

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

**Subject: State aid to support dedicated alternative fuels infrastructure 2021–2025**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified aid measure to support dedicated alternative fuels infrastructure projects (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections<sup>1</sup> to it, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the measure on 9 April 2021.<sup>2</sup>

## 3 Description of the measure

### 3.1 Objective

- (3) The objective of the measure is to facilitate the development of zero/low emission vehicles, vessels and other machinery<sup>3</sup> and infrastructure<sup>4</sup> using alternative fuels<sup>5</sup> in Norway, by incentivising investment in dedicated alternative fuels infrastructure. The term “dedicated” reflects that the supported infrastructure is private and tailored to the needs of *ex ante* identifiable undertakings and is intended to be exclusively or primarily used by the *ex ante* identifiable undertakings.<sup>6</sup>
- (4) The measure is limited to alternative fuels infrastructure technology based on electricity or hydrogen/ammonia and aims at infrastructure that has passed the

<sup>1</sup> 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.

<sup>2</sup> Document Nos 1193134, 1193136, 1193141 and 1193143.

<sup>3</sup> For the purpose of this decision, the term “other machinery” refers to any machinery that cannot qualify as a vehicle or a vessel, for example a robotic machine, a drone or an excavator.

<sup>4</sup> For the purpose of this decision, the term “infrastructure” also refers to facilities or equipment, i.e. objects that cannot quite be described as traditional infrastructure or facilities, for example a mobile battery inserted into an electric forklift.

<sup>5</sup> The term “alternative fuels” means fuels or energy sources that serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and that have the potential to contribute to decarbonising and enhancing the environmental performance of the transport sector. This definition is based on Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

<sup>6</sup> This is opposed to investments in publicly available infrastructure, which is already supported under a different aid measure. See paragraph (11) below. The definition is based on the definition of “dedicated infrastructure” in Article 2 point 33 of 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 (“the GBER”).

stage of research and development (“R&D”), but is not yet regarded commercially attractive, due to market or technological immaturity and high costs for first adopters (see further Section 3.4 below).

- (5) The measure also has an environmental objective. By promoting investments in dedicated alternative fuels infrastructure, the measure is expected to generate increased uptake of alternative fuel vehicles, vessels and other machinery, which, in turn, will help reduce harmful emissions for the benefit of the environment and facilitate the gradual decarbonisation of the Norwegian energy system and the transport sector. The measure therefore serves to support the transition of vehicles, vessels and other machinery, as well as the relevant infrastructure, towards more environmentally friendly technologies.
- (6) The Norwegian authorities have explained that it is necessary to further reduce harmful emissions, and in particular greenhouse gas emissions, in order to meet the objectives of the [Paris Agreement](#).<sup>7</sup> The Paris Agreement sets out the long-term objective of limiting global warming to well below 2°C, compared to pre-industrial levels, and pursuing efforts to limit the temperature increase further to 1.5°C.
- (7) The objectives of the Paris Agreement align with the [European Green Deal Communication](#) (“the Green Deal”).<sup>8</sup> The Green Deal outlines measures needed to achieve climate-neutrality in Europe by 2050. One policy area identified in the initiative is the acceleration of the shift to sustainable and smart mobility. According to the European Green Deal, a 90% reduction in transport emissions is needed in order to achieve climate neutrality by 2050.
- (8) The Norwegian Government has implemented ambitious targets to cut greenhouse gas emissions in the transport sector by 50% by 2030 compared to 2005 levels. In order to achieve this, the Government incentivises the development and use of zero/low emission vehicles and vessels through tax incentives, utility benefits and other public support schemes. An important prerequisite for reaching the target is to establish refuelling and charging infrastructure for such vehicles and vessels. According to the Norwegian authorities, the transport sector currently accounts for approximately 30% of greenhouse gas emissions in Norway. Emissions from shipping and fishing have decreased in recent years whilst they have increased in other transport sectors.<sup>9</sup>
- (9) Furthermore, Norway’s zero-emission vehicle targets are set out in the Norwegian National Transport Plan (“NTP”).<sup>10</sup> By 2025, all new passenger cars, light vans and city buses are planned to be zero emission vehicles. Additionally, by 2030 all

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<sup>7</sup> The Paris Agreement was adopted on 12 December 2015 at the twenty-first session of the Conference of the Parties to the UNFCCC (COP21) held in Paris from 30 November to 13 December 2015, and entered into force on 4 November 2016. Norway ratified the agreement in June 2016.

<sup>8</sup> Communication from the Commission of 11 December 2019, COM(2019) 640 final.

<sup>9</sup> For more detail, see the Norwegian Environment Agency’s website at: <https://miljostatus.miljodirektoratet.no/norgesmiljostatus/> and <https://miljostatus.miljodirektoratet.no/tema/klima/>

<sup>10</sup> Norwegian Ministry of Transport and Communications, National Transport Plan 2018–2029, Meld. St. 33 (2016–2017), Report to the Storting (white paper). Available at: <https://www.regjeringen.no/contentassets/7c52fd2938ca42209e4286fe86bb28bd/en-gb/pdfs/stm201620170033000engpdfs.pdf>

new heavier vans, 75% of long-distance buses and 50% of new trucks are expected to be zero emission vehicles.<sup>11</sup>

- (10) Against this policy background, the measure supports the objectives of the Norwegian Government, as well as environmental objectives at international level.

### 3.2 Background and previously approved measures

- (11) ESA has previously approved Norwegian schemes on alternative fuels infrastructure. By [Decision No 336/15/COL](#),<sup>12</sup> ESA approved a programme for alternative fuels infrastructure (“the AFI Programme”), consisting of five separate aid schemes targeting different technologies and/or groups of beneficiaries. The aim of the AFI Programme is to promote the construction of publicly available alternative fuels infrastructure for road vehicles and ships in the period from 2015 to 2022 where such deployment is not feasible without State support.
- (12) Having assessed various eligible projects for aid under the AFI Programme since its inception in 2015, the Norwegian authorities have concluded that there still exists a residual market failure, which the current schemes are unable to address, namely to incentivise the deployment of the technologies that the measure intends to support, or limitations in terms of scope, including geographical scope.<sup>13</sup>
- (13) The Norwegian authorities submit that a considerable share of market participants require more flexibility and tailor-made solutions than publicly available infrastructure can offer when investing in green alternatives. Such market participants hesitate to invest in zero/low emission vehicles, vessels or other machinery when the associated charging or refuelling infrastructure must be made publicly available. Therefore, the Norwegian authorities submit that state aid is necessary to incentivise investments in dedicated alternative fuel infrastructure, complementing investments in publicly available alternative fuel infrastructure.

### 3.3 Financing, aid granting authority and national legal basis

- (14) The measure will be financed from the Energy Fund, which is managed by Enova SF (“Enova”).<sup>14</sup> Enova is a State enterprise fully owned by the Norwegian State through the Ministry of Climate and Environment.<sup>15</sup>
- (15) Enova has the competence to grant aid on the basis of a Parliamentary Decision of 5 April 2001, amending the Energy Act of 29 June 1990 No 50 and the agreement between Enova and the Ministry of Climate and Environment on the

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<sup>11</sup> Institute of transport economics report 1744/2019: 360 degree analysis of the potential for zero-emission vehicles. Available at: <https://www.toi.no/getfile.php?mmfileid=52314>

<sup>12</sup> As amended and prolonged by [Decision No 232/16/COL](#).

<sup>13</sup> Other incentives have been introduced by the Norwegian authorities to stimulate demand for zero emission vehicles, including: (i) an exemption from purchase tax; (ii) exemption from VAT; (iii) exemption from toll road charges; (iv) reduced ferry charges; (v) reduced parking fees at public parking spaces; (vi) exemption from annual tax (passenger vehicles); and (vii) reduced annual weight fee. See further [Decision No 150/15/COL](#) of 21 April 2015 on the State aid measures in favour of electric vehicles, paragraph 29, [Decision No 228/17/COL](#) of 19 December 2017, and ESA [Decision No 148/20/COL](#) of 16 December 2020 on the prolongation of the zero VAT rating for zero-emission vehicles 2021–2022, Section 3.3.

<sup>14</sup> By [Decision No 248/11/COL](#), ESA approved the Energy Fund. In the decision, ESA declared certain aid schemes financed by the Energy Fund compatible with the EEA Agreement. The notified measure falls outside the scope of the aid schemes ESA authorised by the decision.

<sup>15</sup> See further information on Enova’s website at: <https://www.enova.no/>

management of the funds derived from the Energy Fund from 1 January 2021 to 31 December 2024.<sup>16</sup>

- (16) The national legal basis of the measure will be the programme specific regulations that Enova will design and adopt pursuant to this decision (“the Programmes”).<sup>17</sup> The Programmes will set out, amongst other things, the eligibility terms of the measure. The full text of the Programmes will be published on Enova’s website.

### 3.4 Eligibility criteria and aid beneficiaries

- (17) The measure consists of the Programmes supporting investments in dedicated alternative fuels infrastructure projects for purposes associated either with the transportation of goods/passengers or with other economic activities, such as industrial operations, in Norway or the Norwegian exclusive economic zone. The measure is therefore not limited to specific sectors, but open to applications from undertakings in all sectors of the economy.
- (18) The measure is limited to alternative fuels infrastructure technology based on electricity or hydrogen/ammonia and aims at infrastructure that has passed the stage of R&D. The Norwegian authorities have explained that they follow the market for the relevant infrastructure closely, including technological developments, and are therefore in a position to assess the market/technological maturity of each project.
- (19) The maturity of each project is assessed on a technology readiness level (“TRL”) scale.<sup>18</sup> TRLs range from 1 to 9. A project at TRL 7 or 8 is at the stage of early market introduction and is considered to have passed the stage of R&D. TRL 9 covers early and late market diffusion. Accordingly, infrastructure projects at TRLs 7 to 9 are still at an early phase of market development (early market introduction and diffusion) and are eligible for aid under the measure. Such projects entail costs that are considered too high for interested investors to bear without state aid.

| H2020 TRL                                 | Frascati Manual   | Enova   |
|---|---|---|
| <b>1</b><br>Basic principle observed      | R&D<br>Basic/Oriented research                              | Not relevant for Enova.   |
| <b>2</b><br>Technology concept formulated | R&D<br>Basic /Oriented research                             | Not relevant for Enova.   |
| <b>3</b><br>Experimental proof of concept | R&D<br>Applied research                                     | Not relevant for Enova.   |
| <b>4</b><br>Technology validated in lab   | R&D<br>Applied research and/ or<br>Experimental development | Component and/or system tested in laboratory environment; Function Testing. |

<sup>16</sup> Available at: <https://www.enova.no/om-enova/om-organisasjonen/oppdragsbrev-og-avtaler/>

<sup>17</sup> The Norwegian authorities note that there may be more than one Programmes, e.g. different Programmes for land transport, sea transport and other activities.

<sup>18</sup> Available at Enova’s website: <https://www.enova.no/bedrift/innovasjon-og-klimateknologi/teknologimodenhet/>

|   |                                 |   |
|---|---------------------------------|---|
| 5<br><b>Technology validated in relevant environment (industrially relevant environment in the case of key enabling technologies)</b>         | R&D<br>Experimental development | Laboratory scale testing performed under relevant operating conditions.   |
| 6<br><b>Technology demonstrated in relevant environment (industrially relevant environment in the case of key enabling technologies)</b>      | R&D<br>Experimental development | System at pilot scale validated under relevant operating conditions. Pilot plant. The purpose of the project is to develop the technology further. The technology or parts of it are demonstrated on a small scale under relevant operating conditions, in laboratory (TRL 5) or in upscaled version with end user involvement (TRL 6). |
| 7<br><b>System prototype demonstration in operational environment</b>   | Past R&D                        | Full-scale prototype tested under real operating conditions. Demonstration plant on a market-relevant scale. The purpose of the project is to demonstrate the technology at the relevant scale under conditions relevant to the end user.   |
| 8<br><b>System complete and qualified</b>   | Past R&D                        | System completed and qualified through test and demonstration. The latest development, fulfilment of the level represents the end of the development of the system. The purpose of the project is commercial use.   |
| 9<br><b>Actual system proven in operational environment (competitive manufacturing in the case of key enabling technologies; or in space)</b> | Past R&D                        | The technology is commercially available and has been operating over time under commercial limits and in all expected operating situations. The purpose of the project is commercial use.   |

Table 1: TRL Scale used by Enova<sup>19</sup>

- (20) Further, the infrastructure must fulfil one of the following conditions: (i) it is suitable for vehicles, vessels or other types of static or mobile machinery; (ii) it can be integrated into vehicles, vessels or other machinery; (iii) it is suitable for other road, air or water-borne solutions that cannot be classified into the groups of solutions mentioned in point (i); or (iv) it is mobile.
- (21) Eligible for aid is also dedicated alternative fuel infrastructure that functions as a supplement to publicly available infrastructure.<sup>20</sup>
- (22) Further, the Norwegian authorities have clarified that the following will not be supported under the measure: (i) electric charging infrastructure for passenger cars for private use;<sup>21</sup> and (ii) infrastructure for biofuel, synthetic and paraffinic fuel, natural gas, including biomethane, compressed natural gas (CNG), liquefied natural gas (LNG) and liquefied petroleum gas (LPG).
- (23) The Norwegian authorities submit that the reason for the measure not supporting infrastructure for alternative fuels such as biofuel, synthetic and paraffinic fuel,

<sup>19</sup> See further information on Enova's website at: <https://www.enova.no/bedrift/industri-og-anlegg/tema/technology-readiness-levels-trl/>

<sup>20</sup> The Norwegian authorities provided the following example of such infrastructure: an owner/operator of a bus that can charge its vehicle at a publicly available charging infrastructure might also be in need of dedicated infrastructure located at the bus depot in order to charge during night-time when costs are lower and the distribution grid is not as burdened as during the day. This type of infrastructure is considered by Enova as immature in market terms, entailing investment costs that are too high for interested undertakings to invest in both the infrastructure itself and the acquisition of zero/low emission vehicles or vessels.

<sup>21</sup> The Norwegian authorities submit that state aid aimed at public infrastructure in areas with low deployment of electric cars is sufficient to reduce barriers for choosing electric passenger cars instead of fossil-fuelled alternatives.

natural gas, including biomethane, CNG, LNG and LPG is twofold: (i) the technical features are distinct; and (ii) the bunkering of such fuel is less time consuming than charging, and is done less often, due to higher energy density. Therefore, the Norwegian authorities consider that there is not the same need for dedicated infrastructure for these types of fuels; they can be provided by publicly available infrastructure.

- (24) The direct beneficiaries of the measure, i.e. those undertakings that are eligible for grants under the measure, are undertakings registered in the Norwegian Business Register (*Enhetsregisteret* at *Brønnøysundregistrene*).<sup>22</sup> In order for projects on vessels to be eligible for support, the vessels must either be registered in one of the two Norwegian ship registers: the Norwegian Ship Register (NOR) (*Norsk Skipsregister*) or the Norwegian International Ship Register (NIS) (*Norsk Internasjonalt Skipsregister*).<sup>23</sup> Alternatively, for vessels registered outside of Norway, applicants are required to submit documented plans for significant operations in Norway or the Norwegian exclusive economic zone during the lifetime of the investment. In any case, the ultimate beneficiaries will be chosen on the basis of an application procedure (see Section 3.6 below).
- (25) Enova will not grant aid to: (i) undertakings having a pending recovery order when submitting their application;<sup>24</sup> and (ii) undertakings in difficulties, as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty,<sup>25</sup> when submitting their application.<sup>26</sup>

### 3.5 Form of aid, eligible costs, intensity and cumulation

- (26) The measure provides for aid in the form of direct grants, disbursed in tranches depending on the nature and progress of each project. The disbursements will be made as reimbursements, following requests from the ultimate beneficiaries in regular progress reports, which are typically submitted semi-annually, but may be submitted at intervals spanning one month to one year. For smaller/shorter projects, final reports will be required and a disbursement will be made at the end of a project. The disbursements will be dependent on Enova's approval of the reports. If a project has not started no aid is disbursed.
- (27) The eligible costs will be the extra investment costs in tangible and/or in intangible assets, which are directly linked to the achievement of the desired environmental objective, and will be determined as follows:
- (a) where the costs of achieving the environmental objective can be distinguished from the total investment costs as a separate investment, for instance because the green element is a readily identifiable "add-on component" to a pre-existing facility, the costs of the separate investment constitute the eligible costs;

<sup>22</sup> See: <https://www.brreg.no/>

<sup>23</sup> NOR and NIS are managed by the Norwegian Maritime Authority. More information is available at: <https://www.sdir.no/en/shipping/registration-of-commercial-vessels-in-nisnor/>

<sup>24</sup> Enova monitors pending recovery orders in close cooperation with the Ministry of Trade and Fisheries.

<sup>25</sup> ESA's [Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty](#), as adopted by Decision No 321/14/COL (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015).

<sup>26</sup> Enova monitors the economic performance of the undertakings by assessing relevant information such as financial statements and other information from the business register.

(b) in all other cases, the eligible costs constitute the extra investment costs established by comparing the aided investment with the counterfactual situation in the absence of state aid. In principle, reference can be made to the cost of a technically comparable investment that would credibly be realised without aid and which does not achieve the environmental objective or that only attains that objective to a lesser degree.

- (28) This approach is based on the extra cost calculation method found in section 3.2.5 of the Guidelines on State aid for environmental protection and energy 2014–2020 (“the EEAG”)<sup>27</sup> and will include costs of construction, including network improvement, technical equipment, labelling and signage of the infrastructure. The costs of the authorisation process and the operating costs will be excluded. The support will be granted as investment aid to cover part of the eligible costs of the projects.
- (29) The Norwegian authorities foresee that few eligible projects under the Programmes will have a counterfactual scenario and many of the projects will have the same characteristics as “energy infrastructure”.<sup>28</sup> In light of that, with reference to the EEAG, the aid amount will be limited to the minimum needed to achieve the infrastructure objectives sought. In cases where there is no specific counterfactual scenario, it is presumed to be a situation in which the project would not take place. The eligible cost is therefore the funding gap.<sup>29</sup>
- (30) The aid intensity will be a maximum of 40%, whilst if the beneficiary is a SME, the aid intensity may be increased by 10–20 percentage points, as depicted in the table below:<sup>30</sup>

| Type of undertaking      | Aid intensity |
|--------------------------|---------------|
| Small enterprises        | 60%           |
| Medium-sized enterprises | 50%           |
| Large enterprises        | 40%           |

- (31) Aid under the measure may be cumulated with aid from other sources to cover the same eligible costs, as long as the total aid does not exceed the aid intensities set out in paragraph (30) above. Applicants will be required to inform Enova of any other public funding that they are benefitting from or wish to benefit from alongside funding under the measure so that Enova will be able to assess the total aid intensity of each project.

<sup>27</sup> OJ L 131, 28.5.2015, p. 1, and EEA supplement to the OJ No 30, 28.5.2015, p. 1.

<sup>28</sup> “Energy infrastructure” means any physical equipment or facility which is located within the EEA or linking the EEA to one or more third countries and falling under different categories concerning electricity, gas, oil and CO<sub>2</sub>. For more details, see the definition in Guidelines on State aid for environmental protection and energy 2014–2020, adopted by Decision No 301/14/COL of 16 July 2014 amending for the ninety-eighth time the procedural and substantive rules in the field of State aid by adopting new Guidelines on State aid for environmental protection and energy 2014–2020 2015/790 (OJ L 131, 28.5.2015, p. 1, and EEA Supplement No 30, 28.5.2015, p. 1), paragraph 31.

<sup>29</sup> Enova applies a similar approach in the AFI Programme. See [Decision No 336/15/COL](#), paragraph 15. “Funding gap” means the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital). See the EEAG, paragraph 32.

<sup>30</sup> This is based on the thresholds set out in Annex 1 of the EEAG (for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards).

- (32) If a project is only partially carried out, e.g. due to unforeseen changes in market conditions or if technological challenges arise during the course of the project, Enova will assess the reasons for the cancellation and may claim any disbursed aid back. In cases where the applicant has carried out the project as described in the application, but the project is terminated due to factors beyond the beneficiary's control, Enova may not claim the disbursed aid back.
- (33) Lastly, in the event that a project is more expensive than budgeted, Enova will not grant more aid than initially approved. If, on the other hand, project costs are lower than anticipated in the application, the total aid grant will be reduced on a pro rata basis.

### **3.6 Application procedure for granting aid**

- (34) Grants under the measure will be allocated following call(s) for applications. Each call for application will have an open and transparent application procedure.<sup>31</sup>
- (35) The measure is administered by Enova. Applications for grants are to be submitted to and evaluated by Enova. Eligible undertakings (see paragraph (24) above) may apply for aid using an electronic application form and, if relevant, submitting supporting information through an application portal on Enova's website. The decision to award individual aid under the measure will be taken by Enova on the basis of the eligibility criteria (see section 3.4 above) and priority given to each applicant (see paragraphs (37)–(39) below).
- (36) Enova will assess whether the applications fulfil the eligibility criteria. Moreover, the quality of the information provided by the applicants will be assessed according to whether the projects are sufficiently described in order to enable Enova to assess costs and savings, and whether the costs and savings are within the expected range. Subsequently, Enova assesses the cost effectiveness of the projects and the incentive effect of the aid.
- (37) Projects under the measure are given priority according to the assessment of:
- the level of innovation of the technology compared to state of the art technologies;
  - the technology's potential for contributing to increased environmental protection; and
  - the applicant's ability to execute the project.
- (38) All other factors being equal, projects will be given priority according to the level of aid needed (per kWh saved/produced/improved specific energy consumption as an energy result or per CO<sub>2</sub> equivalent saved/improved specific GHG emissions as a climate result) until the annual budget is fully allocated (see paragraph (41) below). The level of subsidy is therefore determined through a technical and financial evaluation of each project.
- (39) If Enova is unable to prioritise the projects, according to the aforementioned pre-determined factors, the projects will be prioritised according to the date of application (first come, first served).

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<sup>31</sup> The full text of the aid measure will be published at Enova's website. All individual aid grants will be published. See further Section 6.4 below.



- (40) If a beneficiary has not provided correct information in the application or in cases where a realised project deviates significantly from the application, Enova will claim any aid granted back (see also paragraph (32) above).

### **3.7 Budget and duration**

- (41) The measure will come into force following ESA's approval and will have a duration until 31 December 2025. Its annual budget amounts to a maximum of NOK 200 million (approx. EUR 19 million).<sup>32</sup> Specific limits may be put in place for specific calls for applications.

### **3.8 Monitoring and reporting**

- (42) The Norwegian authorities will submit to ESA annual reports on the aid scheme as provided for in Article 21 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.
- (43) Furthermore, detailed records regarding the measure will be maintained. The records will contain all information necessary to establish that the conditions regarding, where applicable, eligible costs and maximum allowable aid intensity have been observed. These records will be maintained for 10 years from the date of granting of aid and will be provided to ESA upon request.<sup>33</sup>

## **4 Presence of state aid**

### **4.1 Introduction**

- (44) 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."
- (45) 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.

### **4.2 Presence of State resources**

- (46) The measure must be granted by the State or through State resources.
- (47) The measure will be financed from the Energy Fund, which was established by the Norwegian State and is administered by Enova, a fully state-owned enterprise managing various support programmes.<sup>34</sup> Its main source of funds is a levy on the electricity grid tariff. The level of the levy is determined by the State. The proceeds

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<sup>32</sup> For currency conversions related to notifications, ESA uses the relevant exchange rate from the European Commission's currency converter for the month when a complete notification was submitted, see <https://www.eftasurv.int/state-aid/rates>. The complete notification was submitted on 9 April 2021 (see para (2) of this decision). The relevant exchange rate for April 2021 is NOK 1 – EUR 0.09939.

<sup>33</sup> This is based on Section 6 of the EEAG.

<sup>34</sup> See Section 3.3.

of the levy are allocated directly to the Energy Fund, and Enova, in turn, allocates them to chosen projects.

- (48) With regard to revenue from the levy, State resources are involved where money is transferred by a fund, which is established by the State, and the fund is fed by contributions imposed or managed by the State,<sup>35</sup> and its assets are permanently under the control of public authorities.<sup>36</sup> ESA concludes that the financial resources available to Enova out of the Energy Fund, as well as disbursements from these resources, are under the permanent control of the Norwegian State and therefore qualify as State resources.
- (49) ESA therefore concludes that the notified measure involves State resources within the meaning of Article 61(1) of the EEA Agreement.

### **4.3 Conferring an advantage on an undertaking and selectivity**

- (50) The measure must confer on the beneficiary an advantage that relieves it of charges that are normally borne from its budget. Further, the aid measure must be selective in that it favours “certain undertakings or the production of certain goods”.
- (51) To be eligible for grants under the measure, the beneficiary must be registered in the Norwegian business register. Companies registered in the Norwegian business register engage in various economic activities. Therefore, the beneficiaries qualify as undertakings within the meaning of Article 61(1) of the EEA Agreement.
- (52) Grants under the measure are aimed at undertakings that intend to invest in dedicated alternative fuels infrastructure projects, granting them support to cover parts of the investment costs and therefore relieving them of charges that are normally born from their budget. ESA considers that the notified measure will therefore confer an economic advantage on these undertakings, which they would not have obtained under normal market conditions.
- (53) The owners of these dedicated alternative fuels infrastructures are therefore the direct beneficiaries of the aid.
- (54) The measure also has a number of potential indirect beneficiaries. The measure can stimulate the demand for zero/low emission vehicles, vessels and other machinery, eventually benefitting their respective manufacturers, as well as undertakings operating in the sectors related to the supply chain of alternative fuels infrastructure, compared to a reference situation in which no such aid would be granted. It follows that the measure may therefore also indirectly favour manufacturers, importers and dealers of these vehicles, vessels and other machinery and undertakings active in the sectors related to the supply chain of the infrastructure itself.

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<sup>35</sup> Judgment of 2 July 1974, *Italy v Commission*, 173/73, EU:C:1974:71, paragraph 16; and judgment of 22 March 1977, *Steinike & Weinlig*, 78/76, EU:C:1977:52, paragraphs 21-22.

<sup>36</sup> Judgment of 19 December 2013, *Vent De Colère and others*, C-262/12, EU:C:2013:851, paragraph 21; and judgment of 17 July 2008, *Essent Netwerk Noord BV*, C-206/06, EU:C:2008:413, paragraph 70. See also Commission Decision of 24 April 2007 in Case No C 7/2005, L 219/9, State aid scheme implemented by Slovenia in the framework of its legislation on qualified energy producers.

- (55) ESA considers these potential indirect advantages to be an incidental and unavoidable consequence of any aid measure aimed at encouraging the development of dedicated alternative fuels infrastructure. Any such indirect aid would in any event be compatible with the functioning of the EEA Agreement (see Section 6).
- (56) ESA thus concludes that the measure confers on the beneficiaries an advantage that relieves them of charges that are normally borne from their budget.
- (57) Further, ESA considers this advantage to the direct and indirect beneficiaries to be selective, as only a limited number of undertakings can benefit from the aid following a selection process with a limited budget.

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

- (58) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (59) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is considered sufficient in order to conclude that the measure is liable to distort competition between undertakings established in other EEA States.<sup>37</sup> To categorise a national measure as state aid, it is not necessary that the aid has a real effect on trade between the Contracting Parties and that competition is actually being distorted, only that the aid is liable to affect such trade and distort competition.<sup>38</sup>
- (60) Under the measure, Enova may grant aid to undertakings that are or can be active in markets that are open to competition within the EEA. The selective economic advantage conferred by the measure is therefore liable to distort competition on the markets on which the direct beneficiaries are active.
- (61) Furthermore, an effect on trade can be presumed when the aid strengthens the position of an undertaking compared to other companies competing in intra-EEA trade, which may indeed be the case under the measure, intra-EEA trade must be regarded as affected by the aid.
- (62) ESA therefore concludes that the measure is liable to affect trade and competition.

#### **4.5 Aid scheme or individual aid**

- (63) ESA notes that the legal basis of the measure is an act, or acts, that is the Programmes, not requiring further implementing measures for the granting of the aid and identifying the beneficiaries in a general and abstract manner.<sup>39</sup> The aid is therefore granted on the basis of an aid scheme.

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<sup>37</sup> Case E-6/98 *Norway v ESA* [1999] EFTA Ct. Rep. 74, paragraph 59.

<sup>38</sup> See, for example, judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 66; judgment of 8 May 2013, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77; and judgment of 4 April 2001, *Friulia Venezia Giulia*, T-288/97, EU:T:2001:115, paragraph 41.

<sup>39</sup> See Article 1(d) 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 ("Protocol 3").

## 4.6 Conclusion

- (64) Based on the above, ESA concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Lawfulness of the aid

- (65) 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."
- (66) The Norwegian authorities have notified the measure and have yet to let the scheme enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## 6 Compatibility of the measure

### 6.1 Introduction

- (67) 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. The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measure.
- (68) For state aid for environmental measures and energy, ESA has set out the elements it will take into account in its compatibility assessment in the EEAG. However, as the Norwegian authorities have rightfully pointed out, the EEAG are not directly applicable to the measure at hand, as the EEAG do not apply to "the financing of environmental protection measures relating to air, road, railway, inland waterway and maritime transport infrastructure", according to its Section 1.1. The notified measure grants aid to undertakings investing in dedicated transport infrastructure projects.<sup>40</sup> As a consequence, the measure falls outside the scope of the EEAG.<sup>41</sup>
- (69) Nevertheless, the Norwegian authorities have modelled certain elements of the measure after the EEAG, notably the eligible cost calculations and maximum aid intensities. Seeing that the measure ultimately has an environmental objective, ESA finds that the EEAG can provide guidance for the general approach to the compatibility assessment, as they reflect relevant case law and the European Commission's decisional practice. However, ESA is not bound by the EEAG in its assessment, as the measure falls outside their scope of application.

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<sup>40</sup> See paragraph (20).

<sup>41</sup> ESA's Decision No 336/15/COL, paragraph 79; Commission Decision of 18 December 2020 in Case No SA.58036, C(2020)9483 final, *Support scheme for alternative fuels infrastructure for commercial transport and the acquisition of low emission commercial vehicles*, paragraph 99 and cited decisional practice; Commission Decision of 11 August 2017 in Case No SA.45182, C(2017) 5588 final, *State aid scheme for supporting the deployment of publicly accessible recharging and refuelling stations for vehicles running on alternative fuels in the Czech Republic*, paragraph 11; Commission Decision of 13 February 2017 in Case No SA.46574 (2016/N), C(2017)753 final, *Charging infrastructure for e-mobility in Germany*, p. 8; and Commission Decision of 11 August 2015 in Case No SA.38769 (2015/N), C(2015) 5572 final, *Green Deal for Electric Vehicle Charging Infrastructure*, p. 6.

- (70) ESA will therefore assess the measure directly under Article 61(3)(c) of the EEA Agreement, which provides that ESA may declare compatible with the functioning of the EEA Agreement “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”. Therefore, in order to declare the aid compatible, the following cumulative conditions must be fulfilled: (i) the aid must be intended to facilitate the development of certain economic activities or of certain economic areas; and (ii) the aid must not adversely affect trading conditions to an extent contrary to the common interest.<sup>42</sup>
- (71) Under the first condition, ESA examines whether the aid is intended to facilitate the development of certain economic activities or of certain economic areas. Under the second condition, ESA weighs up the positive effects of the aid for the development of said activities and the negative effects of the aid in terms of distortions of competition and adverse effects on trade.

## **6.2 Facilitation of development of certain economic activities or certain economic areas**

### *6.2.1 Economic activities or areas supported*

- (72) Under Article 61(3)(c) of the EEA Agreement, in order to be considered compatible, the measure must contribute to the development of certain economic activities or areas.
- (73) The measure aims at facilitating the development of zero/low emission vehicles, vessels and other machinery and infrastructure for alternative fuels in Norway by incentivising investment in dedicated alternative fuels infrastructure. The measure therefore contributes to the development of economic activities related to the supply chain of alternative fuels infrastructure by cutting the costs of such investments borne by undertakings.
- (74) The measure facilitates the development of zero/low emission vehicles, vessels or other machinery as alternative fuels infrastructure is essential for their operation. Indeed, it is expected that by encouraging investments by private undertakings in dedicated alternative fuels infrastructure, this will encourage more undertakings to make the switch from fossil run vehicles, vessels or other machinery and purchase or use zero/low emission vehicles, vessels or other machinery instead.
- (75) In view of the above, ESA considers that the measure constitutes aid to facilitate the development of certain economic activities, as required by Article 61(3)(c) of the EEA Agreement.

### *6.2.2 Incentive effect*

- (76) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect and so effectively facilitates the development of certain economic activities. To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertaking concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner. The aid must not subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity.

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<sup>42</sup> Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraphs 18–20.

- (77) The measure first contributes to the development of the production and installation of alternative fuels infrastructure by cutting the associated costs borne by the undertaking concerned following the application procedure and will thus incentivise them to install the respective infrastructure. In doing so, the measure also facilitates the development of the production by manufacturers of vehicles, vessels and other machinery, as well as the purchase and use by undertakings of such environmentally friendly alternatives to their fossil-fuelled substitutes.
- (78) ESA understands that absent the aid, undertakings would have little or no incentive to invest in dedicated alternative fuels infrastructure. By subsidising the setting up of such infrastructure, some of the risks borne by the undertakings would be diminished or even eliminated. It will therefore incentivise those undertakings to make the necessary investments or increase their investments in alternative fuels infrastructure compared to a situation where no aid is granted.
- (79) ESA also understands that there is a need for State intervention for incentivising increased uptake of zero/low emission vehicles, vessels or other machinery technologies that are considered immature in technological and/or market terms (see Section 6.3.4.2 below).
- (80) Further, Enova intends to specifically assess the existence of an incentive effect from each applicants' submission in line with the requirements set out in the EEAG. Accordingly, no aid will be granted in cases where work on a project has started prior to the submission of an application by the potential beneficiary. In the application process, Enova will use an application form requiring aid applicants to describe the situation without the aid, i.e. the counterfactual scenario. In addition, large undertakings must submit documentary evidence in support of the counterfactual scenario described in the application form. Where no specific counterfactual scenario is known, the incentive effect can be assumed when there is a funding gap (see paragraph (29) above).
- (81) Based on the above, ESA concludes that the measure will have an incentive effect and, in any case, that the application process ensures that any aid disbursed under the measure has an incentive effect.

### 6.2.3 Compliance with relevant EEA law

- (82) If a state aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the state aid measure), or the activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.<sup>43</sup>
- (83) ESA has no indications that the measure, the conditions attached to it, or the activities it finances, is incompatible with EEA law.<sup>44</sup>

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<sup>43</sup> Judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 94–116; 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraph 44; 14 October 2010, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 51–51.

<sup>44</sup> Judgment of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78, and judgment of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94 to 116.

### **6.3 Aid does not adversely affect trading conditions to an extent contrary to the common interest**

#### *6.3.1 Introduction*

- (84) In order to balance the positive with the negative effects of the notified aid, ESA has identified positive effects of the planned aid for the development of the abovementioned economic activities, as well as possible negative effects that it may have in terms of distortions of competition and adverse effects on trade.

#### *6.3.2 Markets affected by the aid*

- (85) The measure mainly has an effect on the market for alternative fuels infrastructure and the market for zero/low emission vehicles, vessels and other machinery. Additionally, the measure may have an effect on the alternative fuels infrastructure supply chains (see Section 6.2.1 above).

#### *6.3.3 Positive effects of the aid*

- (86) The measure can be expected to have many positive effects in facilitating the development of the identified economic activities (see Section 6.2 above).
- (87) Further, in light of the environmental and climate objectives of the aid, ESA notes that the measure will have positive effects in terms of environmental protection. The measure supports undertakings' investments in and deployment of alternative fuels infrastructure, thereby promoting the development of economic activity in an environmentally friendly manner. By facilitating support for alternative fuels infrastructure, the measure will also encourage undertakings to invest in zero/low emission vehicles, vessels or other machinery, as well as the use of sustainable alternative fuels (electricity, hydrogen and ammonia) in transport and other operations. As a consequence, the measure contributes to environmental protection and climate change mitigation through emission reductions in line with environmental objectives at national and international level (see Section 3.1 above).
- (88) With regard to the special characteristics of the aid measure and the nature of the investments supported, the Norwegian authorities foresee that the measure will have limited impact on competition and trade. The market penetration of alternative fuel vehicles, vessels or other machinery and infrastructure is normally hindered by the high investment costs associated with the immaturity of the relevant technologies in market terms. The measure is designed to meet the market's need for financial support, with respect to the existing barriers for the infrastructure's market diffusion.
- (89) The positive effects that are expected from the measure are in line with national, European and international policies and objectives, such as the Green Deal (see further Section 3.1 above), contributing to green outcomes in the common interest.
- (90) The diversity of supported projects, the wider participation of potential beneficiaries with different professional backgrounds and sizes and the relatively low aid intensities per project and per applicant are all factors that should prevent the creation of market powers in local markets and thus contribute to a lower impact on competition and trade on the market. In particular, aid for investments in dedicated infrastructure not directly linked to the beneficiary's main activities (e.g. as an industrial actor) is unlikely to provide any separate competitive

advantage. In other cases, the aided infrastructure is foreseen to serve local users, thereby limiting the competition for the services offered to a local level. On such projects, any effect that the aid measure can be foreseen to have on the conditions of cross-border investments or establishment is likely to be little more than marginal.

- (91) Based on the foregoing, ESA considers that increased investments in dedicated alternative fuels infrastructure, which will be incentivised with the notified aid measure, will have positive effects on facilitating the development of the identified economic activities and on climate and energy efficiency, which are objectives promoted in European and national policies and objectives.

#### *6.3.4 Limited negative effects of the aid*

##### 6.3.4.1 Introduction

- (92) Article 61(3)(c) of the EEA Agreement requires the assessment of any negative effects on competition and on trade. The aid measures must not unduly affect trading conditions to an extent contrary to the common interest. In this regard, ESA considers the need for State intervention, the appropriateness of the measure and its proportionality.
- (93) ESA considers that such negative effects could materialise in the economic sectors identified in Section 6.2, in which competition is present, and possibly in related sectors.
- (94) Aid for dedicated alternative fuels infrastructure directly affects the markets in which the undertakings receiving aid operate, as well as markets for undertakings operating on the alternative fuels infrastructure supply chain. As a consequence of the measure, some operators will receive aid whilst other undertakings will not.
- (95) As explained in Section 3.6 above, the measure involves an application procedure that has been designed in a way that enables Enova to choose investments in projects that contribute to the objective of the measure and have an incentive effect. The measure therefore contributes to facilitating the development of the economic activities in question. In the way the Norwegian authorities have designed the measure, they have ensured that their negative effects are as limited as possible.
- (96) As will be further explained below, ESA considers that the aid is necessary, appropriate and proportionate.

##### 6.3.4.2 Necessity of aid

- (97) A state aid measure is necessary if it is targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure or addressing an equity or cohesion concern.
- (98) According to the Norwegian authorities, the market for and commercial viability of investing and operating dedicated alternative fuels infrastructure is dependent on, and cannot be considered separately from, the diffusion of vehicles, vessels or other machinery utilising such infrastructure. ESA recalls that undertakings hesitate to invest in immature zero/low emission vehicles, vessels or other machinery for several reasons.



- (99) First, there is a need to lower investment costs associated with the use of zero/low emission vehicles, vessels or other machinery. The relevant associated costs can be broken down into: (i) investments in the vehicles, vessels or other machinery itself; (ii) investments in infrastructure; (iii) operating costs (energy); and (iv) maintenance costs. Even though the operation and maintenance costs are comparable and even lower than that of conventional internal combustion engines, the total ownership costs are currently higher due to high investment costs related to the acquisition of vehicles, vessels or other machinery and the relevant infrastructure. The barrier of high investment costs becomes even more significant and decisive in the consequent market development of zero/low emissions vehicles, vessels or other machinery and the relevant infrastructure that are both far too costly.
- (100) Developing only large-scale public infrastructure cannot sufficiently incentivise commercial actors to invest in alternative fuel vehicles, vessels or other machinery. In particular, investment in vehicles, vessels or other machinery may remain too limited for the operators of such infrastructure to achieve profitability absent public support, which would then need to cover both the investment and operational phase of the publicly available infrastructure, as well as a risk of realising too many premature projects, in particular in cases where the technological standards for certain infrastructures are not yet developed in the market.<sup>45</sup> Investment in dedicated infrastructure is therefore more suited for technological and market developments in the field of vehicles, vessels and other machinery.
- (101) As the technology is developed and matured in parallel, larger technology projects can be realised until the technologies reach a point when they are ready to be introduced on the market. At that point, however, there would be low available volumes of vehicles, vessels or other machinery, which, along with the relevant infrastructure technologies, would be considered immature in market terms. The Norwegian authorities therefore consider that prioritising the market development of publicly available infrastructure at a large scale would not be pragmatic. With regard to vehicles, vessels and other machinery that are considered mature in technological and market terms, such as electric passenger vehicles, the Norwegian authorities consider that the development of publicly available infrastructure is an appropriate instrument to support their development.<sup>46</sup>
- (102) For individual projects involving demonstration, testing and market introduction of vehicles/vessels or for technologies where production numbers are low, it is more

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<sup>45</sup> As an example of this, the Norwegian authorities have pointed out that investment in publicly available infrastructure designed for alternative fuel heavy duty vehicles (HDVs), which are currently scarce in number, would be significantly more challenging both in terms of costs, load on the energy system, land requirements and challenges, compared to infrastructure that is developed for private electric vehicles (in Norway) – the latter being considered mature in market and technological terms.

<sup>46</sup> The Norwegian authorities have pointed out that in that example, nationwide supply of charging infrastructure for electric vehicles is difficult, namely due to the many geographical challenges of Norway. Rolling out infrastructure in sparsely populated areas costs more per user than in densely populated areas, hence, service providers may not consider all areas commercially viable. In certain areas (mainly rural and scarcely populated areas), alternative fuels infrastructure will not be deployed or increased until long after capacity has been increased in other parts of the country, if at all. In that case, based on Norway's experience, investment aid followed by a competitive bidding process is deemed appropriate to lead the market development for publicly available infrastructure.

cost-effective to build infrastructure that is dedicated to the user. With such an approach, the infrastructure is dimensioned in correlation to its use, and the risk of high investments in infrastructure that is under-utilised or in other ways premature, is reduced. A flexible energy system is not well served by oversized public infrastructure stations with a maximum capacity that are only used for short periods during the day. This may be the scenario if one considers the magnitude of the publicly available infrastructure needed to facilitate the same predictability and flexibility required by transport operators that could be achieved through dedicated charging facilities.

- (103) Further, the Norwegian authorities submit that there will be a demand for dedicated infrastructure for certain types of transport services and transportation of goods, in particular with regard to charging speed and the need for optimisation in line with the operation pattern of the user.
- (104) In [Decision No 228/17/COL](#), ESA considered that environmentally harmful CO<sub>2</sub> (and other) emissions represent a negative externality that economic agents may disregard when deciding to buy a new vehicle. These agents may not be willing to pay the extra costs linked to environmental protection if those costs are not compulsory or subsidised; there exists little incentive to acquire costlier goods that limit environmental harm. Environmental externalities, therefore, also represent a market failure which justifies state intervention.
- (105) ESA considers that the inability of market forces to fill this gap of dedicated alternative fuels infrastructure represents a fundamental barrier to the development of alternative fuels in the transport sector and of vehicles, vessels and other equipment that are immature in market or technological terms. It is not realistic to expect market operators to carry the extra cost of investing in dedicated alternative fuels infrastructure while the barriers remain as they are. State intervention therefore accelerates such investments.
- (106) Taking into account the above, ESA considers in particular that negative externalities are present and, accordingly, that there is a need for State intervention to support the targeted economic activities in a manner that increases environmental protection.

#### 6.3.4.3 Appropriateness of aid

- (107) State aid must also be an appropriate instrument to contribute to the development of the targeted economic activities. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the development of the targeted economic activity is achievable through other less distortive policy instruments or other less distortive types of aid instruments.
- (108) There are several existing measures in place to support green investments in the Norwegian transport sector, many of which are administered by Enova (see further Section 3.1 above). Aid to dedicated alternative fuels infrastructure is designed to complement existing measures, which the Norwegian authorities consider inadequate.
- (109) In light of these considerations, ESA considers that a favourable regulatory framework alone is currently insufficient to trigger investments in dedicated alternative fuels infrastructure. The measure is an appropriate instrument to

promote investments in sustainable and low-emission mobility and operations via the deployment of such infrastructure.

#### 6.3.4.4 Proportionality of aid

- (110) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.
- (111) In general, ESA bases its proportionality assessment on the concepts of eligible costs and maximum aid intensities. As explained by the Norwegian authorities, the measure has an overall objective of promoting investments in sustainable and low-emission mobility and operations by reducing investment costs of dedicated alternative fuel infrastructure and compensate for other disadvantages of less environmentally friendly alternatives.
- (112) Enova will undertake an assessment of the aid's inventive effect, as described in Section 6.2.2, as well as the proportionality of the aid in line with the EEAG. Pursuant to Section 3.2.5.1 of the EEAG, which constitutes the basis for Enova's assessment, "aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for. As a general principle, aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid. The net extra cost is determined by the difference between the economic benefits and costs (including the investment and operation) of the aided project and those of the alternative investment project which the company would carry out in the absence of aid, that is the counterfactual scenario."
- (113) In the absence of a specific counterfactual scenario, it is presumed to be the situation in which the project would not take place. The eligible cost is therefore the funding gap (see paragraph (29) above).
- (114) Further, the maximum aid intensity is 40%, whilst if the beneficiary is a SME, the aid intensity may be increased by 10–20 percentage points (see paragraph (30) above). This maximum aid intensity follows the aid intensity laid out in the EEAG for undertakings going beyond Union standards or increasing environmental protection in the absence of Union standards. As such, despite the present assessment being based on Article 61(3)(c) of the EEA Agreement, the aid intensity can be regarded as an indication of the measure's proportionality.
- (115) Finally, the application procedure (as described in Section 3.6 above), where undertakings compete based on pre-determined eligibility criteria for a limited budget designated to the measure (see paragraph (41) above), contributes to the aid amount limited to a minimum and will encourage undertakings to submit competitive applications.
- (116) In light of the above, ESA considers the measure to be proportionate.

#### 6.3.4.5 Conclusion on limited negative effects

- (117) On the basis of the design of the measure as mentioned above, ESA concludes that the aid is proportionate to the objective pursued and that the safeguards that the Norwegian authorities have committed to implement mitigate to the greatest

extent possible the advantages that the beneficiaries may get from the notified aid measure.

#### *6.3.5 Balancing positive and negative effects of the aid*

- (118) For the aid to be compatible with the EEA Agreement, the limited negative effects of the measure in terms of distortions of competition and impact on trade between Contracting Parties must be outweighed by positive effects, in terms of contribution to the facilitation of the development of economic activities. It must be verified that the aid does not adversely affect the internal market to an extent contrary to the common interest.
- (119) The Norwegian authorities have demonstrated that the benefits of the measures outweigh any potential adverse effect on competition or trade between Contracting Parties, given the safeguards in place to minimise the latter.
- (120) ESA considers that the measure will enable undertakings to invest in dedicated alternative fuels infrastructure, which leads to important environmental benefits and benefits for the economic development of sustainable and low-emission mobility and operations. Moreover, it will contribute to the promotion of the EEA's climate and environmental policy and objectives.
- (121) Taking into account the safeguards put in place by the Norwegian authorities to mitigate any adverse effects, the distortion of competition and trade induced by the measure can be considered as mitigated.
- (122) ESA concludes that the limited negative effect on competition and trade is outweighed by the positive impact of the aid on the climate and environment. Therefore, the aid does not unduly affect trading conditions to an extent contrary to the common interest.

#### **6.4 Transparency**

- (123) The Norwegian authorities have confirmed that aid granted under the measure will be published in the [national transparency register](#).
- (124) Further, the full text of the aid measure will be published on Enova's website. All individual aid granted under the measure will also be published in line with the transparency requirement laid out in Section 3.2.7 of the EEAG.

#### **7 Conclusion**

- (125) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid with 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 61(3)(c), it has no objections to the implementation of the measure.
- (126) The Norwegian authorities have confirmed that the notification does not contain confidential information.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen  
President  
Responsible College Member

Frank J. Büchel  
College Member

Högni S. Kristjánsson  
College Member

For Carsten Zatschler  
Countersigning as Director,  
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*This document has been electronically authenticated by Bente Angell-Hansen,  
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