

Brussels, 9 February 2022  
Case No: 86912  
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Decision No 029/22/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 9 February 2022

amending the substantive rules in the field of State aid by introducing new Guidelines on State aid for climate, environmental protection and energy 2022

The EFTA Surveillance Authority ('ESA'),

HAVING regard to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

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 and Article 5(2)(b),

Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(1) of Part I,

WHEREAS:

Under Article 24 of the Surveillance and Court Agreement, ESA is to give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA is to issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

Under Article 1(1) of Part I of Protocol 3, ESA is to keep under constant review all systems of aid existing in the EFTA States <sup>(1)</sup> and propose any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

ESA's Guidelines on State aid for environmental protection and energy 2014–2020 ('ESA's 2014–2020 Guidelines') <sup>(2)</sup>, as amended <sup>(3)</sup>, were applicable until 31 December 2021.

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<sup>(1)</sup> Article 1(b) of the Surveillance and Court Agreement states that 'the term "EFTA States" means the Republic of Iceland and the Kingdom of Norway and, under the conditions laid down by Article 1(2) of the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Principality of Liechtenstein'.

<sup>(2)</sup> ESA Decision No 301/14/COL of 16 July 2014 amending for the ninety-eighth time the procedural and substantive rules in the field of State aid by adopting new Guidelines on State aid

ESA's 2014–2020 Guidelines corresponded to the European Commission's ('the Commission') Guidelines on State aid for environmental protection and energy 2014–2020 ('the Commission's 2014–2020 Guidelines') <sup>(4)</sup>. The Commission's 2014–2020 Guidelines, as amended <sup>(5)</sup>, were applicable until 31 December 2021.

On 27 January 2021, the Commission adopted Guidelines on State aid for climate, environmental protection and energy 2022 ('the 2022 Guidelines') <sup>(6)</sup>.

The 2022 Guidelines are also of relevance for the European Economic Area ('EEA').

Uniform application of the EEA State aid rules is to be ensured throughout the EEA in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to paragraph II under the heading 'GENERAL' of Annex XV to the EEA Agreement, ESA, after consultation with the Commission, is to adopt acts corresponding to those adopted by the Commission.

The 2022 Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the Commission when assessing the compatibility of aid with the functioning of the EEA Agreement.

HAVING consulted the Commission,

HAVING consulted the EFTA States,

HAS ADOPTED THIS DECISION:

#### *Article 1*

- (1) The substantive rules in the field of State aid are amended by introducing new Guidelines on State aid for climate, environmental protection and energy 2022. The 2022 Guidelines are annexed to this Decision and form an integral part of it.

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for environmental protection and energy 2014–2020. OJ L 131, 28.5.2015, p. 1, and EEA Supplement No 30, 28.5.2015, p. 1.

<sup>(3)</sup> ESA Decision No 90/20/COL of 15 July 2020 amending, for the one hundred and seventh time, the procedural and substantive rules in the field of State aid, by amending and prolonging certain State aid guidelines. OJ L 359, 29.10.2020, p. 16–19, and EEA Supplement No 68, 29.10.2020, p. 4.

<sup>(4)</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014–2020. OJ C 200, 28.6.2014, p. 1.

<sup>(5)</sup> Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014–2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014–2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance. 2020/C 224/02. OJ C 224, 8.7.2020, p. 2–4.

<sup>(6)</sup> C(2022) 481 final, not yet published in the Official Journal of the European Union.

- (2) ESA applies these guidelines to assess the compatibility of all notifiable aid for climate, environmental protection and energy awarded or intended to be awarded from 9 February 2022. Unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded.

### *Article 2*

ESA applies the 2022 Guidelines with the following adaptations where applicable, including, but not limited to:

- (a) if there is a reference to 'Member State(s)', ESA reads it as a reference to 'EFTA State(s)' <sup>(7)</sup>, or where appropriate 'EEA State(s)';
- (b) if there is a reference to the 'European Commission', ESA reads it, where appropriate, as a reference to the 'EFTA Surveillance Authority';
- (c) if there is a reference to 'the Treaty' or 'TFEU', ESA reads it as a reference to 'the EEA Agreement';
- (d) if there is a reference to 'Union rules on State Aid', ESA reads it as a reference to 'the EEA rules on State Aid';
- (e) if there is a reference to Article 107 TFEU or sections of that Article, ESA reads it as a reference to Article 61 of the EEA Agreement and the corresponding sections of that Article;
- (f) if there is a reference to Article 108 TFEU or sections of that Article, ESA reads it as a reference to Article 1 of Part I of Protocol 3 of the Surveillance and Court Agreement and the corresponding sections of that Article;
- (g) if there is a reference to Council Regulation (EU) 2015/1589 <sup>(8)</sup>, ESA reads it as a reference to Part II of Protocol 3 of the Surveillance and Court Agreement;
- (h) if there is a reference to Commission Regulation (EC) No 794/2004 <sup>(9)</sup>, ESA reads it as a reference to EFTA Surveillance Authority Decision 195/04/COL;
- (i) if there is a reference to the wording '(in-)compatible with the internal market', ESA reads it as '(in-)compatible with the functioning of the EEA Agreement';
- (j) if there is a reference to the wording 'within (or outside) the Union', ESA reads it as 'within (or outside) the EEA';
- (k) if there is a reference to 'intra-Union trade', ESA reads it as a reference to 'intra-EEA trade';
- (l) if the Guidelines set out that they will be applied to 'all sectors of economic activity', ESA applies them to 'all sectors of economic activity or parts of sectors of economic activity falling within the scope of the EEA Agreement';

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<sup>(7)</sup> The 'EFTA States' refers to Iceland, Liechtenstein and Norway.

<sup>(8)</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

<sup>(9)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

- (m) if there is a reference to Commission Communications, Notices or Guidelines, ESA reads it as a reference to the corresponding ESA Guidelines.

*Article 3*

Point 468 of the 2022 Guidelines is replaced by:

‘ESA proposes the following appropriate measures to the EFTA States under Article 1(1) of Part I of Protocol 3 of the Surveillance and Court Agreement:

(a) The EFTA States amend, where necessary, existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023;

(b) The EFTA States are invited to give their explicit unconditional agreement to the proposed measures by 11 April 2022. In the absence of any reply, ESA will assume that the EFTA State in question does not agree with the proposed measures.’

Done at Brussels,

For the EFTA Surveillance Authority

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*

ANNEX: Communication of the European Commission (C(2022) 481 final): Guidelines on State aid for climate, environmental protection and energy 2022 (Document No 1266066) and its Annexes I and II (Document No 1266067).