union are faced with similar demands. The Norwegian authorities consequently consider the planned investment in a reduction of mercury emissions as a voluntary investment.

A letter, as mentioned, was only sent to Celsa, not to other undertakings, as Celsa is the largest source of mercury emissions in Norway.

2.2.2 The new technology

The cleaning technology consists of two parts, first a new primary cleaning system which contains a new technology for mercury recovery. Second, this primary system will be combined with a new system for the preheating of scrap that reduces the amount of mercury which would otherwise escape the primary cleaning system.

The new primary technology contains a technology for mercury recovery, a so-called fixed bed which is a carbon filter to recover mercury.

The preheating equipment is able to reduce emissions because usually the lid of the top-charged furnace is opened at least twice per melt. When the lid is opened, mercury fumes are released. The preheating equipment allows a continuous feed-in of scrap, which enables the lid on the furnace to remain closed.

2.2.3 Eligible costs

The new primary cleaning system related to mercury recovery is estimated at NOK [...]⁴ of which NOK [...] are related to the fixed bed unit, whereas NOK [...] are required to pay for larger filter bags than would be needed without the recovery.

The preheating system has estimated costs of NOK [...], which includes a Consteel conveyer, logistics for scrap, a ladle, a furnace and an Alloy's conveyer. There are also costs of installation and construction. Norway has demonstrated details of the costs in an annex to the notification dealing with all the various cost components.

In total, the Norwegian authorities inform the Authority of an investment cost basis of NOK [...].

2.2.4 Reduction of emissions

The Norwegian authorities state that Celsa's mercury emissions would be reduced by 98% compared to today's emissions, if both the primary technology and the preheating equipment were to be used.

A reduction of 85-88% of emissions could be achieved if the new primary cleaning system (NOK [...]) was combined with the existing melting technology with a top charged furnace. I.e. the majority of the costs, i.e. NOK [...], would not occur.

Based on absolute figures, Celsa reports to have emitted 84,5 kg of mercury in 2006, which under the application of the new technology would be reduced to 1,7 kg.

According to the Norwegian authorities, no Community standard exists which would cover Celsa's mercury emissions stemming from the operation of an electric arc furnace. The Norwegian authorities further confirm that the mercury emissions are only released into the air, and not into the water.

2.3 Legal basis of the support

In an agreement of 2005 between the parties Høyre, Sosialistisk Venstreparti, Kristelig Folkeparti and Venstre, it was decided to grant Celsa NOK 30 million. The grant has been transferred to 2007. The payment will be made to Celsa on the basis of a decision by the Norwegian Ministry of Trade.

2.4 Amount and conditions of the State support

The Norwegian authorities decided to give NOK 20,6 million (EUR 2,5 million)⁵ to Celsa, instead of the NOK 30 million foreseen by the political parties. This is done in order to achieve conformity with the Authority's Environmental Guidelines. The grant is subject to the requirement that Celsa would carry out the mercury recovery investment. The grant will be administered by Innovation Norge, a state-owned company established by law.

The grant has not been paid out yet and is conditional on the Authority's approval.

⁴ Covered by the obligation of professional secrecy. All subsequent square brackets in the text reflect the same professional secrecy obligation.

⁵ Conversion rate of 8,22 for 2007 NOK/EUR as published on the Authority's webpage.
<http://www.eftasurv.int/fieldsofwork/fieldstateaid/rates/dbaFile791.html>

2.5 Calculation of the State support

The Norwegian authorities base the calculation of the amount allowed under the Authority's State aid Guidelines on total investment costs of the primary technology and the preheating equipment of NOK [...].

From this amount they deduct the discounted net value of benefits accruing from the preheating technology in the first five years after the investment. The preheating technology is estimated to give extra profits of [...].

Using a discount rate of 9,4%, the Norwegian authorities estimate the net benefits to amount to NOK [...]. The discount rate was established by using the reference and discount rate of 5,25% established by the Authority for 2007. To that the Norwegian authorities added a risk premium, which was established by an independent evaluation of the project risk by Immobiliare AS. Immobiliare AS used the Capital Asset Pricing method to calculate the relevant discount rate and the premium. It arrived at a figure between 9,4% and 13%. While some of the assumptions of the evaluation are vague, the Authority notes that the Norwegian authorities choose a cautious discount rate of 9,4%.

By using this method, the Norwegian authorities arrive at eligible costs of NOK 59 million (NOK [...]), of which the Norwegian authorities intend to support 35%, i.e. NOK 20,6 million.

2.6 Commitment by the Norwegian authorities

The Norwegian authorities will not pay out any of the notified amount of State support before Celsa has paid back the aid which it received from the Norwegian Energy Fund, managed by Enova (see Authority's Decision 125/06/COL) and the Norwegian electricity tax exemption for the manufacturing sector, which according to the Authority's Decision 148/04/COL was not compatible with the functioning of the EEA Agreement.

Celsa had received a grant from Enova of NOK 700 000, which at the time of the current notification had been already withdrawn. Celsa saved NOK 1 425 832 in electricity tax, which has not yet been repaid.

The Authority pointed out to the Norwegian authorities that according to the principle of the European Court of Justice in the judgment *Deggendorf*⁶, no aid should be paid out to an aid beneficiary before any illegal state aid which the beneficiaries has received earlier, has been recovered. The Norwegian authorities have made a commitment to the Authority that the state support covered by the notification of 31 July 2007 will not be paid out to Celsa before all the illegal aid has been recovered.

The Norwegian authorities further confirmed that the rules on cumulation will be respected. Innovation Norway is responsible for ensuring that the maximum aid intensities are not exceeded. Celsa is obliged to inform Innovation Norway if they receive aid from other public sources concerning the same project. The aid might not be cumulated with de minimis aid for the same eligible expenses if this implies that the aid intensities are exceeded.

⁶ Case C 355/95 P, *Textilwerke Deggendorf GmbH (TWD) v Commission of the European Communities and Federal Republic of Germany*, ECR 1997 I-2549. See also Commission Decision OJ 1991 L 215, p. 16, Commission Decision OJ 1992 L 183, p. 36.

II. ASSESSMENT

1 The presence of state aid

State aid within the meaning of Article 61(1) EEA Agreement

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.”

1.1 Presence of state resources

The aid measure must be granted by the State or through state resources. The support for Celsa is funded by budgetary allocations and thereby from state resources.

1.2 Favouring certain undertakings or the production of certain goods

The aid measure must confer on the undertaking concerned advantages that relieve it of charges that are normally borne from its own budget. As a rule, Celsa would have to pay for any investment in preheating equipment and primary technology from its own budget.

Secondly, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”. This criterion is fulfilled as the support only goes to one specific undertaking.

1.3 Distortion of competition and effect on trade between Contracting Parties

The aid measure must distort competition and affect trade between the Contracting Parties. The tax derogation strengthens the position of Celsa who profits from it in relation to its actual or potential competitors. It cannot be excluded that Celsa is in competition with other producers of metal in the EEA. The grant of NOK 20,6 million therefore distorts or threatens to distort competition and affects trade between the Contracting Parties.

1.4 Conclusion

The budgetary allocation constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

Pursuant to Article 1(3) of 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”*.

The Norwegian authorities have notified the Authority of their intention to pay the State support by letter dated 31 July 2007. The aid has not been paid out yet and conditional on the Authority’s approval. The Authority therefore finds that Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

3 Compatibility of the aid

An assessment of whether the aid granted to Celsa is compatible with the EEA Agreement will be made on the basis of Article 61(3)(c) of the EEA Agreement in combination with the Chapter in the Authority’s State Aid Guidelines dealing with aid for environmental protection (hereinafter referred to as “the Environmental Guidelines”).

The aid in question concerns investment aid, which is dealt with under section D.1 of the Authority’s Environmental Guidelines. According to D.1.2, point (24) investment aid enabling firms to improve on Community standards applicable may be authorised to receive no more than 30% gross of the eligible investment costs as defined in point (32). These conditions also apply to aid where firms undertake investments in the absence of Community standards or where they have to undertake investments in order to comply with national standards that are more stringent than the applicable Community standards.

There is no standard for mercury emissions in the European Economic Area or the European Union which covers the mercury emissions by Celsa stemming from an electric arc furnace. As according to the Norwegian authorities Celsa’s mercury emissions do not enter the water, it is not necessary to examine Community Directives and Frameworks dealing with water pollution. Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (the IPPC Directive) sets out the rules for achieving a high level of protection of the environment in a wide range of industrial activities. The IPC Directive introduces an obligation for Member States to have permits for existing installations based on BAT (best available techniques) in place by 30 October 2007. The European IPPC Bureau issues so called BAT reference documents (BREF) which the Member States are required to take into account. The BREF on Iron and Steel Making, which is relevant in this case, contains a special chapter 9 on electric arc furnaces, which however, does not prescribe a standard for mercury emissions. Consequently, the aid will be assessed as a case of investment done in the absence of Community standards.

Celsa was also no longer obliged by a national regulator or control authority to carry out a reduction of its mercury emissions, as the respective letters by the Norwegian Pollution Control Authority have been set aside by a decision of the Ministry of the Environment. Thus so far, Celsa carries out a voluntary investment.

This investment also aims at promoting environmental protection, as the reduction of mercury emissions into the air should have a positive effect for the environment. That this investment, in particular the preheating equipment investment, will also lead to production benefits for Celsa, does not speak against the environmental character of the investment.

The commercial benefits resulting from this investment, which should not be open to any state support, will be taken into account when establishing the eligible cost base below.

According to point (32) of the Environmental Guidelines, eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives. This calculation is either done on the basis of the costs of investment in environmental protection, where these can be clearly identified, or by a comparison with the investment costs of a traditional power plant. Here, the investment costs can be clearly identified and the Norwegian authorities have submitted a detailed cost overview on the investment.

From the so-identified investment costs of NOK [...], the Norwegian authorities rightly deducted the benefits. in the form of extra profits, resulting from the preheating technology in the first five years. This lead to eligible costs of NOK 59 million. The Authority takes note of the fact that the discount rate to be used in the respective net present value calculation was established by an outside expert and that the Norwegian authorities opted for the more cautious rate suggested by the expert of 9,4%.

On this basis, the Norwegian authorities intended to give 35% of eligible costs as aid to Celsa. As can be seen from the above cited point (24) of the Environmental Guidelines, normally 30% of eligible costs can be granted. However, the Norwegian authorities have included a regional top-up of five percentage points for a company situated in a region covered by Article 61(3)(c) of the EEA Agreement, as authorised under the current Guidelines in point(29)(a). Celsa is located in such a region according to the Authority's Decision No 226/06/COL on the map of assisted areas in Norway.

The Authority therefore concludes that the aid to Celsa is compatible according to the rules on investment aid in the Authority's Environmental Guidelines.

4 Conclusion

On the basis of the foregoing assessment, the Authority considers that aid of NOK 20,6 million to Celsa is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

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

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified support in favour of Celsa Ameringsstål AS to reduce mercury emissions.

Article 2

The implementation of the measure is accordingly authorised.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 28 November 2007

For the EFTA Surveillance Authority,

Per Sanderud
President

Kristján Andri Stéfansson
College Member