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Decision No 205/22/COL

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

**Subject: Temporary Crisis Framework – Grant scheme due to an exceptionally severe increase in energy prices**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the grant scheme relating to the exceptionally severe increase in energy prices (“the measure”), ESA considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections to it,<sup>1</sup> as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the measure on 18 November 2022.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

- (3) The measure concerns two exceptionally severe increases in energy prices that have resulted from the Russian aggression against Ukraine. These are increases in (i) electricity and (ii) district heating prices.
- (4) In the notification, the Norwegian authorities have used the term “energy prices” to refer collectively to the prices for electricity and district heating. The term “energy costs” refers to the costs incurred by undertakings in respect of electricity and/or district heating. The terms “energy prices” and “energy costs” are thus construed differently in the context of the measure than their usual meaning. This terminology will also be employed in the following.
- (5) The measure is designed to comply with the European Commission’s (“the Commission”) Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (“the TCF”).<sup>3</sup>

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

<sup>2</sup> Documents No 1329619 and 1329621.

<sup>3</sup> Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 1311,

### 3.2 Objective

- (6) According to the Norwegian authorities, the objective of the measure is to support businesses in adapting to higher energy costs and to stimulate them to invest in energy saving and energy production.

### 3.3 Legal basis

- (7) The national legal basis of the measure will be the Parliamentary Decision authorising the measure and its budget, as set out in *Innst. 34 S (2022–2023)*, as well as the regulation on its administration that is to be adopted by the Ministry of Climate and Environment.

### 3.4 Aid granting authority

- (8) The granting authority is Enova.<sup>4</sup> Enova will also administer the measure.
- (9) Enova is an existing State Enterprise specialised in granting State aid for climate and energy efficiency solutions.

### 3.5 Aid will not be made conditional on the relocation of an activity

- (10) The Norwegian authorities confirm that aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Norway. There is no provision in the legal basis of the measure, or otherwise in Norwegian law, that would entail such a condition.

### 3.6 Beneficiaries

#### 3.6.1 Undertakings particularly affected by the severe increase in energy prices

- (11) The measure amounts to a horizontal scheme as it is not limited to select sectors. It is open for both small and medium sized businesses (“SMEs”), and large enterprises.
- (12) In order to ensure that only undertakings particularly affected by the severe increase in energy prices qualify for aid, the measure employs two key conditions. First, the prospective beneficiary must, in the first six months of 2022, have incurred energy costs in Norway amounting to at least 3% of its turnover.
- (13) As set out in paragraph (4) above, the term energy costs is, in the context of this decision, limited to costs concerning (i) electricity and (ii) district heating. The Norwegian authorities have furthermore stipulated that energy costs only include those costs that are invoiced to the beneficiary for electricity and district heating, including grid costs, net of deductible VAT.
- (14) With respect to the term “turnover”, this is to be understood as income from the sale of goods or services in the ordinary course of business, excluding directly related taxes such as VAT.
- (15) Second, in order for energy costs to be taken into account in the assessment against the threshold set out in paragraph (12), they must have been incurred in an electricity price area where the average electricity spot price, for the months of

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24.3.2022, p. 1, as amended. The version applicable as of 28 October 2022 was published in OJ C 426, 9.11.2022, p. 1–34.

<sup>4</sup> <https://www.enova.no/>

July through September 2022, has at least doubled compared to the same period in 2021.

### 3.6.2 Condition on taxability

- (16) In order to be eligible for aid, beneficiaries must either wholly or partly be taxable in Norway.
- (17) Non-profit organisations are however eligible for aid also if they are not taxable in Norway, if they have an annual turnover of at least NOK 50 000.

### 3.6.3 Exclusions from the scope

#### 3.6.3.1 Undertakings not registered in applicable business registers

- (18) Undertakings which are, pursuant to Section 2-1 of the Norwegian Act on Company Registration,<sup>5</sup> required to register in the Register of Business Enterprises (*Foretaksregisteret*),<sup>6</sup> are excluded from the measure if such registration has not taken place. Sole proprietorships, which are not required to register in the aforementioned register, are however eligible, when registered instead in the Register of Legal Entities (*Enhetsregisteret*).<sup>7</sup> Foundations not required to register in either of these registers, may be registered in the VAT Register (*Merverdiavgiftsregisteret*)<sup>8</sup> or the Employer and Employee Register (*Aa-registeret*).<sup>9</sup>
- (19) Registration in the applicable register must have taken place by 31 December 2021 at the latest.

#### 3.6.3.2 Undertakings with outstanding liabilities

- (20) Potential beneficiaries are also excluded if taxes, fees or related claims due before 15 November 2022 have not been paid. Beneficiaries who are taxable in Norway must have submitted their tax return for 2021. Beneficiaries required to submit annual accounts must have submitted their annual accounts for 2021.

#### 3.6.3.3 Undertakings lacking the necessary approvals

- (21) Undertakings lacking the necessary permissions, approvals or concessions for their activity in Norway are ineligible under the measure.

#### 3.6.3.4 The petroleum extraction and power-intensive industries

- (22) The petroleum extraction industry, defined as industry taxable pursuant to Section 5 of the Norwegian Petroleum Tax Act,<sup>10</sup> and businesses with an annual electricity consumption exceeding 100 GWh, are excluded from the scope of the measure.

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<sup>5</sup> See lov 21. juni 1985 nr. 78 om registrering av foretak (*foretaksregisterloven*).

<sup>6</sup> <https://www.brreg.no/en/about-us-2/our-registers/about-the-register-of-business-enterprises/?nocache=1668688034915>

<sup>7</sup> <https://www.brreg.no/en/about-us-2/our-registers/about-the-central-coordinating-register-for-legal-entities-ccr/?nocache=1668688097515>.

<sup>8</sup> <https://www.skatteetaten.no/bedrift-og-organisasjon/avgifter/mva/registrere-endre-slette/>.

<sup>9</sup> <https://www.nav.no/no/bedrift/tjenester-og-skjemaer/aa-registeret-og-a-meldingen>.

<sup>10</sup> Lov 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumforekomster mv. (*petroleumsskatteloven*).

3.6.3.5 Undertakings performing activities falling under SN 2007 codes 35.1 and 35.3

- (23) Undertakings performing activities falling under SN 2007 codes 35.1 – *Electric power generation, transmission and distribution*, or 35.3 – *Steam and hot water supply*, are not eligible for aid under the measure.<sup>11</sup>

3.6.3.6 Entities that receive grants under other electricity support measures

- (24) Entities that receive grants under other electricity support measures are excluded from the scope of the measure. This exclusion comprises:
- I. Entities covered by the electricity support scheme for agriculture, greenhouses and watering of agricultural land (*Strømsstøtte for jordbruksforetak, veksthus og vanningslag*). This scheme is managed by the Directorate for Agriculture (*Landbruksdirektoratet*).<sup>12</sup>
  - II. Entities covered by the electricity support scheme for voluntary sector organisations (*Strømsstøtte for frivillige lag og organisasjoner*), managed by the Norwegian Gambling and Foundation Authority (*Lotteri- og stiftelsestilsynet*).<sup>13</sup>
  - III. Undertakings covered by the planned energy grant scheme for convenience stores under the so-called *Merkur*-scheme, which will be allocated funds as described in *Innst. S 34 (2022–2023) Section 2.4 under KAP. 553 Post 73*.
  - IV. Housing undertakings (*boligselskap*) that receive aid under the energy cost support scheme for households and housing undertakings.<sup>14</sup> This exclusion also comprises other entities similar to housing undertakings, such as housing cooperatives (*borettslag*), condominiums and housing stock companies.

3.6.3.7 Undertakings under bankruptcy proceedings or liquidation

- (25) Undertakings subject to bankruptcy proceedings or liquidation are ineligible for aid under the measure. The same goes for undertakings where leading roles are held by anyone under disqualification following bankruptcy.<sup>15</sup>

### 3.7 Compliance with sanctions

3.7.1 *Aid will not be granted to undertakings under sanctions adopted by the European Union or Norway*

- (26) The Norwegian authorities confirm that aid under the measure will not be granted to undertakings under sanctions adopted by Norway or the EU, including but not limited to: (a) persons, entities or bodies specifically named in the legal acts imposing the sanctions; (b) undertakings owned or controlled by persons, entities

<sup>11</sup> SN 2007 is based on the system of NACE codes, see:

<https://www.ssb.no/klasse/klassifikasjoner/6>.

<sup>12</sup> See *midlertidig forskrift 1. juli 2022 nr. 1273 om støtte som følge av ekstraordinære utgifter til elektrisk kraft for jordbruksforetak, veksthus og vanningslag*.

<sup>13</sup> See *forskrift 1. juli 2022 nr. 1283 om strømsstøtteordningen for frivillig sektor*.

<sup>14</sup> See *midlertidig lov 22. desember nr. 170 om stønad til husholdninger som følge av ekstraordinære strømutgifter (strømsstønsloven)* and *midlertidig forskrift 21. januar 2022 nr. 103 om strømsstøtte til boligselskap*.

<sup>15</sup> See *lov 8. juni 1984 nr. 58 om gjeldsforhandling og konkurs (konkursloven)*, Chapter XVIII.

or bodies targeted by the sanctions; or (c) undertakings active in industries targeted by the sanctions insofar as the aid would undermine the objectives of the sanctions.

*3.7.2 The measure may not in any way be used to undermine the intended effects of sanctions*

- (27) The Norwegian authorities confirm that the measure may not in any way be used to undermine the intended effects of sanctions imposed by Norway, the EU or its international partners, and that it will be in full compliance with both the anticircumvention rules of the applicable regulations and the national Regulations on the sanctions against Russia and Belarus.<sup>16</sup>

### **3.8 Aid instrument, eligible costs, aid intensities and amounts**

#### *3.8.1 Introduction*

- (28) The measure comprises two alternative categories of grants. While beneficiaries may apply for either of these two alternatives, they cannot receive aid under both of them.

#### *3.8.2 The first category of aid*

- (29) The first category of aid is for energy costs incurred in an electricity price area as defined in paragraph (15) deriving from the electricity price exceeding NOK 0.70 per kWh. This is defined as eligible operating costs. The maximum aid intensity for the first category of aid is 25%.
- (30) The amount of aid is calculated based on the difference between NOK 0.70 per kWh and the average electricity price per kWh invoiced to the beneficiary from 1 October through 31 December 2022 (“the grant period”), multiplied with the beneficiary's energy consumption in kWh through the same period.
- (31) The electricity price in this calculation comprises the electricity price invoiced per kWh, excluding all add-ons such as grid tariffs and taxes. For months where the beneficiary has yet to be invoiced at the time of application, Enova shall base its calculation on average spot prices for electricity in the relevant electricity price area and the beneficiary's average invoiced consumption in the grant period. The average spot prices shall be calculated separately for November and December, based on the full calendar month for November and for December on the days passed in that month. As an alternative to its average invoiced consumption in the grant period, the beneficiary can decide that its consumption in the corresponding months in 2021, 2020 or 2019 shall be applied.
- (32) The maximum aid amount under this first category of aid is NOK 3.5 million per beneficiary. The maximum aid amounts under the measure concern gross grants, i.e. before any deduction of tax or other charge.

#### *3.8.3 The second alternative category of aid*

- (33) The aid under the second alternative category consists of two components.

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<sup>16</sup> The measure will be in full compliance with *forskrift 15. august 2014 nr. 1076 om restriktive tiltak vedrørende handlinger som undergraver eller truer Ukrainas territoriale integritet, suverenitet, uavhengighet og stabilitet*, as amended, most recently by Regulation of 28 October 2022 No 1815; and *forskrift 8. september 2006 nr. 1041 om restriktive tiltak i lys av situasjonen i Belarus og Belarus' medvirkning i Russlands aggresjon mot Ukraina*, as amended, most recently by Regulation of 21 June 2022 No 1134.

- (34) The first component has the same definition of eligible operating costs as the aid under the first category, but with an aid intensity up to 45%. The maximum aid amount under the first component is NOK 3.5 million per undertaking.
- (35) The second component concerns support of up to 50% of the eligible investment cost of an identified energy saving measure. Such aid may not exceed NOK 1.5 million per undertaking.
- (36) The aggregate maximum aid amount per undertaking under the second category of aid is thus NOK 5 million.
- (37) In order to be eligible for aid, the budgeted investment costs must be at least NOK 50 000 and be incurred after 1 October 2022 (start of the grant period under this scheme). For the purposes of this calculation, costs are considered net of deductible VAT.
- (38) The eligible energy saving measures will be further defined by the Norwegian authorities in a publicly available list. They include energy control systems; post-construction insulation of walls and roofs; replacement or upgrading of windows to energy efficient models; needs-controlled ventilation; heat recovery from ventilation; replacement of older electrical engines, pumps, compressors and fans; compressed air optimisation; energy recycling from compressed air, cooling or freezers; thermal insulation of pipes and parts of energy centrals, valves and industrial processes; solar panels on/at offices or business premises; solar heating systems on/at offices or business premises; heat pumps (fluid-to-water, air-to-air or air-to-water); bio boiler for solid fuel (pellet or equivalent solid fuel) heating systems; accumulator/buffer tanks for existing heat/energy centrals; LED lights and light control.
- (39) It is a condition for both components of aid under the second category that the identified energy saving measure is carried out within two years following Enova's grant decision. An energy saving measure is considered carried out when it is 50% complete. However, no aid will be disbursed for any costs that have yet to be incurred at this point. Moreover, irrespective of whether the costs actually incurred surpassed the budgeted costs, the aid disbursed cannot exceed the amount granted.

### **3.9 Administration**

#### *3.9.1 The application phase*

- (40) The Norwegian authorities plan to open for applications to Enova during November 2022. The applications must be submitted through an electronic solution. Their processing will be automated and based on undertakings submitting one single application.
- (41) In order to apply for aid, undertakings must carry out a standardised energy survey. In this, the concerned undertaking is required to identify the types and costs of energy it relies on. Further, the undertaking in question shall quantify its energy consumption and identify at least three energy-saving measures.
- (42) Undertakings applying for the second category of aid, as described in Section 3.8.3, must in addition commit to invest in an energy saving measure defined in the list identified in paragraph (38) and having budgeted investment costs in line with what is spelled out in paragraph (37).

- (43) Prospective beneficiaries must have the contents of their application verified by an auditor or authorised accountant prior to submitting it. Provided that aid is granted in line with the application, the costs for such verification will be refunded up to a maximum of 80% or NOK 5 000, whichever is lower.
- (44) With respect to the requirements pertaining to sanctions, described in Section 3.7 above, undertakings must submit a declaration of compliance.

### 3.9.2 *Ex post control*

- (45) Enova will carry out spot checks *ex post* in respect of the conditions under the scheme. These spot checks will be risk-based in part and random in part.
- (46) As explained in Section 3.8, the measure distinguishes between two categories of aid, with different eligibility conditions. If an undertaking, which has been granted aid in the second category, does not fulfil the condition relating to the completion of energy saving measures, as set forth in paragraph (39), Enova will claw back the difference between the maximum support levels for increased energy costs under the first (25%) and second category of aid (45%). In addition, any investment aid disbursed for the non-completed energy saving measure(s) will be clawed back.
- (47) There will also be a system for *ex post* control of compliance with the sanctions adopted in response to the aggression by Russia against Ukraine. This system will ensure claw-back of the full aid amount in case of non-compliance or undermining of the intended effects of the relevant sanctions.

### 3.10 Cumulation

- (48) Aid granted under the measure may be cumulated with other aid up to the relevant thresholds following from the applicable legal bases.
- (49) With respect to aid granted under the TCF, the Norwegian authorities confirm that the relevant cumulation provisions in the TCF will be respected.
- (50) There is one earlier Norwegian measure approved under Section 2.1 of the TCF. This measure was approved by ESA [Decision No 151/22/COL](#) of 20 June 2022.
- (51) It cannot be ruled out that an undertaking may have been granted aid under the scheme approved by ESA [Decision No 151/22/COL](#) before applying for aid under the measure. The Norwegian authorities are therefore committed to ensuring that aid granted under this earlier scheme is taken into account when calculating whether the maximum cap for aid under Section 2.1 of the TCF is respected. This will be reflected in the regulations that are to be established for Enova's administration of the measure.
- (52) It can also not be ruled out that an undertaking may apply for grants in the reverse order. In that case, grants under this measure must equally be taken into account when calculating, under the scheme approved by ESA [Decision No 151/22/COL](#), whether the maximum cap for aid under Section 2.1 of the TCF is respected. The Norwegian authorities undertake to revise the relevant national regulations accordingly.



- (53) As for aid granted under the regulations on *de minimis* aid<sup>17</sup> and the General Block Exemption Regulation,<sup>18</sup> the Norwegian authorities confirm, in line with point 53 of the TCF, that the provisions and cumulation rules of those regulations will be respected.
- (54) Provided that the respective cumulation rules are respected, aid under the measure may in principle be cumulated with aid granted under measures approved by ESA under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the COVID TF”).<sup>19</sup> However, according to the Norwegian authorities, such cumulation will in practice not take place as the aid under this measure does not overlap with any of the relevant time periods of measures approved on the basis of the COVID TF.

### 3.11 Budget and duration

- (55) The overall State budget for the measure is NOK 2.8 billion. In the event that the budget proves insufficient to cover all applications, the grants will be reduced accordingly.
- (56) The reductions will first be made by lowering the aid intensity of the investment component under the second alternative category of aid. The same percentage reduction will apply for all beneficiaries. The final aid intensity can, however, not go lower than 35%.
- (57) If there is still a shortage of funds after having undertaken the reductions described in paragraph (56), the aid in support of increased energy costs will also

<sup>17</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), as amended by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215, 7.7.2020, p. 3). Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8), as amended by Commission Regulation (EU) 2018/1923 of 7 December 2018 amending Regulation (EU) No 360/2012 as regards its period of application (OJ L 313, 10.12.2018, p. 2), and Commission Regulation (EU) 2020/1474 of 13 October 2020 amending Regulation (EU) No 360/2012 as regards the prolongation of its period of application and a time-bound derogation for undertakings in difficulty to take into account the impact of the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 1).

<sup>18</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1), and Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215, 7.7.2020, p. 3), and Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270, 29.7.2021, p. 39).

<sup>19</sup> Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).



be reduced with the same percentage reduction for all beneficiaries. This applies for both the first and second alternative category of aid.

- (58) The Norwegian authorities aim for all aid under the measure to be granted by 31 December 2022. In any event, aid will be granted no later than 31 December 2023.

### **3.12 Monitoring and reporting**

- (59) The Norwegian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 3 of the TCF. To this end, the Norwegian authorities will publish relevant information on each individual aid grant above EUR 100 000 in the national State aid register within 12 months from the date of granting the aid. The Norwegian authorities will also keep detailed records regarding the granting of aid for 10 years, calculated from the same date, and provide them to ESA upon request. In line with the requirements of ESA [Decision No 195/94/COL](#), as amended, the Norwegian authorities will further submit annual reports to ESA.

### **3.13 Prohibition on dividends**

- (60) Undertakings granted aid under the measure are prohibited from providing dividends to their owners until the end of 2023. There will be a claw-back mechanism to ensure compliance with this provision.

## **4 Presence of State aid**

- (61) 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."
- (62) The qualification of a measure as State aid therefore 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.
- (63) The measure is imputable to the State as it is administered by Enova (see Section 3.4) and founded on a legal basis adopted by the State (see Section 3.3). It is also financed through State resources, since it is paid out of the State budget (see Section 3.11).
- (64) The measure comprises direct grants (see Section 3.8). It therefore confers an advantage on the beneficiaries by making available funds which would not be available under normal market conditions.
- (65) While the criteria presented in Sections 3.6.1 and 3.8 ensure that aid is only granted to undertakings affected by the increase in energy prices brought about by the crisis, their effect is also to exclude other undertakings which are suffering from increased energy costs. For example, while an undertaking which has in the first six months of 2022 incurred energy costs in Norway amounting to 3% of its

turnover can be eligible under the measure, an undertaking having incurred energy costs of 2.9% of its turnover over the same period cannot.

- (66) The information submitted does not establish that some undertakings which are *de facto* excluded due to the criteria employed under the measure, are not in a comparable legal and factual situation as undertakings eligible for aid. For example, ESA is convinced that an undertaking having incurred energy costs of 2.9% of its turnover in the first six months of 2022, may be in a comparable situation to an undertaking which has in the same period incurred energy costs amounting to 3% of its turnover. On this basis, ESA finds that the measure reserves the advantages available under it for certain categories of undertakings. The measure is therefore selective.
- (67) The grants made under the measure will strengthen the competitive position of the beneficiaries. There is furthermore nothing to preclude undertakings active in trade between EEA States from receiving aid. The measure is therefore liable to distort competition and affect trade.
- (68) In view of the above, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Aid scheme

- (69) ESA notes that the legal basis of the measure is an act which does not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner.<sup>20</sup> The aid is therefore granted on the basis of an aid scheme.

## 6 Lawfulness of the aid

- (70) Pursuant to Article 1(3) in 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."
- (71) 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) in Part I of Protocol 3.

## 7 Compatibility of the aid

### 7.1 Introduction

- (72) Under Article 61(3)(b) of the EEA Agreement, State aid "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State" can be considered compatible with the functioning of the EEA Agreement.
- (73) The military aggression against Ukraine by Russia, the sanctions imposed by the EU and its international partners, and the counter-measures taken, for example by Russia ("the ongoing crisis"), have created significant economic uncertainties, disrupted trade flows and supply chains, and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in

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<sup>20</sup> See Article 1(d) in Part II of Protocol 3.

numerous other input and raw materials and primary goods. It is against this background that the Commission has adopted the TCF. In the TCF, the Commission has defined State aid measures that it will, on a temporary basis, declare compatible with the internal market under Article 107(3)(b) TFEU.

- (74) Article 107(3)(b) TFEU corresponds to Article 61(3)(b) of the EEA Agreement. In order to ensure uniform application of the State aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA will also apply the TCF. In cases where all the applicable conditions in the TCF are fulfilled, ESA will therefore declare the measure in question compatible with the EEA Agreement on the basis of its Article 61(3)(b).

## **7.2 Limited amounts of aid**

- (75) On the basis of the information presented by the Norwegian authorities, as set out above, ESA concludes that the measure fulfils all of the applicable conditions in the TCF.
- (76) ESA notes, first, that the measure fulfils all of the relevant conditions in point 55 of the TCF:
- a) As follows from the information presented in Sections 3.8, 3.9 and 3.10, the aid ceiling of EUR 2 million per undertaking will be respected. This is compliant with point 55(a) of the TCF.
  - b) The measure is, as established in Sections 3.11 and 5, an aid scheme with an estimated budget. This is compliant with point 55(b) of the TCF.
  - c) Aid under the measure will, as set out in Section 3.11, be granted no later than 31 December 2023. This is compliant with point 55(c) of the TCF.
  - d) The criteria presented in Sections 3.6.1 and 3.8 ensure that aid is only granted to undertakings affected by the crisis. This is compliant with point 55(d) of the TCF.
- (77) Second, the information presented by the Norwegian authorities establishes that the aid granted under the measure will also fulfil the remaining, generally applicable, conditions of the TCF.
- (78) In that regard, ESA notes that, as set out in paragraph (10), aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Norway. Point 46 of the TCF is therefore complied with.
- (79) Further, as described in Section 3.7, the Norwegian authorities have committed to respecting the provisions set out in points 47 and 52 of the TCF, in order to safeguard the effectiveness of adopted sanctions. To that end, the Norwegian authorities will, as identified in paragraphs (44) and (47) above, require self-declarations and establish a system for *ex post* control.
- (80) Moreover, the Norwegian authorities have, as described in Section 3.10, established appropriate systems for cumulation control to ensure compliance with point 53 of the TCF.

- (81) Lastly, the Norwegian authorities have, as set out in Section 3.12, confirmed that they will respect the monitoring and reporting obligations laid down in Section 3 of the TCF.

## **8 Conclusion**

- (82) 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 this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b), it has no objections to the implementation of the measure.
- (83) The Norwegian authorities have confirmed that the notification does not contain any 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 Árnason  
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Melpo-Menie Joséphidès  
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*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*