

Brussels, 20 March 2024  
Case No: 86657  
Document No: 1365317  
Decision No 037/24/COL

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

**Subject: Support measures relating to the Norwegian wood industry – Decision to open a formal investigation procedure**

## 1 Summary

- (1) The EFTA Surveillance Authority ('ESA') wishes to inform Norway that, having preliminarily assessed the measures covered by the complaint relating to the Norwegian wood industry ('the measures'), it has doubts as to whether the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement. ESA has also doubts, in case the measures constitute State aid, as to whether the measures are compatible with the functioning of the EEA Agreement. ESA has therefore decided to open a formal investigation procedure, as set out in Article 1(2) of Part I of Protocol 3. ESA has based its decision on the following considerations.

## 2 Procedure

- (2) On 7 April 2021 <sup>(1)</sup>, the Norwegian Precast Concrete Association and the Norwegian Steel Association ('the complainants') lodged a complaint with ESA against the Norwegian authorities, concerning alleged unlawful State aid in favour of the Norwegian wood industry ('the complaint').
- (3) On 7 April 2021 <sup>(2)</sup>, ESA forwarded the complaint to the Norwegian authorities. On 31 August 2021 <sup>(3)</sup>, the Norwegian authorities provided their comments. On 6 October 2021 <sup>(4)</sup>, ESA requested additional information from the Norwegian authorities, and their response was received on 5 November 2021 <sup>(5)</sup>. On 4 November 2021, ESA received additional observations from the complainants <sup>(6)</sup>.
- (4) On 6 May 2022, ESA met with the Norwegian authorities, where the Norwegian authorities presented facts in relation to the case.

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<sup>(1)</sup> Document No 1192740.

<sup>(2)</sup> Document No 1192782.

<sup>(3)</sup> Document No 1223716.

<sup>(4)</sup> Document No 1231881.

<sup>(5)</sup> Document No 1245737.

<sup>(6)</sup> Document No 1245457.

- (5) On 10 June 2022 <sup>(7)</sup> and 5 July 2022 <sup>(8)</sup>, the Norwegian authorities provided ESA with further clarifications.
- (6) By letter of 25 August 2022, ESA sent its preliminary assessment of the complaint to the complainants <sup>(9)</sup>.
- (7) On 21 September 2022 <sup>(10)</sup>, the complainants submitted comments to ESA's preliminary assessment.
- (8) On 31 March 2023 <sup>(11)</sup>, ESA requested additional information from the Norwegian authorities. On 4 May 2023 <sup>(12)</sup>, the Norwegian authorities provided additional information.
- (9) On 16 June 2023 <sup>(13)</sup>, the complainants submitted their comments to the Norwegian authorities' comments of 4 May 2023.
- (10) On 28 June 2023 <sup>(14)</sup>, a meeting was held between ESA and the Norwegian authorities to further clarify the facts of the case.
- (11) On 7 July 2023 <sup>(15)</sup>, ESA requested additional information from the Norwegian authorities. The Norwegian authorities responded by letter of 29 August 2023 <sup>(16)</sup>.

### 3 Description of the measures

#### 3.1 Policy background

- (12) The European Climate Law entered into force on 29 July 2021 <sup>(17)</sup>. It includes an objective for the EU to reach climate neutrality by 2050, and a target of at least 55% reductions in the net greenhouse gas emissions compared with 1990 levels by 2030.
- (13) As reflected in EEA Joint Committee Decision No 269/2019, Norway agreed in 2019 to achieve, by 2030, at least a 40% reduction in greenhouse gas emissions compared with 1990-levels <sup>(18)</sup>. Following the Joint Committee Decision, Norway is subject to a similar legal framework as the EU Member States, including the Effort

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<sup>(7)</sup> Document No 1294588.

<sup>(8)</sup> Document No 1300829.

<sup>(9)</sup> Document No 1245457.

<sup>(10)</sup> Document No 1314572.

<sup>(11)</sup> Document No 1315141.

<sup>(12)</sup> Document No 1371067.

<sup>(13)</sup> Document No 1379795.

<sup>(14)</sup> Document No 1435436.

<sup>(15)</sup> Document No 1386574.

<sup>(16)</sup> Document No 1394598.

<sup>(17)</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, pp. 1–17.

<sup>(18)</sup> See [EEA Joint Committee Decision No 269/2019 of 25 October 2019](#) and the [declarations made in conjunction with this decision](#), OJ L 11, 12.1.2023, pp. 38-45 and EEA Supplement No 5, 12.1.2023 p. 32. See also the [press release of the European Commission of 25 October 2019](#).

Sharing Regulation <sup>(19)</sup>, the Regulation on Land Use Change and Forestry <sup>(20)</sup> and the EU Emission Trading System <sup>(21)</sup>. As part of its *Fit for 55 package* <sup>(22)</sup>, the EU has however revised these acts to reflect the target of at least a 55% reduction, compared to the initial 40% reduction <sup>(23)</sup>.

- (14) Norway is also party to the Paris Agreement, which entered into force in 2016. Prior to the UN Climate Change Conference (COP27) in Egypt, Norway submitted a revised target to reduce emissions by at least 55% compared with 1990 levels by 2030 <sup>(24)</sup>. These new commitments have not yet been reflected in the EEA Agreement.
- (15) In the Norwegian Climate Change Act, Norway has set out objectives of further reducing its greenhouse gas emissions by 2050 <sup>(25)</sup>. According to Section 4 of this Act, Norway aims to reduce its greenhouse gas emissions by 90-95% by 2050 compared with 1990 levels.
- (16) According to the Norwegian authorities, forest and wood products are an important part of climate change mitigation. Forests remove carbon dioxide from the atmosphere via photosynthesis, and store carbon in biomass, soil and wood products. The Norwegian authorities further explain that harvested wood products store carbon and can contribute to limiting emissions by substituting less energy-effective and climate-friendly materials.
- (17) Increasing the use of wood-based materials in buildings is, according to the Norwegian authorities, one of the elements of the Norwegian authorities' policies for mitigating climate change. The policies are further set out in the White Paper on forest policy <sup>(26)</sup> and the Bioeconomy Strategy <sup>(27)</sup>.

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<sup>(19)</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of the European Union of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 ('Effort Sharing Regulation'), OJ L 156, 19.6.2018, pp. 26–42, referred to at paragraph 8(a) of Article 3 (Environment) of Protocol 31 to the EEA Agreement.

<sup>(20)</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, OJ L 156, 19.6.2018, pp. 1–25, referred to at paragraph 8(a) of Article 3 (Environment) of Protocol 31 to the EEA Agreement.

<sup>(21)</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, OJ L 275 25.10.2003, p. 32, referred to at point 21a of Annex XX to the EEA Agreement, see Joint Committee Decision No 146/2007, published in the OJ L 100, 10.4.2008 p. 92 and the EEA Supplement No 71, 22.12.2011, p. 1792.

<sup>(22)</sup> An overview of the adoption of the fit for 55-legislation is available here: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-greendeal/delivering-european-green-deal/fit-55-delivering-proposals\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-greendeal/delivering-european-green-deal/fit-55-delivering-proposals_en).

<sup>(23)</sup> These amendments, reflecting more stringent targets for the EU Member States, are currently not incorporated into the EEA Agreement.

<sup>(24)</sup> See the [press release from the Norwegian Government of 3 November 2022](#).

<sup>(25)</sup> The Act of 10.06.2027 no. 60, in Norwegian: 'Lov om klimamål'.

<sup>(26)</sup> Meld. St. 6 (2016-2017) Verdier i vekst – Konkurransedyktig skog- og trenæring.

<sup>(27)</sup> Regjeringens bioøkonomistrategi: Kjente ressurser – uante muligheter, available at: [https://www.regjeringen.no/contentassets/32160cf211df4d3c8f3ab794f885d5be/nfd\\_biokonomi\\_strategi\\_uu.pdf](https://www.regjeringen.no/contentassets/32160cf211df4d3c8f3ab794f885d5be/nfd_biokonomi_strategi_uu.pdf).

- (18) The Norwegian authorities have explained that the building sector accounts for 36% of European emissions, and that building materials account for more than 80% of the emissions from the sector. The building sector can therefore, according to the Norwegian authorities, contribute to mitigating emissions by using wood products. Wood products sequester carbon and using wood materials will be reported as carbon removal.

## 3.2 The disputed measures

### 3.2.1 Introduction

- (19) The complaint points to two measures which allegedly constitute unlawful and incompatible State aid. The first measure are grants pursuant to the second paragraph of Section 3(1)(c) of the Regulation on grants for investment and business activities in the agricultural sector ('the Agricultural Investment Regulation')<sup>(28)</sup>. The second measure is the financing of focal points which together constitute the Wood Network<sup>(29)</sup>.

### 3.2.2 Section 3(1)(c) of the Agricultural Investment Regulation

- (20) The Agriculture Investment Regulation is part of the Agricultural Agreement, which is negotiated annually between the farmers associations and the Norwegian authorities. The Agriculture Investment Regulation establishes a scheme for financial support to investments and business development in the agricultural sector ('the Agricultural Investment Scheme'). Support for investments in agricultural production facilities is provided pursuant to Section 3(1)(c).
- (21) Grants pursuant to the Agricultural Investment Regulation are administered by Innovation Norway, on the basis of an allocation letter from the Ministry of Agriculture and Food<sup>(30)</sup>.
- (22) The complainants do not argue that the Agricultural Investment Regulation, as a whole, constitutes unlawful and incompatible State aid, but rather paragraphs two and three of Section 3(1)(c) of the Regulation. Paragraph 1 of Section 3(1)(c) applies in general, and reads<sup>(31)</sup>:

*'Investments in production facilities:* Investments in permanent facilities and associated equipment for production which is permanent, are eligible for aid covering 40 percent of the costs, limited to 40 percent of the approved cost estimate for the investment. Aid shall not exceed NOK 3.5 million per investment. Investments in the production of cattle are eligible for aid covering 50 percent of the costs, limited to 50 percent of the approved cost estimate for the investment. The maximum limit for aid is NOK 5 million per project. The maximum threshold does not apply in the counties of Nordland, Troms and Finnmark.'

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<sup>(28)</sup> [Regulation of 19 December 2014 no 1816](#). In Norwegian: «Forskrift om midler til investering og bedriftsutvikling i landbruket». Labelled by the complainants as the "Wood Agriculture Scheme".

<sup>(29)</sup> In Norwegian: Tredriverne.

<sup>(30)</sup> Cf. Section 5 of the Regulation.

<sup>(31)</sup> Unofficial translation provided by ESA.

- (23) Paragraphs two and three of Section 3(1)(c) provide the basis for ‘additional aid’, which may be granted if the construction is based on wood as a building material <sup>(32)</sup>:

‘Investments with wood as building material are eligible for an additional grant up to 20 percent of the aid pursuant to the first paragraph, with an upper limit of NOK 400 000.

When calculating the grant, the share of wood in the project shall be taken into account.’

- (24) Paragraphs two and three of Section 3(1)(c) are supplemented by guidelines developed by Innovation Norway <sup>(33)</sup>. According to these guidelines, additional aid is only granted for new agricultural production facilities, or annexes to existing production facilities. Furthermore, production facilities are eligible for additional aid only if the wall and ceiling constructions are mainly based on wood. Constructions made of massive wood, notched log construction, or timber frame buildings in combination with roof constructions made of wood are eligible for 20% additional aid. Wood constructions combined with other materials are eligible for 10% additional aid.
- (25) The Agricultural Investment Regulation has multiple objectives <sup>(34)</sup>. First, it facilitates for long-term and profitable value creation. Second, it contributes to employment, settlement, and diverse agriculture across the country <sup>(35)</sup>. Third, aid for investment in agricultural production facilities contributes to sustainable agriculture as well as securing and improving animal welfare, according to the Norwegian authorities <sup>(36)</sup>.
- (26) The recipients of financial support under the Agricultural Investment Regulation are owners of agricultural properties or registered agricultural enterprises <sup>(37)</sup>. The support may be granted for establishing, upgrading, or modernising operational facilities, or to the development of agricultural businesses <sup>(38)</sup>.
- (27) In 2021, the annual budget for total grants under Section 3(1)(c) of the Regulation was NOK 664.5 million. There is no separate budget for the additional aid pursuant to the second paragraph, but the Norwegian authorities have indicated that the additional aid accounts for around 7% of the total investment aid pursuant to Section 3(1)(c).
- (28) The basis for additional aid was introduced on 1 January 2020, following the Agricultural Agreement of 2019. Although the amendment originally was made temporary for the years 2020-2022, Section 3(1)(c) still provides a basis for additional aid to this date.

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<sup>(32)</sup> Unofficial translation provided by ESA.

<sup>(33)</sup> Available at: <https://www.innovasjon Norge.no/tjeneste/tradisjonelt-landbruk>.

<sup>(34)</sup> Cf. Section 1 of the Regulation.

<sup>(35)</sup> In Norwegian: “legge til rette for langsiktig og lønnsom verdiskaping, samt bidra til sysselsetting, bosetting og et variert landbruk i alle deler av landet”.

<sup>(36)</sup> Document No 1223716.

<sup>(37)</sup> Cf. Section 2 of the Regulation.

<sup>(38)</sup> Cf. Section 2 of the Regulation.

### 3.2.3 The Wood Network

- (29) The Wood Network is coordinated by Innovation Norway and consists of a regional focal point in different counties. The focal points apply for individual projects, and the projects are co-financed by different actors. The projects are, according to the Norwegian authorities, related to network building, and sharing of knowledge and best practices relating to the use of wood in construction projects. Innovation Norway serves as a coordinator for the network.
- (30) According to the Norwegian authorities, the financing of the focal points is based on existing aid schemes. The Norwegian authorities have explained that the focal points design a project and apply for aid from different aid schemes:
- (i). The Bioeconomy Scheme <sup>(39)</sup>.
  - (ii). The Regional Development Aid Scheme <sup>(40)</sup>.
  - (iii). Regional Facilitation Scheme for agriculture.
- (31) The Regional Facilitation Scheme for agriculture is, according to the Norwegian authorities, part of the Agricultural Agreement. According to the Norwegian authorities, the compatibility with the EEA Agreement is assessed for each individual project.
- (32) According to the Norwegian authorities, the focal points are not formally appointed. Instead, the focal points establish projects either by applying for an individual project with the objective of carrying out the function of a focal point, or by engaging in a competitive bidding process following a municipal public call for a focal point. In both cases, the projects involve promoting wood as a building material.
- (33) The focal points are therefore derived from the project, which the focal point carries out, and for which it has received aid from an aid scheme. Accordingly, the legislative basis for the projects is the allocation of the individual grants to projects initiated by the focal points.
- (34) According to the Norwegian authorities, the main objective of the Wood Network is to coordinate the exchange of knowledge and experience between the focal points. This objective is pursued by hosting workshops and seminars, in addition to sharing of knowledge by providing analyses, reports, network gatherings and meetings.

## 3.3 Arguments brought forward by the complainants

### 3.3.1 Introduction

- (35) The complainants argue that the two measures described above, favour the wood industry and are unlawful and incompatible with Article 61 of the EEA Agreement.

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<sup>(39)</sup> <https://www.innovasjon Norge.no/no/tjenester/innovasjon-og-utvikling/finansiering-for-innovasjon-og-utvikling/tilskudd-til-bioekonomiprojekter/>. Notified to ESA by [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#)

<sup>40</sup> Notified to ESA by [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#).

- (36) The scope of the complaint regarding the Agricultural Investment Regulation is limited to the additional aid pursuant to paragraphs two and three of Section 3(1)(c) of the Agricultural Investment Regulation.

### 3.3.2 *The Agriculture Investment Scheme*

- (37) The complainants argue that the additional aid pursuant to paragraphs two and three of Section 3(1)(c) of the Agricultural Investment Regulation establishes an unlawful aid scheme. Furthermore, the aid scheme is allegedly indirectly favouring undertakings within the wood industry, to the detriment of undertakings within other sectors.
- (38) Regarding the question of whether the EEA Agreement applies to the alleged aid, the complainants do not dispute that the general measures of the Regulation are aimed at the agricultural sector, and therefore fall outside the scope of the EEA Agreement.
- (39) However, the complainants argue that the additional aid is not inseparably linked to the general measures of the Agricultural Investment Regulation. It is argued that the additional aid can easily be removed from the general scheme of the Regulation, while both the objective and the effect of the measure falls within the product scope of the EEA Agreement.
- (40) Accordingly, it is submitted that the aid measure provides preferential treatment to the wood industry and undertakings therein. Considering that the wood industry falls within the scope of the EEA Agreement, the complainants argue that the additional aid pursuant to Section 3(1)(c) falls within the scope of the EEA Agreement.
- (41) Furthermore, the complainants argue that financial support, pursuant to Section 3(1)(c), is in practice only provided to projects from the wood industry. This is, according to the complainants, supported by the wording of the provision and Innovation Norway's decisional practice and implementation of the scheme by actual grants provided.
- (42) According to the complainants, the measure under Article 3(1)(c) contains a so-called 'lock-in' effect. It is argued that although a farmer can apply for aid without using wood in the relevant project, wood must be used to receive the total volume of aid available.
- (43) Moreover, the complainants maintain that there was a reported drop in all orders for concrete after the additional aid measure was introduced. According to the complainants, the market share for barn buildings in precast concrete elements fell from 24% in 2008 to 19% in 2018. After 2018, the market has in practice disappeared completely for farm buildings in materials other than wood, except in Rogaland (Jæren) <sup>(41)</sup>.
- (44) Finally, the complainants argue that the real objective of the additional aid is to promote wood as a building material. Following this, the complainants argue that a potential contribution on climate change mitigation from the agricultural sector only

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<sup>(41)</sup> The complainants explain that the trend in Rogaland (Jæren) is explained by the fact that farmers probably are more self-financed than other Norwegian farmers.

can be assessed based on a life cycle assessment ('LCA') on each individual project. Hence, the additional aid pursuant to Section 3(1)(c) is alleged to be 'greenwashing' the investments in the production facilities, and therefore constitutes incompatible State aid.

### 3.3.3 *The Wood Network*

- (45) The complainants argue that the Wood Network is a commercialisation and marketing tool favouring the Norwegian wood industry. The complainants therefore submit that the wood industry, unlike other sectors, receives State sponsored marketing and lobbying services.
- (46) The complainants argue that the focal points within the Wood Network play an active role in creating a purchasing policy that promotes wood as the preferred choice in construction projects. The focal points are alleged to be key instruments for influencing decision makers, especially local municipalities.
- (47) Furthermore, the complainants submit that the Wood Network focuses its efforts where it can influence the political process, with the aim of increasing the use of wood. In addition, the focal points are allegedly hosting seminars and field trips, together with more general distribution of knowledge and information.
- (48) In total, the Wood Network's activities provide, according to the complainants, the wood industry advantages to the detriment of other industries.

## 3.4 **Comments by the Norwegian authorities**

### 3.4.1 *The Agricultural Investment Scheme*

- (49) The Norwegian authorities argue that the Agricultural Investment Scheme falls in its entirety outside the scope of the EEA Agreement. At the outset, the Norwegian authorities explain that the objective of the Agricultural Investment Scheme is to enhance investments in production facilities to increase animal welfare and efficient production. Following this, the Norwegian authorities argue that the objective of the scheme is directly related to agricultural production, and that the investments in production facilities would not be carried out in absence of the agricultural production.
- (50) Therefore, the Norwegian authorities consider investment aid for agricultural production facilities to be inseparably linked to the production of livestock, and therefore outside the scope of the EEA Agreement.
- (51) Furthermore, the Norwegian authorities submit that the additional aid, serving as an incentive for increasing the use of wood in construction, is an integral part of the Agricultural Investment Scheme. The Norwegian authorities submit that there is no separate application for additional aid, and Innovation Norway assesses whether the share of wood in the investment fulfils the requirements.
- (52) In case the disputed additional aid is considered to fall within the scope of the EEA Agreement, the Norwegian authorities argue that the measure is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c). In this context, the Norwegian authorities argue that the aid contributes to an objective of common interest, namely mitigation of climate change. More specifically, the Norwegian authorities explain that harvested wood products store carbon and can contribute



to limiting emissions by substituting less energy-effective and less climate-friendly building materials.

- (53) The additional aid is also argued to be appropriate, proportionate, and transparent.

#### 3.4.2 *The Wood Network*

- (54) The Norwegian authorities submit that the Wood Network is not an aid scheme, as it is not based on an act, and aid for the focal points requires further implementing measures than the network itself.
- (55) Furthermore, the focal points are allegedly applying for aid from existing aid schemes, more specifically the Bioeconomy Programme <sup>(42)</sup>, the Regional Development Scheme <sup>(43)</sup> and the Regional Facilitation Scheme <sup>(44)</sup>.
- (56) Finally, the Norwegian authorities submit that the focal points within the Wood Network do not constitute undertakings within the meaning of Article 61(1) of the EEA Agreement, as the focal points do not engage in any economic activities.

### 4 **Section 3(1)(c) and the product scope of the EEA Agreement**

- (57) The first part of the complaint targets the additional aid pursuant to the second paragraph of Section 3(1)(c) of the Agricultural Investment Regulation. This part of the complaint relates, as will be specified below, to a measure which may fall outside the scope of the EEA Agreement.
- (58) According to Article 8(3) of the EEA Agreement, the provisions of the EEA Agreement shall only apply to: (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System ('HS'), excluding the products listed in Protocol 2, and, (b) products specified in Protocol 3.
- (59) The Contracting Parties have, by virtue of Article 8(3) of the EEA Agreement, retained the freedom to decide on their respective regulations for certain products, unaffected by the rules of the EEA Agreement <sup>(45)</sup>. This freedom extends to State aid inseparably linked to the trade in products that fall outside the scope of the EEA Agreement <sup>(46)</sup>.
- (60) The first paragraph of Section 3(1)(c) of the Agricultural Investment Regulation provides the basis for financial support to investments in permanent agricultural production facilities. Agricultural production facilities are buildings for the production of livestock, which are encompassed by Chapter 1 of the HS concerning the product group of live animals. The sole purpose of these production facilities is to produce products that fall outside the product scope of the EEA Agreement. Consequently, aid pursuant to the first paragraph of Section 3(1)(c) of the Regulation supports

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<sup>(42)</sup> [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#)

<sup>(43)</sup> [GBER 1-2021-REG.pdf \(eftasurv.int\)](#)

<sup>(44)</sup> The scheme is part of the Agricultural Agreement and administered by the county municipalities. The compatibility with the EEA Agreement is allegedly assessed for each individual project under this scheme.

<sup>(45)</sup> Judgment of the EFTA Court of 15 December 2016 in Case E-1/16 *Synnøve Finden AS v Staten v/Landbruks- og matdepartementet* [2016] EFTA Ct Rep p. 931, paragraph 56 ('*Synnøve Finden*'); and Judgment of the EFTA Court of 25 February 2005 in Case E-4/04 *Pedicef AS v Sosial- og helsedirektoratet* [2005] EFTA Ct Rep p. 1, paragraphs 24-25 ('*Pedicef*').

<sup>(46)</sup> *Synnøve Finden*, paragraph 59.

investments that are arguably inseparably linked to trade in products that are excluded from the product scope of the EEA Agreement. Therefore, aid pursuant to the first paragraph of Section 3(1)(c) may fall outside the scope of the EEA Agreement <sup>(47)</sup>, insofar it is inseparably linked to trade in products that are excluded from the product scope of the EEA Agreement.

- (61) The second paragraph of Section 3(1)(c) of the Agricultural Investment Regulation provides the basis for additional financial support for the relevant investment in the agricultural production facility provided that wood is used as building material. This additional financial support is, according to the Norwegian authorities, an incentive for farmers to invest in environmentally friendly building materials. At the same time, aid pursuant to the second paragraph is, like aid pursuant to the first paragraph, supporting investments in facilities that are being used to produce livestock, which are products that fall outside the scope of the EEA Agreement.
- (62) However, aid pursuant to the second paragraph of Section 3(1)(c) differs from the general aid pursuant to the first paragraph. The additional aid pursues external policy objectives, environmental policy goals, within the agricultural sector. Moreover, the additional aid has potential indirect beneficiaries within the wood industry, which produce and supply wood products that fall within the product scope of the EEA Agreement <sup>(48)</sup>. In this context, ESA has doubts as to whether the additional aid is inseparably linked to the production of livestock.
- (63) In this regard, it is necessary to revisit the purpose of excluding certain products from the EEA Agreement pursuant to its Article 8(3). The purpose is, as confirmed by the EFTA Court, to maintain the freedom of the Contracting Parties to decide on their respective regulations for these products unaffected by the rules contained in the EEA Agreement <sup>(49)</sup>.
- (64) ESA's preliminary view is that a freedom to regulate certain products necessarily includes a certain freedom to pursue both intrinsic and extrinsic policy objectives when deciding on the respective regulation. In other words, pursuing environmental objectives within the production of livestock, may, to a certain extent, fall within the Contracting Parties' discretion to regulate the production of livestock.
- (65) However, in the present case, the additional aid pursuant to Section 3(1)(c) of the Agricultural Investment Regulation pursues external policy objectives by effectively favouring a specific sector of the economy which is included in the product scope of the EEA Agreement. It is unclear whether such a measure falls within the States' discretion to regulate the production of livestock. Therefore, ESA has doubts as to whether the additional aid is inseparably linked to the production of livestock and invites the Norwegian authorities to provide their views on the matter.

## 5 Presence of State aid

### 5.1 Introduction

- (66) 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

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<sup>(47)</sup> *Synnøve Finden*, paragraphs 55-60, and *Pedicel*, paragraph 34.

<sup>(48)</sup> Wood and wood articles are listed in Chapter 44 of the HS.

<sup>(49)</sup> *Synnøve Finden*, paragraph 56, and *Pedicel*, paragraphs 24-25.

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.’

- (67) 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.
- (68) As explained above, Section 3(1)(c) of the Agricultural Investment Regulation appears to fall outside the scope of the EEA Agreement. Considering that the conclusions throughout this decision are preliminary, ESA will nevertheless assess whether the additional aid constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.
- (69) As the parties involved agree that aid under the Agricultural Investment Regulation fall outside the scope of the EEA Agreement insofar the aid benefits farmers producing products that are excluded from the product scope, ESA will focus its assessment on whether there is a presence of State aid in relation to beneficiaries in the wood sector.
- (70) In addition, ESA will assess whether the financing of the Wood Network constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

## **5.2 Presence of State resources**

- (71) For a measure to constitute aid, the measure must be granted by the State or through State resources. State resources include all resources of the public sector, including resources of the municipalities <sup>(50)</sup>.
- (72) Based on the information provided by the parties involved, both the additional aid, pursuant to Section 3(1)(c) of the Regulation, and the financing of the Wood Network, are measures in which one or more public authorities grant advantages through State resources. The additional aid is granted by Innovation Norway and funded over the State budget, while the Wood Network is funded by Innovation Norway, the County Governor and local municipalities based on three aid schemes.
- (73) Consequently, it is ESA’s preliminary view that the measures are imputable to the State and involve State resources.

## **5.3 The notion of undertaking**

### *5.3.1 Introduction*

- (74) The State aid rules only apply where the beneficiary of a measure is an ‘undertaking’. In the case at hand, it is not disputed by the parties that the alleged beneficiaries under Section 3(1)(c) of the Agricultural Investment Regulation are ‘undertakings’ within the meaning of Article 61(1) of the EEA Agreement. This also applies to the alleged indirect beneficiaries under both the Agricultural Investment

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<sup>(50)</sup> 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 48.

Regulation and the Wood Network, namely economic operators that produce or sell building materials made of wood.

- (75) However, and prompted by the arguments of the Norwegian authorities, ESA will preliminarily assess whether the focal points that constitute the Wood Network are undertakings within the meaning of Article 61(1) of the EEA Agreement.
- (76) The concept of an 'undertaking' is consistently defined by the Court of Justice of the European Union and the EFTA Court as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed <sup>(51)</sup>. Furthermore, an economic activity is any activity consisting in offering goods and services on a market <sup>(52)</sup>.

### 5.3.2 *The focal points within the Wood Network*

- (77) According to the Norwegian authorities, the focal points engage in different activities. The projects generally consist of arranging public meetings of various kinds, such as touring construction projects where wood has been used innovatively <sup>(53)</sup>. Moreover, the Norwegian authorities explain that the focal points engage in network building, knowledge-sharing and sharing of best practices. According to the Norwegian authorities, the projects carried out by the focal points are generally provided free of charge.
- (78) The Norwegian authorities argue that the focal points simply convey information about wood as a climate friendly building material, and that they therefore do not offer any goods or services on a market. ESA notes in this regard that also sharing of information may constitute an economic activity. In particular, marketing or other types of promotional activities relating to a specific product or sector may be an activity which is economic in nature. This is especially the case where the activity is aimed at inducing potential customers to buy a specific product or a type of product.
- (79) Based on the information available at this stage, it is ESA's preliminary view that the focal points are engaging in economic activities. Consequently, the Norwegian authorities are invited to elaborate on why the focal points, in their view, are not undertakings within the meaning of Article 61(1) of the EEA Agreement.

## 5.4 **Conferring an advantage**

### 5.4.1 *Introduction*

- (80) The qualification of a measure as State aid requires that it confers an advantage on an undertaking. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit that an undertaking could not have obtained under normal market conditions <sup>(54)</sup>.

### 5.4.2 *The Agricultural Investment Regulation*

- (81) Owners of agricultural property and registered agricultural enterprises are the direct beneficiaries of the additional aid pursuant to Section 3(1)(c) of the Agricultural

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<sup>(51)</sup> NoA, paragraph 7.

<sup>(52)</sup> NoA, paragraph 12.

<sup>(53)</sup> Document No 1245737.

<sup>(54)</sup> NoA, paragraph 66.

Investment Regulation. It is ESA's preliminary view that EEA State aid rules do not apply to this part of the aid, as explained above (see section 4).

- (82) Regarding the alleged advantage to undertakings within the wood industries, ESA notes that an advantage also can be indirect<sup>(55)</sup>. An indirect advantage is present if the measure is designed in such a way as to channel its secondary effects towards identifiable undertakings or groups of undertakings. This is the case, for example, if the direct aid is, *de facto* or *de jure*, made conditional on the purchase of goods or services produced by certain undertakings only. By contrast, a mere secondary economic effect in the form of increased output is not considered as indirect aid<sup>(56)</sup>.
- (83) In the present case, the additional aid, pursuant to Section 3(1)(c) of the Agricultural Investment Regulation, provides an incentive for farmers to build their production facilities in wood. This incentive appears to be liable to stimulate the demand for wood building materials compared to a counterfactual scenario where such additional aid is not provided. While any secondary effects appear to be marginal, the Norwegian authorities are nonetheless invited to elaborate on why the additional aid does not channel its effects towards identifiable groups of undertakings.
- (84) Consequently, ESA has doubts as to whether Section 3(1)(c) of the Agricultural Investment Regulation confers an advantage towards the wood industry.

#### 5.4.3 The Wood Network

- (85) The focal points are the direct beneficiaries of the aid which, according to the Norwegian authorities, is granted under three different aid schemes<sup>(57)</sup>. The financing covers the project costs of the individual focal points, which is an economic advantage for the focal points.
- (86) Furthermore, the financing of the focal points could benefit undertakings within the wood industry. More specifically, marketing or promotional activities of wood products may stimulate demand, and thereby benefit undertakings engaging in the supply of wood products. Depending on the specific activities of the focal points, ESA cannot rule out that they engage in marketing activities that benefit undertakings or groups of undertakings within the wood industry. Consequently, the Norwegian authorities are invited to elaborate on their position that the financing of the focal points do not confer an advantage onto undertakings within the wood industry.

### 5.5 Selectivity

- (87) The measures must be selective in that they 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 those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.<sup>58</sup>
- (88) In relation to the alleged indirect beneficiaries of the additional aid, the selectivity of the measure remains unclear. However, in the event that there are clearly definable

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<sup>(55)</sup> NoA, paragraph 115.

<sup>(56)</sup> NoA, paragraph 116.

<sup>(57)</sup> Cf. section 3.2.3 above.

<sup>(58)</sup> NoA, paragraph 117.

indirect beneficiaries under Section 3(1)(c) of the Agricultural Investment Regulation, the measure appears to grant an advantage to certain economic sectors.

- (89) Finally, in relation to the Wood Network, the economic advantages granted to the individual focal points, if ultimately classified as undertakings, favour certain undertakings and are thereby selective.

### **5.6 Effect on trade and distortion of competition**

- (90) The measures must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.
- (91) Measures granted by the State are considered liable to distort competition when they are liable to improve the competitive position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 61(1) of the EEA Agreement is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition <sup>(59)</sup>. In addition, intra-EEA trade is liable to be affected where State financial aid strengthens the position of undertakings as compared with other undertakings competing in intra-EEA trade <sup>(60)</sup>.
- (92) Regarding the alleged indirect beneficiaries under Section 3(1)(c) of the Agricultural Investment Regulation, ESA notes that an incentive for end users to purchase products from a specific sector could be liable to improve the competitive position of the undertakings within that sector compared to competing undertakings in other sectors. In this context, ESA notes that the markets for building materials are EEA wide markets. Consequently, the additional aid pursuant to Section 3(1)(c) could be liable to distort competition and have an effect on intra-EEA trade.
- (93) Regarding the Wood Network, it remains unclear what the exact objectives and functions of the individual focal points are. The Norwegian authorities are therefore especially invited to clarify what the objectives, functions and more specific activities of the focal points are. Furthermore, the Norwegian authorities are invited to clarify their position on why the activities of the focal points are not liable to distort competition and affect intra-EEA trade.
- (94) Consequently, ESA has doubts as to whether the advantages granted to the focal points are liable to distort competition and have an effect on trade.

### **5.7 Conclusion**

- (95) Based on the above preliminary assessment of the information provided by the Norwegian authorities and the complainant, ESA has doubts as to whether the additional aid, pursuant to Section 3(1)(c) of the Agricultural Investment Regulation, and the financing of the focal points within the Wood Network respectively fulfil all the criteria of Article 61(1) of the EEA Agreement. Consequently, ESA has doubts as to whether the two measures constitute State aid.

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<sup>(59)</sup> NoA, paragraph 187.

<sup>(60)</sup> NoA, paragraph 190.

## 6 Procedural requirements

- (96) 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.'
- (97) The Norwegian authorities have not notified the measures pursuant to Section 3(1)(c) of the Agricultural Investment Regulation to ESA. Provided that the additional aid constitutes State aid that falls within the scope of the EEA Agreement, the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.
- (98) Regarding the financing of the Wood Network, the GBER <sup>(61)</sup> establishes exemptions from the notification obligation for pre-defined categories of aid <sup>(62)</sup>. As set forth in Article 3 of the GBER, an aid measure is compatible with the functioning of the EEA Agreement and exempted from the notification requirement in Article 1(3) of Part I of Protocol 3, provided that the measure fulfils the conditions in Chapter I of the GBER, as well as the specific conditions for the concerned category of aid in its Chapter III.
- (99) The financing of the focal points within the Wood Network is, according to the Norwegian authorities, mainly covered by two aid schemes pursuant to the GBER: the Bioeconomy Scheme <sup>(63)</sup> and the Regional Development Aid Scheme <sup>(64)</sup>. Provided that the aid fulfils the conditions of the GBER, the notification obligation for the financing of the Wood Network pursuant to Article 1(3) of Part I of Protocol 3 is respected.
- (100) In this context, ESA recalls that it remains unclear what the exact objectives and functions of the individual focal points are. Therefore, ESA has doubts as to whether

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<sup>(61)</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), referred to at point 1j of Annex XV to the EEA Agreement, see Joint Committee Decision No 152/2014, published in the OJ L 342, 27.11.2014, p. 63, and EEA Supplement No 71, 27.11.2014, p. 61, 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), see Joint Committee Decision No 185/2017, published in the OJ L 174, 27.6.2019, p. 56, and the EEA Supplement No 67, 19.10.2017, p. 668, 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), see Joint Committee Decision No 115/2020 published in the OJ L 172 6.7.2023, p. 42 and the EEA Supplement No 51, 6.7.2023, p. 41, 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), see Joint Committee Decision No 196/2022, published in the OJ L 267, 13.10.2022, p. 49 and the EEA Supplement No 66, 13.10.2022, p. 47.

<sup>(62)</sup> The Regulation sets out the conditions for when national aid does not require prior authorisation from ESA.

<sup>(63)</sup> [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#).

<sup>(64)</sup> [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#).

the conditions set forth by the GBER are fulfilled, and consequently whether the notification obligation pursuant to Article 1(3) of Part I of Protocol 3 is respected in relation to the Wood Network.

- (101) Moreover, insofar the Wood Network is not financed by GBER schemes <sup>(65)</sup>, the Norwegian authorities are invited to explain why the aid is lawful and in compliance with the notification obligation in Article 1(3) of Part I of Protocol 3.

## **7 Compatibility of the aid**

### **7.1 Introduction**

- (102) 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.
- (103) The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the additional aid pursuant to Section 3(1)(c) of the Agricultural Investment Regulation.
- (104) The financing of the focal points within the Wood Network is, according to the Norwegian authorities, covered by two aid schemes pursuant to the GBER, the Bioeconomy Scheme <sup>(66)</sup> and the Regional Development Aid Scheme <sup>(67)</sup>, in addition to a 'Regional Facilitation Scheme for agriculture'. The latter scheme is part of the Agricultural Agreement, and, according to the Norwegian authorities, compatibility with the EEA Agreement and assessed for each individual project <sup>(68)</sup>.

### **7.2 Compatibility of the additional aid pursuant to Section 3(1)(c)**

- (105) 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'.
- (106) ESA recalls that Section 3(1)(c) of the Agricultural Investment Regulation appears to fall outside the scope of the EEA Agreement <sup>(69)</sup>. However, in the event that the State aid rules apply, it is for the Norwegian authorities to demonstrate that the conditions for compatibility are met <sup>(70)</sup>.
- (107) ESA does not doubt that the additional aid pursuant to Section 3(1)(c) intends to facilitate the development of the sustainability of agricultural production facilities. However, ESA invites the Norwegian authorities to elaborate further on which markets are indirectly affected by the aid, why the additional aid targets market failures that the market cannot deliver, and why there are no alternative and less distortive aid instruments suitable to induce sustainable investments in agricultural production facilities. In addition, the Norwegian authorities are invited to explain why

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<sup>(65)</sup> Reference is made to the 'Regional Facilitation Scheme for agriculture'.

<sup>(66)</sup> [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#).

<sup>(67)</sup> [GBER 11-2021-ENV.pdf \(eftasurv.int\)](#).

<sup>(68)</sup> Document No 1223716.

<sup>(69)</sup> Cf. section 4 above.

<sup>(70)</sup> Judgment in *Italy v Commission*, C-364/90, EU:C:1993:157, paragraph 20.



the additional aid is limited to the minimum needed to incentivise the sustainable investments in the relevant production facilities.

(108) Finally, the Norwegian authorities are invited to provide their balancing exercise, demonstrating that the positive effects of the additional aid outweigh the possible distortions of competition and adverse impact on trade.

### **7.3 Compatibility of the Wood Network**

(109) As stipulated above, the financing of the focal points within the Wood Network is based on three different aid schemes, two of which are covered by the GBER, according to the Norwegian authorities.

(110) As set forth in Article 3 of the GBER, an aid measure is compatible with the functioning of the EEA Agreement and exempted from the notification requirement in Article 1(3) of Part I of Protocol 3, provided that the measure fulfils the conditions in Chapter I of the GBER, as well as the specific conditions for the concerned category of aid in its Chapter III.

(111) Based on the information available in the present case, ESA has no indication of the financing of the Wood Network being contrary to the GBER. However, the Norwegian authorities are invited to elaborate on why the financing of the focal points is GBER compliant, insofar the financing is based on schemes covered by the GBER.

(112) In addition, the Norwegian authorities are invited to elaborate on why, insofar the financing of the focal points is not based on a GBER scheme, the aid is compatible with the functioning of the EEA Agreement.

## **8 Conclusion**

(113) As set out above, ESA has preliminarily assessed that the additional aid pursuant to Section 3(1)(c) of the Agricultural Investment Regulation may fall outside the scope of the EEA Agreement. In the event that the aid falls within the product scope, ESA has doubts as to whether the additional aid constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Moreover, if the additional aid constitutes State aid, ESA has doubts as to whether the aid is compatible with the functioning of the EEA Agreement.

(114) Regarding the Wood Network, ESA has doubts as to whether the financing of the focal points within the Wood Network constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. In addition, in the event that the financing of the focal points constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, ESA has doubts as to whether the aid is compatible with the functioning of the EEA Agreement.

(115) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, ESA hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of ESA, which may conclude that the two measures do not constitute State aid or are compatible with the functioning of the EEA Agreement.

- (116) ESA, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by **22 April 2024** their comments and to provide all documents, information and data needed for the assessment of the Wood Network in light of the state aid rules.
- (117) The Norwegian authorities are requested to immediately forward a copy of this decision to the potential aid recipients, provided that the potential recipients are identifiable.
- (118) Finally, ESA will inform interested parties by publishing a meaningful summary in the Official Journal of the European Union and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Norwegian authorities.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

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

*This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.*