

## IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

## EFTA SURVEILLANCE AUTHORITY DECISION

No 235/09/COL

of 20 May 2009

on the Temporary Small Aid Scheme

(Norway)

THE EFTA SURVEILLANCE AUTHORITY <sup>(1)</sup>

HAVING REGARD to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 of the Surveillance and Court Agreement <sup>(8)</sup>,

HAVING REGARD to the Agreement on the European Economic Area <sup>(2)</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

Whereas:

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice <sup>(3)</sup>, in particular to Article 24 thereof,

## I. FACTS

## 1. Procedure

The Norwegian authorities notified the Temporary Small Aid Scheme, pursuant to Article 1(3) of Part I of Protocol 3, by letter of 2 April 2009 (Event No 514308).

HAVING REGARD to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement <sup>(4)</sup>,

## 2. Description of the proposed measures

## 2.1. The objective of the aid measure

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement <sup>(5)</sup> and in particular Part VIII – Temporary rules regarding the financial crisis – Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis <sup>(6)</sup>, amended by the Authority's Decision No 190/09/COL of 22 April 2009 <sup>(7)</sup>,

The Norwegian authorities have indicated that the financial crisis has started affecting the real economy. The notified measure is a part of a wider package of measures <sup>(9)</sup> aimed at remedying a serious disturbance in the Norwegian economy. The notified scheme provides for the possibility to grant small amounts of aid to companies finding themselves facing a sudden shortage, or even unavailability of credit, thus contributing to remedy a serious disturbance in the Norwegian economy.

The scheme is explicitly based on Article 61(3)(b) EEA, and relies on section 4.2 'Compatible limited amount of aid' of the Temporary Framework.

<sup>(1)</sup> Hereinafter referred to as the Authority.

<sup>(2)</sup> Hereinafter referred to as the EEA Agreement.

<sup>(3)</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>(4)</sup> Hereinafter referred to as Protocol 3.

<sup>(5)</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union*, (OJ L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994 p. 1, hereinafter referred to as the State Aid Guidelines). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

<sup>(6)</sup> Hereinafter referred to as the Temporary Framework.

<sup>(7)</sup> OJ L 15, 20.1.2011, p. 26, and EEA Supplement No 3, 20.1.2011, p. 31.

<sup>(8)</sup> OJ L 139, 25.5.2006, p. 37, and EEA Supplement No 26, 25.5.2006, p. 1, as amended by Decision No 319/05/COL of 14 December 2005 (OJ L 113, 27.4.2006, p. 24, and EEA Supplement No 21, 27.4.2006, p. 46).

<sup>(9)</sup> Addressing the emerging problems in the Norwegian labour market the Norwegian Government amended the Fiscal Budget for 2009 with St.prp. nr. 37 (2008-2009) (a white paper). Although the Temporary Small Aid Scheme is not explicitly a part of St.prp. nr. 37 (2008-2009) it will be financed within the budget increase for Innovation Norway granted in this amendment.

## 2.2. The nature and form of the aid

The aid will be provided in the form of transparent forms of aid, as defined by the General Block Exemption Regulation<sup>(1)</sup> Article 5, and in particular in the form of direct grants, reimbursable grants, interest rate subsidies and subsidised public loans with an aid element which is calculated on the basis of the Authority's reference rate<sup>(2)</sup> applicable on the date of granting the aid, and public guarantees.

The Guarantee scheme administered by Innovation Norway is normally employed in accordance with the Act referred to in Annex XV to the EEA Agreement on *de minimis* aid<sup>(3)</sup>. This implies *i.a.* that individual aid provided to undertakings which are not undertakings in difficulty are treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under the scheme does not exceed EUR 1 500 000 per undertaking (EUR 750 000 in the transport sector). To calculate the aid element of public guarantees for loans exceeding EUR 1 500 000, and in line with the possibility foreseen by the last sentence of the footnote to point 4.3.2(a) of the Temporary Framework, the Norwegian authorities will use as a benchmark the safe-harbour premiums laid down in the Annex of the Temporary Framework. Irrespective of whether the guarantees are issued for the benefit of SMEs or large companies, the annual aid element resulting from the guarantee will be calculated as the difference between the safe harbour premium rates laid down in the Annex of the amended Temporary Framework and the annual premiums applied by the Norwegian authorities.

## 2.3. National legal basis for the aid measure

The legal basis for the scheme is St.prp. nr. 1 (2008–2009) for the Ministry of Trade and Industry, and a letter from the Ministry to Innovation Norway ('Oppdragsbrev Innovasjon Norge').

The scheme will enter into force upon its approval by the Authority.

## 2.4. The administration of the scheme

The notified scheme will be administered by Innovation Norway.

<sup>(1)</sup> Incorporated into Annex XV (State aid) to the EEA Agreement by Decision of the EEA Joint Committee No 120/2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008, p. 20).

<sup>(2)</sup> The reference rate is calculated on the basis of the Chapter on the method for setting Reference and Discount rates of the Authority's State Aid Guidelines as amended by the Authority's Decision No 788/08/COL of 17 December 2008. To get the applicable reference rate appropriate margins have to be added to a base rate. The base rates in force are published on the Authority's webpage.

<sup>(3)</sup> Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5) was incorporated into Annex XV (State aid) to the EEA Agreement by Decision of the EEA Joint Committee No 29/2007 (OJ L 209, 9.8.2007, p. 52, and EEA Supplement No 38, 9.8.2007, p. 34).

## 2.5. Budget and duration

The Norwegian authorities have indicated that it is not possible at this stage to provide an annual budget for the notified measure as the general budget for Innovation Norway was increased without identification of the appropriation dedicated to the notified scheme.

Aid under this scheme can be granted until 31 December 2010.

## 2.6. Recipient

The scheme applies to SMEs and large firms and covers the whole territory of Norway.

The Norwegian authorities confirm that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulty in the meaning of point 2.1 of the Authority's State Aid Guidelines on rescuing and restructuring of firms in difficulty, nor to SMEs which were on that date firms in difficulties in the meaning of Article 1(7) of the General Block Exemption Regulation.

The scheme may be applied to firms that were not in difficulty on 1 July 2008, but entered into difficulty thereafter as a result of the global financial and economic crisis.

## 2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

The Temporary Small Aid Scheme applies to all sectors, with the sectoral exclusions laid down in section 4.2.2, point 38(g) of the Temporary Framework. Export aid and aid favouring domestic over imported goods and services are excluded (section 4.2.2(d) of the Temporary Framework).

## 2.8. Basic elements of the scheme

The Norwegian authorities confirm that the new scheme will comply fully with the conditions of section 4.2.2 of the Temporary Framework for granting small amounts of compatible aid. In particular;

- the aid shall not exceed EUR 500 000 gross (before any deduction of tax or other charge) per undertaking. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid;
- prior to granting the aid, Innovation Norway shall obtain from the undertakings concerned a declaration, in written or electronic form, about any other *de minimis* aid and aid pursuant to this measure received during the current fiscal year. Innovation Norway will check that the aid will not raise the total amount of aid received by the undertaking during the period 1 January 2008 to 31 December 2010 to a level above the ceiling of EUR 500 000;

- the aid will not be granted later than 31 December 2010;
- export aid or aid favouring domestic over imported products will not be granted under the scheme;
- where the aid under this measure is to be combined with other compatible aid, the maximum aid intensities indicated in the relevant Guidelines or Block Exemption Regulations, will be respected;
- no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulty within the meaning of point 2.1 of the Authority's State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty, nor to SMEs which were on that date firms in difficulty within the meaning of Art 1(7) of the General Block Exemption Regulation, as incorporated into the EEA Agreement.

### 2.9. Monitoring and reporting

The Norwegian authorities confirm that the monitoring and reporting rules laid down in the Temporary Framework will be complied with.

## II. ASSESSMENT

### 1. The presence of state aid

Article 61(1) of the EEA Agreement reads as follows:

'1. 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.'

State resources are involved as the notified scheme is funded through the Norwegian State Budget. The measure is selective as it will be granted to certain firms only. By making available limited amounts of aid which would not be made available to the beneficiaries without the measure, the measure involves the granting of an advantage to the beneficiaries. The measure affects trade between EEA States as the scheme is not limited to beneficiaries active in sectors where no intra-EEA trade exists.

In view of the above, the Authority has come to the conclusion that the scheme constitutes state aid within the meaning of Article 61(1) EEA.

### 2. Procedural requirements

Pursuant to Article 1(3) of Part I of 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'.

By submitting notification of the Temporary Small Aid Scheme with a letter dated 2 April 2009 (Event No 514308), the Norwegian authorities have complied with the notification requirement. They have furthermore indicated that they will not implement the scheme until it is approved by the Authority, thereby complying with the standstill obligation.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

### 3. Compatibility of the aid

The Authority has assessed the compatibility of the notified measure with Article 61(3)(b) of the EEA Agreement in combination with the Temporary Framework.

By adopting the Temporary Framework, the Authority acknowledged (section 4.1(33)) that 'In the light of the seriousness of the current financial crisis and its impact on the overall economy of the EFTA States, the Authority considers that certain categories of state aid are justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) thereof.'

The notified measure is intended to contribute to remedy a serious disturbance in the economy of a EFTA State and is designed to meet the requirements of the additional category of aid ('Compatible limited amount of aid') described in section 4.2.2 of the Temporary Framework.

The Authority considers that the notified measure meets all the conditions of the Temporary Framework. In particular:

- The maximum aid amount will not exceed the cash equivalent of EUR 500 000 per undertaking (in line with point 4.2.2(a) and (f) of the Temporary Framework).
- The aid is granted in the form of a scheme (in line with point 4.2.2(b) of the Temporary Framework).

- The aid is granted to firms which were not in difficulty <sup>(1)</sup> on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis (in line with point 4.2.2(c) of the Temporary Framework).
- Export aid and aid favouring domestic over imported goods and services are excluded (in line with point 4.2.2(d) of the Temporary Framework).
- Aid may be granted no later than 31 December 2010 (point 4.2.2(e) of the Temporary Framework).
- The monitoring and reporting rules laid down in the Temporary Framework will be respected (section 4.7(59) of the Temporary Framework).

The Authority therefore considers that the notified measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EFTA State, as defined in point 4.1 of the Temporary Framework.

#### 4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the Temporary Small Aid Scheme which the Norwegian authorities are planning to implement is in conformity with the Temporary Framework and is compatible with the functioning of the EEA Agreement within the meaning of Article 61 EEA.

The Norwegian authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The EFTA Surveillance Authority has decided not to raise objections to the Temporary Small Aid Scheme on the basis of Article 61(3)(b)(f) the EEA Agreement.

#### *Article 2*

This Decision is addressed to the Kingdom of Norway.

#### *Article 3*

Only the English version is authentic.

Done at Brussels, 20 May 2009.

*For the EFTA Surveillance Authority*

Per SANDERUD  
President

Kurt JÄGER  
College Member

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<sup>(1)</sup> For large companies, see point 2.1 of the Guidelines on state aid for restructuring firms in difficulty. For SMEs, see Article 1(7) on the definition of the General Block Exemption Regulation.