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Decision No 011/22/COL

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

Subject: COVID-19 Renewal of and amendments to the aid scheme for long-distance bus and passenger boat services

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified renewal of and amendments to the COVID-19 aid scheme for long-distance bus and passenger boat services (“the measures”), it considers that they constitute state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measures, as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b) EEA Agreement. ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measures on 21 January 2022.²

3 Description of the measures

3.1 Background

- (3) By Decision No [094/20/COL](#) of 20 July 2020, ESA approved a compensation scheme for operators of year-round commercial long-distance bus or passenger boat services for losses incurred in June, July and August of 2020 (“the scheme”).
- (4) By Decision No [137/20/COL](#) of 25 November 2020, ESA approved an amendment to the scheme, clarifying the eligible routes for aid and an extension of the application deadline.
- (5) By Decision No [165/20/COL](#) of 17 December 2020, ESA approved an amendment to and a prolongation of the scheme. The amendment consisted of an increase of the budget of the scheme by NOK 100 million to a total of NOK 200 million (approximately EUR 19.6 million). The prolongation entailed that the scheme was covering losses suffered from 1 September 2020 until 30 June 2021 inclusive.
- (6) By Decision No [200/21/COL](#) of 6 July 2021, ESA approved the scheme under a new legal basis, Article 61(3)(b) of the EEA Agreement and on the basis of

¹ Reference is made to Article 4(3) of the 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 Numbers 1264219 and 1264217.

Section 3.1 of the [Temporary Framework](#) for state aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).³ ESA also approved a prolongation of the scheme until 31 December 2021 and an increased budget to a total of NOK 300 million.

3.2 The notified measures

- (7) In light of the continuance of the COVID-19 outbreak, in particular the new virus mutations, on 15 December 2021 new strict preventative measures on grounds of public health were imposed by national and local authorities in Norway. As a result, employees must work from home, when practically possible, and face masks are required on public transport and indoor stations areas when it is not possible to keep at least a one-metre distance from others. These measures have severely affected the use of public transport, including long-distance bus and passenger boat services. In order to ensure the continuity of commercial long-distance bus and passenger boat services, the Norwegian authorities consider that there is a need to renew the scheme.
- (8) The scheme for long-distance bus and passenger boat services expired on 31 December 2021. The Norwegian authorities propose the renewal of the scheme for the period from 1 January 2022 until 30 June 2022.
- (9) The Norwegian authorities also propose to increase the maximum amount of aid granted per undertaking, from EUR 1.8 million to EUR 2.3 million. This is done on the basis of Section 3.1, paragraph 22(a), of the Temporary Framework.
- (10) The renewal of the scheme entails changes in the application deadlines for the loss incurring periods. Consequently, the application deadline for each month will be three weeks after the end of the month in question. The application deadline for December 2021 will be 21 February 2022. The application deadline for May and June 2022 will be 15 May 2022. The Norwegian authorities confirm that no aid will be granted after 30 June 2022.
- (11) The Norwegian authorities have confirmed that all other conditions of the scheme approved by ESA on 6 July 2021 will remain the same.

4 Presence of state aid

- (12) 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.”
- (13) 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

³ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, amended six times, (i) on 3.4.2020, OJ C 112, 4.4.2020, p. 1, (ii) on 8.5.2020, OJ C 164, 13.5.2020, p. 3, (iii) on 29.6.2020, OJ C 218, 2.7.2020, p. 3, (iv) on 13.10.2020, OJ C 340, 13.10.2020, p. 1, (v) on 28.01.2021, OJ C 34, 01.02.2021, p 6, and (vi) on 18.11.2021, OJ C 473, 24.11.2021, p.1.

undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

- (14) ESA has concluded that the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the notified renewal and amendments to the scheme to alter this conclusion. In light of that, ESA concludes that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (15) 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."
- (16) The Norwegian authorities have notified the measures and have yet to let them 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

- (17) Under Article 61(3)(b) of the EEA Agreement, state aid can be considered compatible with the functioning of the EEA Agreement "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State".
- (18) The disturbance must affect the whole or an important part of the economy of the State concerned, and not merely that of one of its regions or part of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (19) In the context of the current COVID-19 pandemic, the Commission adopted the Temporary Framework that sets out temporary state aid measures that it considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement.
- (20) 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 applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the COVID-19 outbreak.
- (21) The scheme has been considered compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(b) and in particular Section 3.1 of the Temporary Framework.⁴
- (22) There is no indication that the conclusion on the compatibility of the scheme should be altered concerning the notified measures. ESA notes that on 15 December 2021 the Norwegian authorities imposed new strict preventative measures on grounds of public health in light of the spread of the new virus mutations. The Norwegian authorities expect a continued serious disturbance in

⁴ By Decision No [200/21/COL](#) of 6 July 2021.

the economy even after the infection control measures are lifted again and therefore see a need to continue to mitigate the loss in turnover in the sector for long-distance bus and passenger boat services.

- (23) Furthermore, the renewal of the scheme from 1 January 2022 to 30 June 2022 entails that aid will not be granted later than 30 June 2022. This complies with the condition in Section 3.1, paragraph 22(d), of the Temporary Framework.
- (24) Additionally, aid granted under the scheme will not exceed EUR 2.3 million per undertaking, in compliance with the condition in Section 3.1, paragraph 22(a), of the Temporary Framework.
- (25) Based on the above, ESA concludes that the measures comply with Article 61(3)(b) of the EEA Agreement and the requirements in Section 3.1 of the Temporary Framework.

7 Conclusion

- (26) On the basis of the foregoing assessment, ESA considers that the renewal of and the amendments to the aid scheme for operators of year-round commercial long-distance scheduled bus or passenger boat services constitute 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 measures.
- (27) 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,

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President
Responsible College Member

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