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The Green Warriors of Norway (NMF)

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Sent by email only to [REDACTED]

Subject: Mining operating licenses (complaint)
- *Preliminary assessment of complaint*

1 Introduction

We refer to your complaint to the EFTA Surveillance Authority (“ESA”) dated 8 March 2021, regarding alleged unlawful state aid granted by the Norwegian authorities to Nussir ASA and Nordic Mining ASA (“the alleged beneficiaries”).

The complaint concerns a permit for each of the alleged beneficiaries to deposit mining waste in respectively Repparfjord and Førdefjord in Norway (“the permits”).

According to the complaint, (i) the permits are granted without any payment to the community (without remuneration to the State), and (ii) the permits favour the alleged beneficiaries compared to mining companies not allowed to deposit mining waste in the sea, as the alternative (land disposal) is costlier than marine disposal.

Since receiving your complaint, we have gathered information from the Norwegian authorities. Following a preliminary examination of the complaint, ESA takes the preliminary view that the alleged beneficiaries have not received aid in breach of the EEA state aid rules through the permits. This preliminary view is set out in further detail below.

2 No state resources

Only advantages granted directly or indirectly through state resources can constitute state aid within the meaning of Article 61(1) of the EEA Agreement.¹

The transfer of state resources may take many forms, and that includes the foregoing of state revenue.² Foregoing of state revenue can be in the form of granting access to a public domain, or granting special or exclusive rights without adequate remuneration in line with market rates.³

However, in cases where the state acts as a regulator, it can decide legitimately not to demand a remuneration, without falling within the scope of the state aid rules, provided that all operators concerned are treated in a non-discriminatory manner, and that there is an inherent link between achieving the regulatory purpose and the foregoing of revenue.⁴

¹ See the Guidelines on the notion of state aid as referred to in Article 61(1) of the EEA Agreement (“NoA”) ([OJ L 342, 21.12.2017, p. 35](#)), paragraph 47.

² NoA, paragraph 51.

³ NoA, paragraph 53.

⁴ NoA, paragraph 54.

When granting the permits, the State acted as a regulator. It applied criteria and pursued objectives and policies set out in the Pollution Control Act.⁵ Further, permits for marine disposals in general are not subject to charges or fees from the State, apart from a case handling fee. The same applies to permits for land disposals. Accordingly, it appears that granting the permits without remuneration does not constitute the foregoing of state resources, within the meaning of Article 61(1) of the EEA Agreement.

Costs for marine disposal and land disposal entail a transfer of resources between private entities. The fact that the level of the costs may be influenced by the State's regulation on disposal and its granting of disposal permits does not lead to those costs constituting the granting of state resources.⁶ Accordingly, the advantage for a mining company of any difference between the costs for a marine disposal and a land disposal is not granted through state resources, within the meaning of Article 61(1) of the EEA Agreement.

Based on the above, the granting of the permits does not appear to entail either a transfer of, or foregoing of, state resources within the meaning of Article 61(1) of the EEA Agreement, and consequently would not constitute state aid.

3 Preliminary view

Therefore, with reference to paragraph 48(b) of the [ESA's Guidelines on Best Practice for the conduct of state control procedures](#)⁷ and based on the information available, ESA takes preliminary view that the alleged beneficiaries have not received any aid in breach of the EEA state aid rules through the permits.

If you have any additional information you would like to submit that might change this preliminary view,⁸ please do so **by 13 July 2021**. Otherwise, the case will be closed without further notice.

A copy of this letter will be sent to the Norwegian authorities in line with paragraph 51 of ESA's Guidelines on best practices for the conduct of state aid procedures. When the case is closed, a non-confidential version of this letter will be published on ESA's website,⁹ in line with Article 12(1) in conjunction with Appendix III of ESA's [rules on public access to documents](#).¹⁰

Yours sincerely,

Gjermund Mathisen
Director
Competition and State aid

This document has been electronically authenticated by Gjermund Mathisen.

⁵ *Lov om vern mot forurensninger og om avfall (forurensningsloven)* ([LOV-1981-03-13-6](#)).

⁶ See in this respect NoA, paragraph 61.

⁷ 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).

⁸ See order of the General Court, 31.1.2020, *Irish Wind Farmers' Association*, T-6/19, EU:T:2020:20, paragraph 42.

⁹ <https://www.eftasurv.int/state-aid/preliminary-assessments>.

¹⁰ ESA Decision No 015/21/COL of 3.3.2021.