

EFTA SURVEILLANCE AUTHORITY DECISION

of 15 December 2016

raising no objections to the prolongation and budget increase
of the programme for alternative fuels infrastructure

(Norway)

The EFTA Surveillance Authority (“the Authority”),

Having regard to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) By letter of 20 October 2016, the Norwegian authorities notified the prolongation and budget increase of the programme for alternative fuels infrastructure, pursuant to Article 1(3) of Part I of Protocol 3.¹

2 The aid measures

2.1 Background

- (2) The present notification concerns the prolongation of five aid schemes authorised by the Authority in its Decision No 336/15/COL of 16 September 2015 raising no objections to

¹ Document Nos 832190 to 832192.

the programme for alternative fuels infrastructure.² According to that decision, the approval of the schemes expires on 31 December 2016.

- (3) The programme is managed by Enova SF (“Enova”), which is a state enterprise owned by the Norwegian State via the Ministry of Petroleum and Energy.
- (4) Besides the programme for alternative fuels infrastructure, Enova is supporting a wide variety of other environmental activities. To this end, the Norwegian authorities have notified separately two other schemes; one under which it will grant aid for the demonstration of new energy and climate technology as well as a scheme for eco innovation. They have also made use of the General Block Exemption Regulation (“GBER”)³ to exempt from notification the remaining aid granting activities of Enova.

2.2 Description of the aid measures and general considerations

- (5) The programme for alternative fuels infrastructure promotes the construction of alternative fuels refuelling/recharging infrastructure in cases where such deployment will not be feasible without state support. The programme consists of five separate aid schemes targeting different technologies and/or groups of beneficiaries: (i) electric charging infrastructure for vehicles; (ii) shore-side electricity supply for ships; (iii) hydrogen refuelling infrastructure for vehicles; (iv) biofuels refuelling infrastructure for vehicles; and (v) Liquid Natural Gas (“LNG”) refuelling infrastructure for ships.
- (6) As far as possible, Enova uses an open, non-discriminatory and competitive bidding process based on Norwegian and EEA law principles for public procurement to select aid beneficiaries under this programme. In these cases, the aid may reach 100% of the eligible cost. The bidding process will be limited to such an extent that not all participants can obtain a contract.⁴ Enova will furthermore ensure that the most cost-efficient projects are selected, and will set a maximum total aid amount for every project and/or individual component.⁵
- (7) However, if a bidding process is not suitable, Enova uses an application-based competitive procedure to verify compliance with the eligibility criteria (e.g. the existence of an incentive effect) and to select the most cost-efficient projects. In this case, Enova applies the methodology for identifying the eligible costs as set out in the Guidelines on State aid for environmental protection and energy 2014-2020⁶ (“EEAG”). The eligible costs are thus based on the extra cost method for achieving the common objective. For many of the eligible projects under the programme, the most likely situation is that there is no counterfactual scenario. Enova therefore applies the funding gap approach to these projects, as also foreseen in the EEAG. When using the application process, Enova uses the same aid intensities that are applicable to aid for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union

² Available at <http://www.eftasurv.int/media/esa-docs/physical/336-15-COL.pdf>.

³ Most of these activities were previously approved by Decision No 248/11/COL on the Norwegian Energy Fund scheme.

⁴ For instance, the subject of a tender call in relation to electric charging stations for vehicles will be a limited number of charging stations in a defined corridor/target road. In this way, the number of contracts that can be obtained will be limited.

⁵ For instance, in the case of electric charging stations for vehicles, Enova will define a number of chargers for each charging station and, based on its knowledge of prices for the necessary equipment, will define a maximum total aid amount or a maximum aid amount per component (e.g. charging station).

⁶ See EEAG, section 3.2.5, paragraphs 67 to 71. The EEAG are available at: <http://www.eftasurv.int/media/state-aid-guidelines/Guidelines-on-State-aid-for-environmental-protection-and-energy-2014-2020.pdf>.

standards, i.e. 60% for small enterprises, 50% for medium-sized enterprises and 40% for large enterprises.⁷

- (8) All competitions and calls for applications are published both on Enova's website⁸ and in national media.
- (9) Eligible projects are projects contributing towards basic infrastructure coverage in areas where profitability will not be reached within a reasonable time frame. All infrastructure supported by Enova under this programme is required to be open to the general public. Enova assesses the need for additional infrastructure for alternative fuels based on mappings of available infrastructures today and/or the assessments of further needs to make vehicles and ships able to circulate freely. Enova ensures that the infrastructure covers the target area in a sufficient way, based on the defined criteria in the specific call/tender.
- (10) The selection procedures and conditions summarised above are unchanged from those described in further detail in Decision No 336/15/COL.

2.3 Specific considerations for each aid scheme

- (11) Beyond the common elements described above, there is a number of specific considerations for the individual aid schemes under the alternative fuels programme, which are outlined in detail in Decision No 336/15/COL.
- (12) The Norwegian authorities have provided the following additional considerations to justify the need for a prolongation of each scheme:

2.3.1 *Electric charging infrastructure for vehicles*

- (13) As explained in Decision No 336/15/COL, the objective of the aid is to increase the sale and usage of electric vehicles in Norway by ensuring charging possibilities every 50-70 km along the National Transport Corridors.⁹ Information on existing charging infrastructure facilities is collected and shared by NOBIL.¹⁰ Enova uses this database for deciding where additional charging infrastructure is required.
- (14) Enova has so far supported charging infrastructure along National Transport Corridors in all counties except Finnmark and parts of Troms – a total of around 6 000 km, adding up to NOK 50 million in support. Bidding processes for the remaining parts of Troms and selected corridors and locations in Finnmark are being conducted at the end of 2016. In addition, charging stations have been established without public support in densely populated areas and the most attractive parts of the main transport corridors. However, there have been no appreciable commercial infrastructure developments outside these areas.
- (15) Sales of pure battery electric vehicles have stabilised around 15% of total sales of passenger cars, plug-in hybrids have increased significantly the last year and are now on level with pure battery electric vehicles. There have been positive developments regarding the driving range of battery electric vehicles, and new models with increased ranges are announced to enter the market during 2017. Enova will continue to monitor developments in the vehicle market to adapt infrastructure requirements to the evolving needs both

⁷ See EEAG, Annex 1.

⁸ www.enova.no.

⁹ As defined in the Norwegian national transport plan, see <http://www.ntp.dep.no/English>.

¹⁰ See <http://info.nobil.no/index.php/english>.

regarding locations and density of the charging infrastructure as well as the power requirements of the charging stations.

- (16) Even in light of these developments, however, Enova argues that there remains a need to support the less attractive, but still important corridors outside the main cities to avoid that limited access to charging stations will impede sales and use of electric vehicles. The arguments justifying the need for the scheme as summarised in Decision No 336/15/COL are therefore still applicable today.

2.3.2 Shore-side electricity supply for ships

- (17) The objective of the scheme is to facilitate shore-side electricity in ports with significant demand, where cost is acceptable related to benefits. Enova assesses the need for new installations based on actual and estimated future demand.
- (18) Enova has so far supported 13 shore-side electricity projects with a total amount of aid of NOK 82 million, granted based on competitive bidding processes. There is still only a small fraction of ships adapted to make use of shore-side electric supply facilities, resulting in very low utilisation rates and profitability issues for the harbours. Enova expects this to hamper the establishment of shore-side electric facilities without support in the years to come. There are therefore still substantial barriers for investments in shore-side electricity facilities. The arguments justifying the need for the scheme as summarised in Decision No 336/15/COL are thus still applicable today.

2.3.3 Hydrogen refuelling infrastructure for vehicles

- (19) There are presently only around 40 hydrogen-fuelled vehicles in operation in Norway, of which 12 have been registered in the last year. There are still only five hydrogen refuelling stations for light vehicles and one for busses in operation. During the past year, Enova has granted support to one refuelling station for distribution lorries and one for light vehicles. However, despite these new projects, Enova argues that the market is still immature and requires further development before a commercial deployment of hydrogen refuelling infrastructure could be envisaged.
- (20) Based on the above, Enova submits that the arguments justifying the need for the scheme as summarised in Decision No 336/15/COL are still applicable today.

2.3.4 Biofuels refuelling infrastructure for vehicles and LNG refuelling infrastructure for ships

- (21) Since the adoption of Decision No 336/15/COL, Enova has not supported any biofuels refuelling infrastructure for vehicles nor LNG refuelling infrastructure for ships. Furthermore, Enova argues that there have been no significant changes in the markets for these two types of infrastructure over the past year. Therefore, the arguments justifying the need for the corresponding schemes as summarised in Decision No 336/15/COL are still applicable today.

3 National legal basis

- (22) The national legal basis for the scheme is Parliamentary Decision of 5 April 2001 on the basis of a proposition by the Ministry of Petroleum and Energy of 21 December 2000. The Parliamentary Decision amends the Energy Act of 29 June 1990 No. 50.

4 Budget and duration

- (23) The annual budget of the programme will be increased from currently NOK 300 million to NOK 500 million. The Norwegian authorities have explained that the experience from the operation of the programme so far has shown that a higher budget is required.
- (24) The duration of the programme will be extended until the end of 2022.

II. ASSESSMENT

1 The presence of state aid

(25) 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.”

- (26) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.
- (27) In its Decision No 336/15/COL, the Authority found that the resources from the Energy Fund, which Enova uses to finance the programme, constitute state resources. There have been no changes to the financing arrangements since then.
- (28) Grants under the aid schemes are aimed at undertakings that intend to install the types of alternative fuels infrastructure covered by the notified aid schemes, granting them support to cover all or part of the investment costs. As already set out in Decision No 336/15/COL, the Authority therefore considers that the notified aid schemes confer an economic advantage on these undertakings, which they would not have obtained under normal market conditions. The Authority further considers this advantage to the direct beneficiaries to be selective, as only a limited number of undertakings can benefit from the aid.
- (29) In its Decision No 336/15/COL, the Authority also considered potential indirect beneficiaries of the aid schemes. For instance, owners or users of vehicles or ships that use the supported alternative fuels infrastructures benefit from increased availability and (potentially) lower prices.¹¹ As regards undertakings using ships and vehicles powered by alternative fuels, the Authority notes that the infrastructure eligible under the aid schemes has to be open to all (public access) and would usually require payment for refuelling/recharging. Any advantage to users might therefore not be selective, or, if at all, be of a very limited nature. Finally, the measures can also stimulate the demand for vehicles and ships powered by the alternative fuels which the aid schemes support, as well as the sale of the relevant refuelling/recharging equipment, compared to a reference situation in which no such aid would be granted. It follows that the measures may therefore also indirectly favour manufacturers, importers and dealers of these vehicles, ships and equipment. Overall, however, the Authority considers these potential indirect advantages to be an incidental and unavoidable consequence of any aid measure aimed at encouraging the development of alternative fuels infrastructure.
- (30) Regarding the effect on trade and competition, the Authority noted in its Decision No 336/15/COL that Enova may grant aid to undertakings that are or can be active in markets that are open to competition within the EEA. The selective economic advantage conferred by the aid schemes is thus liable to distort competition on the markets on which the direct

¹¹ The Authority notes, however, that private users of (in particular) electric vehicles are not subject to state aid rules as they do not qualify as undertakings.

beneficiaries are active. Furthermore, under each of the aid schemes in question, aid may potentially be granted to large undertakings that have activities subject to trade and competition within the EEA. For instance, electric charging stations and biofuel/biogas installations may be installed by operators of a chain of service stations with activities in other EEA states; hydrogen infrastructure may be installed by transport or logistics firms with an international profile; and LNG as well as shore-side electricity may be supplied by ports that compete with other port facilities in the EEA. The measures are thus liable to affect trade between the Contracting Parties.

- (31) According to the information provided by the Norwegian authorities, there have been no substantial changes to the aid schemes in question nor to the markets affected by them. The Authority can therefore reaffirm its conclusion in Decision No 336/15/COL that the measures under the alternative fuels programme constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

- (32) Pursuant to Article 1(3) of Part I of Protocol 3: *“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.”*
- (33) The Norwegian authorities have submitted a notification of the aid programme and have not let the schemes enter into force yet. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (34) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (35) For most cases, these conditions are outlined in the Authority’s state aid guidelines. However, as the Authority also concluded in Decision No 336/15/COL, there are no existing state aid guidelines applicable to the measures at hand. The Authority will therefore assess the prolongation of the aid schemes under the alternative fuels programme directly on the basis of Article 61(3)(c) of the EEA Agreement.
- (36) The Authority’s assessment is based on the following common assessment principles:
- contribution to a well-defined objective of common interest;
 - need for state intervention;
 - appropriateness of state aid as a policy instrument;
 - existence of an incentive effect;
 - proportionality of the aid amount (aid limited to minimum necessary);
 - avoidance of undue negative effects on competition and trade; and
 - transparency.

3.1 Objective of common interest

- (37) State aid must aim at a well-defined objective of common interest. An objective of common interest is an objective that has been recognised by the Contracting Parties as being in their common interest.
- (38) As has already been described in Decision No 336/15/COL, the importance of alternative fuels infrastructure in reducing the use of fossil fuels in the transport sector is underlined by Directive 2014/94/EU on the deployment of alternative fuels infrastructure.¹² Without a significant uptake of alternative fuels, the targets of the Europe 2020 strategy and the climate goals for 2050 cannot be achieved.¹³
- (39) The Authority therefore concludes that the aid schemes under the alternative fuels infrastructure programme contribute to a well-defined objective of common interest.

3.2 Need for state intervention

- (40) In order to assess whether state aid is effective to achieve the identified objective of common interest, it is necessary first to assess and define the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure or addressing an equity or cohesion concern.
- (41) The lack of refuelling/recharging infrastructure, and the inability of market forces to fill this gap, represent a fundamental barrier to the development of alternative fuels in the transport sector.¹⁴
- (42) As described in Decision No 336/15/COL, this market failure in the provision of alternative fuels infrastructure affects the different technologies as follows:
- Concerning electric charging stations, the Norwegian authorities argue that there is a market failure in more rural areas of Norway, where the lack of demand renders such installations unprofitable. A sufficiently dense network of charging stations throughout the country is, however, necessary in order to further promote the use of electric vehicles. The support provided under the scheme so far has enabled the construction of charging stations in some parts of Norway. However, the market failure and corresponding need for state intervention remains in other parts of the country.
 - Shore-side electricity infrastructure also suffers from a lack of demand, rendering them unprofitable. This is caused by the low number of ships with the required equipment for shore-side charging, which will only increase if there is a larger network of charging stations along the coast. The support provided by Enova so far has enabled the installation of shore-side electricity at several ports. However, the vast majority of Norwegian ports are still lacking such infrastructure.

¹² OJ L 307, 28 October 2014, not yet incorporated into the EEA Agreement. The directive requires Member States to develop national policy frameworks for the market development of alternative fuels and their infrastructure; foresees the use of common technical specifications for recharging and refueling stations; and paves the way for setting up appropriate consumer information on alternative fuels, including a clear and sound

price comparison methodology.

¹³ See White Paper “Roadmap to a Single European Transport Area – Towards a Competitive and Resource Efficient Transport System”, COM/2011/0144.

¹⁴ See European Commission Staff Working Document - impact assessment accompanying the document “Proposal for a Directive on the deployment of alternative fuels infrastructure”, SWD/2013/05.

- The use of hydrogen as a transport fuel still requires further technological development and market maturation before a large-scale roll out of hydrogen infrastructure can be envisaged. This requires the implementation of more hydrogen projects, which Enova will continue to support.
 - Enova has not granted any aid to refuelling infrastructure for biofuels nor LNG infrastructure for ships. According to the Norwegian authorities, there has been no substantial changes to market conditions regarding these technologies either.
- (43) Given the continued existence of the market failure described in Decision No 336/15/COL, the Authority concludes that there remains a need for state intervention.

3.3 Appropriateness of state aid

- (44) State aid must be an appropriate instrument to address the identified objective of common interest. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the common objective is achievable through other less distortive policy instruments or other less distortive types of aid instruments.
- (45) There have been no major changes to the regulatory framework or other support schemes since the adoption of Decision No 336/15/COL.¹⁵ The Authority notes that Norway has notified a new tax reduction for shore-side electricity, which was assessed in its Decision No 216/16/COL. However, this measure does not directly address the lack of shore-side electricity infrastructure in ports, which still represents a fundamental barrier to the widespread adoption of shore-side electricity.
- (46) In its Decision No 336/15/COL, the Authority concluded that the Norwegian authorities had sufficiently demonstrated that state aid was the most appropriate way of tackling the identified market failure, and that the chosen aid instrument, i.e. grants, was the most suitable instrument to address the lack of profitability. The Authority sees no reasons to depart from that conclusion.

3.4 Incentive effect

- (47) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (48) As described in Decision No 336/15/COL, Enova assesses the existence of an incentive effect in line with the requirements set out in the EEAG. In addition, the Authority notes that Enova uses a mapping exercise and other tools to ensure that aid will only be granted in areas where there is no comparable existing or planned infrastructure. The Authority therefore concludes that the alternative fuels infrastructure programme ensures that any aid disbursed under its aid schemes has the necessary incentive effect.

3.5 Proportionality

- (49) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest.
- (50) Concerning eligible costs, the Authority notes that the most likely counterfactual scenario for investments in alternative fuels infrastructure is normally that the project would not take place, due to the lack of profitability. In these cases, Enova therefore takes the total investment costs into account as eligible costs.

¹⁵ See Section I.5.4 of that decision.

- (51) In its Decision No 336/15/COL, the Authority assessed the competitive bidding processes organised by Enova and concluded that they complied with the requirements of paragraph 75 of the EEAG. As they remain unchanged, the Authority can reaffirm its conclusion that Enova can grant aid for up to 100% of eligible costs when using competitive bidding processes.
- (52) In the absence of a competitive bidding process, Enova assesses the investment costs of the project in detail and carries out a funding gap analysis. The maximum aid intensities, as described in paragraph (7) above, are similar to those in the EEAG and represent a good proxy in the context of the proportionality assessment, given the environmental purpose of the programme.
- (53) Based on the above, the Authority reaffirms its conclusion in Decision No 336/15/COL that the aid schemes are proportionate.

3.6 Avoidance of undue negative effects on competition and trade

- (54) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (55) As explained in more detail in Decision No 336/15/COL, the notified measures contain safeguards to limit any effects on competition in relation to the direct beneficiaries. In particular, Enova aims to prevent crowding out effects by using mapping exercises and other tools to ensure that only projects in areas without comparable existing (or planned) infrastructure, and where such projects cannot be realised on a commercial basis, are eligible for aid. Furthermore, Enova uses either a competitive bidding process or an application process to select beneficiaries, which are both designed to be non-discriminatory and to create competition for aid. Finally, the Authority notes that refuelling and recharging infrastructure is mostly of a local nature. Based on the above, any effect on competition and trade in relation to the direct beneficiaries is therefore limited.
- (56) Regarding the indirect beneficiaries, the Authority notes that projects have to guarantee public access to all users in order to be eligible for aid. Furthermore, all projects are obliged to use the most common technological standards in order to allow the highest number of users to be able to benefit from the infrastructure. There is therefore no discrimination between the users of these alternative fuels infrastructures. Nor do the aid schemes discriminate regarding the other indirect beneficiaries, i.e. the manufacturers, importers and dealers of vehicles, ships and equipment for the relevant alternative fuels. The Authority considers that any benefits obtained by these indirect beneficiaries are necessary for achieving the objective pursued by the scheme.
- (57) The Authority thus concludes that the aid schemes do not entail undue distortions of competition and trade, and that the overall balancing exercise has a positive outcome.

3.7 Transparency

- (58) To ensure transparency, all individual aid granted under the alternative fuels programme will be published in accordance with the requirements in the EEAG, section 3.2.7. In addition, the full text of the aid schemes are published on Enova's website.
- (59) The Authority therefore concludes that the transparency requirements of the common assessment principles are met.

4 Conclusion

- (60) On the basis of the foregoing assessment, the Authority considers that the schemes under the programme for alternative fuels infrastructure constitute state aid with the meaning of Article 61(1) of the EEA Agreement. The notified prolongation and budget increase of these aid schemes are compatible with the functioning of the EEA Agreement.
- (61) The Norwegian authorities are reminded that all plans to modify these schemes must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Authority has accordingly decided not to raise objections to the prolongation and budget increase of the programme for alternative fuels infrastructure on the grounds that they are compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done in Brussels, on 15 December 2016.

For the EFTA Surveillance Authority

Sven Erik Svedman
President

Helga Jónsdóttir
College Member

This document has been electronically signed by Sven Erik Svedman, Helga Jonsdottir on 15/12/2016