

Brussels, 27 November 2023  
Case No: 91142  
Document No: 1394071  
Decision No 168/23/COL

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

**Subject: Prolongation of the rail freight support scheme**

## 1 Summary

The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the prolongation of the rail freight support scheme and the adjustment to its budget (“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 objections<sup>1</sup> to the measures, as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 49. ESA has based its decision on the following considerations.

## 2 Procedure

- (1) The Norwegian authorities notified the measures on 7 November 2023.<sup>2</sup>

## 3 Description of the measures

### 3.1 Background

#### 3.1.1 The initial decision

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

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

<sup>2</sup> Documents No 1411320 and 1411322.

<sup>3</sup> Decision No 056/19/COL, paragraph 15.

periods were, respectively, 1 September 2020 and 1 September 2021. The aid per period was therefore granted once a year, after the expiry of the period in question.<sup>4</sup>

### 3.1.2 *The prolongation decision*

- (5) By Decision No 185/22/COL of 30 September 2022 (“the prolongation decision”), ESA approved a prolongation of the scheme to June 2023. The prolonged scheme covered two additional periods: (i) 1 July 2021 to 30 June 2022 (“the 2022 period”) and (ii) 1 July 2022 to 30 June 2023 (“the 2023 period”).
- (6) The deadline for application for compensation relating to the 2022 and 2023 periods were, respectively, 1 September 2022 and 1 September 2023. The granting of aid taking place in November 2022 and November 2023.
- (7) According to the Norwegian authorities, railway undertakings engaged in freight transport in Norway have faced, and continue to face, a challenging financial situation. The challenges are due, in particular, to shortcomings in the rail infrastructure and competition from road haulers. State intervention is therefore necessary to alleviate these challenges.<sup>5</sup>
- (8) According to a report from the Norwegian Railway Directorate, dated 17 April 2023, the scheme has had a significant impact on the willingness of freight operators to shift transport from road to rail. Since the scheme was approved in 2019 the net tonne-kilometres freight volume by rail for all freight trains increased by 23%.<sup>6</sup> It can therefore be expected that a prolonged scheme will continue to contribute to a modal shift from road to rail.
- (9) The Norwegian authorities have reiterated that important improvements of the railway infrastructure in Norway are in progress. On the connections (i) Oslo–Drammen–Bergen, (ii) Oslo–Narvik, (iii) Oslo–Trondheim and (iv) Trondheim–Bodø, new lines are being constructed, and tracks are being extended to accommodate longer freight trains. This will allow for increased capacity, reduced costs per unit transported and increased competitiveness. The Norwegian authorities state that given necessary priority and funding, most of these projects can be finalized around 2030, with the remainder being finalized between 2030 and 2033.<sup>7</sup>

## 3.2 Notified measures

- (10) In light of the positive effects of the scheme and the need to further encourage the shift from road to rail, the Norwegian authorities intend to prolong the scheme by five years. The scheme will cover five additional periods: (i) 1 July 2023 to 30 June 2024 (“the 2024 period”); (ii) 1 July 2024 to 30 June 2025 (“the 2025 period”); (iii) 1 July 2025 to 30 June 2026 (“the 2026 period”); (iv) 1 July 2026 to 30 June 2027 (“the 2027 period”); and (v) 1 July 2027 to 30 June 2028 (“the 2028 period”).

---

<sup>4</sup> *Ibid*, paragraph 32.

<sup>5</sup> Document No 1411322.

<sup>6</sup> Document No 1412234.

<sup>7</sup> Document No 1412240.

- (11) The deadline for applications for the periods is 1 September each year. However, the granting of aid will not take place until 30 November each year.<sup>8</sup> The granting of aid is conditional upon ESA's approval of the measures.<sup>9</sup>
- (12) The Norwegian authorities will additionally increase the budget per period from NOK 93.5 million to NOK 124.3 million.<sup>10</sup>
- (13) The previous budget of NOK 93.5 million per period was equivalent to 8.5% of CargoNet AS' ("CargoNet") total costs allocated to combined and/or single wagonload rail traffic.<sup>11</sup> With respect to such traffic, CargoNet is the largest railway operator in Norway. CargoNet's costs were therefore used as a proxy for the total costs of rail transport in the initial decision and the prolongation decision as well.
- (14) According to the Norwegian authorities, CargoNet's total costs allocated to combined and/or single wagonload rail traffic were NOK 1 105 million in 2021. The increased budget of NOK 124.3 million per period is therefore equivalent to 11.2% of those costs.
- (15) As noted above, the Norwegian authorities have increased the budget per period. Therefore, the maximum aid amount under the scheme will change from NOK 43.93 per 1 000 tonne-km to NOK 62.15 per 1 000 tonne-km. The maximum aid amount corresponds to an aid intensity of 50% of the eligible costs (NOK 124.3 per 1 000 tonne-km).
- (16) With respect to the establishment of the eligible costs, the Norwegian authorities have relied on the calculations of the Railway Directorate. In 2023, the Railway Directorate updated the underlying conditions for the calculation. Consequently, the total amount of eligible costs increased in comparison to the eligible costs as notified in the initial decision and the subsequent prolongation decision. However, the Norwegian authorities have confirmed that the Railway Directorate's methodology for establishing the eligible costs remained the same as in the initial decision.<sup>12</sup>
- (17) The planned prolongation and budget increase have been publicly announced through the Norwegian National Budget for 2024. The guidelines and regulations governing the scheme, and the aid amounts, will remain publicly available.
- (18) According to the Norwegian authorities, the scheme remains as described in the initial decision, apart from the prolongation of the scheme and the adjustment to the budget.

#### 4 Presence of State aid

- (19) 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

---

<sup>8</sup> *Ibid.*

<sup>9</sup> See [annual budgetary proposal to the Parliament](#), page 163.

<sup>10</sup> The budget for the 2022 and 2023 periods was NOK 93.5 million per period. See the prolongation decision, paragraph 10.

<sup>11</sup> See the prolongation decision, paragraph 12.

<sup>12</sup> Document No 1412236.

shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

- (20) The qualification of a measure as State aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; it must (ii) confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (21) In its initial decision, and its subsequent prolongation decision, ESA concluded that the scheme constituted State aid. As there are no elements in the notified measures capable of altering this conclusion, ESA finds, on the basis of the reasoning set out in the initial decision, and its subsequent prolongation decision, that the notified measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Lawfulness of the aid

- (22) 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.”
- (23) 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

- (24) Article 49 of the EEA Agreement states that aid shall be compatible with the EEA Agreement if it “meets the needs of coordination of transport [...]”. In this regard, ESA notes that transport coordination measures may be needed when certain modes of transport do not bear all the costs of the negative externalities they inflict on society.
- (25) In its previous decisions, ESA approved the scheme on the basis of Article 49 of the EEA Agreement in conjunction with Section 6 of the [Railway Guidelines](#).<sup>13</sup> ESA will assess the compatibility of the measures on the same basis. However, given that the remaining features of the scheme remain unaltered, ESA will limit its assessment to the prolongation and budget increase introduced by the measures. With respect to the remaining features of the scheme, ESA refers to the initial decision and the prolongation decision.
- (26) It follows from point 97 of the Railway Guidelines that aid must be limited to a maximum of five years. In this respect, ESA notes that the total duration of the prolonged scheme is five years. The prolongation is therefore within the limitation set out in point 97 of the Railway Guidelines.
- (27) According to points 107(b) and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality, and absence of overcompensation

---

<sup>13</sup> Guidelines on State aid for railway undertakings of 17 December 2008, published in the OJ L 105, 21.4.2011, p. 32 and in the EEA Supplement No 23, 21.04.2011, p. 1.

when the intensity of aid for reducing external costs does not exceed: (i) 50% of the eligible costs, and (ii) 30% of the total cost of rail transport.

- (28) ESA observes that with the notified budget increase the aid will remain within the thresholds set out in points 107(b) and 109 of the Railway Guidelines. First, the maximum aid amount will be NOK 62.15 per 1 000 tonne-km, corresponding to an aid intensity of 50% of the eligible cost, i.e. NOK 124.3 per 1 000 tonne-km. Second, the increased budget of NOK 124.3 million per period is equivalent to 11.2% of the total costs of rail transport in Norway, i.e. NOK 1 105 million. Accordingly, ESA finds that the measure is proportionate and necessary, and that it will not lead to overcompensation.
- (29) Point 110 of the Railway Guidelines further requires that the aid must have the effect of encouraging a modal shift to rail. Since it is the shipper who makes the choice between different transport modes, the aid must therefore be reflected in the prices demanded by railway undertakings from shippers.
- (30) As noted in paragraph 75 of the initial decision, the Norwegian authorities have implemented a specific provision transposing the principle in point 110 of the Railway Guidelines into the scheme. That provision, and the mechanisms established for ensuring that grants of aid comply with it, remains unaltered under the measure.
- (31) Furthermore, the Norwegian authorities have publicly announced the measures in the Norwegian National Budget for 2024. Due to that announcement, and the continued availability of public information regarding the scheme, ESA is confident that the customers of the beneficiaries, i.e. the shippers, are still aware of the scheme and its applicability. Therefore, ESA's opinion remains that it can be expected that the shippers will request in their price negotiations to consider the advantage granted to the beneficiaries. The result being that the required price effect encourages the modal shift to rail. Therefore, ESA finds that the analysis set out in paragraphs 75-77 of the initial decision remains valid. On that basis, ESA finds that the criteria in point 110 of the Railway Guidelines are fulfilled also with respect to the measure.
- (32) According to point 111 of the Railway Guidelines, in the case of aid for reducing external costs, there must be a realistic prospect of keeping the traffic transferred on rail, so that the aid leads to a sustainable transfer of traffic. In this regard, ESA notes, first, that the scheme has had a significant impact on the freight operators' willingness to shift transport from road to rail (see paragraph (8)). Second, as explained in paragraph (9), improvements of key parts of the railway infrastructure are in progress. This will, according to the Norwegian authorities, allow for railway undertakings to operate with longer freight trains and reduced unit costs in a more competitive environment. In view of these factors, ESA concludes that the scheme has realistic prospects for keeping the traffic transferred to rail.
- (33) With respect to the assessment of (i) non-discrimination, transparency and time limit, and (ii) avoidance of undue negative effects on competition and trade, ESA finds that the assessment set out in Sections 6.4 and 6.5 of the initial decision remains applicable also with respect to the measures. In this regard, ESA notes that the scheme, as amended, will still not exceed the time limit of five years set out in point 97 of the Railway Guidelines, as stated above (see paragraph 26).

Further, there are no indications that the measures will have more profound effects on competition and trade than the limited effects in the period assessed in the initial decision. The measures therefore comply with point 96 of the Railway Guidelines.

- (34) In view of the above, ESA finds that the scheme, as modified by the measures, will continue to fulfil the applicable criteria set out in the Railway Guidelines. On this basis, ESA concludes that they meet the needs of coordination of transport within the meaning of Article 49 of the EEA Agreement.

## 7 Conclusion

- (35) On the basis of the foregoing assessment, ESA considers that the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 49, it has no objections to the implementation of the measures.
- (36) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.
- (37) For the EFTA Surveillance Authority, acting under [Delegation Decision No 068/17/COL](#),

Arne Røksund  
President  
Responsible College Member

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

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