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Ministry of Trade, Industry and Fisheries
P.O. Box 8090 Dep
0032 Oslo
Norway

Subject: Compensation scheme for rail freight operators due to damage to the Otta bridge

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the compensation scheme for rail freight operators due to damage to the Otta bridge (“the measure”), it considers that it constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 20 June 2025.

3 Description of the measure

3.1 Background

3.1.1 *The Otta railway bridge and the adverse climatic conditions*

- (3) On 21 January 2025, the Otta railway bridge was closed to traffic due to safety concerns after movements were detected in its structure. The movement was caused by erosion around the southern abutment, triggered by high water levels and heavy ice in the Otta River. This erosion weakened the foundation and led to a shift in the bridge.
- (4) Ice had accumulated in a way that forced the river to flow through a narrow passage near the southern abutment. This created substantial water pressure, which caused large amounts of material around the abutment to be washed away as the river sought an alternative path.
- (5) The Otta railway bridge was built around 1890. The abutments of the bridge have remained firm while there have been regular floods and heavy icing in the Otta River. Because of the exceptional nature of the matter, the Norwegian authorities examined whether any act or omission by Bane NOR SF (“Bane NOR”) – the public entity responsible for maintenance of the bridge – may have contributed to the erosion. The investigation revealed no evidence of negligence by Bane NOR. It

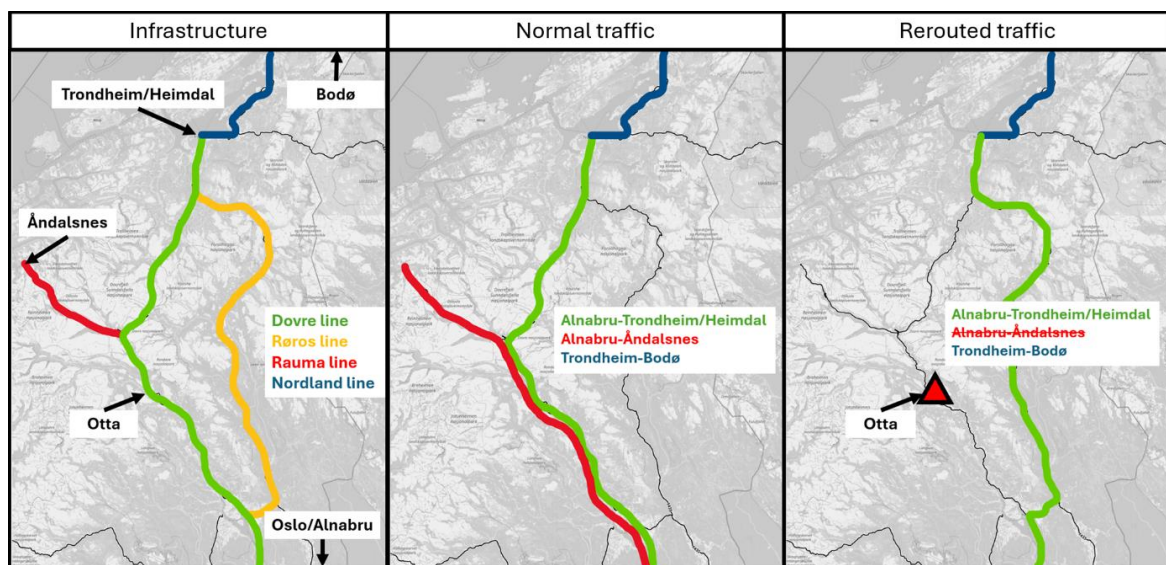
¹ Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

appears, instead, that the combination of high-water levels and ice created atypical and exceptional forces on the southern abutment, causing it to shift.

- (6) To relieve the situation, Bane NOR took immediate measures, including ice removal, rock filling to redirect waterflow, and making the local power station reduce the water level in the river.
- (7) Bane NOR's examination of the bridge shows that it had shifted 15 centimetres due to the erosion, which, according to the Norwegian authorities, has never happened before.

3.1.2 Effects of the bridge closure on the rail freight undertakings

- (8) As a result of the Otta bridge closure, rail freight operators were prevented from transporting the same amount of cargo on the Dovre Line² until the bridge was repaired, leading to economic losses. Rail freight operators reported that only a limited amount of traffic could be rerouted to the Røros Line,³ which has a lower capacity and is not electrified. The rerouting also led to higher costs, due to the need for more expensive equipment (e.g. renting of diesel locomotives) and training of staff, as well as the reallocation of rolling stock. The Otta bridge reopened on 4 April 2025.
- (9) Below are three maps of the impacted area, where the left map depicts the infrastructure, and the middle and right maps depict the traffic, normally and as rerouted.



- (10) The Dovre line works as a connecting line between Oslo and Trondheim/Heimdal and the lines terminating in Åndalsnes and Bodø. For 2025, the freight train operators were given 6 928 slots for intermodal freight trains on routes between Alnabru, Trondheim/Heimdal, Åndalsnes and Bodø. This is approximately the same

² The Dovre Line (*Dovrebanen* in Norwegian) is a Norwegian railway line connecting Eidsvoll (Akershus county) to Trondheim (Trøndelag county).

³ The Røros Line (*Rørosbanen* in Norwegian) is a Norwegian railway line running between Hamar (Innlandet county), Røros and Trondheim (both in the Trøndelag county).

number of trains per year as in 2022-2024. This gives an average of 133 trains each week or 19 each day. Dovre Line was closed for 74 days because of the Otta bridge closure.⁴ In the period that the Dovre Line was closed due to the closure of the Otta bridge, from 21 January 2025 to 4 April 2025 inclusive (i.e. a period of 74 days), one would normally have expected 1 406 trains between Alnabru, Trondheim/Heimdal, Åndalsnes and Bodø (i.e. corresponding to 19 trains for each of the 74 days).

- (11) According to the Norwegian authorities, the actual number of trains, based on statistics from Bane NOR, between Alnabru, Trondheim/Heimdal, Åndalsnes and Bodø during this period was, however, only 916 intermodal freight trains. This makes an average of 12.4 trains a day, compared to the expected number of 19 trains per day. As a consequence, the transportation work (measured in gross tonnes-kilometres) for this period is only 72% of the average transportation work for the same period in the years 2019–2024.⁵
- (12) Although no precise estimate has been made of the total economic loss resulting from the Otta bridge closure, the Norwegian authorities indicate that the damage per day appears comparable to that of the Randklev bridge collapse.⁶ The Randklev bridge was closed for 280 days, and Bane NOR estimated the total cost of that incident at NOK 2.4 billion. While the Otta bridge closure was shorter in duration, the associated costs are likewise assumed to be significant.⁷

3.2 Objective

- (13) The primary objective of the measure is to compensate rail freight operators for the losses incurred as a direct result of the closure of the Otta bridge, so that bankruptcy, restructuring and downscaling because of the closure of the bridge are avoided.
- (14) A complementary goal pursued by the Norwegian authorities is to move freight transport from road to rail, based on environmental and traffic safety considerations. In this context, they emphasise the scheme's importance in facilitating a rapid return of freight transport on the Dovre Line following the reopening of the Otta bridge.

3.3 National legal basis

- (15) The scheme will be financed through Norway's 2025 State budget, consisting of both the government proposition and the parliament approval.
- (16) The Norwegian Railway Directorate ("the Railway Directorate") will publish guidelines on its website on conditions for receiving aid and how freight operators

⁴ The Otta bridge is situated in the middle of the Dovre line, and its closure closed the line for through traffic, especially for the freight trains. This includes the transport markets from Alnabru (in Oslo) to Åndalsnes, Heimdal, Trondheim and Bodø. Some of this traffic was re-routed to the Røros line, as previously mentioned. The *passenger* trains, however, drove trains close to the bridge, and transported the passengers past the broken bridge by replacement busses.

⁵ The trains in this calculation are registered as "combitrains" or "other freight trains" on the Dovre, Røros, Rauma and Nordland lines.

⁶ ESA [Decision No 055/24/COL](#), *Randklev bridge*.

⁷ Based on Bane NOR's estimate for the Randklev bridge closure and assuming an equivalent total cost per day of the two bridge closures, the estimated total cost of the Otta bridge closure would represent approximately NOK 630 million.

shall apply for aid under the scheme, document their economic losses and mechanisms for preventing overcompensation.

- (17) These rules, along with the 2025 State budget, will constitute the national legal basis of the measure.

3.4 Aid granting authority

- (18) The measure will be administered by the Railway Directorate,⁸ which is a government agency under the Norwegian Ministry of Transport.

3.5 Beneficiaries

- (19) The measure applies to all railway undertakings within the meaning of Article 3(1) of Directive 2012/34/EU⁹ that provide services for the transport of goods by rail and with train slots on the Dovre Line that were impacted by the closure of Otta bridge, if they fulfil the other criteria to receive aid.
- (20) The rail freight operators with train slots on the Dovre Line impacted by the closure of the Otta bridge are Cargonet AS, BLS AS ("BLS"), Grenland Rail AS ("Grenland Rail") and OnRail AS ("OnRail").
- (21) Aid will not be granted to undertakings in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹⁰ except for those whose financial difficulties are caused by the bridge closure.

3.6 Aid instrument, intensity, eligible costs, overlap with other schemes

- (22) The aid takes the form of direct grants. The aid intensity is 95% of the eligible costs (i.e. of the economic losses caused by the bridge closure). The eligible costs of the measure are the economic losses suffered by the freight operators directly attributable to the closure of the Otta bridge caused by the extreme and atypical icing in January 2025. The scheme will only cover the economic losses for the train slots that utilised the Otta bridge before the closure and necessary adjustments incurred to facilitate alternative freight transport via the Røros Line.
- (23) At the outset, the economic losses will be quantified as the difference between (a) the EBITDA that freight operators would reasonably have expected on the train routes linked to the Dovre Line if the Otta bridge had remained operational (counterfactual result); and (b) the EBITDA from the train slots which could be redirected from the Dovre Line to the Røros Line during the closure period (the actual result).
- (24) An aid applicant must have minimised its financial losses resulting from the bridge closure as far as possible. This obligation entails that the applicant was required to

⁸ <https://www.jernbanedirektoratet.no/en/>.

⁹ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, OJ L 343, 14.12.2012, p. 32. The Directive has been incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 247/2021, which entered into force on 1 June 2022, and is implemented into Norwegian law through Section 1-7(b) of the Railway Regulation (*jernbaneforskriften*).

¹⁰ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ L 271, 16.10.2015, p. 35 and EEA Supplement No 62 15.10.2015, p. 1).

have made use of alternative routes allocated on the Røros Line to maintain rail freight transport if doing so reduced the economic loss.

- (25) The eligible costs also include adjustment costs incurred to facilitate alternative freight transport via the Røros Line, and loss of income on other routes or contracts that arise as a direct consequence of relocating personnel, locomotives, and rolling stock to the Røros Line.
- (26) The method for calculating the loss will be similar to the method described in ESA's Decision *Randklev bridge*, but with some modifications. Calculating the profit/loss based on a month-to-month comparison, as was done in *Randklev bridge* is, according to the Norwegian authorities, not optimal, as the profitability month-by-month can vary considerably, for example due to railway downtime. Calculating the loss based on an average of a relevant time period, excluding the worst and best results, represents a more accurate estimate of the profit/loss due to the closure of the Dovre Line.
- (27) Therefore, the loss of income will be calculated using a year-on-year comparison, with operators applying for compensation based on historical monthly data from the past five years (2020–2024). The years with the highest and lowest EBITDA will be excluded, and the average of the remaining three years will be used as the benchmark for each calendar month. In other words, it is an average of the EBITDA for the relevant month across the three chosen years. The figures will be adjusted in line with the consumer price index provided by Statistics Norway (SSB).
- (28) The eligible cost amounts are net of losses that can be covered by other means, for example other aid measures or insurance payments.
- (29) The Norwegian authorities note that there may be instances where relevant financial data for the ordinary reference period (referred to in paragraph (27)) does not exist. This appears to be the case for OnRail and BLS. In such cases, where this is feasible, the EBITDA for the month for which aid is sought will be compared to an average of the last five months before the Randklev bridge closure, from March to July 2023, excluding the best and worst month. The time period before the Randklev bridge closure is chosen because it is the most recent normal period, that is, the most recent period without special circumstances.¹¹ The Norwegian authorities expect that this calculation method can be applied for OnRail. For BLS, which only started operations on the Dovre Line in December 2024, there is insufficient data for any five-month reference period. In this specific case, the EBITDA for the month for which aid is sought will therefore be compared to an average EBITDA calculated from the actual operating days in January 2025.
- (30) The accounts used for calculating the aid amounts shall follow the stipulations in Section 6-1 of the Norwegian Accounting Act,¹² including detailing the total operating revenues and total operating expenses.

¹¹ In the period after the Randklev bridge reopened (mid Q2 2024) and up until the Otta bridge closed (early Q1 2025), the freight volumes had not yet returned fully to the railway.

¹² <https://lovdata.no/dokument/NL/lov/1998-07-17-56>.

- (31) Moreover, the allocation keys for shared cost elements must remain constant throughout the reference and compensation period.¹³ If a beneficiary calculates the amount of a shared cost attributed to the Dovre Line based on a particular allocation key, the beneficiary must follow that method consistently and thus cannot change the allocation key retroactively.

3.7 Compensation procedure and control mechanisms

- (32) A beneficiary must file an application with accounts documenting the economic losses, accompanied by an independent auditor's confirmation that the aid applied for is in line with the measure.
- (33) In the application, the beneficiary must declare that: (i) the loss is a direct consequence of the Otta bridge closure, (ii) damage mitigation measures have been implemented as effectively as possible, (iii) the beneficiary does not receive other compensation for the same losses which has not been deducted in the damage calculation, (iv) shared costs will be calculated using representative cost allocation principles, (v) the allocation key will remain constant throughout the reference period and the compensation period, (vi) revenues from the extra train slots on the Røros Line made available due to the bridge closure have been utilised and accurately reported, and (vii) the aid applied for is estimated in accordance with the rules of the measure and ESA's approval decision.
- (34) The Railway Directorate will independently assess each application before aid is granted. If the conditions are not met, the application will be rejected. The Railway Directorate may request further information or documentation in case of an incomplete application.
- (35) The applicants must also present a reassessment of the damage calculations by an independent auditor when the annual accounts for 2025 have been finalised. The Railway Directorate will then conduct an *ex-post* control of the aid disbursements.
- (36) If the Railway Directorate finds that the overall payments made exceed 95% of the economic losses suffered by a given rail freight operator as a consequence of the bridge closure, any excess aid will be clawed back, including interest pursuant to the Norwegian Act relating to interest on overdue payment.
- (37) The Norwegian authorities will ensure the following:
- Any payment exceeding the damage suffered as a direct consequence of the natural disaster will be clawed back, including interest (see paragraph (36)).

¹³ Cost shall as far as possible be directly allocated to the Dovre Line and the Røros Line. Remaining/other costs shall then be allocated using the most appropriate of the following allocation keys: number of load carriers and trains handled, freight train rolling schedule and train kilometres, locomotive kilometres, wagon kilometre, locomotive rolling schedule and line turnover. If none of the above keys is suitable, costs shall be allocated on the basis of the number of train departures performed. The operator must also justify the choice of allocation key.

- Payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage.
- If aid under the scheme is paid out and support is subsequently received from other sources such as insurance, the Norwegian authorities will claw back from the beneficiaries the aid amount corresponding to the amount received from other sources.
- Payments under the scheme are excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take appropriate measures to mitigate its damages, implemented as effectively as possible. Furthermore, applicants providing false statements or false documents will forfeit the benefit of aid under the scheme.
- Payments under the scheme are excluded for any applicant that is subject to an outstanding recovery order.

3.8 Cumulation

- (38) The total compensation received by an individual beneficiary cannot exceed 95% of the assessed damage/eligible costs. This includes both public funds and insurance payments.
- (39) To prevent overcompensation under the scheme, beneficiaries must, as outlined in Section 3.7 above, declare that they have not received any other non-deducted compensation (whether aid or non-aid) for the same damage. This provision is first controlled by an independent auditor and then by the granting authority.
- (40) At present, there are no other State aid measures in place in Norway covering the same eligible costs. If such measures are introduced, the Norwegian authorities commit to put in place sufficient cumulation control mechanisms.

3.9 Reporting and transparency

- (41) The Norwegian authorities are committed to provide a report no later than one year after the date of ESA's decision, specifying the total amount of compensation granted to each beneficiary.
- (42) The Norwegian authorities confirm that information about all individual aid awards exceeding EUR 100 000 will be published in the national transparency register.

3.10 Budget and duration

- (43) The maximum aid to be granted under the measure is NOK 70 million.
- (44) The Norwegian authorities will put the scheme into effect from the date of ESA's approval decision. The measure will compensate for direct losses as result of the bridge closure from 21 January 2025 until 4 April 2025 ("the compensation period").

4 Presence of State aid

4.1 Introduction

- (45) 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.”

- (46) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

4.2 Presence of State resources and imputability

- (47) Imputability of a measure to the State and the granting of an advantage through State resources are two separate and cumulative conditions for the existence of State aid, which are, however, often assessed together as they both relate to the public origin of the measure in question.¹⁴
- (48) Regarding imputability, the measure is by definition imputable to the State if the advantage is granted by a public authority, even if the latter enjoys legal autonomy from other public authorities.¹⁵
- (49) As to the requirement that State resources be involved, those include all resources of the public sector.¹⁶
- (50) The compensation envisaged by the measure will be paid from the State budget and therefore constitutes State resources within the meaning of Article 61(1) of the EEA Agreement (see paragraph (15)). Moreover, the measure is taken by the Norwegian authorities through the adoption of legislative or regulatory provisions and is therefore imputable to the State (see paragraphs (15)-(17)).

4.3 Conferring an advantage on an undertaking

- (51) An advantage within the meaning of Article 61(1) of the EEA Agreement is any economic benefit which an undertaking could not have obtained under normal market conditions.¹⁷
- (52) The measure confers an advantage on the beneficiaries, as the compensation will relieve the beneficiaries from costs they would otherwise have to bear, as a cost of business. The advantage corresponds to the amount of compensation paid to the beneficiaries under the measure. As the beneficiaries are engaged in economic activities by operating rail freight services, an advantage is conferred on undertakings.

4.4 Selectivity

- (53) To fall within the scope of Article 61(1) of the EEA Agreement, a State measure must favour ‘certain undertakings or the production of certain goods’. Hence, not all measures which favour economic operators fall under the notion of aid, but only

¹⁴ ESA’s Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (‘NoA’) ([OJ L 342, 21.12.2017, p. 35](#) and EEA Supplement No 82, 21.12.2017, p. 1), paragraph 38.

¹⁵ NoA, paragraph 39.

¹⁶ NoA, paragraph 48 and the case law cited.

¹⁷ NoA, paragraph 66 and the case law cited.

those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.¹⁸

- (54) The measure is selective since it is only available to certain undertakings, namely the railway undertakings with rail freight activities and train slots on the Dovre Line impacted by the closure of the Otta bridge.

4.5 Effect on trade and distortion of competition

- (55) In order to constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement. While these are two distinct conditions, they are in practice often treated jointly in the assessment of State aid as they are, as a rule, considered inextricably linked.¹⁹
- (56) The beneficiaries receive an advantage that will improve their competitive position compared to that of undertakings with which they compete. The measure benefits undertakings active in the freight transport sector, in which intra-EEA trade exists. The measure is therefore liable to distort competition and affect EEA trade.

4.6 Conclusion

- (57) In the light of the above assessment, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Aid scheme

- (58) Pursuant to Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3 SCA"), an aid scheme shall mean, inter alia, any act on the basis of which, without further implementing measure being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner.
- (59) ESA notes that the legal basis of the measure is set out in acts which do not require further implementing measures for the granting of the aid, since the Railway Directorate will apply the rules and guidelines referred to in paragraphs (15)-(16) above and, in doing so, will not have discretion which would allow it to influence the amount of the aid, its characteristics or the conditions under which that aid is granted.²⁰ Moreover, the beneficiaries are defined in a general and abstract manner as railway undertakings (see paragraph (19) above). The aid is therefore granted on the basis of an aid scheme.

6 Lawfulness of the aid

- (60) Pursuant to Article 1(3) of Part I of Protocol 3 SCA: "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."

¹⁸ NoA, paragraph 117.

¹⁹ NoA, paragraphs 185-186.

²⁰ See judgment of 14 May 2025, *Telly v Commission*, Joined Cases T-362/21 and T-363/21, EU:T:2025:493, paragraphs 120-121.

- (61) The Norwegian authorities notified the scheme on 20 June 2025 and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3 SCA.

7 Compatibility of the aid

7.1 Introduction

- (62) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement. The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measure.
- (63) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”. Therefore, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.²¹
- (64) Under the first condition, ESA examines how the aid facilitates the development of certain economic activities or areas. Under the second condition, ESA weighs up the positive effects of the aid for the development of said activities or areas and the negative effects of the aid in terms of distortions of competition and adverse effect on trade.
- (65) In the present case, there are no existing State aid guidelines applicable to the measure at hand. ESA will therefore assess the measure directly under Article 61(3)(c) of the EEA Agreement.

7.2 Adverse climatic events which can be assimilated to a natural disaster

- (66) On 21 January 2025, the Otta bridge was closed due to movement caused by erosion around its southern abutment. The erosion was triggered by exceptionally high water levels and heavy ice that created unusual pressure on the bridge.
- (67) ESA notes that according to Article 61(2)(b) of the EEA Agreement, aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the functioning of the EEA Agreement. Aid to make good damage due to heavy icing has not been assessed under Article 61(2)(b) of the EEA Agreement or Article 107(2)(b) TFEU in previous State aid decisions by ESA or by the European Commission.
- (68) The notion of a “natural disaster” and “exceptional occurrence” referred to in Article 61(2)(b) of the EEA Agreement must be interpreted restrictively as that provision constitutes an exception to the general prohibition of State aid within the internal market laid down in Article 61(1) of the EEA Agreement.²²

²¹ Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraphs 18-20.

²² Judgment of 29 July 2024, *Ryanair and Laudamotion v Commission*, C-591/21 P, EU:C:2024:635, paragraph 42 and the case law cited; judgment of 11 November 2004, *Spain v Commission*, C-

- (69) However, aid for damage caused by events such as heavy snowfalls and frost and glaze ice has been considered compatible by the European Commission with Article 107(3)(c) TFEU (corresponding to Article 61(3)(c) of the EEA Agreement) as compensation for damage caused by an adverse climatic event which can be assimilated to a natural disaster.²³ These decisions refer to aid that compensates for damage caused by adverse climatic events which can be compared to the one in the case at hand such as heavy snowfalls, ice and frost.
- (70) Article 61(3)(c) of the EEA Agreement provides that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be considered compatible with the functioning of the EEA Agreement.
- (71) The objective of the notified measure is to compensate the damage caused by the adverse climatic events of heavy icing leading to the closure of the Otta bridge. According to the Norwegian authorities, the closure of the Otta bridge was directly caused by a combination of exceptionally heavy icing and high water levels. The resulting forces caused the bridge to shift. This type of event has never occurred before since the bridge was built around 1890. The occurrence is of such nature that freight operators on the Dovre Line could not have reasonably anticipated it. The closure of the Otta bridge due to heavy icing is an extremely atypical incident caused by a climatic event.
- (72) ESA notes that aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster can be considered an appropriate tool to help undertakings recover from such damage and facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that the aid is restricted to compensate for the damage caused by the adverse climatic event.

7.3 Facilitation of development of certain economic activities or areas

7.3.1 Economic activities or areas supported

- (73) Under Article 61(3)(c) EEA, in order to be considered compatible, the measure must contribute to the development of certain economic activities or areas.
- (74) The economic activity supported by the scheme is rail freight transport. The scheme is intended to compensate rail freight operators for the economic losses incurred as a direct result of the Otta bridge closure. Without aid, economic activity in the sector could be jeopardised, as the undertakings face the risk of bankruptcy, restructuring, or downscaling of operations, due to the closure of the Otta bridge (see Section 3.1.2).
- (75) Moreover, by ensuring the viability and continuity of rail freight services on the Dovre Line, the scheme also supports the overarching policy objective of shifting

73/03, EU:C:2004:711, paragraph 36; and judgment of 23 February 2006, *Atzeni and others*, Joined Cases C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

²³ Commission [Decision No SA.39539](#), *Heavy snowfalls of 2012 in Forlì-Cesena and Rimini*, OJ C 153, 8.5.2015 and Commission [Decision No SA. 39622](#), *Glaze ice in Slovenia*, OJ C 136, 24.4.2015.

freight transport from road to rail in order to reduce pollution and improve traffic safety.

- (76) In view of the above, ESA considers that the measure constitutes aid to facilitate the development of a certain economic activity as required by Article 61(3)(c) EEA.

7.3.2 *Incentive effect*

- (77) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect and so effectively facilitates the development of certain economic activities. To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertakings concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner.
- (78) ESA notes that compensatory aid has, by its nature, characteristics which affect the assessment of the incentive effect of such a measure as the objective of the aid is to compensate for damage caused to the undertakings which, in the absence of the event in question, would not have incurred the cost compensated.
- (79) ESA considers that for an aid measure to compensate for damage caused by adverse climatic events which can be assimilated to a natural disaster, it is not necessary to demonstrate an incentive effect for the measure to be considered compatible with the functioning of the EEA Agreement.²⁴
- (80) In any event, the measure in question has the objective of compensating rail freight operators to avoid bankruptcy, restructuring and downscaling as a result of the closure of the Otta bridge. The aid can therefore change the behaviour of the undertakings in question in such a way that they engage in an activity which they could not carry out without the aid or which they would otherwise only have carried out in a more limited or different manner.
- (81) A complementary goal of the measure is to move freight transport from road to rail by facilitating a rapid return of freight transport on the Dovre line. The aid can therefore change the behaviour of the undertakings concerned in such a way that they can continue to compete with road transport and thereby contribute to the shift of freight transport from road to rail.
- (82) In view of the above, ESA considers that the measure has an incentive effect.

7.3.3 *Compliance with relevant EEA law*

- (83) If a State aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure), or the

²⁴ The European Commission has applied the same approach in relation to the incentive effect in other cases concerning compensatory aid under Article 107(3)(c) TFEU, the equivalent to Article 61(3)(c) of the EEA Agreement: see Commission [Decision No SA.39539](#), *Heavy snowfalls of 2012 in Forlì-Cesena and Rimini*, OJ C 153, 8.5.2015 and Commission [Decision No SA. 39622](#), *Glaze ice in Slovenia*, OJ C 136, 24.4.2015, in which the European Commission did not assess whether the measures at issue had an incentive effect.

activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.²⁵

- (84) ESA has no indications that the measure, the conditions attached to it, or the activity it finances entail a violation of relevant EEA law.

7.4 Whether the aid adversely affects trading conditions to an extent contrary to the common interest

7.4.1 Introduction

- (85) ESA has not only identified positive effects of the planned aid for the development of the abovementioned economic activities and economic areas, but also possible negative effects that it may have in terms of distortions of competition and adverse effects on trade. These positive and negative effects must then be weighed up.

7.4.2 Markets affected by the aid

- (86) The aid affects the rail freight market, that is, operators on the Dovre Line by compensating the affected rail freight operators for the economic loss resulting from the closure of the Otta bridge. The measure ensures the viability of these operators relative to alternative transport providers. A complementary goal pursued by the measure is to move freight transport from road to rail, based on environmental and traffic safety considerations. The aid can therefore, to a more limited extent, affect the market for road freight transport.

7.4.3 Positive effects of the aid

- (87) The aid contributes to preserve the market for rail freight transport going forward, see Section 3.2. Furthermore, the aid is likely to have a positive environmental impact and to enhance traffic safety by ensuring that rail freight operators remain competitive relative to road freight operators.

7.4.4 Limited negative effects of the aid

7.4.4.1 Introduction

- (88) Article 61(3)(c) EEA requires an assessment of any negative effects on competition and on trade. The aid must not adversely affect trading conditions to an extent contrary to the common interest.

7.4.4.2 Necessity of the aid

- (89) A State aid measure is necessary if it is targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself.
- (90) With regard to the necessity of the aid, ESA considers that due to the significant economic impact that the closure of the Otta bridge has had on rail freight operators on the Dovre Line and the precarious financial situation that the relevant operators now find themselves in (see Section 3.1.2), there is a justifiable need for State aid to compensate for the damage caused to the rail freight operators.

²⁵ Judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 94-116; of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraph 44; and of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50-51.

- (91) Without State intervention, these operators risk bankruptcy, restructuring, or downscaling of their operations. This is particularly critical given the broader policy objective of shifting freight transport from road to rail.

7.4.4.3 Appropriateness of the aid

- (92) EEA EFTA States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 61(1) EEA can only be justified by the appropriateness of a particular instrument to contribute to the development of the targeted economic activities or areas.
- (93) ESA normally considers that a measure is an appropriate instrument where the EEA EFTA State can demonstrate that alternative policy options would not be equally suitable to contribute to the development of economic activities or areas and where it can demonstrate that alternative, less distortive, aid instruments would not deliver equally efficient outcomes.
- (94) The aid will be provided in the form of a direct grant to compensate damage caused by adverse climatic events that can be assimilated to natural disasters. This form of aid can generally be regarded as appropriate for compensatory aid as long as safeguards are in place to prevent overcompensation.
- (95) In view of the above, ESA considers that State aid is the appropriate instrument to facilitate the development of rail freight services on the Dovre Line.

7.4.4.4 Proportionality of the aid

- (96) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.
- (97) For aid schemes compensating damages resulting from adverse climatic events that can be assimilated to natural disasters, the compensatory aid can be considered to be proportionate if the amount of the aid does not exceed the eligible costs. The eligible costs refer to the costs incurred as a direct consequence of the adverse climatic event, that is, the damage caused by the event. The aid must not result in overcompensation of the damage; it should only make good the damage caused by the adverse climatic event.
- (98) The scheme compensates 95% of the eligible costs. The beneficiaries under the scheme will therefore receive compensation corresponding to 95% of the economic losses directly attributable to the closure of Otta bridge. The compensation is net of any insurance recoveries or compensation from other sources (see Section 3.6).
- (99) The Railway Directorate will independently assess each application before aid is granted (see paragraph (34)).
- (100) The applicants must also present a reassessment of the damage calculations by an independent auditor when the annual accounts for 2025 have been finalised. The Railway Directorate will then conduct an *ex-post* control of the aid disbursements (paragraph (35)).
- (101) If the Railway Directorate finds that the overall payments made exceed 95% of the economic losses suffered by a given rail freight operator as a consequence of the

bridge closure, any excess aid will be clawed back, including interest pursuant to the Norwegian Act relating to interest on overdue payment (see paragraph (36)).

(102) The measure therefore introduces a mechanism to ensure that no overcompensation will be granted. The measure is designed to restore affected operators to the competitive position they would have maintained in the absence of the closure of the Otta bridge.

(103) In light of the above, ESA considers the measure to be proportionate.

7.4.4.5 Conclusion on limited negative effects

(104) In light of the above arguments, ESA concludes that any negative effects of the aid on competition and on trade are limited.

7.4.5 *Balancing positive and negative effects of the aid*

(105) For the aid to be compatible with the functioning of the EEA Agreement, the limited negative effects of the aid measure in terms of distortion of competition and adverse impact on trade between Contracting Parties must be outweighed by positive effects, in terms of contribution to the facilitation of the development of economic activities or areas. It must be verified that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

(106) On the negative side of the balance, ESA notes that direct grants generally have the potential to strengthen the position of beneficiaries compared to competitors who do not receive aid under the measure. In this case, the aid is compensatory and granted to all affected operators, which limits the potential for distortion of competition.

(107) On the positive side of the balance, the aid measure ensures the viability of rail freight operations on the Dovre Line by compensating for the losses directly attributable to the closure of the Otta Bridge, thereby enabling operators to re-establish a freight transport environment similar to that which existed before the event.

(108) Moreover, the measure supports the long-term objective of shifting freight transport from road to rail, thus contributing to environmental sustainability and enhanced traffic safety. The compensatory nature of the aid, which is limited to 95% of the eligible costs, ensures that beneficiaries receive no more than the direct damages incurred, thereby preventing overcompensation and undue market distortions.

(109) Based on the above considerations, ESA concludes that the positive effects of the measure outweigh possible distortions of competition and adverse impact on trade. Therefore, the aid does not unduly affect trading conditions to an extent contrary to the common interest.

7.5 Transparency

(110) The Norwegian authorities have confirmed that any aid award exceeding EUR 100 000 will be published in the [national transparency register](#).

(111) Therefore, the measure fulfils the transparency requirements.

8 Conclusion

- (112) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), it has no objections to the implementation of the measure.
- (113) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund
President
Responsible College Member

Stefan Barriga
College Member

Árni Páll Arnason
College Member

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

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