

Brussels, 24 November 2022  
Case No: 89541  
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Decision No 206/22/COL

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

**Subject: Temporary Crisis Framework – Grant scheme for small rural retailers due to an exceptionally severe increase in electricity prices**

## **1 Summary**

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the grant scheme for small rural retailers due to an exceptionally severe increase in electricity prices (“the measure”), ESA 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)(b). ESA has based its decision on the following considerations.

## **2 Procedure**

- (2) The Norwegian authorities notified the measure on 18 November 2022.<sup>2</sup>

## **3 Description of the measure**

### **3.1 Background**

- (3) The measure concerns the exceptionally severe increase in electricity prices that has resulted from the Russian aggression against Ukraine. As will be elaborated on in Section 3.6.1 below, rural retailers in Norway will be particularly hard hit by the resulting effect on electricity costs.
- (4) The measure is designed to comply with the European Commission’s (“the Commission”) Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (“the TCF”).<sup>3</sup>

### **3.2 Objective**

- (5) According to the Norwegian authorities, the objective of the measure is to support small retail stores in rural areas to adapt to higher energy costs. In so doing, the

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<sup>1</sup> Reference is made to Article 4(3) in 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 1329689 and 1329691.

<sup>3</sup> Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 1311, 24.3.2022, p. 1, as amended. The version applicable as of 28 October 2022 was published in OJ C 426, 9.11.2022, p. 1–34.

measure aims at safeguarding these retail stores as providers of food supplies and personal services in small rural communities.

### 3.3 Legal basis

- (6) The national legal basis for the measure will be the Parliamentary Decision authorising the measure and its budget, as set out in *Innst. 34 S (2022-2023)*, as well as the regulation on its administration that is to be adopted by the Ministry of Local authorities and rural development.

### 3.4 Aid granting authority

- (7) The aid granting authority will be *Distriktssenteret*.<sup>4</sup> *Distriktssenteret* will also administer the measure.

### 3.5 Aid will not be made conditional on the relocation of an activity

- (8) The Norwegian authorities confirm that aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Norway. There is no provision in the legal basis of the measure, or otherwise in Norwegian law, that would entail such a condition.

### 3.6 Beneficiaries

#### 3.6.1 Undertakings particularly affected by the severe increase in energy prices

- (9) The aid under the measure is reserved for rural retailers registered as participants under the so-called *Merkur*-programme. The aim of this aid programme is to support small rural grocery shops. Its primary focus is retailers in areas with population decline and long distances to other retail opportunities.<sup>5</sup>
- (10) As part of the programme, competence-based services are offered to registered retailers through 10 counsellors located in different areas of Norway. These services comprise support in respect of business development.<sup>6</sup>
- (11) Due to their location, the stores participating in the *Merkur*-programme typically have a weaker economic situation and customer base than stores situated in more central areas. Even when the electricity prices were normal, many retailers experienced a delicate financial situation due to a lack of regular or sufficient cash flow.<sup>7</sup>
- (12) The Norwegian authorities have further referred to a report from *Institutt for bransjeanalyse AS* (“IBA”). This report analysed the turnover of those stores participating under the programme in 2019.<sup>8</sup> IBA is an institute focusing on analyses of different business sectors.
- (13) The findings made in the report from IBA included, in particular, that rural retailers have a significantly lower growth in turnover compared to other retailers.

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<sup>4</sup> The Centre of Competence on Rural Development (*Distriktssenteret*) is a Government agency dedicated to strengthening the abilities of rural municipalities and regions to develop attractive communities. More information is available in English on: <https://distriktssenteret.no/english/>

<sup>5</sup> See: <https://www.merkur-programmet.no/om-oss/english-summary/>

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Institutt for bransjeanalyse AS. *Analyse av Merkurbutikkernes omsetning 2019*. The report is available on the following link: <https://www.merkur-programmet.no/wp-content/uploads/2021/12/Analyse-av-Merkurbutikkernes-omsetning-2019.pdf>.

- (14) In addition, the Norwegian authorities have made reference to a report from *Menon Economics AS* (“Menon”) in cooperation with *NORCE*.<sup>9</sup> Menon is an employee-owned consultancy, whereas *NORCE* is an independent research institute that conducts research for both public and private sectors.
- (15) The findings in this report included, in particular, that the fall in operating surplus from 2014 to 2019 among the rural retailers was higher than for other retailers.<sup>10</sup>
- (16) The combination of relatively lower growth rates, and larger falls in operating profit, also makes the stores participating in the *Merkur*-programme less economically robust with respect to increased operating costs than stores located in more central areas.
- (17) In view of the above, it is to be expected that those stores participating under the *Merkur*-programme will be particularly hard hit by the extraordinary increase in electricity prices that is resulting from Russia’s aggression against Ukraine.

### 3.6.2 Exclusions from scope

#### 3.6.2.1 Undertakings not registered in applicable registers

- (18) All operating businesses – with limited as well as unlimited liability – are obliged to register in the Register of business enterprises (*Foretaksregisteret*).<sup>11</sup> Undertakings which are required to register in the register are excluded from the measure, if such registration has not taken place. Sole proprietorships which are not required to register in the register, are, however, eligible when registered instead in the Central coordinating register of legal entities (*Enhetsregisteret*).<sup>12</sup>
- (19) Registration in the applicable register must have taken place by 31 December 2021 at the latest.

#### 3.6.2.2 Undertakings with outstanding liabilities

- (20) Undertakings are also excluded if taxes, fees or similar claims from a public body have not been paid and are overdue.

#### 3.6.2.3 Undertakings lacking the necessary approvals

- (21) Undertakings lacking the necessary permissions, approvals or concessions for their activity in Norway are ineligible under the measure.

#### 3.6.2.4 Undertakings under bankruptcy proceedings or liquidation

- (22) Undertakings subject to bankruptcy proceedings or liquidation are ineligible for aid under the measure.

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<sup>9</sup> Menon in cooperation with NORCE. *Gjennomgang av Merkur-programmet. Report 131/2021*. The report is available on the following link:

<https://www.regjeringen.no/contentassets/ea1fb174ff1247b6a470636bd174f79c/menon-publikasjon-131-2021-gjennomgang-av-merkur-programmet.pdf>

<sup>10</sup> *Ibid.*

<sup>11</sup> <https://www.brreg.no/en/about-us-2/our-registers/about-the-central-coordinating-register-for-legal-entities-ccr/>

<sup>12</sup> <https://www.brreg.no/en/about-us-2/our-registers/about-the-central-coordinating-register-for-legal-entities-ccr/>

### 3.7 Compliance with sanctions

#### 3.7.1 *Aid will not be granted to undertakings under sanctions adopted by the European Union or Norway*

- (23) The Norwegian authorities confirm that aid under the measure will not be granted to undertakings under sanctions adopted by Norway or the EU, including but not limited to: (a) persons, entities or bodies specifically named in the legal acts imposing the sanctions; (b) undertakings owned or controlled by persons, entities or bodies targeted by the sanctions; or (c) undertakings active in industries targeted by the sanctions insofar as the aid would undermine the objectives of the sanctions.

#### 3.7.2 *The measure may not in any way be used to undermine the intended effects of sanctions*

- (24) The Norwegian authorities confirm that the measure may not in any way be used to undermine the intended effects of sanctions imposed by Norway, the EU or its international partners. To this end, it will be in full compliance with both the anticircumvention rules of the applicable regulations and the national Regulation on the sanctions against Russia and Belarus.<sup>13</sup>

### 3.8 Aid instrument and aid amounts

- (25) The measure comprises grants in support of increased electricity costs. The grants will cover up to 80% of the difference between the actual electricity costs faced, and those that would have followed from an energy price of NOK 0.70 per kWh.
- (26) Aid under the measure can be granted in support of electricity costs incurred in the period from 1 September 2022 to 1 December 2023. The aid will be calculated and disbursed monthly. The maximum total aid amount per undertaking is EUR 2 million.
- (27) Electricity costs comprise consumption, all calculated net of VAT. Grid tariffs are excluded.

### 3.9 Administration

#### 3.9.1 *The application phase*

- (28) In order to apply for aid, applicants must document their incurred electricity costs by means of invoice(s) and proof of payment.
- (29) Applicants must further carry out a standardised energy survey. The purpose of this survey is to quantify consumption levels and identify energy saving measures.
- (30) Prospective applicants must lastly submit a declaration of compliance with reference to the requirements pertaining to sanctions, described in Section 3.7 above.

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<sup>13</sup> The measure will be in full compliance with *Regulation of 15 August 2014 No 1076*, as amended by *Regulation of 29 April 2022 No 647 (Forskrift om endring i forskrift om restriktive tiltak vedrørende handlinger som undergraver eller truer Ukrainas territoriale integritet, suverenitet, uavhengighet og stabilitet)*.

### 3.9.2 *Ex post control*

- (31) *Distriktscenteret* will carry out spot checks *ex post* in respect of the conditions under the measure.
- (32) There will also be a system for *ex post* control of compliance with the sanctions adopted in response to the aggression by Russia against Ukraine. This system will ensure claw-back of the full aid amount in case of non-compliance or undermining of the intended effects of the relevant sanctions.

### 3.10 Cumulation

- (33) The Norwegian authorities have confirmed that the relevant provisions on cumulation in the TCF and the COVID-19 Temporary Framework (“the COVID TF”) will be respected.
- (34) The measure at hand will allow direct grants for a different time period as compared to grants approved under section 3.1 of the COVID TF. No cumulation issues will then arise.
- (35) Norway has currently two other schemes under section 2.1 of the TCF: the Aid scheme for undertakings that suffer loss of revenue<sup>14</sup> and the Grant scheme due to an exceptionally severe increase in electricity prices.<sup>15</sup> It follows from the eligibility criteria of both these schemes that the beneficiaries under the measure at hand are excluded from the scope of these two schemes.
- (36) The Norwegian authorities confirm that aid granted under this measure may be cumulated with aid under the *de minimis* Regulation<sup>16</sup> and the SGEI *de minimis* Regulation,<sup>17</sup> and that the provisions and cumulation rules of those Regulations will be respected.
- (37) The Norwegian authorities confirm that aid under the notified measure may not be cumulated with aid under the General Block Exemption Regulation.<sup>18</sup>

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<sup>14</sup> ESA Decision No 151/22/COL.

<sup>15</sup> ESA Decision No 205/22/COL.

<sup>16</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid ([OJ L 352, 24.12.2013](#), p. 1).

<sup>17</sup> Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest ([OJ L 114, 26.4.2012](#), p. 8–13), consolidated version of 13 October 2020 (OJ L 337, 14.10.2020, p. 1–2).

<sup>18</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1), and Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215, 7.7.2020, p. 3), and Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270, 29.7.2021, p. 39).

### 3.11 Budget and duration

- (38) The overall State budget for the measure is NOK 150 million. Aid will be granted no later than 31 December 2023.

### 3.12 Monitoring and reporting

- (39) The Norwegian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the TCF. To this end, the Norwegian authorities will publish relevant information on each individual aid above EUR 100 000 in the national State aid register within 12 months from the date of granting the aid. The Norwegian authorities will also keep detailed records regarding the granting of aid for 10 years, calculated from the same date, and provide them to ESA upon request. In line with the requirements of ESA [Decision No 195/94/COL](#), as amended, the Norwegian authorities will further submit annual reports to ESA.

## 4 Presence of State aid

- (40) 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.”
- (41) The qualification of a measure as State aid therefore 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.
- (42) The measure is imputable to the State as it is administered by *Distriktssenteret* (see Section 3.4) and founded on a legal basis adopted by the State (see Section 3.3). It is also financed through State resources, since it is paid out of the State budget (see Section 3.11).
- (43) The measure comprises direct grants (see Section 3.8). It therefore confers an advantage on the beneficiaries by making available funds which would not be available under normal market conditions.
- (44) While the criteria presented in Sections 3.6.1 and 3.8 ensure that aid is only granted to undertakings affected by the increase in energy prices brought about by the crisis, their effect is also to exclude other undertakings, which are suffering from increased energy costs. For example, retailers that are not registered as participants under the *Merkur*-programme are ineligible under the measure.
- (45) The information submitted does not establish that some undertakings, which are *de facto* excluded, due to the criteria employed under the measure, are not in a comparable legal and factual situation as undertakings eligible for aid. For example, ESA is convinced that some retailers, which are participants under the *Merkur*-programme, may be in a comparable situation to retailers that are not participating in the programme. On this basis, ESA finds that the measure reserves the advantages available under it for certain categories of undertakings. The measure is therefore selective.

- (46) The grants made under the measure will strengthen the competitive position of the beneficiaries. There is furthermore nothing to preclude undertakings active in trade between EEA States from receiving aid. It cannot be excluded that some of the beneficiaries do attract customers across the border or procure goods subject to cross-border trade. The measure is therefore liable to distort competition and affect trade.
- (47) In view of the above, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

## **5 Aid scheme**

- (48) ESA notes that the legal basis of the measure is an act which does not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner.<sup>19</sup> The aid is therefore granted on the basis of an aid scheme.

## **6 Lawfulness of the aid**

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

## **7 Compatibility of the aid**

### **7.1 Introduction**

- (51) Under Article 61(3)(b) of the EEA Agreement, State aid "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State" can be considered compatible with the functioning of the EEA Agreement.
- (52) The military aggression against Ukraine by Russia, the sanctions imposed by the EU and its international partners, and the counter-measures taken, for example by Russia ("the ongoing crisis"), have created significant economic uncertainties, disrupted trade flows and supply chains, and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. It is against this background that the Commission has adopted the TCF. In the TCF, the Commission has defined State aid measures that it will, on a temporary basis, declare compatible with the internal market under Article 107(3)(b) TFEU.
- (53) Article 107(3)(b) TFEU corresponds to Article 61(3)(b) of the EEA Agreement. In order to ensure uniform application of the State aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA will also apply the TCF. In cases where all the applicable conditions in the TCF are fulfilled, ESA will therefore declare the

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<sup>19</sup> See Article 1(d) in Part II of Protocol 3.

measure in question compatible with the EEA Agreement on the basis of its Article 61(3)(b).

## 7.2 Limited amounts of aid

- (54) On the basis of the information presented by the Norwegian authorities, as set out above, ESA concludes that the measure fulfils all of the applicable conditions in the TCF.
- (55) ESA notes, first, that the measure fulfils all of the relevant conditions in point 55 of the TCF:
- a) As follows from the information presented in Sections 3.8, 3.9 and 3.10, the aid ceiling of EUR 2 million per undertaking will be respected. This is compliant with point 55(a) of the TCF.
  - b) The measure is, as established in Sections 3.11 and 5, an aid scheme with an estimated budget. This is compliant with point 55(b) of the TCF.
  - c) Aid under the measure will, as set out in Section 3.11, be granted no later than 31 December 2023. This is compliant with point 55(c) of the TCF.
  - d) The criteria presented in Sections 3.6.1 and 3.8 ensure that aid is only granted to undertakings affected by the crisis. This is compliant with point 55(d) of the TCF.
- (56) Second, the information presented by the Norwegian authorities establishes that the aid granted under the measure will also fulfil the remaining, generally applicable, conditions of the TCF.
- (57) In that regard, ESA notes that, as set out above in paragraph (8), aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Norway. Point 46 of the TCF is therefore complied with.
- (58) Further, as described above in Section 3.7, the Norwegian authorities have committed to respecting the provisions set out in points 47 and 52 of the TCF. Points 47 and 52 of the TCF safeguard the effectiveness of adopted sanctions. They concern respectively a prohibition on granting aid in breach of sanctions adopted by the EU, and of using aid measures in a way undermining the effectiveness of sanctions adopted by the EU and its international partners. To this end, the Norwegian authorities will, as identified above in paragraphs (30) and (32), require self-declarations and establish a system for *ex post* control.
- (59) Moreover, the Norwegian authorities have, as described above in Section 3.10, established appropriate systems for cumulation control to ensure compliance with point 53 of the TCF.
- (60) Lastly, the Norwegian authorities have, as set out above in Section 3.12, confirmed that they will respect the monitoring and reporting obligations laid down in section 3 of the TCF.

## 8 Conclusion

- (61) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this aid is compatible with the functioning of the



EEA Agreement, pursuant to its Article 61(3)(b), it has no objections to the implementation of the measure.

- (62) The Norwegian authorities have confirmed that the notification does not contain any confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

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

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