EFTA SURVEILLANCE AUTHORITY DECISION

OF 19 DECEMBER 2001

ON THE REGIONAL DIRECT TRANSPORT AID SCHEME
("REGIONAL TRANSPORTSTØTTE")

(AID NO 01-010,
FORMER AID NO 93-207, 93-208, 93-209, 93-210,
93-211 AND 93-212).

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area\(^1\), in particular to Articles 61 to 63, Annex XV and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice\(^2\), in particular to Article 24 and Article 1 of Protocol 3 thereof,

Having regard to the Authority's Guidelines\(^3\) on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

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\(^1\) Hereinafter referred to as the EEA Agreement.

\(^2\) Hereinafter referred to as the Surveillance and Court Agreement.

I. FACTS

1. The notification

By letter of 5 December 2001 from the Mission of Norway to the European Union, received and registered on 7 December 2001 (Doc. No: 01-9941 A), the Norwegian authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a regional direct transport aid scheme (“Regional transportstøtte”).

By letter dated 11 December 2001 (Doc. No: 00-9972 D), the EFTA Surveillance Authority acknowledged the receipt of the letter dated 5 December 2001.

2. The contents of the scheme

By letter dated 4 January 1994 (Doc. No: 94-469) the Authority requested information on all existing aid measures in Norway. The Norwegian authorities provided such information on several occasions in 1994, including that 6 counties operated direct transport aid schemes: Møre og Romsdal (former aid No 93-207), Sør-Trøndelag (former aid No 93-208), Nord-Trøndelag (former aid No 93-209), Nordland (former aid No 93-210), Troms (former aid No 93-211) and Finnmark (former aid No 93-212). The Authority has previously not assessed and approved the schemes.

Møre og Romsdal ceased to operate a direct transport aid scheme in 1998, while Sør-Trøndelag still operates a scheme within the de minimis rule.

The present notification contains a description of the scheme and guidelines fixed by the Ministry of Local Government and Regional Development (“Ytre rammeverk for transportstøtte”). The scheme covers the counties Finnmark, Troms, Nordland and Nord-Trøndelag (except the municipalities Stjørdal, Frosta and Levanger). The notified area is a contiguous area and within the approved map of assisted areas4. The population density of the notified areas are 1.5, 5.8, 6.4 and 4.3 inhabitants per square kilometre, respectively.

The purpose of the scheme is to partly offset additional transport costs of firms located in the northernmost low population density areas of Norway. Additional transport costs mean the extra costs occasioned by movements of goods within the borders of Norway. Under the scheme aid is granted in relation to transport of raw materials or semi-finished goods that will undergo significant processing at the premises of the consignee, and transport from places within the area of finished or semi-finished goods that have undergone significant processing within the eligible area.

Only documented transport costs may form the basis for calculating the extra transport costs. The transport aid is calculated as a percentage of the total extra transport costs incurred by the aid recipient. In this context, the transport cost refers to a reasonable cost, which is specified in a consignment note or equivalent document and which is dependent on the transport distance, weight of goods and on freight charges and other

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4 OJ C 91, 30.03.2000, and in the EEA Supplement thereto No 15 on the same date.
charges which may be attributed to the actual transport. The guidelines for the scheme states that the size of the aid should be objectively quantifiable in advance, \textit{i.e.} that aid shall be calculated on the basis of aid-per kilometre or aid-per-kilometre multiplied with weight ("tonnk$m^\text{m}").

Transport compensation is given on the basis of applications from the firms the year after the transport costs occurred. A firm cannot receive more than 35\% of the total transport costs eligible for aid as regional transport aid. The aid is payable as a grant towards the costs for transport of goods by rail, road or sea. Sea transport qualifies for assistance only over the stretch of the journey between the port in the transport aid region and the port in the rest of Norway that is closest to the point where the shipment leaves Norwegian territorial waters.

In areas where firms are also eligible to receive assistance to transport from other schemes the Norwegian authorities note that it is necessary to ensure that overcompensation do not exist. The degree of compensation will therefore be considered in each payment of regional transport aid, in order to avoid overcompensation.

The following economic activities without an alternative location or covered by specific sectoral rules cannot receive regional transport aid:
- Production and distribution of electricity
- Extraction of crude petroleum and natural gas
- Service activities incidental to oil and gas extraction excluding surveying
- Mining and metal ores
- Extraction of the industrial minerals nepheline syenite and olivine.
- Enterprises engaged in production of ECSC steel.

Regional transport aid given to the Motor vehicle industry or industrial production of synthetic fibres will be notified in advance to the Authority subject to the Guidelines in force.

The duration of the scheme is from 1 January 2000 until 31 December 2006. The total budget for 2001 is approximately NOK 16 million (approximately EUR 2 million). The estimated number of recipients is 250 enterprises.

\textbf{II. APPRECIATION}

1. \textbf{The presence of State aid and notification formalities}

The notified aid is being funded by State resources and will favour certain undertakings in the meaning of Article 61(1) of the EEA Agreement. The benefiting enterprises are actually or potentially in competition with similar undertakings in Norway and other EEA States. As the proposed aid distorts or threatens to distort competition and to affect trade within the EEA, the scheme therefore constitutes State aid in the meaning of Article 61(1) of the EEA Agreement.
Article 1(3) of Protocol 3 to the Surveillance and Court Agreement states that “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”. Furthermore, in the last sentence of Article 1(3) of Protocol 3 it is stated that: “The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.”

The Authority adopted new rules on national regional aid on 4 November 1998. In the decision the Authority proposed i.a., as an appropriate measure under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that the EFTA Member States amend all existing regional aid schemes which will be in force after 31 December 1999, so as to make them compatible with the Guidelines applicable from 1 January 2000, and that they communicate the proposed changes within six months from the date of the decision. In a letter of 4 January 1999 (Doc No: 99-39 A), the Norwegian authorities accepted the appropriate measures. The Norwegian authorities also stated that they “will inform the Authority of the changes envisaged in order to make existing regional aid schemes as will be in force from 1 January 2000 compatible with the new Guidelines”.

By notifying the direct transport aid scheme in a letter dated 5 December 2001, received and registered on 7 December 2001 (Doc. No: 01-9941 A), the Norwegian authorities have failed to comply with their commitment to report that the direct transport aid scheme have been brought into line with the new Guidelines. The Norwegian authorities have thereby infringed the last sentence of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement. The aid is thus “aid unlawful on procedural grounds” and the Authority considers the scheme as un-notified new aid. However, the EFTA Surveillance Authority is obliged to assess whether any of the exemption clauses under Article 61(2) or (3) are applicable such that the aid measure could be exempted from the general prohibition in Article 61(1).

2. Application of the relevant State aid rules

Chapter 25.4.(27) of the Authority’s Guidelines states that: “In the regions of low population density qualifying either for exemption under Article 61(3)(a) or under 61(3)(c) on the basis of the population density test referred to in Chapter 25.3, paragraph 17, aid intended partly to offset additional transport costs may be

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5 By reference to Chapter 3.3(2) of the State Aid Guidelines, the Authority would like to emphasize that “by putting into effect” mentioned in the last sentence of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement is meant not only the action of granting aid to the recipient. It is sufficient that the conferment of powers enabling the aid to be granted without further formality has taken place.

6 OJ L 111, 29.04.1999, and in the EEA Supplement thereto No 18 on the same date.

7 See Chapter 6 of the State Aid Guidelines, Specificities regarding aid unlawful on procedural grounds.

8 Additional transport costs mean the extra costs occasioned by movements of goods within the borders of the country concerned. In no circumstances may such aid constitute export aid, nor must it constitute measures having an equivalent effect to quantitative restrictions on imports, within the meaning of Article 11 of the EEA Agreement.
authorised under special conditions. It is up to the EFTA State to prove that such additional costs exist and to determine their amount.”

With regard to the special conditions for regions qualifying for the Article 61(3)(c) derogation under the population density criterion, Chapter 25.4.(27) of the Guidelines refers to Annex XI that sets out the conditions to be met for aid to qualify for exemption. The conditions to be met are:

- “Aid may serve only to compensate for the additional cost of transport. The EFTA State concerned will have to show that compensation is needed on objective grounds. There must never be overcompensation. Account will have to be taken here of other schemes of assistance to transport.
- Aid may be given only in respect of the extra cost of transport of goods inside the national borders of the country concerned. It must not be allowed to become export aid.
- Aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios.
- The estimate of the additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets.
- Aid may be given only to firms located in areas qualifying for regional aid on the basis of the new population density test. Such areas will be made up essentially of NUTS level III geographic regions with a population density of less than 12.5 inhabitants per square kilometre. However, a certain flexibility is allowed in the selection of areas, subject to the following limitations:
  - Flexibility in the selection of areas must not mean an increase in the population covered by transport aid;
  - The NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometre;
  - They must be contiguous with NUTS III regions which satisfy the low population density test;
  - Their population must remain low compared with the total coverage of the transport aid.
- No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.).
- Transport aid given to firms in industries which the EFTA Surveillance authority considers sensitive (motor vehicles, synthetic fibres, shipbuilding and steel) must always be notified in advance and will be subject to the industry guidelines in force.”

The Norwegian authorities have proposed that the following counties should be included in the area eligible for regional transport aid: Finnmark, Troms, Nordland and Nord-Trøndelag (except the municipalities Stjørdal, Frosta and Levanger). The population densities of the notified areas are all below 12.5 inhabitants per square
kilometre (1.5, 5.8, 6.4 and 4.3 inhabitants per square kilometre, respectively). The designated area is a contiguous area and within the map of assisted areas approved by the Authority. The geographical scope of the notification is therefore in compliance with the criteria cited above in Chapter 25.4.(27) and indent 5 of Annex XI of the Authority’s Guidelines.

The notified scheme serves only to compensate for the additional cost of transport. The Norwegian authorities have documented that compensation is needed on objective grounds. As firms cannot receive more than 35% of the total transport costs eligible for aid as regional transport aid, in addition to cumulation rules, it is ensured that there is no overcompensation. The conditions set out in the first indent of Annex XI are therefore met.

Aid may be given only in respect of the extra cost of transport of goods inside the national borders of Norway based on the most economical form of transport and not for the export of goods. The second and fourth indents of Annex XI are therefore fulfilled.

The guidelines for the scheme states that the aid must be objectively quantifiable in advance on the basis of an aid-per-kilometre ratio, as referred above in point I. The conditions of the third indent of Annex XI are therefore met.

The scheme does not apply to transport or transmission of the products of businesses without an alternative location and industries covered by specific sector rules. Regional transport aid given to motor vehicles or synthetic fibres will be notified in advance subject to the Guidelines in force. The notification is therefore also in accordance with indent six and seven of Annex XI cited above.

3. Conclusion

For the reasons stated above it is concluded that the notified aid qualifies for exemption under article 61(3)(c) of the EEA Agreement, as aid to facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest.

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9 OJ C 91, 30.03.2000, and in the EEA Supplement thereto No 15 on the same date.
HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the notified Regional direct transport aid scheme (“Regional transportstøtte”), as notified by the Norwegian authorities by letter dated 5 December 2001 (Doc. No: 01-9941 A).

2. The Norwegian authorities are obliged to submit a separate simplified annual report to the EFTA Surveillance Authority on the application of the Regional direct transport aid scheme (in accordance with Chapter 32 and Annex IV of the State Aid Guidelines).


For the EFTA Surveillance Authority

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President

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College Member