

Case No: 62231
Event No: 448032
Dec. No: 76/08/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 13 FEBRUARY 2008
relating to the notification of the Norwegian Space Centre support scheme
(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹,

Having regard to the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 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 Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, in particular the chapter on aid for research and development and innovation⁵,

Whereas:

I. FACTS

1. Procedure

By letter of 15 May 2007, received and registered by the Authority on the same date (Event No 421897), the Norwegian authorities notified amendments to the Space Centre support scheme, pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

By letter dated 6 July 2007 (Event No 423494), the Authority requested additional information. By letter dated 17 August 2006, received and registered by the Authority on

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, 03.09.94, p. 1 and EEA Supplement No. 32, 03.09.94, p. 1. The Guidelines were last amended on 3 May 2007. Hereinafter referred to as "the State Aid Guidelines".

⁵ Hereinafter referred to as "the R&D&I Guidelines".

the same date (Event No 434628), the Norwegian authorities replied to the information request.

By letter dated 6 September 2007 (Event No 438969), the Authority requested further information on the scheme. The Norwegian authorities replied to the information request by letter dated 4 September (presumably October) 2007, received and registered by the Authority on 4 October 2007 (Event Nos 445598 and 445602).

By letter dated 16 November 2007 (Event No 448547), the Authority again requested additional information on the scheme. The Norwegian authorities replied to the information request by letter dated 17 December 2007, received and registered by the Authority on the same date (Event No 458032).

Finally, the Norwegian authorities submitted additional information by letter dated 7 February 2008, received and registered by the Authority on the same date (Event No 464216).

2. Description of the proposed measures

2.1 Introduction

The Norwegian Space Centre⁶ was established in 1987 and has, since then, operated a scheme providing grants to undertakings active in the Norwegian space sector. The Norwegian authorities have notified changes to the scheme made in order to align it with the new R&D&I Guidelines.

In 2006, the Norwegian space industry had a turnover of approximately NOK 5,6 billion (approximately EUR 700 million). According to the notification, the industry is characterised by a relatively small number of undertakings spread across Norway. The industry employs approximately 1 700 people.

The space industry is, according to the notification, of a global nature, meaning that competition in the industry is international. The Norwegian authorities state that the R&D&I efforts of the undertakings are of great importance to their competitiveness, in particular since undertakings in the space sector operate in a high-risk environment where R&D&I activities are crucial in order to remain a competitive player and attractive project and business partner.

Norway has been a member of the European Space Agency since 1987.⁷ Through this membership, the Norwegian space industry is ensured industrial contracts every year for an amount corresponding at least to Norway's annual membership contribution.

2.2 The objective of the aid scheme

According to the notification, the objective of the Norwegian Space Centre support scheme is to increase research, development and innovation within the space industry in Norway. The guidelines for the scheme state that the main objectives are to:

⁶ Hereinafter referred to as "the NSC".

⁷ Hereinafter referred to as "ESA".

- i. Assist Norwegian companies in reaching a technological level that allows them to qualify for participation in projects initiated by ESA.
- ii. Contribute to the development of space-based services that can cover national needs in an efficient and cost-saving manner.
- iii. Provide financial support to research projects that in various ways increase the general public's interest in space and space-related research activities.

2.3 National legal basis for the aid measure

The legal basis for the scheme can be found in the annual State Budget, the annual “*Tildelingsbrev*” (Letter of Intent) from the Ministry of Trade and Industry to the NSC, and in the draft guidelines on the scheme.⁸ The Letter of Intent identifies the NSC as responsible for implementing the scheme and includes: a reference to the relevant budgetary texts and allocated funds for the NSC to distribute for the year in question; the definition of the Government's main priorities in the field of industry and commerce and more specifically for the space sector; the general aims for risk management for undertakings, with defined aims and indicators for the NSC's activities; further information regarding the different posts in the budget for the NSC, such as the NSC administration, co-operation with other bodies and ESA membership; the reporting responsibility of the NSC to the Ministry of Trade and Industry.

2.4 Eligible applicants

The target group of the scheme is comprised of undertakings and research organisations that have or will have deliveries to the international space industry, either as a result of Norway's membership in ESA or based on open contracts in the commercial market. It is, according to the notification, a prerequisite that the recipients operate in technology-intensive niches in the market and that their projects contribute to developing technology-intensive sectors. The Norwegian authorities estimate the number of beneficiaries under the scheme to be between 11 and 50. The aid recipients under the scheme will include both undertakings and research organisations.

The scheme does not apply to undertakings in difficulty within the meaning of the Guidelines on aid for rescue and restructuring of firms in difficulty.

2.4.1 Undertakings

Both small and medium sized enterprises⁹ and large companies are eligible for aid under the scheme.¹⁰ According to the notification, the space technology companies in Norway are to a large extent SMEs. However, as they lack the experience and resources necessary to act on their own, they often rely on partnerships with larger players in order to be able to undertake R&D&I. To initiate projects, promote networks and guide entrepreneurs, large companies are often needed to take a lead, acting as guide and facilitator for the co-

⁸ “Retningslinjer for ordningen med offentlig tilskudd til Nasjonale Følgemidler”, hereinafter referred to as “the Guidelines for the scheme”.

⁹ Hereinafter referred to as “SMEs”.

¹⁰ The Norwegian authorities confirm that the definition of SMEs as laid down in Regulation (EC) No 70/2001, incorporated into the EEA Agreement through Annex XV point 1f, will apply.

operation between the parties involved in the innovative processes. The scheme is therefore also intended to provide an incentive for large companies to pursue this role.

2.4.2 Research organisations

Aid under the scheme may be granted to research organisations. The Norwegian authorities estimate that the research organisations involved in projects receiving aid under the scheme will for the most part not be engaged in an economic activity.

However, it cannot be excluded that some economic activity is present and that aid under the scheme may also benefit such economic activity.

The Norwegian authorities have confirmed that if a research organisation carries out both economic and non-economic activities, the two kinds of activities and their costs and funding will be separated. Accounting practices or obligatory declarations of the beneficiaries will prevent any possible spill-over of public funding into potential economic activities, thus avoiding cross-subsidisation.

Where public monies are specifically intended to fund an economic activity, the Norwegian authorities have stated that, in such cases, services will be provided in line with Section 3.1.2 of the R&D&I Guidelines, namely on market conditions.

2.5 Research on behalf of undertakings (contract research or research services)

The notified scheme does not exclude that a project is carried out by a research organisation on behalf of an undertaking. In that respect, the Norwegian authorities have declared that the research organisation provides its service at market price or, in the absence of a market price, a price which reflects its full costs plus a reasonable margin.

Concerning research projects with more than one undertaking/research organisation involved, the scheme foresees that aid is only granted to the initiator of the project.

2.6 Collaboration projects

As regards collaborative research between undertakings and research organisations, the Norwegian authorities have confirmed that, in order to ensure that no indirect state aid is provided to undertakings through public research organisations because of favourable conditions of collaboration, one of the following conditions, listed under Section 3.2.2 of the R&D&I Guidelines, will be respected:

- (i) The participating undertakings bear the full cost of the project; or
- (ii) The results which do not give rise to intellectual property rights (IPRs) will be widely disseminated and any intellectual property rights to the R&D&I results which arise from the activity of the research organisation are fully allocated to that organisation; or
- (iii) The research organisation receives from the participating undertakings compensation which is equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating undertakings. Any

contribution of the participating undertakings to the costs of the research organisation shall be deducted from such compensation.

According to information provided by the Norwegian authorities, if a project involves collaboration between several partners, a project budget, a funding plan listing the contributions from the individual partners and a formal contract governing the relationship between the partners must be submitted to the NSC. A description of the ownership of the results of the project must also be included. A separate account for each project is required, clearly indicating the costs and contributions by each party to the project.

2.7 Form of aid and eligible expenses

The aid under the scheme will take the form of direct grants from the NSC to the beneficiaries.

According to the notification, the research and development stages qualifying for aid are fundamental research, industrial research and experimental development, as well as feasibility studies in relation to industrial research. The main focus of the scheme will be industrial research projects.

On the basis of the information in the project descriptions contained in the applications for aid under the scheme, the NSC will be responsible for assessing under which research category/categories a project falls. The assessment will follow the definitions of the R&D&I Guidelines and the OECD's Frascati Manual. The relevant definitions are also taken into the Guidelines for the scheme, making them easily accessible for the case handlers at the NSC. The Norwegian authorities confirm that if a project encompasses different elements or tasks, the Guidelines for the scheme stipulate that the NSC will assess the relevant research category for each element/task.

According to the Norwegian authorities, the NSC is obliged to follow up the projects and monitor them to ensure that a project does not over its lifetime change to such an extent as to risk entering into a different research category. This monitoring will be performed on the basis of reports provided by the aid recipients to the NSC. The NSC may also request additional information in order to assess the research category. In addition to the monitoring which the NSC is obliged to carry out, the contract provisions of the scheme require that the aid recipient immediately notifies the NSC of any substantial changes to the project.

The eligible costs under the scheme are:

- costs of personnel employed solely on the research activity;
- costs of durable assets used solely and on a continual basis for the research activity (equipment and instruments);
- costs of land and premises used solely and on a continual basis (except where transferred commercially) for the research activity;
- costs of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources;

- additional overheads incurred directly as a result of the research activity; and
- other operating expenses (costs of materials, supplies and similar products incurred directly as a result of the research activity).

2.8 Aid intensities

The aid intensities under the scheme are set out in the table below:

	Small enterprises	Medium-sized enterprises	Large enterprises
Fundamental research	100%	100%	100%
Industrial research	70%	60%	50%
Industrial research subject to - Collaboration between undertakings for large undertakings cross border or with at least one SME or - collaboration of an undertaking with a research organisation or - dissemination of results	80%	75%	65%
Experimental development	45%	35%	25%
Experimental development subject to: - Collaboration between undertakings for large undertakings cross border or with at least one SME or - collaboration of an undertaking with a research organisation	60%	50%	40%
Feasibility studies relating to industrial research activities	75%	75%	65%

Innovation aid is not provided for under the notified scheme.

IPRs related to the research and development performed will, in general, be allocated between the partners in proportion to their contributions. Where, on the contrary, the IPRs are not allocated in proportion to their contributions, the share of the IPRs distributed in excess will be taken into account when determining whether the aid intensity caps are complied with. The procedure to be followed by the NSC when assessing the impact of IPRs on the aid intensities allowed under a project is described in the Guidelines for the scheme.

2.9 Incentive effect

The Norwegian authorities have stated that no aid under the scheme will be granted to projects which were already initiated prior to the company submitting the application for aid. This, however, does not exclude that the potential beneficiary has already carried out feasibility studies in relation to the research project covered by the request for aid.

Finally, the Norwegian authorities have confirmed that no project for which aid is granted under the scheme will reach the thresholds, set out in Section 7.1 of the R&D&I Guidelines, for when a detailed assessment of incentive effect will be necessary.

2.10 Cumulation

Applications for aid under the scheme must include detailed information concerning financial aid received for the project from other sources. The NSC will monitor this information and co-operate with other granting authorities in order to ensure that no over-compensation takes place. Furthermore, the NSC will receive auditor-certified profit and loss accounts from the beneficiary.

In addition, the Norwegian authorities will request an annual overview of contracts awarded to companies under ESA's obligatory and voluntary programmes as well as the notified scheme.

2.11 Budget and duration

The proposed total budget for the scheme for 2007 is NOK 37 million (approximately EUR 4,6 million). Annual budgets for subsequent years are subject to annual parliamentary budget procedures. Funds that are not committed by the end of one year are transferred to the budget for the following year.

The duration of the scheme will be six years.

2.12 Application procedure, administration and monitoring of the scheme

The scheme is administered and supervised by the NSC. The NSC is the Norwegian Government's primary agent for implementing national space initiatives and upholding Norwegian interests in ESA.

Applications for aid under the scheme will be received and handled by the NSC. The NSC's board is accountable to the Ministry of Trade and Industry for all decisions on financial grants made available for individual projects.

The application procedure will be as follows: each year the NSC will publish the framework of the scheme and the application procedures on the NSC's website¹¹ and set a deadline for application. Interested parties can apply online by filling in a form requesting them to provide details of the project for which they wish to receive a grant. Once the application deadline has passed, case handlers at the NSC assess each project according to the requirements in the Guidelines for the scheme. A final list of suggested project grants is presented to the NSC board for approval at the board meeting in February of each year.

¹¹ www.spacecentre.no.

The application must include a project description, as well as, in the case of applications from entities other than SMEs, details concerning the expected incentive effect of the aid. The project descriptions must include a status report of the relevant technologies at a national and international level, a description of the project organisation and a target schedule.

In addition to this procedure, the NSC is also given competence to initiate projects on an independent basis.

The beneficiaries under the scheme will be selected on the basis of qualitative criteria. The governmental priorities within the field are set forth in the annual Letter of Intent from the Ministry of Trade and Industry to the NSC. The “*Norsk Langtidsplan for romvirksomhet*” (Norwegian long term plan for the space industry), a public document published by the NSC, also provides an overview of the targets and strategies for the Norwegian space sector.

According to the notification, projects under the scheme are selected on the basis of their ability “*to contribute to the space activities giving substantial and lasting contributions to increased added value, knowledge development, environmental and civil protection*”. This is further divided into the following elements: the selected projects should generate substantial industrial effects and spin-offs of Norwegian space activities, secure utilisation of Norwegian geographical comparative advantages, contribute to the development of cost efficient systems that respond to national and international needs, contribute to strengthening Norwegian research institutions through international co-operation and contribute to increased knowledge about engineering and scientific subjects through work on space-related activities.

Aid is paid out throughout the project period on the basis of progress reports and profit and loss accounts submitted to the NSC by the beneficiary. In order for grants to be released, these documents must be approved by the NSC.

The aid beneficiaries are obliged to hand in auditor certified accounts to the NSC concerning the supported projects. According to the notification, parts of the amount granted to a project will be withheld by the NSC until the final project report and the audit report have been received and approved by the NSC.

If information submitted by the beneficiary is incomplete or does not arrive on time, the NSC shall carry out control measures. In particular, the NSC may check that the reports are signed and certified and that the basis for the figures submitted seems reasonable. Furthermore, the NSC may perform random sampling to test the data forming the basis for the reported information. Finally, the NSC may carry out examination and assessment of the reported information.

The NSC shall verify that the grant is used in line with the project description. The beneficiary is obliged to present project progress reports and other information necessary for this examination. If it transpires that the grant has not been used according to the project description, the grant, including interest, must be paid back to the NSC.

The Ministry of Trade and Industry has indicated that methods of reporting under the notified scheme will be evaluated and revised if potential for improvement is identified.

Finally, the Norwegian authorities refer to a system created by the Ministry of Trade and Industry and the NSC in 2006, which will be used in order to monitor the results of the scheme. According to the notification, indicators such as the degree of participation in ESA programmes, attainment of international contracts, the industrial return coefficient and spin-off effects of grants will provide a benchmark for assessing the level of goal achievement of the scheme.

2.13 Reporting to the Authority

The Norwegian authorities will submit annual reports to the Authority containing, for each measure, information as to: the name of the beneficiary; the aid amount per beneficiary; the aid intensity; the sectors of activity where the aided projects are undertaken, including also the information necessary to demonstrate the incentive effect of aid.

Furthermore, the Norwegian authorities will publish the full text of the final aid scheme on the internet and will communicate the internet address of the publication to the Authority. The scheme will not be applied before the information is published on the internet.

Detailed records regarding the granting of aid under the scheme will be kept for 10 years.

The Norwegian authorities have stated that if individual aid granted under the scheme exceeds EUR 3 million, the information requested in the standard form laid down in the Annex to the R&D&I Guidelines will be submitted to the Authority.

II. ASSESSMENT

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

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

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

In addition to applying the four conditions set out in Article 61(1) EEA, the Authority has also analysed the presence of state aid on the basis of the criteria set out in Chapter 3 of the R&D&I Guidelines.

1.1 Direct state aid to undertakings

Insofar as aid is awarded to undertakings, public funding of the activities of these undertakings will generally constitute state aid.

The notified scheme is funded through the Norwegian State Budget, and therefore using state resources. It favours a limited number of undertakings and research organisations engaged in the space industry. Hence, the measure is selective. The aid under the scheme makes it possible for the beneficiaries to improve their overall financial condition and to

enhance their market position. The Authority cannot rule out that some of the aid beneficiaries may be engaged in intra-EEA trade. In fact, the Norwegian authorities have stated that the space industry is of a global nature, meaning that competition in the industry is international. The same applies to the economic activities of eligible research organisations. It must therefore be assumed that the aid under the scheme is likely to distort competition and thereby affect trade between EEA States.

Against this background, the Authority has come to the conclusion that insofar as support to undertakings is concerned, the scheme constitutes state aid within the meaning of Article 61(1) EEA.

1.2 Indirect state aid to undertakings through research in collaboration with publicly funded research organisations

It follows from Section 3.2.2 of the R&D&I Guidelines that in the case of collaboration projects carried out jointly by undertakings and publicly funded research organisations, the Authority considers that no indirect state aid is granted to the undertakings through aid to the research organisation provided one of the following conditions is fulfilled:

- (i) The participating undertakings bear the full cost of the project.
- (ii) The results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which arise from the activity of the research organisation are fully allocated to that organisation.
- (iii) The research organisation receives from the participating undertakings compensation equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating undertakings. Any contribution of the participating undertakings to the costs of the research organisation shall be deducted from such compensation.

As indicated under Section I-2.6 above, the Norwegian authorities have stated that the scheme itself requires that one of the aforementioned conditions is fulfilled. Hence, the scheme is in line with the provisions of Section 3.2.2 of the R&D&I Guidelines.

The Authority therefore concludes that the undertakings directly benefiting from the scheme do not receive any additional indirect state aid as a result of participation in collaboration projects with publicly funded research organisations.

1.3 Contract research by research organisations

Concerning contract research carried out by research organisations on behalf of undertakings, it follows from Section 3.2.1 of the R&D&I Guidelines that there will normally be no state aid involved if the organisations are paid the market price for contractual research and the undertaking owns the results of the project. As indicated under Section I-2.5 above, the conditions laid down in the notified scheme for contractual research performed by research organisations are in line with Section 3.2.1 of the R&D&I Guidelines.

The Authority concludes that contract research by research organisations under the scheme will normally not involve state aid.

1.4 State aid to research organisations

As indicated in Section I-2.4.2 above, the Norwegian authorities estimate that most of the support provided for research organisations under the scheme will be directed towards the non-economic activities of these entities, within the meaning of Section 2.2(d) of the R&D&I Guidelines. The public funding of such activities does not fall under Article 61(1) EEA.

The Norwegian authorities have confirmed that where the same entity carries out activities of both an economic and a non-economic nature, the economic and non-economic activities and their costs and funding will be separated. This allows the Authority to exclude the possibility of cross-subsidisation of the economic activity. As the notified scheme thus complies with Section 3.1.1 of the R&D&I Guidelines, the Authority concludes that the financial support granted with respect to non-economic activity performed by research organisations does not constitute state aid within the meaning of Article 61(1) EEA. However, support to research organisations' economic activity constitutes state aid and thus falls under Article 61(1) EEA.

Research organisations which are closely linked to the economy and whose R&D&I activities promoted under the scheme aim at commercialisation and are therefore of an economic nature, are considered as undertakings within the meaning of Article 61(1) EEA and hence as beneficiaries under the notified scheme.

Against this background, and without prejudice to the conclusion in Section II-1.3 above, the Authority has come to the conclusion that as far as aid to research organisations engaged in economic activities is concerned, the scheme constitutes state aid within the meaning of Article 61(1) EEA.

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 plans to implement amendments to the Norwegian Space Centre support scheme. Furthermore, the Norwegian authorities have declared that the scheme as notified will not be put into effect until the Authority has authorised the aid.

The Authority can therefore conclude that, with respect to the notified scheme, the 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

3.1 Introduction

Article 61(3)(c) EEA stipulates that aid to facilitate the development of certain economic activities may, where such aid does not adversely affect trading conditions to an extent contrary to the common interest of the Contracting Parties to the EEA Agreement, be found compatible with that Agreement.

The Authority has assessed the compatibility of the notified Space Centre support scheme with Article 61(3)(c) EEA read in conjunction with the R&D&I Guidelines.

3.2 Form of aid and eligible expenses

Section 5.1.1 of the R&D&I Guidelines provides that the aided part of the project must fall within one or more of the following research categories: fundamental research, industrial research, experimental development.¹² Section 5.2 clarifies that technical feasibility studies preparatory to industrial research or experimental development may also be funded.

The Norwegian authorities have stated that the scheme will fund fundamental research, industrial research, experimental development and feasibility studies for industrial research.

Based on their experience in the sector, the Norwegian authorities expect that the majority of projects funded by the scheme will be industrial research projects.

As described in Section I-2.7 above, the NSC will be responsible for ensuring that projects applying for aid are classified correctly according to the categories set out in the Guidelines for the scheme.

On the basis of the above, the Authority finds that the conditions laid down in Sections 5.1.1 and 5.2 of the R&D&I Guidelines as to the type of research which may be eligible for aid are fulfilled.

The eligible costs under the scheme, as listed in Section I-2.7 above, are in line with the costs identified as eligible in Section 5.1.4 of the R&D&I Guidelines.

Hence, the Authority concludes that the eligible costs under the notified scheme are compatible with the R&D&I Guidelines.

3.3 Aid intensities

Section 5.1.2 of the R&D&I Guidelines provides that the aid intensity, 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.

¹² For a definition of “fundamental research”, “industrial research” and “experimental development”, see Section 2.2 (e), (f) and (g) of the R&D&I Guidelines.

According to Section 5.1.3(a) of the R&D&I Guidelines, the ceilings fixed for industrial research and experimental development may be increased 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. Up to a maximum aid intensity of 80%, a bonus of 15 percentage points may also be added if the conditions specified in Section 5.1.3(b) of the R&D&I Guidelines are met. The scheme, as described in Section I-2.8 above, complies with these limits.

Concerning feasibility studies, it follows from Section 5.2 of the R&D&I Guidelines that the aid intensity for studies which are preparatory to industrial research activities should not exceed 75% for SMEs and 65% for large undertakings. Again, the table in Section I-2.8 above indicates that the scheme complies with these aid ceilings.

The NSC is responsible for verifying both *ex ante* and *ex post* that the aid ceilings are complied with.

On the basis of the provisions under the notified scheme described in Section I-2.8 above, the Authority concludes that the conditions regarding aid intensities, including where IPRs are involved, are fulfilled.

3.4 Incentive effect

Section 6 of the R&D&I 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

Section 6 distinguishes between cases where there is an automatic presumption that an incentive effect is present and cases where there is no presumption and the incentive effect of the aid measure must be established.

An automatic presumption of incentive effect will operate in relation to 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, provided always that the project has not started before the application for aid for aid is made.¹⁴

It cannot be excluded that some of the projects for which aid is granted under the notified scheme will comply with those conditions thus triggering the automatic presumption.

With regard to cases where there is no automatic presumption and the incentive effect of the aid must therefore be demonstrated, Section 6 of the R&D&I Guidelines provides that, when assessing an aid scheme, the conditions relating to the incentive effect shall be

¹³ However, footnote 40 of the R&D&I Guidelines provide that feasibility studies carried out prior to the application for aid do not count in this respect.

¹⁴ See paragraph 124 of the R&D&I Guidelines.

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 and to submit annual reports on the implementation of the scheme to the Authority.

In relation to the present notification, the scheme itself provides that incentive effect is verified in each case. The Authority notes that criteria for assessing whether an incentive effect is present are laid down in the Guidelines for the scheme and are based on the quantitative and qualitative indicators set out in Section 6 of the R&D&I Guidelines themselves.¹⁵ In addition, as mentioned in Section I-2.13 above, a report will be submitted annually to the Authority and will contain information on the assessment of incentive effect.

The Norwegian authorities have confirmed that none of the projects will exceed the aid amounts listed in Section 7 of the R&D&I Guidelines such that the methodology for a detailed assessment of incentive effect will not need to be applied to the notified scheme.

It follows from the above that, under the notified scheme, some cases may benefit from the automatic presumption of incentive effect, however this will not always be the case. Where the presumption does not apply, the scheme requires that incentive effect is demonstrated for each project before individual aid is granted. The Norwegian authorities have made the commitments provided for in Section 6 of the R&D&I Guidelines in relation to aid schemes and incentive effect.

The Authority therefore concludes that the notified scheme complies with the provisions on incentive effect set out in Section 6 of the R&D&I Guidelines.

3.5 Cumulation

The Norwegian authorities are reminded that the aid ceilings under the R&D&I 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. Aid may not be cumulated with aid granted in accordance with the Guidelines on state aid to promote risk capital investment in SMEs.

Aid for R&D&I 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 R&D&I Guidelines.

It would appear that, under the scheme, the NSC is responsible for ensuring that cumulation of aid under the scheme and other aid measures do not lead to maximum aid intensities being exceeded. As described above in Section I-2.10, applications for aid under the scheme shall include a financial plan giving information inter alia on other

¹⁵ See paragraph 126 of the R&D&I Guidelines.

public financing granted to the project. The applicants are obliged to inform the NSC if they receive aid from other public sources concerning the same project.

Moreover, the Norwegian authorities have committed to ensuring that the rules on cumulation of the R&D&I Guidelines will be respected.

3.6 Reporting and monitoring

Pursuant to Section 9.1.1 of the R&D&I Guidelines, the EFTA States must submit annual reports to the Authority on their R&D&I schemes. Beyond the requirements set out in Protocol 3 to the Surveillance and Court Agreement and the Authority's Decision 195/04/COL of 14 July 2004, such reports must contain, for each measure, information as to: the name of the beneficiary; the aid amount per beneficiary; the aid intensity; the sectors of activity where the aided projects are undertaken, including also the information necessary to demonstrate the incentive effect of aid. The annual reports, as indicated in Section I-2.13 above, will be submitted in accordance with the R&D&I Guidelines.

Section 9.1.2 of the R&D&I Guidelines requires the full text of all final aid schemes to be published on the internet and the internet address of the publication to be communicated to the Authority. The scheme must not be applied before the information is published on the internet. In accordance with Section 9.1.3 of the R&D&I Guidelines, detailed records regarding the granting of aid for all R&D&I measures must be maintained for 10 years. If individual aid granted under the scheme exceeds EUR 3 million, the information requested in the standard form laid down in the Annex to the R&D&I Guidelines must be provided to the Authority, in accordance with Section 9.1.3 of those Guidelines. The reporting and monitoring provisions of the notified scheme, as described in Section I-2.13 above, are in line with the provisions of Section 9 of the R&D&I Guidelines.

Hence, the Authority considers that the conditions related to reporting and monitoring are satisfied.

4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the scheme notified to the Authority as the Space Centre support scheme, which the Norwegian authorities are planning to implement, is compatible with the functioning of the EEA Agreement within the meaning of Article 61 EEA.

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

The Norwegian authorities are also reminded that any plans to modify this scheme must be notified to the Authority. The Authority draws the Norwegian authorities' attention to the fact that the Authority intends to review the R&D&I Guidelines, under which the notified scheme has been approved, three years after their entry into force. In case the rules of the R&D&I Guidelines change, this may have an effect on all existing aid schemes falling under the guidelines, including the scheme authorised by this decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the scheme notified as the Norwegian Space Centre support scheme.

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, 13 February 2008

For the EFTA Surveillance Authority,

Kurt Jaeger
College Member

Kristján Andri Stefánsson
College Member