

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 149/02/COL

of 26 July 2002

regarding environmental tax measures

(Norway)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 and Article 1 of Protocol 3 thereof,

Having regard to the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾, in particular Chapter 15 thereof ⁽⁴⁾,

Whereas:

I. FACTS

Procedure

By decision of 23 May 2001, the EFTA Surveillance Authority adopted new Environmental Guidelines (see Decision No 152/01/COL). Pursuant to point 69 of these guidelines, the Authority proposed, as appropriate measures under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that EFTA States should bring their existing environmental aid schemes into line with these guidelines before 1 January 2002.

By letter from the Authority dated 23 May 2001 (Doc. No 01-3596-D), the Norwegian Government was informed about the adoption of these new guidelines and asked to signify its agreement to the appropriate measures. By letter from the Ministry of Trade and Industry dated 6 July 2001, received and registered by the Authority on 10 July 2001 (Doc. No 01-5475-A), the Norwegian Government signified its agreement to the appropriate measures.

The implementation of the new Environmental Guidelines was discussed between representatives from the Authority and the Norwegian authorities on various occasions (i.e. at bilateral meetings in April, June and September 2001).

⁽¹⁾ Hereinafter referred to as the 'EEA Agreement'.

⁽²⁾ Hereinafter referred to as the 'Surveillance and Court Agreement'.

⁽³⁾ 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 EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994; EEA Supplements No 32, 3.9.1994, last amended by the Authority's Decision No 370/01/COL of 28 November 2001 (OJ C 34, 7.2.2002, p. 15); hereinafter referred to as the 'Authority's State Aid Guidelines'.

⁽⁴⁾ Chapter 15 of the Authority's State Aid Guidelines on Aid for Environmental Protection, as adopted by the Authority's Decision No 152/01/COL of 23 May 2001 (OJ L 237, 6.9.2001, p. 16), hereinafter referred to as the 'Environmental Guidelines'.

By letter from the Ministry of Finance dated 31 January 2002, received and registered by the Authority on 5 February 2002 (Doc. No 02-1004-A), the Norwegian Government informed the Authority of the measures in place and submitted its comments as regards compliance with the new Environmental Guidelines.

By letter dated 28 February 2002, the Authority acknowledged receipt of this letter (Doc. No: 02-1539-D). The Authority emphasised that, having assessed the information submitted to it, the various schemes in place could not be regarded as complying with the requirements laid down in the new Environmental Guidelines. The Authority observed in this respect that the Norwegian Government had acknowledged this fact and informed the Authority of plans to remedy the situation. However, the Authority took the view that the plans and intentions referred to by the Norwegian Government were not sufficient, since they did not contain any concrete proposals or commitments which would have ensured full compliance with the new Environmental Guidelines as from 1 January 2002.

Having identified its main doubts concerning the compatibility of certain derogations from environmental taxes with the Environmental Guidelines, the Authority requested the Norwegian Government to present concrete proposals of adequate implementing measures and commitments ensuring that the requirements set out in the new Environmental Guidelines were met from the prescribed date. In addition, the Norwegian Government was requested to submit additional information, including a justification of the aid measures in question under the State aid rules. These proposals, commitments and additional information were to reach the Authority within two months from receipt of the letter dated 28 February 2002.

The Authority stressed that, in the absence of any concrete proposals, commitments and additional information as requested by the Authority within that deadline, the Authority would proceed to open the formal investigation procedure.

By letter from the Ministry of Finance dated 15 May 2002, received and registered by the Authority on 24 May 2002 (Doc. No 02-3995-A), the Norwegian Government submitted additional information. The Norwegian Government informed the Authority, *inter alia*, of the mandate of a working group which was established in order to assess the consequences of the new Environmental Guidelines for the Norwegian electricity tax system. This working group was asked to deliver a preliminary report by 1 July 2002. Against this background, the Norwegian Government asked the Authority to allow for additional time in order to comply with the requirements laid down in the new Environmental Guidelines.

By e-mail dated 5 July 2002, the Norwegian authorities sent the Authority a copy (in Norwegian) of a preliminary report of the working group.

The Authority notes that it has not been formally informed by the Norwegian Government about that report, nor has the Norwegian Government expressed its views on the conclusions presented in the report or explained its further approach regarding the findings of the report. It should also be noted that this report reached the Authority after the deadline for submitting information and proposals had expired. In light of these circumstances, the Authority has not taken the content of this preliminary report into consideration when assessing the various tax measures.

Description of aid measures

The following description is based partly on information provided by the Norwegian Government and partly on information at the Authority's disposal.

The Authority regrets that the Norwegian Government has not submitted copies of the relevant legal provisions governing the various tax measures at issue. Furthermore, the Authority observes that, even though the Authority had specifically asked the Norwegian Government to submit supportive documents allowing the Authority to verify the structure and logic of the Norwegian environmental tax system, including all relevant background documents on the objectives pursued by the environmental taxes and the various exemptions, no such information was provided by the Norwegian Government.

Tax on electricity consumption

The tax on electricity consumption was first introduced in 1971. According to the Norwegian Government (see description given in letter of 31 January 2001), the objective of the tax was to ensure a more efficient use of electric power and thus lead to positive environmental effects that would not otherwise occur.

The tax covers all domestic use of electricity, subject to certain exemptions and, until 1993, reduced rates for different industries. According to the Norwegian Government, these exemptions and reduced rates were introduced to offset losses of competitiveness. In this respect, the Norwegian Government submitted data on electricity consumption by the industries covered by the exemption and on increased costs for these industries should the exemption from the electricity tax be abolished.

Since 1990, all users in Finnmark and seven municipalities in North Troms (Karlsøy, Kvænangen, Kåfjord, Lyngen, Nordreisa, Skjervøy and Storfjord) have been exempted from the tax. This exemption applies to both household consumption and all commercial activities.

Until 1992, the tax covered all industries, but certain sectors benefited from reduced rates (this was the case for all or part of the power-intensive industry⁽¹⁾ as well as the pulp and paper industry). In 1993, these industries were completely exempted. As from 1 January 1994, the exemption was extended to the whole manufacturing industry, mining and greenhouse industry. According to the Norwegian Government, the limitation of the exemption to power-intensive industries was abandoned, since the definition was unclear and could not be maintained. From 1997, labour market enterprises that exercise industry production are also exempted from the tax. Other sectors of industry are subject to the tax.

According to the Norwegian Government, the tax base was extended, as from 1 January 2001, to cover the use of electricity in administration buildings in the manufacturing industry and mining enterprises. According to the Norwegian Government, this amendment resulted in a situation where only electricity used in production processes was exempted from the tax. In order to be defined as an administration building a minimum of 80 % of the building's space has to be used for administration purposes. This meant that if production activities occupied above 20 % of the space, the electricity delivered to that building was not to be taxed. This was, according to the Norwegian Government, seen as the only practical definition.

According to the Norwegian Government, the existing exemptions from the tax (i.e. sectoral and regional derogations) cover about 45 % of the total electricity consumption and about 70 % of electricity consumption in all industries in Norway.

The following table gives an overview of the applicable tax rates and exemptions since 1993, based on figures submitted by the Norwegian Government.

Table 1: Electricity tax in øre per kWh (expressed in 2002-prices)

| | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|--------------|---|--|------------|------------|---|------------|---------------------------|------------|---|------|
| Tax rate | 5,60 | 6,12 | 6,09 | 6,14 | 6,34 | 6,34 | 6,41 | 8,95 | 11,47 | 9,30 |
| Reduced rate | 2,80 ⁽¹⁾ | - ⁽²⁾ | — | — | — | — | — | — | — | — |
| Exemptions | Power-intensive industry, pulp and paper industry and greenhouses | Manufacturing industry and mining exempted | As in 1994 | As in 1994 | Exemption was extended so as to include labour market companies undertaking industry production | As in 1997 | As in 1997 ⁽³⁾ | As in 1999 | As in 1999 but excluding electric power used in administrative buildings from exemption | |

⁽¹⁾ The Norwegian Government pointed out that the manufacturing industry and mining paid only 2,3 øre per kWh.

⁽²⁾ The manufacturing industry and mining were, as from 1 January 1994 fully exempted from the tax.

⁽³⁾ However, according to the Norwegian Government, the exemption for users with electric boilers was abolished.

⁽¹⁾ The main sectors of the power-intensive industry are the aluminium and ferro alloy industries.

In addition, the Norwegian Government submitted information on the revenues and calculated tax expenditures under the tax on electricity consumption. Tax expenditure is calculated as revenue forgone by the State due to the tax exemptions of tax reductions. For the purpose of these calculations, possible behavioural changes caused by an abolishment of the tax exemption are not taken into account.

Table 2: Tax on electricity consumption: Revenues and tax expenditures expressed in million NOK

| | 1999 | 2000 | 2001 | 2002 |
|--|-------|-------|-------|-------|
| Revenues | 3 267 | 4 205 | 6 530 | 6 206 |
| Tax expenditure due to sectoral exemptions | 2 735 | 3 940 | 5 595 | 4 605 |
| Tax expenditure due to regional exemption | 100 | 140 | 190 | 160 |

The Authority notes that the relevant legal provisions governing the electricity tax would seem to stipulate as a general rule that all domestic consumption of electricity is liable to taxation ⁽¹⁾. On the other hand, the relevant provisions formulate exemptions for certain industries or regions ⁽²⁾. The sectoral derogations are defined with reference to their statistical classification.

In some cases, the scope of the exemption has been further clarified/limited, so that electricity used on administrative buildings would not be covered by the exemption ⁽³⁾.

CO₂ tax

The CO₂ tax on mineral oil and petrol was introduced in 1991 and on coal and coke in 1992. When the tax was first introduced, it was an integrated element of the existing excise tax-systems on mineral oil, petrol and coal and coke. As part of the green tax reform in 1999, the CO₂ tax was proposed as a separate tax in the legislation. The rate of the CO₂ tax on mineral oil was set at NOK 0,490 per litre ⁽⁴⁾. The rate of the CO₂ tax on coal and coke was increased, in the period between 1994 and 2002, from (2002) NOK 0,410 to (2002) NOK 0,490 per kg.

The tax levied on coal and coke covers products used for energy purposes. According to the Norwegian Government, the use of coal and coke as raw materials or as reducing agents in industrial processes is exempted from the CO₂ tax. This exemption was adopted in 1992 when the CO₂ tax on coal and coke was introduced. According to the Norwegian Government, coal and coke are used as raw materials or reducing agents in the production of carbides, ferro alloys and primary aluminium and magnesium. These industries were also energy-intensive and would not be viable without the exemption. In its letter dated 31 January 2002, the Norwegian Government stated that the reason for the exemption was that available techniques were based on the use of carbon material and that the producers in question were exposed to international competition.

Furthermore, the CO₂-tax is not levied on coal and coke used for energy purposes in production of cement and leca. This exemption was established in 1992, as the tax came into force. The reason for this exemption is, according to the Norwegian Government, that possible large-scale substitutes to coal and coke would be unprofitable and that the industry concerned would be exposed to international competition.

The paper and pulp industry has paid a reduced rate of NOK 0,245 per litre since January 1993.

⁽¹⁾ See the Norwegian Parliament's decision on the electricity tax in the context of the State Budget for 2002, Vedtak om forbruksavgift på elektrisk kraft, 28 November 2001, paragraph 1 as well as Chapter 3 of the Regulation on Excise Duties, paragraph 3.12.1.

⁽²⁾ See the Norwegian Parliament's decision on the electricity tax in the context of the State Budget for 2002, Vedtak om forbruksavgift på elektrisk kraft, 28 November 2001, paragraph 1 as well as Chapter 3 of the Regulation on Excise Duties, paragraph 3.12.4.

⁽³⁾ Chapter 3 of the Regulation on Excise Duties, paragraph 3.12.5.

⁽⁴⁾ According to information submitted by the Norwegian Government, the rate expressed in 2002 NOK has not changed since 1994.

The Norwegian Government has submitted information regarding revenues and tax expenditures under the CO₂ tax ⁽¹⁾.

Table 3: CO₂ tax revenues and tax expenditures in million NOK ⁽¹⁾

| | 1999 | 2000 | 2001 | 2002 |
|-----------------|-------|-------|-------|-------|
| Revenues | 6 904 | 6 567 | 6 600 | 7 018 |
| Tax expenditure | 2 125 | 2 175 | 2 230 | 2 270 |

⁽¹⁾ The Norwegian Government explained that the figures were calculated using the CO₂ tax on mineral oil at a rate of NOK 0,49 per litre as a benchmark.

The Authority notes that based on the relevant legal provisions governing the CO₂ tax, certain uses of the taxable products are exempted from the tax. Pursuant to paragraph 3.6.3 of Chapter 3 of the Regulation on Excise duties, products used as raw material are eligible for refund of the tax to the extent that CO₂ emissions into the air are less than the carbon content of the respective product would indicate. According to paragraph 3.6.4 of Chapter 3 of the Regulation on Excise Duties, coal and coke used as reducing agents are exempted from the tax. The exemption covers only the amount of the products necessary for the reduction process. Furthermore, coal and coke used for the manufacture of clinker in combination with the production of cement and leca are exempted from the tax.

In addition, the Customs and Excise Duties Department issued explanatory notes to the exemptions referred to above which can further illustrate the background for the exemptions at issue ⁽²⁾.

As regards the use of coal and coke as raw materials for industrial processes, the notes say that when coal and coke are a part of the finished product, either permanent or temporary, in a way that implies no emissions of CO₂, or that the emissions are lower than if it had been a normal combustion, the use of coal and coke is exempted from tax. This is the case if coal and coke are used, *inter alia*, as raw materials for production of graphite electrodes and electrode mass and e.g. by production of calcium carbide.

As regards the use of coal and coke as reducing agents in industrial processes, the notes state that in some cases, coal and coke are a necessary part of the chemical process, but will not be included as a part of the finished product. In such cases the level of CO₂ emissions is comparable to emissions from use of coal and coke for energy purposes. The reason for the exemption is said to be that there are no alternative materials for such processes other than coal and coke.

The Norwegian Government submitted figures about the CO₂ emissions caused by the various industries as well as estimates regarding the costs due to the CO₂ tax.

SO₂ tax

In 1970, a tax on mineral oil was introduced. The Norwegian Government explained that, pursuant to Regulation of 17 September 1976 No 2 ⁽³⁾, all or part of that tax could be reimbursed on application, if the emission from the use of the product was less than the content of sulphur would indicate. All users of mineral oil were eligible to apply for reimbursement. This showed, according to the Norwegian Government, that the SO₂ tax targets in fact the sulphur dioxide actually emitted.

⁽¹⁾ As regards the concept of 'tax expenditure', see explanation above.

⁽²⁾ Toll- og avgiftsdirektoratets kommentarer Fritak for industriell bruk, kull og koks (jf. Stortingets vedtak om CO₂-avgift § 3 nr.1 bokstav d og § 3 nr.4 bokstav a, jf. forskriften §§ 3-6-3 og 3-6-4).

⁽³⁾ The Authority notes that this Regulation was not submitted to it.

As from 1993, the tax was based on the content of sulphur in the oil and increased according to the percentage of the content of sulphur. The tax base covered petroleum, gas oil, solar oil, auto diesel, diesel oil and fuel oil or any oil that might be used as fuel oil. In 1999, the sulphur-based tax levied on mineral oil was changed into a SO₂ tax.

At the same time, the tax base was extended so as to include coal and coke. However, SO₂ emissions due to the use of coal and coke were taxed at a reduced rate. The Regulation on sulphur tax on mineral products of 18 December 1998 No 961 ⁽¹⁾ provided for the application of a differentiated tax depending on the different categories of coal and coke, based on the presumed sulphur content. Following the extension of the scope of the SO₂ tax, the reimbursement scheme under Regulation of 17 September 1976 No 2 (see above) was extended so as to cover also the new products subject to the tax.

The scope of the tax was further extended in 1999, so as to include also SO₂ emissions from oil refinery plants. In order to avoid possible double taxation, the Regulation on sulphur tax on mineral products of 18 December 1998 No 961 paragraph 1, No 3 was implemented. This provision stipulated that if products already taxed caused the emission covered by the tax, the former tax should be deducted from the tax payable on the emission. Hence, as far as the oil refineries used mineral oil in the refinery process the amendment in 1999 was in reality merely a technical one. From being taxed on emission indirectly through the reimbursement scheme, the tax was formed directly as an emission tax. Oil refineries were thus singled out as a candidate where it was considered as more efficient to apply the SO₂ tax directly on the emission from the refinery. In the Norwegian Government's view, only as far as the emissions were caused by sources not previously taxed, the emission tax on oil refineries could be said to represent a 'new' tax. Because oil refineries use raw oil to produce mineral oil products, there is emission from this process as such. Raw oil is, however, not taxed as a product and thus not part of the reimbursement scheme.

According to the figures presented by the Norwegian Government, the basic SO₂ tax rate on mineral oil decreased from (2002) NOK 0,084 per litre in 1994 to (2002) NOK 0,070 per litre in 2002. The rate of the SO₂ tax in coal and coke and oil refineries decreased from (2002) NOK 3,24 per kg SO₂ in 1999 to (2002) NOK 3,14 per kg in 2002.

As from 1 January 2002, the SO₂ tax on use of coal and coke and on oil refineries was abolished. The Norwegian Government explained that the industry, which was previously covered by the SO₂ tax, would instead be regulated through emissions permits in accordance with the Pollution Control Act. According to the Norwegian Government, the abolishment of the tax is to be seen against the background of the Norwegian States commitments under the 1999 Gothenburg Protocol, which sets a ceiling on Norwegian SO₂ emissions of 22 000 tonnes in 2010. The Norwegian Government explained that in order to achieve that emission limit, Norwegian SO₂ emissions would have to decrease by 7 000 tonnes. Calculations made by the Norwegian State Pollution Control Authority showed that this reduction was best made by the process industry. To this end, a letter of intent was signed, on 19 September 2001, between the Ministry of Environment and the Norwegian Federation of Norwegian Process Industries (PIL), on behalf of undertakings in the following sectors: oil refineries, chemical/ceramic materials, cement, ferro alloys and aluminium.

The Norwegian Government stated that in the environmental field there are different kinds of instruments or measures that should be considered in order to choose the most efficient one to reach the target set, the tax instrument being one of them. In St.prp. No 54 (1997-1998), several measures were considered in order to reduce the overall emission of SO₂, and it was chosen to implement a tax on the use of coal and coke with a reduced rate. However, a study published by the Norwegian Pollution Control Authority showed that only minor emission reduction could be achieved by this reduced rate. Hence, the tax was abolished and other measures, such as the Agreement of Intent entered into with PIL, were introduced.

⁽¹⁾ The Authority notes that this Regulation was not submitted to it.

According to the Agreement of Intent, the Federation of Norwegian Process Industries declares on behalf of the companies listed in an Appendix to the Agreement ⁽¹⁾, that they would develop technology and build cleansing plants that will reduce Norway's emission of SO₂ by a minimum of 5 000 tonnes. Furthermore, PIL will make concrete proposals on how such an emission reduction may be carried out and at the same time make proposals on how a total reduction of 7 000 tonnes may be achieved.

The Agreement further stipulates that emissions from individual operations will be regulated by the Norwegian Pollution Control Authority (SFT) through licences in accordance with the Pollution Act associated with implementation of the EC Directive on integrated pollution control (the IPPC Directive) for existing industry which is to be operated in accordance with the Directive's requirements by 30 October 2007. To the extent permitted by the Pollution Act, the environmental protection authorities aim to design the emission licences in such a way that the industry is given the opportunity to meet the reduction requirements by cooperating in taking joint emission reducing measures where the industry finds this most efficacious. The emission licences are also to provide rules on the more detailed terms for joint implementation, including that the requirements in the IPPC Directive on use of BAT ⁽²⁾ in the individual plants are complied with. Furthermore, the emission licences are to be formulated in accordance with the requirements for alternative methods for relief from duty in the EFTA Surveillance Authority's guidelines for environmental support.

According to the Agreement of Intent, PIL is to put forward proposals for methodology to calculate/measure the emission of SO₂ from individual companies by 1 June 2002.

The Norwegian Government declared that it had the intention for regulation, in accordance with the Pollution Act, to be the main tool to reduce the SO₂ emissions from industrial processes until the deadline for emission reduction measures has been reached, at the latest by 2010. The legally binding obligations will thus be contained in the companies' licences. Accordingly, the Government undertook to put forward a proposal to the Norwegian Parliament that the duty on emission of SO₂ from use of coal and coke and from the refineries be removed from 1 January 2002.

It is finally stated that the Agreement with PIL is to be regarded as an agreement of intent that does not bind the parties legally. The Norwegian authorities also made a proviso that this agreement was in line with the EFTA Surveillance Authority's guidelines for environmental support.

With a view to implementing the agreement of intent, PIL has established a so-called process industries' environment fund'. The fund is organised as an independent trust. Each individual participating company has apparently signed an implementation agreement with the fund. The most important element in the implementation agreement is that the companies undertake to pay a sum to the fund that corresponds to the current SO₂ tax. The fund's resources will be used to finance cleansing plants prioritised according to the costs until the agreement of intent target is reached.

Based on the figures provided by the Norwegian Government, the following table gives an overview of revenues and tax expenditures ⁽³⁾ under the SO₂ tax.

Table 4: SO₂ tax revenues and expenditure in million NOK

| | 1999 | 2000 | 2001 | 2002 |
|-----------------|------|------|------|------|
| Revenues | 344 | 117 | 140 | 98 |
| Tax expenditure | 540 | 525 | 540 | 600 |

⁽¹⁾ The sectors enumerated in the Appendix are: oil refineries, chemical/ceramic materials, cement, ferro alloys and aluminium.

⁽²⁾ 'Best available techniques' (BAT).

⁽³⁾ For an explanation of the concept of tax expenditures, see above.

The Norwegian Government also provided information on the SO₂ emissions caused by the use of coal and coke and oil refineries as well as estimates regarding costs due to the SO₂ tax.

II. APPRECIATION

Scope of the present decision

The Authority points out that the present decision is limited to assessing whether the Norwegian Government complied with its obligations stemming from the appropriate measures proposed by the Authority and accepted by the Norwegian Government. Consequently, the current investigation only concerns the examination of compatibility under Article 61(3)(c) of the EEA Agreement in combination with the new Environmental Guidelines of aid schemes covering the period as from 1 January 2002.

The present investigation covers only aid measures in the form of exemptions from the electricity tax, derogations from the CO₂ tax as well as through the partial abolishment of the SO₂ tax. With respect to other measures which were communicated by the Norwegian Government in its letter dated 31 January 2002, the Authority reserves the right to assess these measures at a later stage.

State aid within the meaning of Article 61(1) of the EEA Agreement

The Norwegian Government claimed in its letter dated 15 May 2002 that, contrary to the views expressed in the letter dated 31 January 2002, certain of the measures in question could be regarded as falling outside the scope of Article 61(1) of the EEA Agreement. The Authority was invited to review these measures against the background of the Norwegian Government's interpretation of the concept of State aid with respect to environmental taxes.

The Norwegian Government claimed that it would result from the EC Commission's practice ⁽¹⁾ and case law from the European Court of Justice ⁽²⁾ that it is within the EEA State's discretion to decide which products to be taxed and what particular use of certain products should be taxed. The Norwegian Government takes the view that measures which are restricted to a particular input factor or to a particular use of certain products, or a particular conduct, are general in nature. Such measures would not favour certain undertakings or the production of certain goods. As regards a possible justification of the measures, in light of the objectives pursued by the measures in question, the Norwegian Government makes reference to case law and the Commission's proposal for a Council Directive restructuring the Community framework for the taxation of energy products which illustrated circumstances in which favourable tax treatment was regarded as being justified by the nature and general scheme of the tax system at issue ⁽³⁾.

⁽¹⁾ In the respect, the Norwegian Government referred, in particular, to the Commission's Decision of 3 April 2002 regarding the dual-use exemption from the climate change levy in the United Kingdom (State aid No C 18/2001 and C 19/2001) as well as the Commission's Decision regarding the electricity reform in Denmark (State aid N 416/99).

⁽²⁾ In this respect, the Norwegian Government referred to the following cases: Judgment of the European Court of Justice of 2 July 1974, Case 173/73, Italy v. Commission [1974] ECR 709, Judgment of the European Court of Justice of 2 February 1988, Joined cases 67, 68 and 70/85, van der Kooy v. Commission [1988] ECR 219, Judgment of the European Court of Justice of 17 June 1999, Case C-75/97, Belgium v. Commission (Maribel bis/ter) [1999] ECR I-3671 and Judgment of the European Court of Justice of 8 November 2001, Case C-143/99, Adria Wien Pipeline.

⁽³⁾ In addition to the case law referred to above, the Norwegian Government mentioned the judgment of the European Court of Justice of 22 November 2001, Case C-53/00, Ferring.

By virtue of Article 61(1) of the EEA 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 the Contracting Parties, be incompatible with the functioning of this Agreement.'

State aid within the meaning of Article 61(1) of the EEA Agreement covers '...measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effects ...' (1).

Consequently, a system under which the public authorities grant to certain undertakings a tax exemption that relieves them of some of their costs and confers on them financial advantages which improve their competitive position constitutes State aid within the meaning of Article 61(1) of the EEA Agreement if the aid is capable of affecting trade between the Contracting Parties and distorting competition.

The introduction of environmental taxes is not as such caught by Article 61(1) of the EEA Agreement, insofar as they are general measures which do not favour particular firms or sectors of industry (2). Exceptions to a general tax do, however, fall under that provision, if they are targeted at certain firms or sectors of industry, and without these exemptions being justified by the nature or general scheme of the tax system in question (3).

As a first step, and when assessing whether or not a measure is targeted at certain firms or sectors of industries, both the legal provisions governing the tax measure in question and its effects have to be taken into account (4). Therefore, a measure may be selective if the legal provisions explicitly limit the tax benefits to certain sectors of the industry. In the absence of such explicit provisions, the measure may still be selective if the application of certain criteria laid down in the tax provisions or the definition of the scope of the tax measures in question results in only certain, clearly identifiable, sectors of industry actually benefiting from favourable tax treatment.

The assessment of whether or not certain measures constitute exemptions or derogations from a general rule/common system takes, as a starting point, the structure of a given tax measure: based on the legal provisions governing the tax measures in question, it needs to be determined whether there are general rules from which exceptions are granted (5). However, it should be stressed that the denomination of the measures in question is not decisive (6). For the qualification as a derogation it is not determining whether a specific measure is designed as an exemption or as a limitation of the scope of the measure. What needs to be assessed is whether the measure at issue constitutes a derogation, by virtue of its actual nature, from the general system in which it is set (7). This assessment needs to be based on the objectives pursued by the measures at issue.

(1) Judgment of The European Court of Justice of 17 June 1999, Case C-75/97, *Belgium v. Commission*, (*Maribel bis/ter*) [1999] ECR I-3671, paragraph 23.

(2) See point 17B.3.1.(1) of Chapter 17 B of the Authority's State Aid Guidelines on the application of State aid rules to measures relating to direct business taxation.

(3) See point 17B.3.1.(4) of Chapter 17B of the Authority's State Aid Guidelines; see also Judgment of the European Court of Justice of 2 July 1974, Case 173/73, *Italy v. Commission* [1974] ECR 709, paragraph 15.

(4) In this respect, it should be emphasised that Article 61(1) of the EEA Agreement '...does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects': *Maribel bis/ter*, paragraph 25; see also Judgment of the European Court of Justice of 29 February 1996, Case C-56/93, *Belgium v. Commission* [1996] ECR I-723, paragraph 79.

(5) See point 17B.3.1.(4) of Chapter 17B of the Authority's State Aid Guidelines.

(6) See Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 17 September 1998, Case C-6/97, *Italian Republic v. Commission* [1999] ECR I-2981, paragraph 27 footnote 17: 'What matters is not the formal name given to the measure (exemption, reduction, bonus, deduction, relief etc.) but its nature as a fiscal provision creating an exceptional situation in favour of one or more taxable persons.'

(7) See Opinion of Advocate General Darmon delivered on 17 March 1992, Joined Cases C-72 and 73/91 [1993] ECR I-887, paragraph 50.

The Authority recalls that the European Court of Justice held in the *Adria Wien* case that, when assessing whether or not State aid rules are applicable, 'the only question to be determined is whether, under a particular statutory scheme, a State measure is such as to favour 'certain undertakings or the production of certain goods within the meaning of Article 92(1) of the Treaty in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question' ⁽¹⁾.

As a second step, it has to be ascertained whether there is a 'justification for this exemption on the basis of the nature or general scheme of this system' ⁽²⁾. When assessing a possible justification with respect to environmental tax measures, special attention must be paid to the environmental policy considerations underlying the national legislation at issue and it needs to be examined whether, having these considerations in mind, a different treatment of economic operators is justified or whether undertakings/sectors benefiting from the tax advantages are equally contributing to the negative environmental effects the tax in question was designed to penalise ⁽³⁾.

Finally, the Authority would like to point out that it is, in principle, for the EFTA State concerned to design its environmental tax systems as it sees fit. This includes the EFTA State's freedom to decide which products and activities should be brought within the scope of a specific environmental tax system. However, in exercising its freedom to determine the national environmental tax system, the EFTA State concerned has to ensure that, in order not to be in conflict with the EEA State aid rules, measures which are benefiting certain sectors of industry are in line with the environmental objectives underlying the tax measures in question. It is for the Government concerned to present information allowing the Authority to verify that the favourable tax measures adopted can be regarded as an implementation of the objectives inherent to the tax system in question.

It is against this background that the Authority assessed the various tax measures.

Electricity tax

According to the Norwegian Government, as from 1 January 2001, the preferential tax measure in question could not be regarded as an exemption from the electricity tax system directed to a particular sector of the economy (manufacturing and mining sector), as opposed to e.g. the service sector. The tax would have to be regarded as a tax that is limited in scope covering all use of electricity other than electricity used for production purposes.

The Norwegian Government took the view that the distinction depending on the specific use of electricity as opposed to a distinction according to specific sectors of industry could not be regarded as constituting aid.

Based on the relevant rules, as laid down in the Regulation on Excise Duties (Chapter 3) as described above, the Authority takes the view that the system governing the electricity tax is currently designed in such a way that the general rule is that all consumption of electricity is liable to taxation. The Norwegian Government's argument that the general rule underlying the current electricity tax system would be that only electricity used for purposes other than production processes would be liable to taxation does not seem to find support in the relevant rules referred to above. These rules clearly establish that certain industries, defined by reference to their classification by the Central Bureau of Statistics of Norway, shall be exempt from the tax. This definition of the scope of the exemption results in certain sectors of industry not benefiting from the exemption although it may not be excluded that also within these sectors electricity is used for production processes.

It results clearly from the relevant case law that exemptions defined by reference to specific sectors are to be regarded as selective measures which cannot, in principle, be justified by the nature or logic of the tax system in question ⁽⁴⁾.

⁽¹⁾ Judgment of the European Court of Justice of 8 November 2001, Case C-143/99, *Adria Wien Pipeline* [2001] ECR I-8365, paragraph 41.

⁽²⁾ Judgment of the European Court of Justice of 2 July 1974, *Italy v. Commission*, Case 173/73 [1974] ECR 709, paragraph 15.

⁽³⁾ See Judgment of the Court of Justice of 22 November 2001, Case C-53/00, *Ferring SA v. Agence centrale des organismes de sécurité sociale (ACOSS)* [2001] ECR I-9067, paragraphs 17 to 22.

⁽⁴⁾ In the *Adria Wien*-judgment, the European Court of Justice held that '...any justification for the grant of advantages to undertakings whose activity consists primarily in the production of goods is not to be found in the nature or general scheme of the taxation system...', paragraph 49. Furthermore, in the *Maribel*-case, the Court held 'that the limitation of the increased reductions to certain sectors rendered those reduction measures selective, so that they fulfilled the condition of specificity.', paragraphs 28 to 31.

In addition, the Authority is not convinced that the exemptions could be regarded as reflecting the Norwegian Government's choice to impose a tax only on certain kinds of consumption of electricity. As the Norwegian Government has stated itself (see letter dated 31 January 2002), the exemptions for various industries were introduced to offset losses of competitiveness. The Authority also notes that the Norwegian Government has not explained how the limitation of the exemption to the effect that electricity used in administrative buildings would be subject to the tax actually ensures that only electricity used for production processes would benefit from the tax exemption. In this respect, the Authority notes in particular that the Norwegian Government has not given any definition of what would be regarded as production processes and administrative purposes. Furthermore, the Authority has doubts whether it would be in line with the objectives purportedly pursued by the electricity tax, namely to reduce electricity consumption, to exclude the use of electricity for certain purposes, such as the use of electricity for production processes as opposed to other uses.

Finally, it is also clear from case law that the regionally differentiated application of tax measures constitutes a selective measure caught by Article 61(1) of the EEA Agreement ⁽¹⁾.

In light of the above considerations, and based on the information in the Authority's possession, the Authority has concluded that the exemptions from the electricity tax for certain industries and regions, as laid down in paragraph 3.1.4 of Chapter 3 of the Regulation on Excise Duties, could constitute a selective measure which seems to derogate from the general system of taxation on consumption of electricity.

These derogations confer a financial benefit to undertakings covered by the exemptions, since these companies are relieved of charges that would normally be borne from their budgets. This advantage is granted through State resources as the State suffers a loss of State revenues. Based on the figures provided by the Norwegian authorities, the loss in tax revenues due to the sectoral and regional exemptions for 2002 was estimated to amount to NOK 4 605 million and NOK 160 million, respectively ⁽²⁾. The recipient firms exercise an economic activity on markets on which there is or could be trade between the Contracting Parties or on which firms from other EEA countries might wish to establish themselves. The exemptions therefore distort or threaten to distort competition and could affect trade between the Contracting Parties.

Consequently, the derogations from the electricity tax for certain industries and regions could be regarded as constituting aid within the meaning of Article 61(1) of the EEA Agreement.

CO₂ tax

Derogation for coal and coke used as raw materials or reducing agents

The Norwegian Government took the view that the derogations from the CO₂ tax for coal and coke used as raw materials and for coal and coke used as reducing agents could fall outside the scope of Article 61(1) of the EEA Agreement.

The Norwegian Government claimed that both derogations were defined by a particular use of the products in question and not as an exemption/reduction directed to certain undertakings or for the production of certain goods. This derogation was open for all undertakings that use coal and coke for this purpose. In such a situation, the Norwegian Government took the view that the tax exemption for certain uses of the products could only be regarded as 'selective' if certain undertakings would not benefit from the tax exemption even though they would also use the products for the purposes described in the exemption clause.

In the alternative, the Norwegian Government claimed that, at least the derogation for the use of coal and coke as raw materials could be justified by the underlying principle actually pursued.

⁽¹⁾ EFTA Court judgment 20 July 1999 regarding the Norwegian regionally differentiated social security tax, Case E-6/98, *The Government of Norway v. EFTA Surveillance Authority* [1999] Report of the EFTA Court, p. 74.

⁽²⁾ According to the Norwegian Government, these figures were taken from *Budsjettinnstilling S. nr. 1 (2001-2002)*.

The Norwegian Government claimed that the objective of the CO₂ tax was the reduction of CO₂ emissions. The tax was levied on mineral oil products used for energy purposes. To the extent that certain uses of mineral oil products other than for energy purposes do not result in CO₂ emissions, the exemptions/refunds could be regarded as justified by the logic of the measure in question.

In this respect, the Norwegian Government stated that processing coal and coke into the end product caused no or negligible emission of CO₂. The expressed reason for this is either the 'low' temperature (4 500 °C) or the lack of oxygen in this process. As the purpose of the tax is to target the emission of CO₂, the derogation for the use of coal and coke as raw materials was, in the Norwegian Government's view, justified by the underlying objective actually pursued.

In the Norwegian Government's view, the underlying objective for introducing a tax on the use of coal and coke was in part to reduce the use of these products for energy purposes, and in part to avoid the risk of conversion from use of mineral oil, that was already taxed, to the use of the not taxed coal and coke. Taking these objectives into account, the Norwegian Government claimed that the derogation for the use of coal and coke as raw materials and reducing agents, which are not used for energy purposes, could be regarded as justified. Furthermore, the Norwegian Government argued that as it did not see any alternative products that could be used in this particular process, both derogations could be said to be justified also on these grounds.

The Authority observes that the refund possibility for coal and coke used as raw materials as well as the exemption for coal and coke used as reducing agents are not defined with respect to a specific sector of the industry. However, it would seem that coal and coke are only used for the specified purposes in particular industries. Consequently, the exemptions limited to these purposes would appear to necessarily benefit only these industries. In addition, the Authority observes that the Norwegian Government itself seems to regard these exemptions as being targeted at specific industries, namely in the production of carbides, ferro alloys and primary aluminium and magnesium and states that these industries would not be viable without the exemption ⁽¹⁾.

The Authority does not exclude at this stage that certain exemptions/reductions may be regarded as justified where it can be demonstrated that certain uses of the taxable product in question do not contribute to the negative environmental effects that the tax in question seeks to penalise.

The Authority notes, however, that the Norwegian Government has not submitted verifiable information on CO₂ emissions from the use of coal and coke as raw materials in the different industries covered by the exemption. Furthermore, the Norwegian Government has not explained how the refund mechanism established under paragraph 3.6.3(1) of Chapter 3 of the Regulation on excise duties is applied in practice. Consequently, the Authority was not in a position to ascertain that the exemption is applied in a way that would limit the exemption to processes not causing CO₂ emissions.

As regards the exemptions from the CO₂ tax for coal and coke used as reducing agents (see paragraph 3.6.4 of Chapter 3 of the Regulation on excise duties), the Authority notes that, according to the explanatory notes issued by the Customs and Excise Duties Directorate, the use of coal and coke as necessary parts of the chemical process results in emission of CO₂ at a similar level compared to emissions from use of coal and coke for energy purposes. Consequently, the exemption would seem to be in contradiction to the objectives of the CO₂ tax, namely to impose a levy on products causing CO₂ emissions. According to the Norwegian Government, the reason for the exemption was that there were no alternative materials for such processes other than coal and coke.

In this respect, the Authority notes that the Norwegian Government has not submitted any further information which would have enabled the Authority to verify that those industries benefiting from the exemption are actually in a situation where it could be said that there were no alternative materials for the industrial processes in question. Furthermore, the Norwegian Government has not explained why in such circumstances CO₂ taxes should not be levied.

It results from the Environmental Guidelines that aid measures in relation to environmental taxes must take into account the basic principles of environmental policy objectives when assessing their compatibility under the EEA State aid rules. The basic principles, as referred to in the guidelines are the 'polluter pays' principle. Accordingly, and pursuant to point 19 of the guidelines, '...aid should no longer be used to make up for the absence of cost internalisation. If environmental requirements are to be taken into account in the long term, prices must accurately reflect costs and environmental protection costs must be fully internalised.'

⁽¹⁾ The Authority also takes note of the Norwegian Government's paper on Climate Change Policy, where in Table 2 reference is made to 'sectors exempt from taxation: ...coal and coke for processing purposes (iron alloy, carbide and aluminium industry)' (underlined here).

In light of the foregoing considerations, the Authority has doubts that the refund of the CO₂ tax regarding coal and coke used as raw materials and the exemption regarding coal and coke used as reducing agents can be justified by the nature and logic of the tax system at issue. In addition, the Authority notes that the Norwegian Government stated in its letter dated 31 January 2002, that the industries benefiting from the exemptions were energy-intensive industries which were exposed to international competition and would not be viable without the exemptions. This seems to indicate that the underlying reason for the exemptions are not inherent to the tax system at issue.

Exemption for the use of coal and coke for energy purposes in the manufacture of cement and leca

According to the Norwegian Government, the reason for exempting the use of coal and coke for energy purposes in the manufacture of cement and leca was partly that large-scale substitutes for coal and coke would be unprofitable, and partly that the industry was exposed to international competition. The former might indicate, according to the Norwegian Government, that the amount of the energy product required would be decided by the manufacturing process, and that only substitution and not reduction of the use of coke was an alternative. As far as this was the case, the Norwegian Government argued that it would seem to result from the EC Commission's decision in the dual-use case that the limited scope for a producer to change the type and amount of the energy product required for the process would have to be taken into account. However, the Norwegian Government recognised that the exemption for the manufacture of cement and leca might require further assessment. The Norwegian Government therefore informed the Authority that this exemption would be assessed in more detail with the State Budget for 2003.

The Authority notes that this exemption is limited to a specific sector of industry and is also contrary to the general rule established under the CO₂ tax system that all uses of coal and coke for energy purposes should be subject to tax. The exemption is therefore a sector-specific measure and cannot, in principle, be justified by the nature or logic of the tax system in question ⁽¹⁾. In this respect, the Authority notes that the Norwegian Government has not demonstrated that it would only be the cement industry which required a special treatment in light of the alleged problems of not having access to substitutes for coal and coke. Furthermore, and as stated above ⁽²⁾, even if it should result that there are no alternative products to be used by the cement industry, this does not in itself justify a derogation from the rules, to the extent that such a derogation runs counter to the environmental objectives actually pursued.

The Authority concludes that the Norwegian Government has not submitted sufficient information demonstrating that the exemptions in question could be regarded as being justified by the nature and general scheme of the CO₂ tax system.

The Authority is aware of the EC Commission's decision regarding the dual-use case in the United Kingdom ⁽³⁾ as well as the EC Commission's proposal regarding a new framework for energy taxation within the European Union ⁽⁴⁾. The Authority does not exclude that the considerations underlying the EC Commission's assessment may be of relevance for the exemptions from the CO₂ tax on coal and coke used as raw materials or reducing agents. However, the Authority would like to point out that the objectives pursued by the EC Commission's proposal on energy taxation, and which, according to the EC Commission, justified certain exemptions from the tax concerned, may not necessarily be those pursued by the Norwegian tax system. This issue will, however, be assessed in the course of the formal investigation procedure.

⁽¹⁾ In the *Adria Wien*-judgment, the European Court of Justice held that '...any justification for the grant of advantages to undertakings whose activity consists primarily in the production of goods is not to be found in the nature or general scheme of the taxation system...', paragraph 49. Furthermore, in the *Maribel*-case, the Court held that 'that the limitation of the increased reductions to certain sectors rendered those reduction measures selective, so that they fulfilled the condition of specificity.', paragraphs 28 to 31.

⁽²⁾ See above, where reference is made to the requirements of cost-internalisation, as stipulated in point 19 of the Environmental Guidelines.

⁽³⁾ Commission's decision of 3 April 2002 regarding the dual-use exemption from the climate change levy in the United Kingdom (State aid No C 18/2001 and C 19/2001)

⁽⁴⁾ COM (1997) 30 final, OJ 1997 C 139/14.

Reduced rate for paper and pulp

Finally, as regards the reduced rate for the paper and pulp industry, the Authority notes that this reduction is sector-specific. The Norwegian Government has not submitted arguments which would have justified such a derogation by the nature or general scheme of the CO₂ tax system.

Conclusions

The derogations resulting from paragraphs 3.6.3 and 3.6.4 of Chapter 3 of the Regulation on Excise Duties, as well as the reduced rate for the paper and pulp industry, confer a financial benefit to undertakings covered by the exemptions. Thus, firms using the mineral products in the way described above are relieved of charges that would normally be borne from their budgets and gives the recipient firms an advantage over other firms. This advantage is granted through State resources as the State suffers a loss of State revenues. According to the information submitted by the Norwegian Government, tax expenditure due to the exemptions was estimated to amount to NOK 2 270 million. The recipient firms exercise an economic activity on markets on which there is or could be trade between the Contracting Parties or on which firms from other EEA countries might wish to establish themselves. The exemptions therefore distort or threaten to distort competition and could affect trade between the Contracting Parties.

Consequently, and based on the information submitted by the Norwegian Government, the Authority has doubts whether the exemptions from and the reduced rates of the CO₂ tax do not constitute aid, as the Norwegian Government claimed, within the meaning of Article 61(1) of the EEA Agreement.

SO₂ tax

The Norwegian Government argued that, as far as the tax on oil refineries represented a 'new' tax, it was selective as it only applied to oil refineries. In order to represent a 'new' tax the emission tax had to have a source, other than mineral oil and coal and coke, and thus a source not previously taxed (e.g. raw oil). As far as this was the case, the Norwegian Government was of the opinion that the abolition in 2002 of the selective tax measure could not be regarded as selective in the sense that it represents 'aid' within Article 61(1) of the EEA Agreement.

The Norwegian Government expressed the view that the abolition of the tax on coal and coke could fall outside the scope of Article 61(1) of the EEA Agreement.

The Norwegian Government argued that for a measure to be selective it had to be an exemption/reduction from a general tax scheme directed at a particular sector of the economy or a particular region. A tax system that taxed, e.g. some products or a certain conduct, as opposed to others, was not selective in nature. Hence, the abolishment of the SO₂ tax on the use of coal and coke could not, in the Norwegian Government's point of view, be considered as aid within the meaning of Article 61(1) of the EEA Agreement.

The Authority has examined whether the decision to exclude coal and coke as well as emissions from oil refinery plants has the effect of favouring the production of certain goods or certain undertakings compared with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.

At the outset, the Authority notes that the abolishment of the SO₂ tax on coal and coke limits the scope of the SO₂ tax without, however, distinguishing between different categories of undertakings or sectors. The scope of the SO₂ tax is determined by excluding a specific product, namely the use of coal and coke. The abolishment of the SO₂ tax on coal and coke benefits, in principle, all undertakings in Norway using coal and coke. However, there are indications that the abolishment is targeted at specific sectors of the industry. Based on information at the Authority's disposal, it would seem that the extension of the scope in 1999, as well as the limitation of the scope in 2002, concerned around 30 enterprises in the following sectors: oil refineries, cement and leca production, carbide, aluminium and ferro-alloy industry ⁽¹⁾. As regards the abolishment of the SO₂ tax for oil refineries, the Authority takes the view that this limitation of the scope of the SO₂ tax is sector-specific. In addition, the Authority observes that these industries are subject to the agreement of intent concluded between the Norwegian Government and PIL. Due to the link between the abolishment of the tax and the agreement, the abolishment of the SO₂ tax can be seen as being targeted at the industries covered by the agreement.

⁽¹⁾ This information is taken from the Government paper on Green Taxes, St.prp. nr. 54 (1997-98), Chapter 6 point 6.2.5.

In view of the overall objective to reduce SO₂ emissions, it would seem reasonable for any tax system targeting SO₂ emissions to cover the major part of the emissions; on the other hand, a limitation of the scope of the tax system which would result in only a minor part of those emitting SO₂ being subject to the tax would at first glance not seem to be in line with the objectives as defined by the Norwegian Government.

In this respect, the Authority notes however that according to information available to the Authority, before the extension of the scope of the SO₂ tax, only around 20 % of all SO₂ emissions were subject to the tax ⁽¹⁾. After the extension of the scope of the tax, around 80 % of SO₂ emissions were covered ⁽²⁾.

The abolishment leads to a situation where not all industries causing SO₂ emissions actually pay for such emissions in the form of an SO₂ tax. Therefore, taking account of the objectives pursued by the SO₂ tax, the Authority cannot exclude that the abolishment of the SO₂ tax leads to a different tax treatment between industries which are — from the environmental point of view — in a comparable situation.

Furthermore, without more detailed information on this point, the Authority cannot exclude that the abolishment of the tax on the use of coal and coke as fuel may benefit certain undertakings compared to undertakings in the process industry using mineral oil for fuel purposes. There may, therefore, be a distortion of competition within the various industry sectors depending on the degree they make use of taxed and non-taxed products ⁽³⁾.

In light of the above considerations and based on the information at its disposal, the Authority concluded that the abolishment of the SO₂ tax for coal and coke and on oil refineries confers a financial benefit to undertakings in certain sectors and is thus, in its effects, comparable to a tax exemption. The Norwegian Government has, in practice, waived their right to receive tax payments from firms in these sectors, thus conferring upon them an economic advantage.

Consequently, that advantage was conferred through the use of State resources. According to information at the Authority's disposal ⁽⁴⁾, based on the current rate of SO₂ tax of NOK 3,09 per kg, the duty would have provided annual tax revenues of approximately NOK 40 to 50 million. The figures presented by the Norwegian Government regarding tax expenditures due to the SO₂ tax exemptions indicate that, from 2001 to 2002, the expected losses in tax revenues were estimated to decrease by NOK 60 million.

The recipient firms exercise an economic activity on markets on which there is or could be trade between the Contracting Parties or on which firms from other EEA countries might wish to establish themselves. The exemptions therefore distort or threaten to distort competition and could affect trade between the Contracting Parties.

Consequently and based on the information at the Authority's disposal, the Authority takes the view that the abolishment of the SO₂ tax may be regarded as aid within the meaning of Article 61(1) of the EEA Agreement.

Qualification as 'new aid' as from 1 January 2002

By accepting the appropriate measures proposed by the Authority (see letter from the Norwegian Government dated 6 July 2001), the Norwegian Government was legally bound to bringing existing aid schemes in line with the requirements set out in the Environmental Guidelines before 1 January 2002 ⁽⁵⁾.

⁽¹⁾ See Government paper on Green Taxes, St.prp. nr. 54 (1997-98), Chapter 6 point 6.2.5.

⁽²⁾ St. prp. nr. 1 (2001-2002) — FIN, point 3.11.

⁽³⁾ It would seem that at least inasmuch as these products are used as heating fuels, they are substitutable; see Proposal for a Council Directive restructuring the Community framework for the taxation of energy products: 'It is clear that all these products, inasmuch as they are used as heating fuels, are directly or indirectly substitutable and therefore should all come with the same taxation framework.'

⁽⁴⁾ PIL News dated 18 December 2001, 'Norwegian Process Industry takes responsibility for reduced SO₂-emissions.'

⁽⁵⁾ It results from the case law of the European Court of Justice that appropriate measures, accepted by the States concerned, have a binding effect; see Judgment of the European Court of Justice of 24 March 1993, Case C-313/90, *Comité International de la Rayonne et des Fibres Synthétiques and others v. Commission* [1993] ECR p. I-1125.

The Authority would like to point out that, had the Norwegian Government not signified its agreement to the appropriate measures, the Authority would have been obliged to open the formal investigation procedure against all existing aid schemes in place in Norway should the Authority have had doubts as regards their compliance with the new Environmental Guidelines⁽¹⁾. To the extent certain measures had been found to be incompatible with the requirements laid down in the new Environmental Guidelines, the Authority would have asked the Norwegian Government to adopt the necessary measures to ensure compliance or otherwise abolish the aid measures in question. The fact that the Norwegian Government accepted the appropriate measures but did not adopt the necessary measures to comply with the obligations resulting therefrom cannot lead to a situation where the Norwegian Government escapes the legal consequences of its acceptance.

With the acceptance of the appropriate measures, the Norwegian Government assumed obligations which imply that any aid scheme which is not in accordance with the requirements set out in the new Environmental Guidelines would have to be abolished as from 1 January 2002. With the acceptance, the Norwegian Government assumed obligations it cannot unilaterally deviate from.

The Authority takes note of the request from the part of the Norwegian Government to allow it additional time for complying with the requirements laid down in the Environmental Guidelines in light of the findings of the working group which was asked to deliver a preliminary report by 1 July 2002.

The Authority observes that it has not been formally informed about the conclusions of the preliminary report, nor has the Norwegian Government indicated which measures it might intend to take in accordance with the findings of that report. The Authority notes that more than 14 months after the entry into force of the new Environmental Guidelines, there are still no concrete proposals from the Norwegian Government of how existing aid schemes will be amended so as to be in accordance with the requirements set out in the new Environmental Guidelines. Without such concrete proposals or commitments, it is impossible for the Authority to ascertain that existing aid schemes would in fact be in line with the new Environmental Guidelines, albeit at a later date than initially foreseen.

The Norwegian Government has not submitted information which would have demonstrated that the adoption of appropriate measures necessary to comply with the requirements laid down in the new Environmental Guidelines would take more time than foreseen under the appropriate measures. In addition, the Norwegian Government has not claimed that it would not be possible to adopt measures which would allow the elimination of possible incompatible aid with retroactive effect, i.e. as from 1 January 2002.

In light of the foregoing considerations, the Authority takes the view that the Norwegian Government has not submitted arguments justifying an extension of the time limit for compliance.

The Authority, therefore, takes the initial view that any aid scheme applicable after 1 January 2002, and which is found to be incompatible with the requirements laid down in the new Environmental Guidelines, is to be regarded as 'new aid'⁽²⁾.

The Authority reminds the Norwegian Government that, in accordance with point 6.2.3 of Chapter 6 of the Authority's State Aid Guidelines, unlawful aid may be recovered from the recipients should the Authority find the compensation scheme to be incompatible with the EEA Agreement.

Compatibility of aid measures

Assessment of the aid measure under Article 61 (3)(c) of the EEA Agreement in combination with Chapter 15 of the Authority's State Aid Guidelines on Aid for Environmental Protection

Pursuant to point 42 of the Environmental Guidelines, '[w]hen adopting taxes that are to be levied on certain activities for reasons of environmental protection, EFTA States may deem it necessary to make provisions for temporary exemptions for certain firms notably because of the absence of harmonisation at European level or because of the temporary risks of a loss of international competitiveness.'

⁽¹⁾ See point 7.4.3(2) of Chapter 7 in combination with Chapter 5 of the Authority's State Aid Guidelines, in particular point 5.2(1) thereof.

⁽²⁾ See Judgment of the European Court of Justice of 24 March 1993, Case C-313/90, CIRFS v. Commission [1993] ECR I-1125, paragraph 35; see also EC Commission's decision to open the formal investigation procedure in the State aid case No C 37/2000 (ex NN 60/2000, ex E 19/94, ex E 13/91 and N 204/86) regarding the financial and tax aid scheme for the free zone of Madeira (Portugal), published in OJ 2000 C 301/4, and EC Commission's decision to adopt appropriate measures in the State aid case No E 10/2000 regarding the 'Gewährträgerhaftung und Anstaltslast' in Germany, letter to Germany dated 27 March 2002.

According to the guidelines, such exemptions constitute operating aid but that '...the adverse effects of such aid can be offset by the positive effect of adopting taxes. Accordingly, if such exemptions are necessary to ensure the adoption or continued application of taxes applicable to all products, the Authority takes the view that they are acceptable, subject to certain conditions and for a limited period of time. This period may last for 10 years if the conditions are met...'

Pursuant to point 43 of the Environmental Guidelines, '[i]f the tax does not correspond to a tax which is to be levied within the European Community as the result of a Community decision, the firms affected may have some difficulty in adapting rapidly to the new tax burden. In such circumstances there may be justification for a temporary exemption enabling certain firms to adapt to the new situation.'

In the following, the guidelines lay down the specific requirements which must be fulfilled in order to benefit from the 10-year exemption (see point 46 of the Environmental Guidelines). The requirements depend also on whether or not the tax in question concerns a tax which corresponds to a harmonised tax at Community level.

The Authority points out that exemptions may, in principle, only be approved under the Environmental Guidelines with respect to 'new environmental taxes'. This means, on the one hand, that the tax in question must be an 'environmental tax' as defined in point 7 of the guidelines. This implies that the EFTA State concerned has to demonstrate the estimated environmental effect of the levy. In addition, the exemptions in question must be granted with respect to a newly introduced tax. For 'existing taxes' the EFTA State concerned would have to demonstrate that the conditions enumerated under point 46.2 or point 47 of the Environmental Guidelines are fulfilled.

In general, and in cases where no corresponding harmonised Community tax exists, a 10-year exemption may be justified where exemptions from the tax are conditional upon the conclusion of agreements in which beneficiary firms give undertakings to achieve environmental protection objectives or where the exemptions are subject to conditions that have the same effects (see point 46.1(a)). Point 46.1(a) lays down further criteria which have to be met in order for the agreement/commitment to be regarded as justified. It is for the Authority to assess the substance of the agreements. EFTA States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between an EFTA State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.

In the absence of such agreements and undertakings, derogations from the tax in question may be granted if the eligible firms pay a significant proportion of the national tax (see point 46.1(b) second alternative). On the other hand, where the reduction concerns a tax corresponding to a harmonised Community tax, the guidelines require that the amount effectively paid by the eligible undertakings must remain higher than the Community minimum in order to provide an incentive to improve environmental protection (see point 46.1(b) first alternative).

Finally, the EFTA State concerned would have to show that the tax measure in question makes a significant contribution to protecting the environment and that the exemptions do not, by their very nature, undermine the general objectives pursued (see point 45 of the Guidelines).

Electricity tax

At the outset, the Authority takes note of the fact that, according to the Norwegian Government, a working group has been set up in order to examine the consequences of the new Environmental Guidelines for the electricity tax in Norway. This working group was asked to deliver a preliminary report by 1 July 2002. Any measures addressed by the working group would be assessed by the Norwegian Government in the context of the State Budget for 2003. No further information or justification was provided by the Norwegian Government as regards exemptions from the electricity tax and their compatibility under the Environmental Guidelines.

The Authority notes that there is currently no harmonised electricity tax at Community level. However, several EC Member States have introduced taxes on the consumption of electricity. These taxes show big differences in the applicable rates and the tax structure, including exemptions and refund mechanisms. These differences make it difficult to compare the electricity tax systems in other EC Member States to that in place in Norway. The Authority takes note of the information submitted by the Norwegian Government regarding the estimated increase in costs resulting from a withdrawal of the tax exemptions. These figures may indicate that, at least for some industries, there is a necessity to offset costs due to the electricity tax. Against this background, exemptions under the Norwegian electricity tax system for certain industries might be regarded as justified in order to offset losses of competitiveness.

However, in order to strike a balance between environmental concerns and concerns regarding the maintenance of competitive conditions for certain industries, the exemptions in question have to satisfy the requirements laid down in the new Environmental Guidelines.

Based on the scarce information provided by the Norwegian Government as regards the justification of the sectoral derogations from the electricity tax under the new Environmental Guidelines the Authority makes the following observations:

First of all, the Authority notes that the electricity tax was introduced in 1971 and is therefore to be regarded as an 'existing tax'. Based on the information submitted by the Norwegian Government, it would seem that various tax exemptions were adopted after the tax was introduced. The Norwegian Government has not provided an explanation as to how the exemption possibility in point 46.1 of the Environmental Guidelines could apply to exemptions from existing tax measures. In particular, the Authority notes that in 1993, 1994 and 1997, when additional exemptions were introduced, the tax rate had not been increased significantly. As regards exemptions granted in, and possibly before, 1993 the Authority has no information.

In addition, the Norwegian Government has submitted only general statements regarding the objectives of the electricity tax. It has, however, not provided information required in accordance with point 7 of the Environmental Guidelines, showing that the electricity tax has positive environmental effects.

Contrary to the conditions stipulated in point 46.1 of the Environmental Guidelines, the exemption is neither conditional on the conclusion of environmental agreements, nor do firms eligible for an exemption pay a significant proportion of the national tax (since they are totally exempted). In this respect, the Authority points out that the figures presented by the Norwegian Government regarding the estimated increase in costs due to the abolishment of the existing exemptions from the electricity tax cannot in themselves justify the exemptions. These figures need to be assessed in more detail in the context of determining what could be regarded as a 'significant proportion' of the national tax, which would have to be paid by the companies concerned in order to benefit from the derogation possibility in point 46.1(b) of the Environmental Guidelines.

Contrary to the requirements laid down in point 45 of the Environmental Guidelines, the Norwegian Government has not shown that the exemptions do not undermine the general objectives of the electricity tax. With approximately 70 % of consumption of electricity by the industry in Norway being exempted, the Authority is not convinced that the objective of the tax, i.e. the reduction of electricity consumption, has been achieved despite the broad exemption possibilities.

Finally, the Norwegian Government has neither shown that the derogations are temporary, nor have they given any commitment as regards the limitation of the aid measures in time.

As regards the regional derogations from the electricity tax, the Norwegian Government pointed out the special need for use of electricity in the eligible areas. It pointed out that harsh weather conditions and the long distances in this particular area would make the external conditions hard for business activities, and the exemption might, therefore, be justified as regional development aid. Furthermore, the exemption covered every industry, and no single company is discriminated by this exemption.

Even though the Authority explicitly requested the Norwegian authorities to provide a proper justification of the measures in question, the Authority notes that no such justification has been provided (the Norwegian Government merely stated that it is for the working group to consider alternative tax structures that are expected to be in line with the new Environmental Guidelines). In the absence of a justification, the Authority has doubts that the regional derogations could be regarded as compatible with the EEA State aid rules.

In light of the foregoing considerations, the Authority has doubts that the exemptions from the electricity tax are compatible with the functioning of the EEA Agreement.

CO₂ tax

The Authority notes that there is currently no harmonised CO₂ tax at Community level. To the Authority's knowledge, several EC Member States have introduced CO₂ taxes (in particular in Denmark, Sweden, Finland and the Netherlands) ⁽¹⁾. The tax rates and the structure, including tax base, applicable exemptions and refund schemes show, however, big differences. These differences make it difficult to compare the CO₂ tax systems in other EC Member States to that in place in Norway. The Authority takes note of the information submitted by the Norwegian Government regarding costs of the CO₂ tax for certain industries. These figures might indicate that, at least for certain sectors of industry, there is a necessity to offset costs due to the CO₂ tax. Against this background, exemptions under the Norwegian CO₂ tax system for certain industries might be regarded as justified in order to offset losses of competitiveness.

However, in order to strike a balance between environmental concerns and concerns regarding the maintenance of competitive conditions for certain industries, the exemptions in question have to satisfy the requirements laid down in the new Environmental Guidelines.

Contrary to the conditions stipulated in point 46.1 of the Environmental Guidelines, the exemptions from the CO₂ tax are neither conditional on the conclusion of environmental agreements, nor do firms eligible for an exemption/refund seem to pay a significant proportion of the national tax (since they are totally exempted; where the tax is refunded, the Authority would need information about the level of compensation in order to assess whether the companies concerned still pay a significant proportion of the tax).

As regards the environmental effects of the CO₂ tax, the Authority regrets that no information was submitted in accordance with point 7 of the Environmental Guidelines, which would have shown the effects of the CO₂ tax on reduction of CO₂ emissions.

Contrary to the requirements laid down in point 45 of the Environmental Guidelines, the Norwegian Government has not shown that the exemptions do not undermine the general objectives of the CO₂ tax. In this respect, the Authority takes note of the information submitted by the Norwegian Government regarding CO₂ emissions caused by certain industries. From this information it would appear that the CO₂ emissions caused by industries exempted from the CO₂ tax account for approximately 66 % of overall CO₂ emissions. Against this background, the Authority has doubts whether the requirement in point 45 of the Environmental Guidelines is fulfilled.

Contrary to what is required under point 43 of the Environmental Guidelines, the Norwegian Government has neither shown that the derogations are temporary nor have they given any commitment as regards the limitation of the aid measures in time.

As regards the application of a reduced rate for the paper and pulp industry, the Norwegian Government has claimed that the reduced rate to be paid by this industry would exceed the corresponding EC tax, which is EUR 18 per 1 000 litres (NOK 0,14 per litre). Therefore, the Norwegian Government regarded the reduced tax to be in line with section 46.1(b) alternative 1.

⁽¹⁾ See overview of environmental taxes in the EU, in Report to DG Environment, Update of Database of Environmental Taxes and Charges, Stefan Speck and Paul Ekins, July 2000; see also EC database on environmental taxes: http://euro-pa.eu.int/comm/environment/enveco/env_database/database.htm.

As the Authority has stated above, there is currently no harmonised CO₂ tax at Community level. Therefore, it would not seem that point 46.1(b) first alternative of the Environmental Guidelines is applicable. In addition, the Authority notes that no further information was submitted which would have shown that this rate provided firms in the paper and pulp industry with an incentive to improve environmental protection.

As regards the possibility for a temporary exemption under point 46.1(b) second alternative of the Environmental Guidelines, the Authority notes that the reduced tax rate amounts to 50 % of the normal CO₂ tax rate. The Authority does not exclude that this percentage could be regarded as a 'significant proportion' of the national tax. However, and as already pointed out in the previous paragraph, without information on the effects of this reduced rate on the behaviour of the industry concerned and in particular whether this rate still serves as an incentive to improve environmental protection, the Authority cannot conclude that the requirements in the guidelines are fulfilled.

Finally, the Authority observes that the CO₂ tax on mineral oil introduced in 1991 constitutes an 'existing tax'. The Authority notes that, according to the information submitted by the Norwegian Government, the reduced rate for the paper and pulp industry was only later introduced, i.e. in 1993. Against this background, the Authority has doubts whether the conditions laid down in point 46.2 of the Environmental Guidelines are satisfied, since the derogation from the generally applicable rate would seem not to have been decided on when the tax was adopted. In addition, the Authority notes that the Norwegian Government has not submitted information enabling the Authority to assess whether an exemption under point 46.1. of the Environmental Guidelines was justified under these circumstances.

In light of the above considerations, and should the further investigation confirm that the measures in question constitute aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has doubts that the requirements laid down in the Environmental Guidelines are fulfilled with respect to the derogations from the CO₂ tax.

SO₂ tax

The Authority notes at the outset that there is currently no harmonised SO₂ tax at Community level. To the Authority's knowledge, several EC Member States have introduced SO₂ taxes (in particular Finland, Sweden and Denmark) ⁽¹⁾. The tax rates and the structure, including exemptions and refund schemes show, however, big differences. These differences make it difficult to compare the SO₂ tax systems in other EC Member States to that in place in Norway. The Authority takes note of the information submitted by the Norwegian Government regarding costs of the SO₂ tax for certain industries. These figures might indicate that, at least for certain sectors of industry, there is a necessity to offset costs due to the SO₂ tax. Against this background, exemptions under the Norwegian SO₂ tax system for certain industries might be regarded as justified in order to offset losses of competitiveness.

However, in order to strike a balance between environmental concerns and concerns regarding the maintenance of competitive conditions for certain industries, the exemptions in question have to satisfy the requirements laid down in the new Environmental Guidelines.

According to the Norwegian Government (see letter dated 31 January 2002), the exemptions from taxes, such as no tax on use of coal and coke and on the refineries, were in line with the Environmental Guidelines.

The Norwegian Government claimed that the abolishment of the tax was conditional on the conclusion of the agreement and that the abolishment of the tax could be seen as temporary. In this respect, it referred to a declaration in the State Budget for 2002 (St.prp. nr. 1 (2001-2002)): 'As part of the Agreement with PIL, the reduced tax on coal and coke and on oil refineries shall be abolished for the period up to 2010.' The Norwegian Government further informed the Authority that it had also been indicated in the context of the State Budget 2002 that it was the Norwegian Government's intention to phase out the existing tax exemption within 2010.

⁽¹⁾ See overview of environmental taxes in the EU, in Report to DG Environment, Update of Database of Environmental Taxes and Charges, Stefan Speck and Paul Ekins, July 2000; see also EC database on environmental taxes: http://europa.eu.int/comm/environment/enveco/env_database/database.htm.

The Authority points out that, even though the Norwegian Government stated that its intention was to phase out the existing 'tax exemption' within 2010, the Authority notes that no formal commitment, which would have limited the duration of the tax exemption to a maximum of ten years in a legally binding way, has been given by the Norwegian Government. Therefore, the Authority does not consider the aid to be of only temporary nature, as required under point 43 of the Environmental Guidelines.

Furthermore, the Authority notes that the SO₂ tax is not a 'new tax' within the meaning of point 46.1 of the Environmental Guidelines. According to point 46.2 of the Environmental Guidelines, the provisions in point 46.1 may be applied to existing taxes if certain conditions are fulfilled. In this respect, the Authority notes that the Norwegian Government has not provided a justification for why the exemption possibility in point 46.1 of the Environmental Guidelines is applicable in the present case.

More importantly, the Authority has doubts whether the conclusion of an agreement of intent between the Federation of Norwegian Process Industries (PIL) and the Ministry of Environment, as well as the adoption of possible future permission limits/permits by the Norwegian Pollution Control Authority fulfil the requirements set out under point 46.1 of the Environmental Guidelines.

As the Authority has already pointed out in its letter dated 28 February 2002, the agreement of intent is not legally binding upon the parties. Furthermore, the abolishment of the SO₂ tax would not seem to be conditional upon the implementation of the measures envisaged under the agreement of intent. The statement in the State Budget for 2002 can hardly be seen as sufficient. In this respect, the Authority notes, in particular, that there are no sanctions in case the commitments given by the undertakings benefiting from the tax exemption are not fulfilled. Finally, it is not clear to the Authority whether the obligation to reduce SO₂ emissions will result from the agreement or emission permits to be issued by the Norwegian Pollution Control Authority.

In order to benefit from a ten-year exemption, the Environmental Guidelines require that commitments given under agreements or other provisions having the same effects will result in reductions in emissions on the part of the firms benefiting from the exemption which go beyond normal business. The environmental effects of the agreements, or other provisions having the same effect, must be at least as good as the environmental effect of the taxes they replace.

The Norwegian Government informed the Authority, by letter dated 15 May 2002, that SO₂ emissions from the process industry were already subject to legally binding regulations through emission permits in accordance with the provisions of the Pollution Control Act. These regulations had already led to SO₂ emission reductions at costs higher than NOK 3/kg SO₂. From 1990 to 2000, emissions from industrial processes were reduced by 13 500 tonnes, to 17 100 tonnes in 2000. Only 800 tonnes of this reduction took place from 1998 to 2000, when the SO₂ tax was in force (¹).

The Authority observes, however, that, at present, no concrete commitments as regards such reductions have been given by the sector benefiting from the exemption from the SO₂ tax, nor has the Authority more detailed information on the content of the future emission permits.

The information submitted by the Norwegian Government with respect to reductions of SO₂ emission due to the previous tax regime might indicate that the efforts to be undertaken by the industry concerned until 2010 go beyond what has been achieved so far in terms of SO₂ emissions with the tax in place. However, given the lack of more detailed and verifiable information, the Authority is not able to ascertain that the company's efforts under the agreement of intent or in the context of future binding emission limits set by the Norwegian Pollution Control Authority are in proportion to the tax exemption.

(¹) The Norwegian Government informed the Authority that emission data for 2001 was not yet available.

In addition, the Authority observes that it is not clear from the information that has been submitted by the Norwegian Government whether emission permits issued in the past as well as possible future emission limits exceed binding Community standards within the meaning of the Environmental Guidelines. Point 7 of the Environmental Guidelines defines 'Community standard' as being the standard mandatory within the European Community setting the levels to be attained in environmental terms and the obligation to use the best available techniques (BAT) which do not entail excessive costs ⁽¹⁾. In this respect, the Authority notes that no information was submitted which would have allowed the Authority to examine whether and to what extent such possible future limits for SO₂ emissions would exceed harmonised standards, such as the limits laid down in the EEC Directive on air quality standards for sulphur dioxide ⁽²⁾ and whether such future limits would exceed the requirements following the Directive on air pollution from industrial plants ⁽³⁾ and the 'IPPC' Directive ⁽⁴⁾.

In light of the above considerations, and should the further investigation confirm that the measures in question constitute aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has doubts that the requirements laid down in the Environmental Guidelines are fulfilled with respect to the partial abolition of the SO₂ tax.

Final remarks and conclusions

Based on the information submitted by the Norwegian Government, the Authority cannot exclude that the exemptions from the electricity tax, derogations from the CO₂ tax as well as the abolition of the SO₂ tax constitute aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that these measures can be regarded as complying with Article 61(3)(c) of the EEA Agreement, in combination with the requirements laid down in the new Environmental Guidelines. Consequently, the Authority has doubts that the above measures are compatible with the functioning of the EEA Agreement.

Consequently, and in accordance with point 5.2 of Chapter 5 of the Authority's State Aid Guidelines, the Authority is obliged to open the procedure provided for in Article 1(2) of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

1. The Authority has decided to open the formal investigation procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement against:
 - the sectoral and regional exemptions from the tax on electricity consumption;
 - the exemptions from the CO₂ tax for coal and coke used as raw materials or as reducing agents in industrial processes as well as for coal and coke used for energy purposes in the production of cement and leca and the reduced CO₂ tax rate for the paper and pulp industry; and
 - the abolition of the SO₂ tax for coal and coke as well as for the oil refinery industry.
2. The Norwegian Government is invited, pursuant to point 5.3.1(1) of Chapter 5 of the Authority's State Aid Guidelines, to submit its comments on the opening of the formal investigation procedure within two months from the notification of this Decision.

⁽¹⁾ In footnote 5 to the Environmental Guidelines, it is clarified that such standards become EEA standards when they are incorporated into the EEA Agreement. In footnote 6 to the Environmental Guidelines, reference is made to the relevant EC Directives as incorporated into the EEA Agreement.

⁽²⁾ Council Directive 80/779/EEC, incorporated into the EEA Agreement, point 14 of Annex XX to the EEA Agreement.

⁽³⁾ Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants, incorporated into the EEA Agreement in point 16 of Annex XX to the EEA Agreement.

⁽⁴⁾ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, incorporated into the EEA Agreement in point 2g of Annex XX to the EEA Agreement.

3. The Norwegian Government is requested to submit all information enabling the Authority to examine the compatibility of the tax measures in question with the EEA Agreement within two months from the notification of this Decision.

Done at Brussels, 26 July 2002.

For the EFTA Surveillance Authority

Einar M. BULL

The President
