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Ministry of Trade, Industry and Fisheries
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Subject: Compensation scheme for the ban on fur farming in Norway

- Letter concluding pre-notification contacts.

1 Procedure

We refer to the pre-notification of 27 September 2021 regarding compensation to previous fur farmers in Norway and exemption of this compensation from tax (“the measure”).¹ We understand that you consider the measure not to constitute state aid, and make reference to our additional correspondence in the case.²

2 Description of the measure

On 1 July 2019, Norway adopted the act on prohibition on fur farming (the “Act”).³ The Act prohibits the keeping of animals solely or mainly for the purpose of selling or otherwise commercialising the fur. As a result of the ban, fur farmers are suffering a loss. For this reason, Section 3 of the Act granted the Ministry of Agriculture and Food the power to adopt a regulation governing compensation to the fur farmers. Norway adopted such a regulation on compensation on 27 November 2019.⁴ On 18 June 2021, the Norwegian Parliament amended Section 3 of the Act in order to expand and clarify the scope and method of compensation.⁵ In addition, the Norwegian Parliament has adopted a decision to amend Section 9-3 of the Norwegian Tax Act⁶ to state that the compensation granted according to Section 3 of the Act is exempt from tax.

It is estimated that some 250–260 fur farmers will be compensated under the measure. The fur farmers can be natural or legal persons. Furthermore, in cases where fur farmers have operated in rented facilities, both the owner of the facilities and the fur farmer renting the facility (hereinafter commonly referred to as “the beneficiaries”) will be compensated, through splitting the compensation. The total number of beneficiaries will therefore be slightly higher than 250–260.

¹ Document Nos 1229677, 122979, 1229681.

² Document No 1233323, your reply of 5 November 2021, and our meeting on 10 November 2021.

³ [LOV-2019-06-21-63 lov om forbud mot hold av pelsdyr.](#)

⁴ [FOR-2019-11-27-1587 forskrift om kompensasjon etter avviklinga av hold av pelsdyr mv.](#)

⁵ [LOV-2021-06-18-135 lov om endringer i lov om forbud mot hold av pelsdyr \(kompensasjonsordning\).](#)

⁶ [LOV -1999-03-26-14 lov om skatt av formue og inntekt \(skatteloven\).](#)

Since the farms vary in size, the compensation granted will vary accordingly. The size of the compensation depends on the methods for compensation. On the basis of the information provided, it appears the estimated average amount of compensation is some NOK 4.5–6.5 million. You have highlighted that the fur farms will lose an essential part of their value when the activity of fur farming is abandoned. The beneficiaries will therefore have to make use of the compensation to repay debts accumulated because of already made investments.

The beneficiaries fall into three categories:

- (a) Those who perform(ed) no economic activity in addition to fur farming.
- (b) Those who perform(ed) agricultural activity that falls outside the scope of the EEA Agreement in addition to fur farming.
- (c) Those who perform(ed) other types of economic activity in addition to fur farming.

With regard to category b, you have confirmed that about half of the fur farms had other agricultural activity than fur farming in 2014. With regard to category c, it appears likely that some beneficiaries, in addition to fur farming, perform(ed) additional (and undefined) economic activities. You have explained that the majority of such activity would be of small scale, and local.

3 Preliminary state aid assessment

3.1 Introduction

For a measure to qualify as aid within the meaning of Article 61(1) of the EEA Agreement, four cumulative conditions must 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. Below, we will provide a preliminary assessment of the three categories of beneficiaries in light of these conditions.

3.2 Beneficiary category (a) – no aid to undertakings

Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.⁷ An economic activity is any activity consisting in offering goods and services on a market.

Since fur farmers offer fur skins on a market they would constitute undertakings in this sense. However, in this case, a prerequisite for the beneficiaries receiving a compensation from Norwegian authorities is that the activity of fur farming has completely stopped. But from the point in time that the fur farming stops, the beneficiaries falling into category (a) no longer perform an economic activity, and would appear no longer to constitute undertakings.

3.3 Beneficiary category (b) – the product scope limitation

Article 61 of the EEA Agreement does not apply to aid to the production of products falling outside the product coverage of the EEA Agreement. Article 8(3) of the EEA Agreement limits the material scope of the application this way:

⁷ See the Authority's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (NoA), paragraph 7.

“Unless otherwise specified, the provisions of this Agreement shall apply only to: (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2; (b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol.”

A main category of products listed in Chapters 1 to 24 of the Harmonized System are agricultural products. To the extent that such production is carried out by the fur farmers, there is no scope of application for Article 61 of the EEA Agreement.

3.4 Beneficiary category (c) – lack of effect on trade between EEA States

With regard to the beneficiaries falling into category (c), a consideration is that the required effect on trade cannot be merely hypothetical or presumed. An economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Contracting Parties is not required.⁸ However, it must be established why the measure is liable to have more than a marginal effect on trade between EEA States, based on the foreseeable effects of the measure.⁹

Even if a relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected,¹⁰ an effect is less likely where the scope of the economic activity is very small.¹¹

ESA and the Commission have in a number of decisions considered that certain activities and measures, in view of their specific circumstances, have a purely local impact and consequently are not liable to have more than a marginal effect on trade between EEA States.¹² In those cases, ESA and the Commission ascertained in particular: (i) that the beneficiary supplied goods or services to a limited area within an EEA State and was unlikely to attract customers from other EEA States, and (ii) that it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment.¹³ A measure is considered not to be liable to affect trade if these two criteria are met.

With regard to the geographical zone where the beneficiaries' additional economic activities compete, you have explained that the majority of such additional economic activity is small and of a local nature. A small and local economic activity will presumably be predominantly, or entirely, aimed at serving a local

⁸ See, for instance, judgment in *Mediaset*, T-177/07, EU:T:2010:233, paragraphs 145–146, as confirmed on appeal in *Mediaset*, C-403/10 P, EU:C:2011:533, paragraphs 111, 113 and 115.

⁹ See, for instance, judgment in *Marinvest and Porting*, T-728/17, EU:T:2019:325, paragraph 106.

¹⁰ See, for instance, judgments in *Altmark*, C-280/00, EU:C:2003:415, paragraph 81, and *Eventech*, C-518/13, EU:C:2015:9, paragraph 68.

¹¹ NoA, paragraph 7.

para 192.

¹² See, for instance, ESA Decisions No 459/12/COL, *Bømlabadet Bygg AS*, and No 020/19/COL *Leangbukten Båttforenings Andelslag*, and the Commission Decisions in cases No 258/2000 *Leisure Pool Dorsten*; N 458/2004 *Editorial Andaluza Holding*; SA.33243 *Jornal de Madeira*; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*; and SA.38208 *United Kingdom – UK member-owned golf clubs*.

¹³ NoA, paragraph 196.

market and therefore be unlikely to attract customers from other EEA States to any meaningful degree.

Moreover, the compensation granted to the beneficiaries is limited in size, and the total compensation must be used to repay accumulated debts. Any remaining amount to be used in the performance of an economic activity would appear to be limited in size. This reduces the likelihood of the measure having any effect on the conditions of cross-border investments or establishment.

In addition, given that the compensation is granted to beneficiaries located in different regions of Norway, and is not granted to beneficiaries performing a specific and determined additional economic activity, any effect of the compensation would appear to be spread across different sectors and different geographical markets. It is therefore not apparent that the compensation would preclude or deter undertakings from other EEA states from establishing themselves in Norway.

Against this background, it is not apparent that the compensation and the tax exemption must be considered as having more than a marginal effect on trade between EEA States within the meaning of Article 61(1) EEA.

4 Preliminary conclusion

Based on the information provided by the Norwegian authorities, ESAs informal preliminary assessment is that the pre-notified measure would appear not to constitute state aid within the meaning of Article 61(1) EEA.

This is a letter concluding the pre-notifications contacts in the case at hand in accordance with paragraph 16 of [ESA's guidelines on Best Practice for the conduct of state aid control procedures](#).¹⁴ It represents informal guidance, and it is as such not binding on ESA.

Yours faithfully,

Gjermund Mathisen
Director
Competition and State Aid Directorate

This document has been electronically authenticated by Gjermund Mathisen.

¹⁴ Guidelines on Best Practice for the conduct of state aid control procedures (OJ L 82, 22.3.2012, p. 7, and EEA Supplement No 17, 22.3.2012, p. 1).