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Case No: 89236
Document No: 1309139
Decision No 185/22/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
Norway

Subject: Prolongation of the rail freight support scheme

1 Summary

The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the prolongation of the rail freight support scheme (“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 49. ESA has based its decision on the following considerations.

2 Procedure

- (1) The Norwegian authorities notified the measure on 21 September 2022.²

3 Description of the measure

3.1 Background

- (2) By [Decision No 056/19/COL](#) of 10 July 2019 (“the initial decision”), ESA approved a State aid scheme for rail freight support (“the scheme”). The scheme aims to reduce the negative external effects of transport, such as local and global air pollution, climate gases, noise, congestion and accidents. With the scheme, the Norwegian authorities aim to encourage a modal shift away from road to rail transport.
- (3) As approved in the initial decision, the scheme covered the period from 1 July 2018 to 30 June 2021. This period was further divided into three periods: 1 July 2018 to 30 June 2019 (“the 2019 period”), 1 July 2019 to 30 June 2020 (“the 2020 period”) and 1 July 2020 to 30 June 2021 (“the 2021 period”).³
- (4) The deadline for applications for compensation for the 2019 period was 30 September 2019. The deadlines for applications relating to the 2020 and 2021 periods were, respectively, 1 September 2020 and 1 September 2021. The aid

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.

² Document Nos. 1314482 and 1314484.

³ Decision No. 056/19/COL, paragraph 15.

per period was therefore granted once a year, after the expiry of the period in question.⁴

- (5) According to the Norwegian authorities, railway undertakings engaged in freight transport in Norway have faced, and continue to face, a challenging financial situation. The challenges are due, in particular, to shortcomings in the rail infrastructure and competition from road haulers. State intervention is therefore necessary in order to alleviate these challenges.
- (6) According to a report from the Norwegian Railway Directorate, dated 30 April 2021, the scheme has had a significant impact on the willingness of freight operators to shift transport from road to rail.⁵ In 2021, the net tonne-kilometres freight volume by rail for all freight trains increased by 12%. It can therefore be expected that a prolonged scheme will continue to contribute to a modal shift from road to rail.
- (7) The Norwegian authorities have further reiterated that, as set out in paragraph 7 of the initial decision, important improvements of the railway infrastructure in Norway are under way. On the connections (i) Oslo–Drammen–Bergen, (ii) Oslo–Narvik, (iii) Oslo–Trondheim and (iv) Trondheim–Bodø, new lines will be constructed and tracks extended to accommodate longer freight trains. This will allow for increased capacity and reduce the costs per unit transported.

3.2 Notified measure

- (8) In light of the positive effects of the scheme, and the need to further encourage the shift from road to rail, the Norwegian authorities intend to prolong the scheme by two years. The scheme will cover two additional periods: (i) 1 July 2021 to 30 June 2022 (“period 4”), and (ii) 1 July 2022 to 30 June 2023 (“period 5”).
- (9) The deadline for applications for each of the two periods are 1 September 2022 (for period 4) and 1 September 2023 (for period 5). However, the granting of aid will not take place until November 2022 (for period 4) and November 2023 (for period 5). The granting of aid is conditional upon ESA’s approval of the measure.⁶
- (10) The Norwegian authorities will additionally adjust the budget per period from NOK 87.87 million to NOK 93.5 million.⁷
- (11) The previous budget of NOK 87.87 million per period was equivalent to 9% of CargoNet AS’ (“CargoNet”) total costs allocated to combined and/or single wagonload rail traffic.⁸ With respect to such traffic, CargoNet is the largest railway operator in Norway. CargoNet’s costs were therefore used as a proxy for the total costs of rail transport in the initial decision.

⁴ Ibid, paragraph 32.

⁵ Document No.1316129.

⁶ See letter of 1 July 2022 from the Railway Directorate to applicants (Document No 1316128), where reference is made to the [annual budgetary decision of the Parliament](#), chapter 1352 Jernbanedirektoratet, post 75, which states that the continuation of the scheme is subject to approval by ESA. See also Document No 1316127.

⁷ The budget for the 2020 and 2021 periods was NOK 87.87 million per period. The budget for the 2019 period was NOK 60 million. See the initial decision, paragraph 17.

⁸ See the initial decision, paragraph 28.

- (12) According to the Norwegian authorities, CargoNet's total costs allocated to combined and/or single wagonload rail traffic were NOK 1 105 million in 2021. The increased budget of NOK 93.5 million per period is therefore equivalent to 8.5% of those costs.
- (13) The Norwegian authorities have confirmed that the maximum aid amount and intensity will remain unchanged. The maximum aid amount under the scheme will therefore remain NOK 43.935 per 1 000 tonne-kilometres. The maximum aid amount corresponds to an aid intensity of 50% of the eligible costs (NOK 87.87 per 1 000 tonne-km).
- (14) With respect to the establishment of the eligible costs, the Norwegian authorities have relied on the calculations presented in Section 3.6 of the initial decision. ESA has not received any indications that these calculations are outdated.
- (15) The planned prolongation and budget increase have been publicly announced through the Norwegian National Budget for 2022. The guidelines and regulations governing the scheme, and the aid amounts, will be publicly available.
- (16) The Norwegian authorities have confirmed that apart from the prolongation of the scheme and the adjustment to the budget, the scheme remains as described in the initial decision.

4 Presence of State aid

- (17) 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."
- (18) The qualification of a measure as State 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; it must (ii) confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (19) In its initial decision, ESA concluded that the scheme constituted State aid. As there are no elements in the notified measure capable of altering this conclusion, ESA finds, on the basis of the reasoning set out in the initial decision, that the notified measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (20) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("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."

- (21) The Norwegian authorities have notified the measure 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.

6 Compatibility of the aid

- (22) Article 49 of the EEA Agreement states that aid shall be compatible with the EEA Agreement if it “meets the needs of coordination of transport [...]”. In this regard, ESA notes that transport coordination measures may be needed when certain modes of transport do not bear all the costs of the negative externalities they inflict on society.
- (23) In the initial decision, ESA approved the scheme on the basis of Article 49 of the EEA Agreement in conjunction with Section 6 of the [Railway Guidelines](#).⁹ ESA will assess the compatibility of the measure on the same basis. However, given that the remaining features of the scheme remain unaltered, ESA will limit its assessment to the prolongation and budget increase introduced by the measure. With respect to the remaining features of the scheme, ESA refers to the initial decision.
- (24) It follows from point 97 of the Railway Guidelines that aid must be limited to a maximum of five years. In this respect, ESA notes that the total duration of the prolonged scheme is five years. The prolongation is therefore within the limitation set out in point 97 of the Railway Guidelines.
- (25) According to points 107 and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation when the intensity of aid for reducing external costs does not exceed: (i) 50% of the eligible costs, and (ii) 30% of the total cost of rail transport.
- (26) ESA observes that the notified budget increase does not affect the maximum aid amounts or aid intensities. The aid will therefore remain within the thresholds set out in points 107(b) and 109 of the Railway Guidelines. Accordingly, ESA finds that the measure is proportionate and necessary, and that it will not lead to overcompensation.
- (27) Point 110 of the Railway Guidelines further requires that the aid must have the effect of encouraging a modal shift to rail. Since it is the shipper who makes the choice between different transport modes, the aid must therefore be reflected in the prices demanded by railway undertakings from shippers.
- (28) As noted in paragraph 75 of the initial decision, the Norwegian authorities have implemented a specific provision transposing the principle in point 110 of the Railway Guidelines into the scheme. That provision, and the mechanisms established for ensuring that grants of aid comply with it, remains unaltered under the measure. In line with paragraph 32 of the initial decision, applications for aid will furthermore still be examined by the Railway Directorate.
- (29) Considering that the Norwegian authorities have also publicly announced the measure in the Norwegian National Budget for 2022, ESA finds that the analysis set out in paragraphs 75-77 of the initial decision remains valid. On that basis,

⁹ Guidelines on state aid for railway undertakings of 17 December 2008, published in the OJ L 105, 21.4.2011, p. 32 and in the EEA Supplement No 23, 21.04.2011, p. 1.

ESA finds that the criteria in point 110 of the Railway Guidelines are fulfilled also with respect to the measure.

- (30) According to point 111 of the Railway Guidelines, in the case of aid for reducing external costs, there must be a realistic prospect of keeping the traffic transferred on rail, so that the aid leads to a sustainable transfer of traffic. In this regard, ESA notes, first, that the scheme has had a significant impact on the freight operators' willingness to shift transport from road to rail (see paragraph (6)). Second, as explained in paragraph (7), key parts of the railway infrastructure will be improved in the coming years. This will, according to the Norwegian authorities, allow for railway undertakings to operate with longer freight trains and reduced unit costs. In view of these factors, ESA concludes that the scheme has realistic prospects for keeping the traffic transferred to rail.
- (31) With respect to the assessment of (i) non-discrimination, transparency and time limit, and (ii) avoidance of undue negative effects on competition and trade, ESA finds that the assessment set out in Sections 6.4 and 6.5 of the initial decision is applicable also with respect to the measure. In this regard, ESA notes that the scheme as amended will still not exceed the time limit of five years set out in point 97 of the Railway Guidelines. Further, there are no indications that the measure will have more profound effects on competition and trade than the limited effects in the period assessed in the initial decision. The measure therefore complies with point 96 of the Railway Guidelines.
- (32) In view of the above, ESA finds that the scheme, as modified by the measure, will continue to fulfil the applicable criteria set out in the Railway Guidelines. On this basis, ESA concludes that it meets the needs of coordination of transport within the meaning of Article 49 of the EEA Agreement.

7 Conclusion

- (33) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid within 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 49, it has no objections to the implementation of the measure.
- (34) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.
- (35) For the EFTA Surveillance Authority, acting under [Delegation Decision No 068/17/COL](#),

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This document has been electronically authenticated by Arne Roeksund, Melpomenie Josephides.