

## II

(Acts whose publication is not obligatory)

EUROPEAN ECONOMIC AREA  
EFTA SURVEILLANCE AUTHORITY

**EFTA SURVEILLANCE AUTHORITY DECISION**

**No 22/04/COL**

**of 25 February 2004**

**with regard to a notification of a new direct transport aid scheme (Norway)**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area <sup>(1)</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

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

Having regard to the Authority's Guidelines <sup>(3)</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(4)</sup>,

Whereas:

**I. FACTS**

**1. Introduction**

By letter from the Mission of Norway to the European Union dated 26 March 2003 (Doc. No: 03-1846 A), forwarding a letter from the Ministry of Trade and Industry dated 25 March 2003, a letter from the Ministry of Finance dated 25 March 2003 and a letter from the Ministry of Local Government and Regional Development dated 25 March 2003, all received and registered by the Authority on 26 March 2003, the Norwegian authorities notified a transition period for the regionally differentiated social security contributions and a new direct transport aid scheme.

By letter dated 16 May 2003 (Doc. No: 03-2951 D), the Authority acknowledged the receipt of the above letters and requested additional information.

By letter from the Mission of Norway to the European Union dated 10 June 2003 (Doc. No: 03-3707 A), forwarding a letter from the Ministry of Finance dated 5 June 2003, both received and registered by the Authority on 11 June 2003, the Norwegian authorities submitted additional information.

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

<sup>(2)</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>(3)</sup> Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in OJ L 231, 3.9.1994, p. 1. The Guidelines were last amended on 18 February 2004 (not yet published).

<sup>(4)</sup> Decision No 141/03/COL of 16 July 2003 (OJ C 216, 11.9.2003, p. 3 and EEA Supplement No 45 11.9.2003, p. 1).

By letter from the Mission of Norway to the European Union dated 19 June 2003 (Doc. No: 03-3976 A), forwarding a letter from the Ministry of Trade and Industry dated 10 June 2003, both received and registered by the Authority on 20 June 2003, the Norwegian authorities submitted a survey documenting additional transport costs <sup>(5)</sup>.

By letter dated 16 July 2003 (Doc. No: 03-4598 D), the Authority informed the Norwegian authorities of its decision to initiate the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, with regard to State aid in the form of regionally differentiated social security contributions and direct transport aid (hereinafter the decision to open an investigation).

The decision to open an investigation was published in the *Official Journal of the European Union* <sup>(6)</sup>. The Authority invited interested parties to present comments on the aid schemes concerned.

The official response of the Norwegian authorities to the decision to open an investigation was received by fax from the Ministry of Trade and Industry dated 17 September 2003, forwarding a letter from the Ministry of Finance dated 17 September 2003 (Doc. No: 03-6381 A). The letter from the Ministry of Finance dated 17 September 2003 was also forwarded by letter from the Mission of Norway dated 18 September 2003, received and registered by the Authority on 19 September 2003 (Doc. No: 03-6451 A). The letter from the Ministry of Finance contained, *inter alia*, an extended version of the survey of additional transport costs that was submitted to the Authority by letter dated 19 June 2003.

The Authority received comments from 10 interested parties concerning the decision to open an investigation.

By letters dated 16 October 2003 (Doc. No: 03-7071 D) and 17 October 2003 (Doc. No: 03-7135), respectively, the Authority submitted the comments from third parties to the Norwegian authorities.

By fax dated 21 October 2003, the Ministry of Trade and Industry forwarded a reply dated 21 October 2003 from the Ministry of Finance (Doc. No: 03-7243 A) concerning the comments from third parties. By letter from the Mission of Norway dated 23 October 2003, received and registered by the Authority on 24 October 2003 (Doc. No: 03-7360 A), the letter from the Ministry of Finance was also forwarded to the Authority.

By letter from the Mission of Norway to the European Union dated 22 October 2003, forwarding a letter from the Ministry of Local Government and Regional Development dated 20 October 2003, both received and registered by the Authority on 24 October 2003 (Doc. No: 03-7362 A), the Norwegian authorities notified an extension of the geographic area eligible for direct transport aid that was notified by letter dated 25 March 2003.

By letter dated 19 December 2003 (Doc. No: 03-8952 D), the Authority requested additional information and clarification, in particular concerning the cumulation rules contained in the notified scheme.

By fax dated 21 January 2004, the Ministry of Trade and Industry forwarded a letter dated the same day from the Ministry of Local Government and Regional Development (Event No: 187224) containing additional information. By letter from the Mission of Norway to the European Union dated 23 January 2004, received and registered on 26 January 2004 (Event No: 188041), the same letter was forwarded to the Authority.

By fax dated 9 February 2004, the Ministry of Trade and Industry forwarded a letter dated the same day from the Ministry of Local Government and Regional Development (Event No: 189794). By letter from the Mission of Norway to the European Union dated 11 February 2004, received and registered on 12 February 2004 (Event No: 191138), the same letter was forwarded to the Authority. The letter dated 9 February from the Ministry of Local Government and Regional Development contained a minor change concerning the administration of the scheme.

<sup>(5)</sup> Institute of Transport Economics (TØI). Arbeidsdokument av 4.6.2003. U-2899. TR1180/2003.

<sup>(6)</sup> See footnote 4.

The notification dated 25 March 2003 and the decision to open an investigation referred to above, concerned a three year transitional period, from 2004 to 2007, for the regionally differentiated social security contributions, as well as the introduction of a new direct transport aid scheme. The Authority decided on 12 November 2003 to close — with a positive decision — the investigation concerning the three year transitional period for the regionally differentiated social security contributions (Dec. No: 218/03/COL) <sup>(7)</sup>.

Consequently, the present decision deals with two aspects concerning the direct transport aid scheme. Firstly, the notification dated 25 March 2003 and the subsequent decision to open an investigation. Secondly, the additional notification dated 22 October 2003 containing a geographical extension of the scheme.

## 2. Description of the aid scheme notified on 25 March 2003

### 2.1. Aim of the scheme

The Norwegian authorities point out that extra transport cost is one of the permanent disadvantages or costs of distance related handicaps for firms located in peripheral areas and within sparsely populated regions compared to firms located in central areas. According to the Norwegian authorities, the aim of the new scheme is thus partly to offset the competitive disadvantages that additional transport costs represent for enterprises situated long distances from their markets.

### 2.2. Proposed eligible geographic area

The following counties/municipalities were proposed as eligible for national direct transport aid:

- Troms: Harstad, Tromsø, Kvæfjord, Skånland, Bjarkøy, Ibestad, Gratangen, Lavangen, Bardu, Salangen, Målselv, Sørreisa, Dyrøy, Tranøy, Torsken, Berg, Lenvik and Balsfjord,
- Nordland: all municipalities,
- Nord-Trøndelag: Leka, Nærøy, Vikna, Flatanger, Fosnes, Overhalla, Høylandet, Grong, Namsos, Namsskogan, Røyrvik, Lierne, Snåsa, Inderøy, Namdalseid, Verran, Mosvik, Verdal, Leksvik, Meråker and Steinkjer,
- Sør-Trøndelag: Hemne, Snillfjord, Hitra, Frøya, Ørland, Agdenes, Rissa, Bjugn, Åfjord, Roan, Osen, Oppdal, Rennebu, Meldal, Røros, Holtålen, Midtre Gauldal, Selbu and Tydal,
- Møre og Romsdal: Kristiansund, Vanylven, Sande, Herøy, Ulstein, Hareid, Norddal, Stranda, Stordal, Rauma, Nasset, Midsund, Sandøy, Aukra, Eide, Averøy, Frei, Gjemnes, Tingvoll, Sunndal, Surnadal, Rindal, Aure, Halså, Tustna and Smøla,
- Sogn og Fjordane: Gulen, Solund, Hyllestad, Høyanger, Vik, Balestrand, Leikanger, Sogndal, Aurland, Lærdal, Årdal, Luster, Askvoll, Fjaler, Gaular, Jølster, Bremanger, Vågsøy, Selje, Eid, Hornindal, Gloppen and Stryn.

The proposed areas eligible for direct transport aid are within the eligible area for regional aid, approved by the Authority on 17 December 1999 (327/99/COL), except for the municipalities Herøy (8 374 inhabitants), Ulstein (6 664 inhabitants), Hareid (4 780 inhabitants) and Aukra (3 026 inhabitants) in Møre og Romsdal county. The area for regional aid in Norway covers 25,2 % of the total population <sup>(8)</sup>, while the proposed area for the new direct transport aid scheme, as notified on 25 October 2003, covers 16,0 % of the total population (721 079 inhabitants).

The Norwegian authorities state that the designation of the area for regional transport aid is based on Annex XI of the State Aid Guidelines, which establishes criteria for granting aid to offset additional transport costs in low population density areas, i.e. regions with fewer than 12,5 inhabitants per square kilometre.

<sup>(7)</sup> OJ L 145, 9.6.2005, p. 25.

<sup>(8)</sup> All the population figures used in this decision are on 1 January 2002. The total population of Norway on 1 January 2002 was 4 503 436 inhabitants.

The counties Troms, Nordland, Nord-Trøndelag and Sogn og Fjordane have a population density of fewer than 12,5 inhabitants per square kilometre.

The counties Sør-Trøndelag and Møre og Romsdal do not have a low population density, but the parts of these counties proposed eligible for direct transport aid have a low population density (4,1 and 9,6 inhabitants per square kilometre, respectively). The total population of the municipalities in the two counties that are included in the proposed area is 179 792.

The Norwegian authorities state in the notification that the population covered by the existing indirect transport aid scheme (the geographically differentiated social security contributions scheme) is 23,55 % compared to a population coverage of 16,01 % in the new proposed area, and that this is in accordance with the first condition in the fifth indent in Annex XI (see section II.3 below) of the State Aid Guidelines for national regional aid.

### 2.3. Calculation of the regional direct transport aid

According to the notification, aid may only be given in respect of the extra costs of transporting goods inside the national territory, calculated on the basis of the most direct and economical mode of transport between the place of production and processing and the nearest commercial outlet. When transporting goods to destinations in Sweden and Finland, the calculation of the total transport distance also includes the distances within Sweden and Finland. However, aid is only given to the transport costs occurred within the national borders.

Only documented transport costs may form the basis for calculating the aid. The transport aid is calculated as a percentage of the total transport costs. The transport costs must be specified in a consignment note or equivalent document that is dependent on the transport distance inside national boundaries, weight of goods and type of goods and on freight charges and other charges that may be attributed to the actual transport. Compensation is given on the basis of applications from the firms, the year after the transport costs occurred.

The aid intensity will be differentiated according to two geographical transport zones and according to transport distance (minimum 350 km). The highest aid intensity priority is given to Troms, Nordland and Nord-Trøndelag (zone 1) while Sør-Trøndelag, Møre og Romsdal and Sogn og Fjordane (zone 2) is subject to lower aid intensity. Table 1 below shows the differentiation in aid intensities.

Table 1  
Aid intensity

Transport distances in kilometres	(in %)	
	Zone 1	Zone 2
350-700	30	20
701-	40	30

### 2.4. Documentation of additional transport costs

By letter dated 10 June 2003, the Ministry of Trade and Industry submitted a survey from the Institute of Transport Economics (TØI) <sup>(9)</sup> on the extra transport costs in the proposed area for transport aid. The survey is based on interviews with 33 enterprises divided into six samples (geographic areas). The 33 enterprises are selected from the Central Register of Establishments and Enterprises (CRE) at Statistics Norway <sup>(10)</sup> by using a random sample statistical method. The conclusion from TØI is that sample 1 (the three northernmost counties (Troms, Nordland and Nord-Trøndelag)) and sample 2 (counties in Western-Norway (Sør-Trøndelag, Møre og Romsdal and Sogn og Fjordane)) have on average transport costs per man-year — in total and for transport distances above 350 kilometres — that are significantly above comparable cost figures for the reference area. The reference area is zone 1 of the geographically differentiated social security contributions scheme (mostly Oslo and surrounding areas).

<sup>(9)</sup> Interju av industribedrifter i aktuelle transportstøttesoner og i referansesoner. Arbeidsdokument av 4.6.2003.

<sup>(10)</sup> 'Statistisk sentralbyrås bedrifts- og foretaksregister'.

### 2.5. Duration of the scheme

1 January 2004-31 December 2006.

### 2.6. Budget

The budget is estimated at approximately NOK 200 million (some EUR 24,5 million) per year.

### 2.7. Cumulation

By setting the maximum aid intensities as percentages of the total transport costs (see table 1 above), the Norwegian authorities state that they will ensure that firms are not being overcompensated. If undertakings benefit from a reduced social security contribution in the same period, the advantages of this reduction will be deducted from the transport aid grant calculated according to table 1. Furthermore, the undertakings will not receive more in transport aid from the new transport aid scheme and reduced social security contributions, altogether, than the amount equivalent to what they would have received through the existing differentiation of social security contributions.

### 2.8. Sectors exempted from the scheme and sensitive sectors that are subject to specific notification requirements

The economic activities hereunder cannot, according to the notification, receive direct transport aid.

(a) The scheme does not apply to transport or transmission of products of the following sectors and/or products of businesses without an alternative location:

- production and distribution of electricity,
- extraction of crude petroleum and natural gas,
- service activities incidental to oil and gas extraction excluding surveying,
- mining of metal ores,
- extraction of the industrial minerals nepheline syenite and olivine.

(b) Industries covered by specific sectoral rules

The following sectors may not receive regional transport aid due to specific sectoral rules:

- enterprises covered by the Act referred to in point 1a and b of Annex XV to the EEA Agreement (on aid to the steel industry and aid to shipbuilding).

(c) Economic activities within the agriculture/forestry-and-fisheries-sectors that will still be subject to the current system of differentiated rates of social security contribution.

Direct transport aid given to the motor vehicle industry or industrial production of synthetic fibres will, according to the notification, be subject to prior notification and approval by the Authority in accordance with the State Aid Guidelines.

### 2.9. The decision to open an investigation

In its decision of 16 July 2003 to open an investigation, the Authority expressed two doubts in respect of the direct aid scheme.

Firstly, the Authority noted that four of the notified municipalities proposed eligible for direct transport aid are outside the approved regional aid map (Herøy, Ulstein, Hareid and Aukra). As the Norwegian authorities have not notified an adjustment of the map of assisted areas, the Authority considered that direct transport aid to these four municipalities would be incompatible with the State aid provisions of the EEA Agreement.

Secondly, the Authority considered that the documentation submitted by the Norwegian authorities did not, to a sufficient degree, prove that additional transport costs exist in the geographical areas in southern Norway proposed eligible for direct transport aid (Sogn og Fjordane, Møre og Romsdal and Sør-Trøndelag).

#### 2.10. *Comments from Norway to the decision to open an investigation*

By letter dated 17 September 2003 from the Ministry of Finance, the Norwegian authorities submitted comments on the Authority's decision to open an investigation. The Norwegian authorities stated that, to ensure the validity of the previously presented documentation for extra transport costs in the notified area for transport aid, they had carried out a more extended survey compared to the one submitted by letter dated 19 June 2003 (enclosed with the comments). This survey confirmed the results of the previous survey, according to the Norwegian authorities.

The extended survey <sup>(1)</sup> covers 39 enterprises, including firms in the area not proposed eligible for the new national transport aid. Transport costs in zone 1 of the geographically differentiated social security contributions scheme are established as reference transport costs compared to extra transport costs in areas proposed eligible for direct transport aid. The conclusions of the study confirm, according to the Norwegian authorities, that enterprises in the counties of Troms, Nordland, Nord-Trøndelag, Sør-Trøndelag, Møre og Romsdal and Sogn og Fjordane have average transport costs — both in total and for distances above 350 kilometres — that are significantly higher than for enterprises in the reference area. The transport costs in the counties Troms, Nordland and Nord-Trøndelag are 220 % higher than the reference area for transport distances above 350 kilometres. The transport costs in the counties Sør-Trøndelag, Møre og Romsdal and Sogn og Fjordane are 143 % higher than the reference area for transport distances above 350 kilometres.

#### 2.11. *Comments from interested parties to the decision to open an investigation*

Ten organisations and undertakings from Norway submitted comments to the decision to open an investigation. The main part of the comments concerned the geographically differentiated social security contributions scheme (transition period). The interested parties commenting upon the direct transport aid scheme, *inter alia*, stated that they do not know how the direct transport aid scheme will work, or what the effects of the scheme will be. Some comments also claim that the new direct transport aid scheme will only, to a limited extent, reduce the additional transport costs for enterprises located in the peripheral regions in Norway.

By letter dated 23 October 2003 from the Mission of Norway to the European Union, forwarding a letter dated 21 October 2003 from the Ministry of Trade and Industry and a letter dated 21 October 2003 from the Ministry of Finance, all received and registered by the Authority on 24 October (Doc. No: 03-7360 A), the Norwegian authorities briefly commented upon the comments from third parties. The Norwegian authorities note that the considerations and figures put forward in the comments from third parties substantiate the arguments that have been presented previously to the Authority. The Norwegian authorities also note that no third parties have raised any objections to the notified direct transport aid scheme.

### 3. **Description of the notification of 22 October 2003**

#### 3.1. *Extension of the geographical scope*

On 22 October 2003 the Norwegian authorities notified an extension of the geographical scope of the scheme notified on 25 March 2003. The following 13 municipalities were also proposed as eligible for national direct transport aid:

in Hedmark county: Rendalen, Engerdal, Tolga, Tynset, Alvdal, Folldal and Os,

in Oppland county: Dovre, Lesja, Lom, Skjåk, Vågå and Sel.

The total population in these 13 municipalities is 37 271 persons. Both Hedmark and Oppland have a population density of fewer than 12,5 inhabitants per square kilometre. The population density for the area in Hedmark proposed as eligible for direct transport aid is 1,5 inhabitants per square kilometre, while it is 2,0 inhabitants per square kilometre for the proposed eligible area in Oppland county.

<sup>(1)</sup> 'Arbeidsdokument av 4.6.2003 (rev.1.9.2003-U-2899-TR1180/2003)'.

### 3.2. Amended justification for including municipalities from non-low population density counties (Møre og Romsdal and Sør-Trøndelag)

In the notification dated 22 October 2003, the Norwegian authorities amended their justification for including municipalities from counties that do not have a low population density in the proposed area eligible for direct transport aid (see last paragraph in point I.2.2 above).

The Norwegian authorities now argue that it is justified to include municipalities in Sør-Trøndelag and Møre og Romsdal according to Annex XI of the State Aid Guidelines, because the population of Sør-Trøndelag and Møre og Romsdal within the proposed area for direct transport aid is 179 792 inhabitants, while the population in other low density population counties<sup>(12)</sup> within the regional aid map, but outside the proposed transport aid map, is 172 322 inhabitants. The population within the proposed direct transport aid area in Sør-Trøndelag and Møre og Romsdal (counties with a population density higher than 12,5 inhabitants per square kilometre) is thus slightly higher (7 470 inhabitants) than the population within the regional aid map, but outside the proposed direct transport aid map, in counties with a low population density. The Norwegian authorities consider that it is within the Authority's discretionary powers to approve this limited increase in the population covered by the scheme.

### 3.3. Additional documentation of transport costs

As part of the amended notification of 22 October 2003, the Norwegian authorities submitted a new survey covering enterprises in notified municipalities in Hedmark and Oppland. The method used is the same as in the first survey (see point 2.4 above).

The survey<sup>(13)</sup> — also carried out by TØI — covers 13 enterprises in 13 municipalities in the northern parts of the counties of Hedmark and Oppland. Engerdal municipality was not covered by the survey, but is included in the additional notification. The survey confirms, according to the Norwegian authorities, that the enterprises in these 12 municipalities have transport costs — both in total and for distances above 350 kilometres — that on average are significantly higher than the costs of enterprises in the reference area. The reference area is the same as for the first study. The survey concludes that the transport costs in the 12 municipalities are 120 % higher than the reference area for transport distances above 350 kilometres.

## II. APPRECIATION

### 1. The existence of aid

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

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

The notified aid is being funded by State resources and will favour certain undertakings in the meaning of Article 61(1) of the EEA Agreement. The benefiting enterprises are actually or potentially in competition with similar undertakings in Norway and other EEA States. As the proposed aid distorts or threatens to distort competition and affects trade within the EEA, the scheme therefore constitutes State aid in the meaning of Article 61(1) of the EEA Agreement.

### 2. Notification requirement

Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement states: 'The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.' Aid provided without notification or aid that is notified late, i.e. notified after being 'put into effect' is considered unlawful aid.

<sup>(12)</sup> Population within the low density population counties of Aust-Agder, Telemark, Hedmark and Oppland.

<sup>(13)</sup> 'Arbeidsdokument av 22.9.2003-U-2929-TR1194/2003'.

By letters from the Mission of Norway to the European Union dated 26 March 2003 (Doc. No: 03-1846 A), 10 June 2003 (Doc. No: 03-3707 A), 22 October 2003 (Doc. No: 03-7362 A), 23 January 2004 (Event No: 188041) and 11 February 2004 (Event No: 191138) the Norwegian authorities have complied with their obligation under Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement by notifying the aid measure before putting it into effect.

### 3. Relevant legal basis

In their notifications, the Norwegian authorities qualified the aid granted under the proposed scheme as transport aid.

Chapter 25.4(27) of the Authority's State Aid Guidelines states that: 'In the regions of low population density qualifying either for exemption under Article 61(3)(a) or under 61(3)(c) on the basis of the population density test referred to in Chapter 25.3, paragraph 17, aid intended partly to offset additional transport costs<sup>(14)</sup> may be authorised under special conditions. It is up to the EFTA State to prove that such additional costs exist and to determine their amount.'

Chapter 25(3), paragraph 17, of the State Aid Guidelines defines low population density as below 12,5 inhabitants per square kilometre.

With regard to the special conditions for regions qualifying for the Article 61(3)(c) derogation under the population density criterion, Chapter 25.4(27) of the Guidelines refers to Annex XI that sets out the conditions to be met for aid to qualify for exemption. The conditions to be met are:

- Aid may serve only to compensate for the additional cost of transport. The EFTA State concerned will have to show that compensation is needed on objective grounds. There must never be over-compensation. Account will have to be taken here of other schemes of assistance to transport.
- Aid may be given only in respect of the extra cost of transport of goods inside the national borders of the country concerned. It must not be allowed to become export aid.
- Aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios.
- The estimate of the additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets.
- Aid may be given only to firms located in areas qualifying for regional aid on the basis of the new population density test. Such areas will be made up essentially of NUTS level III geographic regions with a population density of less than 12,5 inhabitants per square kilometre. However, a certain flexibility is allowed in the selection of areas, subject to the following limitations:
  - flexibility in the selection of areas must not mean an increase in the population covered by transport aid,
  - the NUTS III parts qualifying for flexibility must have a population density of less than 12,5 inhabitants per square kilometre,
  - they must be contiguous with NUTS III regions which satisfy the low population density test,
  - their population must remain low compared with the total coverage of the transport aid;

<sup>(14)</sup> Additional transport costs mean the extra costs occasioned by movements of goods within the borders of the country concerned. In no circumstances may such aid constitute export aid, nor must it constitute measures having an equivalent effect to quantitative restrictions on imports, within the meaning of Article 11 of the EEA Agreement.



- No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.);
- Transport aid given to firms in industries which the EFTA Surveillance Authority considers sensitive (motor vehicles, synthetic fibres, shipbuilding and steel) must always be notified in advance and will be subject to the industry guidelines in force.<sup>15</sup>

In Chapter 25.5(5) of the State Aid Guidelines it is stated in relation to the EFTA State's regional aid maps that: 'During the period of validity of the map, EFTA States may request adjustments to it, if it is shown that socioeconomic conditions have changed significantly. Such changes may relate to the rates of intensity and the eligible regions, provided that the possible inclusion of new regions is offset by the exclusion of regions having the same population. The validity of the adjusted map expires on the date already set for the original map'.

The Authority has examined the two notifications dated 25 March 2003 and 22 October 2003, respectively, in light of Article 61(3)(c) of the EEA Agreement and the relevant parts of the State Aid Guidelines on national regional aid cited above.

#### 4. The notification dated 25 March 2003

The assessment of the notification dated 25 March 2003, which was the subject of the opening decision dated 16 July 2003, has led to the following observations:

- (a) *The aid is limited to regions of low population density qualifying for Article 61(3)(c) status, with the exception of four municipalities (Chapter 25.4(27) and 25.5(5) and fifth indent of Annex XI of the State Aid Guidelines)*

The Norwegian authorities have notified four municipalities outside the current regional aid map (Herøy, Ulstein, Hareid and Aukra).

The Authority's authorisation of the map of assisted areas for Norway in 1999 (327/99/COL) implied an endorsement of the granting of aid to enterprises in areas covered by the regional aid map under approved regional aid schemes. It follows that regional aid (for example direct transport aid) cannot be granted outside the approved map of assisted areas.

Chapter 25.5(5) of the State Aid Guidelines obliges Member States to remove existing regions of the approved regional aid map, in order to include new regions. As the Norwegian authorities have not notified an adjustment of the map of assisted areas in accordance with Chapter 25.5(5) of the State Aid Guidelines, regional aid (direct transport aid) to the four municipalities outside the regional aid map (Herøy, Ulstein, Hareid and Aukra, all located in the county of Møre og Romsdal) is incompatible with the State aid provisions of the EEA Agreement. Consequently, the Norwegian authorities cannot implement the notified aid scheme for these four municipalities.

The total population coverage in the notification dated 25 March 2003 was 721 079 inhabitants, or 16,0 % of the total population in Norway. The total population of Herøy, Ulstein, Hareid and Aukra is 22 844 inhabitants. The population coverage without these four municipalities therefore becomes 698 235 inhabitants, or 15,5 % of the total population.

The population coverage in Sør-Trøndelag and Møre og Romsdal (the counties that do not have a low population density) was 179 792 inhabitants in the notification dated 25 March 2003. Without the four municipalities Herøy, Ulstein, Hareid and Aukra the population coverage for these two counties becomes 156 948 <sup>(15)</sup> inhabitants, which is lower than the population within the regional aid map in counties with a low population density that is not proposed eligible for direct transport aid (Hedmark, Oppland, Telemark and Aust-Agder). The total population within the regional aid map in these four counties is 209 593 inhabitants.

<sup>(15)</sup> 179 792 – 22 844 = 156 948.

The areas in Sør-Trøndelag and Møre og Romsdal proposed eligible for direct transport aid have a population density lower than 12,5 inhabitants per square kilometre. They are contiguous with the counties that satisfy the low population density test (Nord-Trøndelag and northwards). The population coverage in Sør-Trøndelag and Møre og Romsdal (156 948 inhabitants) amounts to 22,5 % of the total population coverage of the proposed scheme (698 235 inhabitants).

As to the rest of the notified areas, they are all Article 61(3)(c) EEA areas with a low population density. The conditions of Chapter 25.4(27) and the fifth indent of Annex XI are fulfilled.

*(b) The Norwegian authorities have proven that additional transport costs exist and have determined their amount (Chapter 25.4(27) of the State Aid Guidelines)*

To document additional transport costs, the Norwegian authorities have submitted two surveys. The first one by letter from the Mission of Norway to the European Union dated 19 June 2003, the second one, which is an extension of the first one, by letter from the Mission of Norway to the European Union dated 18 September 2003. Both surveys are random sample surveys where a number of firms were selected according to established statistical methods. For the selected firms data on transport costs were assembled.

In the opening decision (dated 16 July 2003), the Authority expressed doubts about the documentation submitted by the Norwegian authorities (the first survey). The Authority considered that the survey did not, to a sufficient degree, prove that additional transport costs exist in the geographical areas in southern Norway proposed eligible for direct transport aid (Sogn og Fjordane, Møre og Romsdal and Sør-Trøndelag).

In the second survey, the number of enterprises was increased. The study now confirms that enterprises located in the proposed area for direct transport aid have additional transport costs. Enterprises in the counties of Troms, Nordland, Nord-Trøndelag, Sør-Trøndelag, Møre og Romsdal and Sogn and Fjordane have average transport costs, both in total and for distances above 350 kilometres, that are significantly higher than for enterprises in the reference area. Enterprises in Troms, Nordland and Nord-Trøndelag have transport costs that are 220 % higher than enterprises in the reference area for transport distances above 350 kilometres. Enterprises in Sør-Trøndelag, Møre og Romsdal and Sogn and Fjordane have transport costs that are 143 % above the reference area for transport distances above 350 kilometres.

The Authority finds that the Norwegian authorities have proven that additional transport costs exist, and that the condition of Chapter 25.4(27) of the State Aid Guidelines therefore is fulfilled.

*(c) The aid serves to compensate for the additional transport costs only (first indent of Annex XI of the State Aid Guidelines)*

The aid intensities presented in table 1 in point I.2.3 above ensure that enterprises can receive aid up to a maximum of 40 % of their transport costs (for transport distances above 701 kilometres). Only transportation of more than 350 kilometres will be eligible for transport aid. The Authority considers that this is consistent with the results of the surveys presented by the Norwegian authorities (see point I.3.3 above) and finds that the scheme does not provide aid in excess of what is needed to compensate these additional transport costs.

In order to ensure that companies are not being overcompensated, any benefit from a reduced social security contribution rate will be deducted from the transport aid grant calculated according to table 1 in point I.2.3 above.

The condition in the first indent of Annex XI of the State Aid Guidelines is thus fulfilled.

*(d) Aid is given only in respect of transport of goods inside the national borders of the country concerned (second indent of Annex XI of the State Aid Guidelines)*

Under the scheme, aid may only be given in respect of the extra cost of transport of goods inside national boundaries and calculated on the basis of the direct and most economical option of transport mode between the place of production and processing and commercial outlet. When transporting goods to destinations in Finland and Sweden, the calculation of total transport distance also includes the distances within Sweden and Finland but aid is only given to the transport costs incurred within the national borders.

The condition in the second indent of Annex XI of the State Aid Guidelines is therefore fulfilled.

(e) *The aid is objectively quantifiable in advance on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio; the estimate of additional costs is based on the most economical form of transport and the shortest route (third and fourth indent of Annex XI of the State Aid Guidelines)*

The proposed scheme satisfies these requirements in the following manner:

- the aid is calculated as a percentage of the transport costs (see table 1 in point I.2.3),
- the transport costs refer to reasonable costs specified in a consignment note or equivalent document, and which are dependent on the transport distance inside national boundaries, weight of goods and type of goods and on freight charges and other charges that may be attributed to the actual transport,
- transport costs must be calculated on the basis of the most economical mode of transport and the shortest route between place of production and the destination.

The conditions in the third and fourth indent of Annex XI of the State Aid Guidelines are thereby fulfilled.

(f) *The sector-specific arrangements are complied with (sixth and seventh indent of Annex XI of the State Aid Guidelines)*

- The scheme does not apply to transport or transmission of the products of businesses without an alternative location: production and distribution of electricity, extraction of crude petroleum and natural gas, service activities incidental to oil and gas extraction excluding surveying, mining of metal ores and extraction of the industrial minerals nepheline syenite and olivine.
- The scheme does not apply to enterprises covered by the Act referred to in point 1a and b of Annex XV to the EEA Agreement (on aid to the steel industry and aid to shipbuilding).
- The scheme does not apply to agriculture, forestry and fisheries that will continue to be subject to the current system of geographically differentiated social security contributions.

The conditions in the sixth and seventh indent of Annex XI of the State Aid Guidelines are thus fulfilled.

##### **5. The amended notification dated 22 October 2003**

By letter from the Mission of Norway to the European Union dated 22 October 2003, the Norwegian authorities notified a geographical extension of the scheme notified on 25 March 2003 (see point I.3.1 above).

To document additional transport costs, the Norwegian authorities have submitted a survey that documents additional transport costs for the 13 proposed eligible municipalities in Hedmark and Oppland counties. The conclusion of the survey is that the enterprises in these 13 municipalities have transport costs — both in total and for distances above 350 kilometres — that, on average, are significantly higher than the costs of enterprises in the reference area (120 % for transport distances above 350 kilometres).

The Authority finds that the survey proves that additional transport costs exist for the notified 13 municipalities.

The Authority notes that the extension of the geographical scope of the scheme brings the total population coverage for the scheme up to 735 506 inhabitants<sup>(16)</sup>, or 16,3 % of the total population (without the municipalities Herøy, Ulstein, Hareid and Aukra).

The Authority also notes that the population density in the proposed areas from Hedmark and Oppland is lower than 12,5 inhabitants per square kilometre.

<sup>(16)</sup> 698 235 + 37 271 = 735 506.

Furthermore, the population within the regional aid map in counties with a low population density that is not proposed eligible for direct transport aid becomes 172 322 inhabitants<sup>(17)</sup>, which is higher than the population of the areas in Møre og Romsdal and Sør-Trøndelag (the counties that do not have a low population density) that is proposed eligible for direct transport aid (156 948 inhabitants).

Concerning the notification of 22 October 2003, the Authority concludes that the population density in the 13 municipalities is lower than 12,5 inhabitants per square kilometre and that they are within the existing regional aid map. The inclusion of these 13 municipalities does not bring the population coverage in the non-low population density counties Møre og Romsdal and Sør-Trøndelag (156 948 inhabitants) above the population coverage in the low population density counties Hedmark, Oppland, Telemark and Aust-Agder that is not proposed eligible for direct transport aid (172 322 inhabitants). The Norwegian authorities have also proven that additional transport costs exist for the 13 additional municipalities. As to the remaining requirements that need to be fulfilled, the Authority refers to the assessment in point 4 above that are equally valid when the 13 municipalities are included in the scheme.

## 6. Conclusion

The Authority concludes, with reference to the arguments above, that direct transport aid to the four municipalities Herøy, Ulstein, Hareid and Aukra is incompatible with the State aid provisions of the EEA Agreement and the aid shall not be put into effect for these four municipalities. Otherwise, the notified direct transport aid scheme is compatible with the EEA Agreement.

The Norwegian authorities are reminded that they are obliged to inform the Authority of any plan to amend or extend the scheme. The Norwegian authorities are also requested to submit an annual report providing detailed information on the implementation of the scheme and on the aid-per-kilometre ratio or the aid-per-kilometre and aid-per-unit-weight ratio in particular,

HAS ADOPTED THIS DECISION:

1. Direct transport aid to the four municipalities Herøy, Ulstein, Hareid and Aukra is incompatible with the State aid provisions of the EEA Agreement. The aid shall not be put into effect for these four municipalities.
2. The direct transport aid scheme, as notified by the Norwegian authorities on 25 March 2003 and 22 October 2003, with the exception of direct transport aid to the four municipalities mentioned in point 1 above, is compatible with Article 61(3)(c) of the EEA Agreement.
3. This decision is addressed to the Kingdom of Norway.
4. This decision is authentic in the English language.

Done at Brussels, 25 February 2004.

*For the EFTA Surveillance Authority*

*The President*  
Hannes HAFSTEIN

*College Member*  
Einar M. BULL

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<sup>(17)</sup> 209 593 – 37 271 = 172 322.