

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 303/13/COL

of 10 July 2013

concerning a Charter Fund Scheme for Northern Norway (Norway)

THE EFTA SURVEILLANCE AUTHORITY (THE 'AUTHORITY'),

HAVING REGARD to the Agreement on the European Economic Area (the 'EEA Agreement'), in particular to Articles 61 and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the 'Surveillance and Court Agreement'), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular Article 1(2) of Part I and Articles 6 and 7(4) of Part II,

Whereas:

I. FACTS

1. Procedure

- (1) In a letter dated 2 May 2012, and following pre-notification discussions with the Authority, the Norwegian authorities notified a Charter Fund Scheme for Northern Norway, pursuant to Article 1(3) of Part I of Protocol 3 ⁽¹⁾.
- (2) In a letter dated 27 June 2012 ⁽²⁾, the Authority informed the Norwegian authorities that it had decided to initiate the formal investigation procedure laid down in Article 1(2) of Part I and Article 6(1) of Part II of Protocol 3 in respect of the plan to grant aid under the Charter Fund Scheme for Northern Norway.
- (3) The Authority's Decision (No 246/12/COL) to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ⁽³⁾.
- (4) The Norwegian authorities submitted their comments to the Decision No 246/12/COL in a letter dated 27 August 2012 ⁽⁴⁾.
- (5) The Authority has received comments on Decision No 246/12/COL from eight interested third parties ⁽⁵⁾.
- (6) The Norwegian authorities submitted their comments on the observations from third parties in letters dated 15 November 2012 ⁽⁶⁾ and 23 April 2013 ⁽⁷⁾.

⁽¹⁾ Event Nos 632837 and 322824.

⁽²⁾ Event No 638133.

⁽³⁾ OJ C 291, 27.9.2012, p. 2 and EEA Supplement No 53, 27.9.2012, p. 36.

⁽⁴⁾ Event No 644991.

⁽⁵⁾ Innovative Experiences (Event No 650797), NHO Reiseliv (Event No 650549), NHO Luftfart (Event No 650733), Avinor (Event No 650806), VinterTroms AS (Event No 650827), Northern Norway Tourist Board Ltd (Event No 650958), Hotel chains Rica Hotels and Thon Hotels (Event No 650880) and Voigt Travel b.v. (Event No 668161).

⁽⁶⁾ Event Nos 653590 and 653595.

⁽⁷⁾ Event No 669821.

2. Description of the proposed measure

2.1. The Charter Fund Scheme

- (7) The measure consists of establishing a Charter Fund Scheme (the 'Charter Fund' or the 'Scheme') which will grant aid to tour operators flying air charter flights⁽⁸⁾ to three counties in Northern Norway: Nordland, Troms and Finnmark (the 'Counties'). The Charter Fund will be a non-profit undertaking acting as a vehicle for granting aid. Capitalization of the Charter Fund will be made with funds from the three Counties.
- (8) The Scheme will cover charter flights to all airports in Northern Norway. The Norwegian authorities have indicated that they expect only large aircraft⁽⁹⁾ to be relevant as only such aircraft generally are suitable for charter flights⁽¹⁰⁾. All airports in Northern Norway have excess capacity.
- (9) The aid will take the form of a payment of up to a maximum of 25 % of the total charter costs incurred by the tour operator for the eligible flights and will be limited to cover only such costs⁽¹¹⁾.
- (10) The Norwegian authorities anticipate that the Charter Fund will trigger 16 charter series⁽¹²⁾ with seven flight rotations per charter series in the first year, *i.e.*, a total of 112 flight rotations. A cabin factor of 60 %⁽¹³⁾ is the 'worst case scenario' which will lead to the highest aid intensity⁽¹⁴⁾. Assuming an average cabin factor of 60 %, the total annual amount of aid from the Charter Fund is estimated to be around NOK 8 400 000⁽¹⁵⁾.
- (11) The Scheme is part of a coherent regional development strategy of the Norwegian authorities. One of the key policy objectives of Norway's 'High North Policy' is to 'strengthen the basis for employment, value creation and welfare throughout the country by means of a regional and national effort in cooperation with partners from other countries and relevant indigenous groups'⁽¹⁶⁾. The policy for Northern Norway focuses specifically on tourism, aiming at preventing depopulation by creating jobs in the tourist industry. The tourism strategy of the Norwegian Government also makes reference to the Charter Fund⁽¹⁷⁾. Focusing on tourism to prevent depopulation is an important policy of the regional authorities in the Counties of Nordland, Troms and Finnmark⁽¹⁸⁾.

⁽⁸⁾ A charter flight is defined as a non-scheduled flight.

⁽⁹⁾ Aircraft of Boeing 737-category and above.

⁽¹⁰⁾ The following airports in Northern Norway can currently handle large aircraft: Tromsø, Bodø, Harstad Narvik/Evenes, Alta, Kirkenes (Høybuktoen), Bardufoss, Svalbard, Lakselv (Banak), Andøya (also called 'the Northern lights airports'). As for Svalbard, see Protocol 40 to the EEA Agreement.

⁽¹¹⁾ See Section 2.5 below for a more detailed description of the Scheme.

⁽¹²⁾ The term 'charter series' means charter flights between two destinations repeated over a limited period of time (e.g. weekly flights between Bodø and London from February to April).

⁽¹³⁾ The cabin factor is the percentage of sold seats in a flight. The cabin factor will be determined according to the actual number of departing passengers, divided with the maximum seat capacity for the aircraft.

⁽¹⁴⁾ Charter series with an average cabin factor of less than 60 % is eligible for aid; however, the maximum aid that can be granted is still 25 % of the charter costs incurred with a cabin factor of 60 %. With a cabin factor of less than 60 %, the aid will not cover all of the charter operator's loss. This is illustrated in the figure at paragraph 26 below.

⁽¹⁵⁾ This corresponds to 25 % aid intensity of the total charter costs. The total charter cost is estimated to be NOK 33 600 000 (NOK 300 000 in costs per flight rotation multiplied with 112).

⁽¹⁶⁾ See the Norwegian Government's white paper 'The High North. Vision and Policy Instruments', (Meld. St. 7 (2011-2012), the short version, p. 25). One priority is to 'maintain focus on the travel and tourism industry in North Norway and Svalbard and to promote further cooperation and coordination between actors in the travel and tourism industry' (p. 37). (http://www.regjeringen.no/upload/UD/Vedlegg/Nordområdene/UD_nordomrodene_EN_web.pdf). The Norwegian Government's political platform form 2009-2013 refers to the importance of tourism and in particular for Northern Norway: 'Northern Norway is a unique travel destination and must be given the opportunity to realize and release its potential' (p. 22) (http://arbeiderpartiet.no/file/download/4861/58544/file/soriamoria2_english.pdf).

⁽¹⁷⁾ See the Norwegian Government's tourism strategy: 'Avinor is establishing "Northern Light Airports" as a unified brand for the largest airports in Northern Norway [...] Avinor supports the Charter Fund for Northern Norway [...] This kind of charter fund is intended to promote charter tours to the region. Feedback from the industry indicates that this will be an important initiative to encourage new traffic' ('Destination Norway — National strategy for the tourism industry', p. 76). (http://www.regjeringen.no/pages/37646196/Lenke_til_strategien-engelsk.pdf).

⁽¹⁸⁾ For instance, the County of Nordland has prepared a 'Strategy for Tourism in Nordland for the period 2011 until 2015' (<http://www.nfk.no/Filnedlasting.aspx?MId=1266&Filld=11230>).

- (12) The Charter Fund will most likely be organised as an undertaking owned by the three Counties. The Charter Fund's Board of Directors will appoint a group to approve applications for aid under the Scheme subject to certain criteria being satisfied.

2.2. The objective and possible effect of the aid measure

- (13) The objective of the Charter Fund is to increase the use of airports in Northern Norway and thereby contribute to economic development in the region. The aid measure is intended to reduce the economic risk involved in operating air charter (non-scheduled flights) to Northern Norway.
- (14) The Counties are low density population areas with an average population density of 4,2 inhabitants per square kilometre thereby falling within the definition of 'least populated regions' as set out in the Authority's Regional Aid Guidelines ⁽¹⁹⁾. In addition, the Counties are facing depopulation.
- (15) A limited number of charter routes have been operated to Northern Norway in the past, however, without success ⁽²⁰⁾. A reason for this may be the cancellation rules applying to air charters. Cancellation at a late stage is very expensive. The deadline for deciding whether to cancel a charter flight is several months before the operation of the charter series. If the sale of tickets at that date is limited, the charter series is often cancelled. The tour operator would otherwise risk having to pay a cancellation fee or bear the loss corresponding to the empty seats. The tourist industry believes that if that risk was reduced, many flights would go ahead. Such flights could even be profitable. However, tour operators seem to prefer to cancel flights due to the risk of empty seats rather than to wait and hope that late sales will make the flight profitable.
- (16) In 2010, the estimated economic impact of tourism in the three Counties was about NOK 14 billion. This includes both direct and indirect effects of tourism ⁽²¹⁾. The following table gives some examples of tourist spending divided between different industries in the three Counties ⁽²²⁾.

County/industry	Food/drinks	Passenger transport	Activities	Food/drinks	Clothing and shoes	Souvenir, maps etc.
Finnmark	311,7 mill	470,8 mill	51,1 mill	192,9 mill	45,8 mill	23,2 mill
Troms	453,9 mill	1457,8 mill	80,0 mill	250,8 mill	59,6 mill	31,6 mill
Nordland	664,0 mill	2654,6 mill	110,3 mill	428,7 mill	101,9 mill	46,6 mill

⁽¹⁹⁾ The Authority's Guidelines on National Regional Aid for 2007-2013, OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 42, also available at: <http://www.efasurv.int/state-aid/legal-framework/state-aid-guidelines/>. The Guidelines were last time amended on 6.4.2006, published in OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1. The Guidelines correspond to the 'Guidelines on National Regional Aid for 2007-2013' adopted by the European Commission, published in OJ C 54, 4.3.2006, p. 13 (the 'Regional Aid Guidelines'). The three Counties are NUTS II regions. Finnmark has the lowest population density with 1,6 inhabitants per square kilometre.

⁽²⁰⁾ In 2009, the Authority approved an aid scheme for route development from the second largest city in Northern Norway, Bodø, see the Authority's Decision No 179/09/COL ('the Route Development Fund Bodø'). The Route Development Fund has not yet granted any aid under the scheme. For three years, the airline company 'Norwegian' operated a route between Tromsø and one of the biggest cities in Europe. Despite receiving support from Avinor, this route was not profitable. The route was shut down in March 2011. Air Baltic has operated a seasonal route between Tromsø and Riga twice a week from 1 April to 30 September. This route was shut down in 2011. SAS operates a route between Tromsø and Stockholm twice a week from 1 July to 15 August. In addition, a Russian airline flies three times a week from Tromsø to Murmansk, Russia. Given the limited number of international routes, there is a presumption that routes between North Norwegian airports and European cities are of little commercial interest for air carriers (Event No 632837).

⁽²¹⁾ Direct effects refer to consumption paid with the tourists' own money. The indirect effects refer to the value of tourists' spending in a broader view, e.g. demand for goods and services in the form of subcontracts.

⁽²²⁾ All numbers are in NOK. The figures are based on numbers from the report 'Travel Life's economic impact in Trøndelag and North Norway 2010' prepared by The Executive Committee for Northern Norway (Landsdelsutvalget) and the Norwegian Hospitality Association (NHO Reiseliv Nord-Norge).

- (17) The hotel industry in Northern Norway suffers from overcapacity and low operating margins. In addition, the utilization of capacity varies considerably throughout the year. A challenge for the tourist industry is the many seasonal jobs. The Norwegian authorities assume that the Scheme will lead to increased tourism in the low season, with a particularly positive effect on employment in the tourist industry. In 2012, it was estimated that travellers to Northern Norway would spend NOK 9 000 (per person) in the region ⁽²³⁾. The Norwegian authorities assume that a low level of aid from the Charter Fund will trigger a high amount of spending by tourists in the target area of the Scheme. This can be illustrated by the following table ⁽²⁴⁾.

Average cabin factor	Number of tourist year one	Aid from the Charter Fund	Tourist spending	Charter Fund cost/ tourist spending
60 %	10 714	8 400 000	96 422 400	8,7 %
61 %	10 892	7 980 000	98 029 440	8,1 %
62 %	11 071	7 560 000	99 636 480	7,6 %
63 %	11 249	7 140 000	101 243 520	7,1 %
64 %	11 428	6 720 000	102 850 560	6,5 %
65 %	11 606	6 300 000	104 457 600	6,0 %
66 %	11 785	5 880 000	106 064 640	5,5 %
67 %	11 964	5 460 000	107 671 680	5,1 %
68 %	12 142	5 040 000	109 278 720	4,6 %
69 %	12 321	4 620 000	110 885 760	4,2 %
70 %	12 499	4 200 000	112 492 800	3,7 %
71 %	12 678	3 780 000	114 099 840	3,3 %
72 %	12 856	3 360 000	115 706 880	2,9 %
73 %	13 035	2 940 000	117 313 920	2,5 %
74 %	13 213	2 520 000	118 920 960	2,1 %
75 %	13 392	2 100 000	120 528 000	1,7 %
76 %	13 571	1 680 000	122 135 040	1,4 %
77 %	13 749	1 260 000	123 742 080	1,0 %
78 %	13 928	840 000	125 349 120	0,7 %
79 %	14 106	420 000	126 956 160	0,3 %
80 %	14 285	0	128 563 200	0,0 %

⁽²³⁾ The notification, p. 11 (Event No 632837), referring to a report from the Institute of Transport Economics (Transportøkonomisk institutt, TØI) of 2007 No 941/2008 (<https://www.toi.no/getfile.php/Publikasjoner/T%C3%98I%20rapporter/2008/941-2008/941-hele%20%20rapporten%20elektronisk-ny.pdf>).

⁽²⁴⁾ The Norwegian authorities have submitted that the figures are only estimates made for the purposes of preparing a budget for the Charter Fund. Due to rounding of numbers, the figures in the table are not accurate.

2.3. National legal basis for the aid measure

- (18) Capital injections from the Counties to the Charter Fund will be made over its budgets. The legal basis for the aid that is granted will be budgetary decisions taken by the Counties ⁽²⁵⁾.
- (19) The Charter Fund will be entitled to make grants of aid based on its statutes (by-laws); the standard agreements will be entered into between the Charter Fund and the aid beneficiaries.

2.4. Beneficiaries

- (20) Applicants for aid from the Charter Fund will be the tour operators, *i.e.* the charter operator. All applications to the Charter Fund must be supported by three parties:
- The tour operator, which is the direct aid recipient;
 - The destination provider, which could be a destination management company, a hotel, a tourist office, or any other commercial provider of tourist services. Aid from the Charter Fund will not be granted to 'air only packages'. It must be demonstrated that the tour package includes a 'land arrangement' in the target area of the Scheme, with a value of at least NOK 800 per tourist;
 - The airline, which must set out all costs, deadlines, penalties, obligations and responsibilities applicable to the charter series.
- (21) The approval group of the Charter Fund may reject an application if:
- The fund limitations set by the Board of Directors of the Charter Fund for the period in question have been reached;
 - Any of the supporting partners of the beneficiary are believed to be unable to meet the expected commercial performance described in the application;
 - The application is incomplete or does not comply with published guidelines of the Charter Fund.
- (22) The Charter Fund will grant aid to tour operators operating air charters to Northern Norway. Such operators may be located in or outside Northern Norway or in or outside the EEA.

2.5. Aid intensity, eligible costs, overlap with other schemes

- (23) The aid will take the form of a maximum payment of up to 25 % of the total charter costs and will be limited to such costs only (*i.e.*, financial obligations under the contract between the tourist operator and the airline). Other costs borne by the tour operators are not eligible costs under the Scheme.
- (24) The aid will be calculated with reference to the 'average cabin factor' of the flights operated under the charter series, excluding empty legs ⁽²⁶⁾. The cabin factor will be determined according to the actual number of departing passengers divided by the maximum seat capacity of the aircraft. Passenger data will be based on the official numbers recorded by the Norwegian airport authorities. Empty legs will not be taken into account when calculating the average cabin factor but will be included when the total eligible costs for the charter series are calculated.

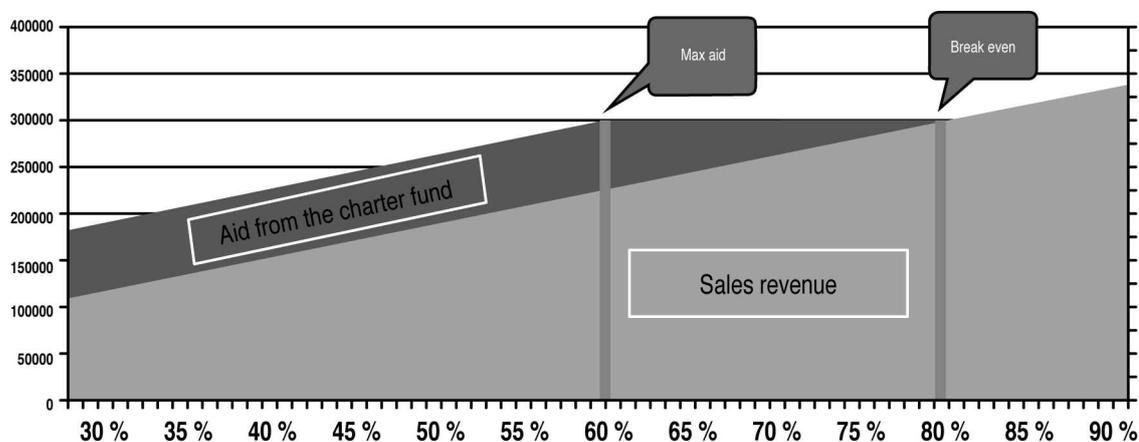
⁽²⁵⁾ It is possible that the Norwegian State might provide some funding over the state budget.

⁽²⁶⁾ 'Empty legs' are flights operated in order to position an aircraft at the start and at the end of a charter series. The return flight on the first departure will be empty and the flight to pick up the last passengers will be empty. Empty legs represent a considerable cost for charter series.

- (25) Tour operators will be required to set a break-even point at 80 % of the cabin factor ⁽²⁷⁾. If sales only reach a cabin factor of 60 % or less, the Charter Fund will reimburse the tour operator 25 % of the charter costs, which will be the maximum aid intensity. Thus, maximum support (25 %) will be given for cabin factors of 60 % or less. The aid will decrease to zero when the cabin factor reaches 80 %. This is illustrated in the following table ⁽²⁸⁾.

Cabin factor	Sales revenue (NOK)	Aid from the Charter Fund (NOK)
50 %	187 500	75 000
55 %	206 250	75 000
60 %	225 000	75 000
65 %	243 750	56 250
70 %	262 500	37 500
75 %	281 250	18 750
80 %	300 000	0

- (26) If the aircraft operated under a charter series reach a cabin factor between 60 % — 80 %, the contribution paid by the Charter Fund will cover losses incurred by the tour operator in connecting with the charter series. The following figure illustrates how the Charter Fund will work ⁽²⁹⁾.



- (27) As shown in the figure above, if flights are operated with a cabin factor of less than 60 %, the tour operator will lose money, as the combination of sales revenues and an aid intensity of 25 % will not be enough to reach the break-even point. The financial aid granted by the Charter Fund will only cover the tour operator's losses when the cabin factor lies between 60 % and 80 %.
- (28) The aid will be paid to the tour operators from the Charter Fund after the charter series to Northern Norway have been completed and after the approval group of the Charter Fund has evaluated and confirmed that all award criteria are fulfilled.

⁽²⁷⁾ A cabin factor of 80 % is deemed to be the industrial break-even standard.

⁽²⁸⁾ The table is prepared by the Charter Fund and gives an example of how the Scheme will work with flights from London to Northern Norway with a Boeing 737-800. It is estimated that the net cost quoted by the airline to the tour operator will be NOK 300 000 per flight rotation. 149 persons must purchase tickets to reach the break-even point (80 % of an aircraft capacity of 186 persons).

⁽²⁹⁾ The figure is prepared by the Charter Fund for illustration purposes (Event No 632837).

- (29) Aid under the Charter Fund may be cumulated with other forms of aid. Funding of the same eligible costs under other schemes will be coordinated by the Charter Fund and the aid ceilings in the applicable guidelines will not be exceeded. Operating aid under the Charter Fund cannot be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the Regional Aid Guidelines.

2.6. Monitoring and advertising

- (30) The Charter Fund will be published on a new subpage on Avinor AS' webpage ⁽³⁰⁾ and on www.visitnorthernorway.com.
- (31) The Charter Fund will ensure that a list of tour operators receiving aid is published annually, in each instance indicating the source of public funding, the recipient company, the amount of aid paid out and the number of passengers concerned.
- (32) In the event that a tour operator fails to comply with the criteria fixed by the Charter Fund when aid is granted, penalty mechanisms will apply.

2.7. Budget and duration

- (33) The budget of the Charter Fund for the three first years of operation will amount to NOK 30 million. Thereafter, further capital will be injected only if necessary. The maximum capital base will not exceed NOK 30 million. The maximum possible grant of aid from the Charter Fund will be NOK 15 million per year (the absolute aid ceiling). However, it is estimated that the amount of aid granted by the Charter Fund will be appreciably below NOK 10 million per year.
- (34) The Norwegian authorities have indicated that the Charter Fund will be in place for 10 years.

2.8. Grounds for initiating the formal investigation procedure

- (35) Based on the information submitted by the Norwegian authorities, the Authority considers that the conditions set out in Article 61(1) of the EEA Agreement are met and that the notified Scheme entails state aid. In the Authority's Decision (No 246/12/COL), the Authority expressed doubts as to whether the Scheme complies with Article 61(3) of the EEA Agreement, read in conjunction with the requirements laid down in the Authority's Regional Aid Guidelines. The doubts were in particular related to whether operating aid could be granted to direct recipients located outside the region of Northern Norway.

3. Comments from third parties

- (36) The Authority has received comments from eight interested third parties, seven in favour of the Charter Fund: Innovative Experiences ⁽³¹⁾, NHO Reiseliv ⁽³²⁾, Avinor, VinterTroms AS ⁽³³⁾, Northern Norway Tourist Board Ltd, Hotel chains Rica Hotels and Thon Hotels, and Voigt Travel b.v.; and one against: NHO Luftfart ⁽³⁴⁾.

⁽³⁰⁾ Avinor AS is a state-owned company that operates the majority of the civil airports in Norway.

⁽³¹⁾ Innovative Experiences represents 33 experience-based tourist companies in Northern Norway.

⁽³²⁾ NHO Reiseliv (the Norwegian Hospitality Association) represents more than 2 500 companies that employ a workforce of approximately 55 000. The North Norwegian branch of NHO Reiseliv has 400 members.

⁽³³⁾ VinterTroms AS is owned by six travel companies in Northern Norway.

⁽³⁴⁾ NHO Luftfart represents companies in the airline sector in Norway and other interested companies.

- (37) All third parties *in favour* of the Charter Fund strongly support the Charter Fund and submit that it is of very high importance for the regional development of Northern Norway and for Northern Norway as a tourist destination. Some of the comments submitted to the Authority are:
- In order to develop year-round profitable experience-based tourism in Northern Norway, access to important international target groups is vital. The increase in guests arriving in the winter time is very important, and more direct charter flights will support this development. For short breaks or visits outside the summer season driving to Northern Norway, or use of bus or train, is not an option for target groups. Northern Norway needs more year-round operations in order to secure competent staff for the tourist industry, and in order to sustain a vital and attractive region in the years to come. There is a strong relationship between the region as a populated and attractive region to live in, and Northern Norway as a sustainable, authentic, year-round tourism region.
 - Northern Norway is threatened by depopulation. With the exception of Tromsø, all airports in the region have ample spare terminal capacity that can be utilized for international flights, to the benefit of the region. The notified measure will make Avinor's airports in Northern Norway into the local power-gateways for tourism. This will contribute to more jobs in the area, and the development of tourism will thus have significant positive regional effects.
 - A particular challenge for the tourist industry in Northern Norway is how to operate year-round and ensure that there is a sufficient customer base during the winter months to be sustainable and profitable.
 - For the development of winter tourism to Northern Norway charter flights are a priority. The Charter Fund will be crucial for the development of profitable winter traffic and year-round jobs in the tourist industry in the region.
 - It is the intention of Northern Norway Tourist Board Ltd to increase visitor numbers to the area by almost 100 %, from 2,9 million to 5 million, by 2018. To reach this goal, charter flights are extremely important and, according to tour operators, the only way to make the destinations accessible.
 - For tour operators the challenge is the risk of failure, since Northern Norway is a new destination and many of them already sell similar products in competing markets. Hence, filling charter flights and making the operation profitable at the right price is not easy.
 - The fact that there has been a significant decrease in bus charters from Europe to Northern Norway during the last few years means that there is a need to replace this traffic with new traffic, such as charter flights.
 - Charter flights operate from an airport convenient to the customer at one end, directly to the chosen destination, thus avoiding unnecessary time spent, delays, costs and energy caused by transiting on various scheduled flights.
 - Charter operation is an operation with high risks, as airline cancellation terms do not coincide with customers booking behaviour. An incentive which will reduce the risks may well encourage traffic to a relatively new (winter) destination (Northern Norway).
 - Preparing and selling tour programs to Northern Norway using traditional scheduled routes in Norway is not at all an option. Packages including transport with scheduled flights would be a totally different product and involve entering into a quiet different market-segment.
- (38) A summary of the main comments of the third party expressing *disfavour* in relation to the Charter Fund are set out below ⁽³⁵⁾:
- It is not correct that only a few unsuccessful routes have been operated during the last years. For example, SAS has operated charter routes from Tromsø, Evenes and Bodø to several destinations in Europe for many years, and with a regular yearly increase during the last few years. It is therefore possible to operate such routes on a commercial basis.

⁽³⁵⁾ NHO Luftfart (Event No 650733) (unofficial translation from Norwegian to English).

- It is misleading to claim that tour operators take the biggest risks concerning charter flights. For example, SAS offers a standard contract which allows cancellation without extra cost up to 60 days prior to the flight. Cancellation after that is subject to a fee.
- The Norwegian air route system is built around a 'hub and spokes' principle. Oslo Lufthavn Gardermoen serves as the natural point for all traffic to Norway, which has served as a basis for developing a strong domestic air transport system. Therefore, there is a direct competitive interrelationship between today's air routes to/from Northern Norway and any new charter routes which would be subsidised a Charter Fund. There is a significant number of international passengers on the ordinary air routes to Northern Norway.
- The Scheme will have direct economic consequences for companies operating ordinary scheduled flights.
- The Scheme will discriminate between such charter flights eligible for aid and possible new ordinary air routes from abroad directly to Northern Norway. State aid to charter flights will impede start-up of new scheduled routes and be in breach of the fundamental principle of equal competition.
- Inter-continental flights normally require a higher cabin factor than 80 % to be profitable. In order to deliver a good in-coming air transport offer to Norway from European destinations, the placement of airport bases is decisive. For example, to attract British tourists directly to smaller destinations in Northern Norway, a base in the UK will be a significant competitive advantage. Therefore, in practice, the Scheme will favour foreign air carriers.
- It is fully possible for the Norwegian authorities to buy air transport routes pursuant to Regulation (EC) No 1008/2008 ⁽³⁶⁾.

4. Comments from the Norwegian authorities

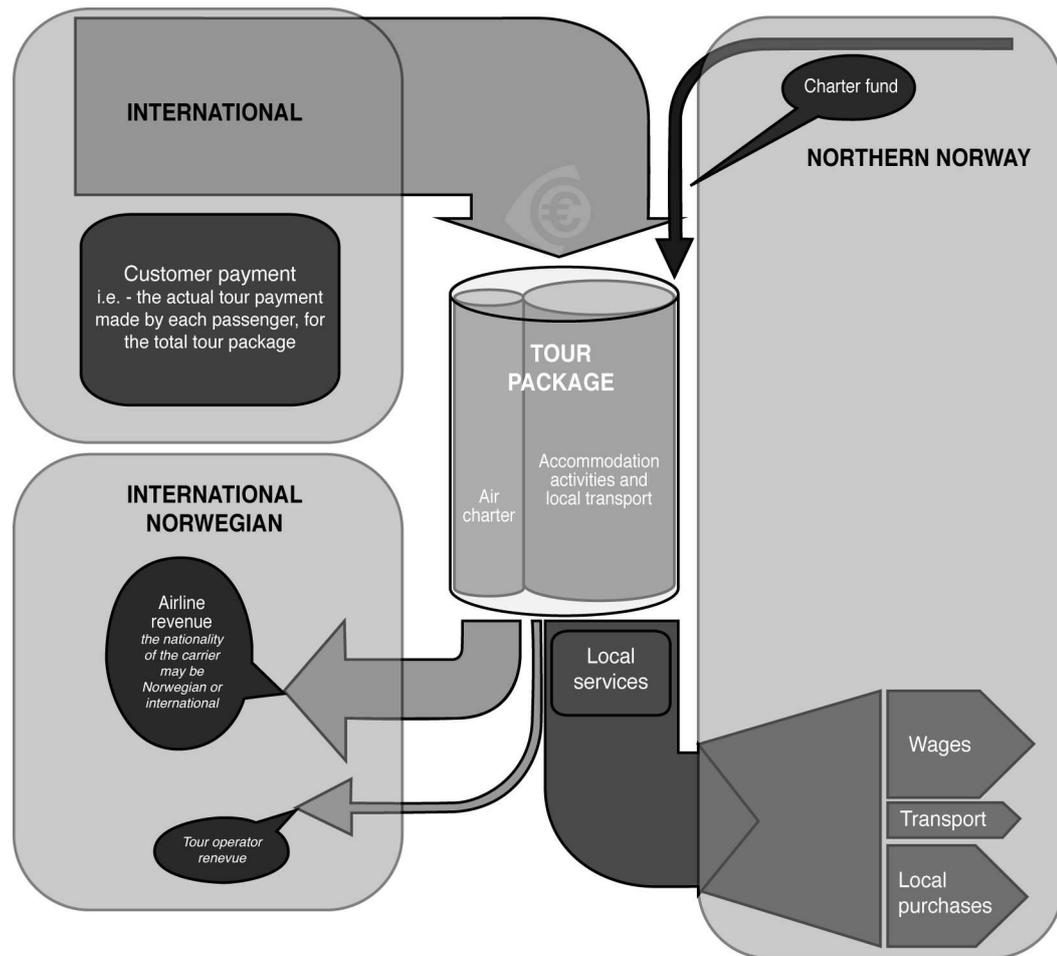
- (39) The Norwegian authorities provided their comments on Decision No 246/12/COL in a letter dated 27 August 2012 ⁽³⁷⁾ and their views on the comments from third parties in letters dated 15 November 2012 and 23 April 2013 ⁽³⁸⁾.
- (40) Most Arctic areas, including the northern parts of Norway, suffer from problems relating to a low degree of diversification of local industry, as well as problems resulting from remoteness, long internal and external distances and harsh weather conditions. The Charter Fund is intended to contribute to the diversification of industry in the area, creating jobs in the tourism sector and related sectors. The Counties believe that the Charter Fund will be an important tool with which to slow down the depopulation of the area.
- (41) It is fully in line with the Regional Aid Guidelines to grant aid to an undertaking located outside the relevant area as long as the intended effect of the aid takes place in the region eligible for regional aid. The Charter Fund is intended to have effect in the three Counties of Northern Norway.
- (42) The Regional Aid Guidelines and the Guidelines on financing of airports and start-up aid to airlines departing from regional airports do not contain any limitations on the granting of operating aid on the basis of the location of the beneficiary, provided that the intended effect takes place within the region concerned. Further, the EU Commission's and the Authority's practice under Article 107(3)(c) TFEU and Article 61(3)(c) EEA respectively, both with regard to operating aid and start-up aid to regional airports, has allowed operating aid without any limitations on the location of the beneficiary.
- (43) The link between the aid and the target area is clear. The following figure illustrates how the Charter Fund is intended to bring positive effects to Northern Norway ⁽³⁹⁾.

⁽³⁶⁾ Regulation (EC) No 1008/2008 of 24.9.2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3). Incorporated into the EEA Agreement by Annex XIII point 64a.

⁽³⁷⁾ Event No 644991.

⁽³⁸⁾ Event Nos 653590/653595 and Event No 669821.

⁽³⁹⁾ The figure is prepared by the Charter Fund for illustration purposes (Event No 644991).



- (44) The economic activity generated will have several effects. The airline will receive income from the charter operator for chartering the aircraft. The tour operator will receive income from the charter flights. The main impact is the effect on the Northern Norwegian economy, as shown by the arrows in the right bottom corner in the figure above. The Charter Fund contains no limitations on the location of the tour operator chartering the aircraft, but the tour operator will only receive aid if it operates a charter series to a regional airport in Northern Norway.
- (45) The Scheme is both necessary and appropriate ⁽⁴⁰⁾.
- (46) The Counties believe that the Charter Fund is compatible with the Regional Aid Guidelines. If the Authority should disagree, the Counties submit that the Scheme nevertheless is compatible with the EEA Agreement, either on the basis of the Guidelines on the financing of airports and start up aid to airlines departing from regional airports, or on the basis of Article 61(3)(c) of the EEA Agreement directly.
- (47) As regards the comments from third parties, the Norwegian authorities have in particular commented on the observations made by NHO Luftfart ⁽⁴¹⁾. The Norwegian authorities consider that some of these observations appear to rely on some divergent views of the facts.
- The Counties have never disputed the existence of charter flights from Northern Norway to holiday destinations in Southern Europe. However, this is a different market from that at issue. The relevant market in the present case is the supply and demand for charter flights to Northern Norway.
 - The Counties are not aware of contracts offering favourable cancellation terms as referred to by NHO Luftfart. Other operators and agents in the industry have stated that the standard term in charter flight contracts is a non-refundable deposit of 5-10 % upfront, or a 5-10 % cancellation fee. In any event, a 60-day deadline for free cancellation still exposes the tour operators to considerable risk, as there is a universal trend towards later bookings.

⁽⁴⁰⁾ See Section 3.3 in Part II below.

⁽⁴¹⁾ Letter from the Norwegian authorities dated 15.11.2012 (Event Nos 653590/653595).

- The Counties are uncertain as to the relevance of NHO Luftfart's argument that the air route system in Norway is built around a 'hub and spokes' system. The intention of the Charter Fund is to stimulate new traffic, and not to limit already existing traffic. New international traffic will support new tourism development, new infrastructure, and a sustainable tourist industry and employment. The Counties believe that this will support more demand on scheduled services from Oslo to Northern Norway. International charter flights and domestic Oslo flights are complementary services. An increase in charter flights from abroad will not undermine the Norwegian air flight travel pattern. In addition, a significant part of travel to Northern Norway is business travel, a segment that would not in any event be affected by the Scheme.
- The effects on competition for scheduled flights appear to be exaggerated by NHO Luftfart. Different routes constitute different markets. Moreover, non-scheduled flights and scheduled flights are also different markets.
- It is hard to see how the notified measure could be discriminatory. New scheduled routes have repeatedly received support, and the magnitude of such support is far above what will be distributed through the Charter Fund.
- There is no mechanism in the Charter Fund which would discriminate against Norwegian carriers. Norwegian scheduled air transport operators do not only have bases in Norway as argued by NHO Luftfart.
- Regards the possibility of procuring air transport services on unprofitable routes pursuant to Regulation (EC) No 1008/2008, the Counties do not see the relevance of the comment.

II. ASSESSMENT

1. The presence of state aid

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

(48) Article 61(1) of the EEA Agreement provides 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'.

1.2. Presence of state resources

(49) The aid measure must be granted by the State or through State resources.

(50) The Norwegian authorities have informed that the Charter Fund is likely to be financed directly from the budgets of the three Counties (it cannot be excluded that it may also receive financing directly from the Norwegian State).

(51) In that light, the Authority considers that this condition is met as the Scheme will be financed either by the budgets of the Counties or the State ⁽⁴²⁾.

1.3. Favouring certain undertakings or the production of certain goods

(52) Firstly, the aid measure must confer on the beneficiaries an advantage that relieves them of charges that are normally borne from their budgets.

⁽⁴²⁾ The Norwegian authorities have also mentioned the fact that the Charter Fund may, at some stage in the future, be co-financed by private undertakings. The assessment carried out by the Authority has not examined this possibility as this option seems to be relatively uncertain.

- (53) The tour operators benefiting from the Scheme will receive a direct grant which will reduce the charter costs on a given charter series. The service providers located in the three Counties gaining from an increase in tourists to the region will indirectly benefit from the Scheme.
- (54) Secondly, the aid measure must be selective in that it favours certain undertakings or the production of certain goods.
- (55) Only tour operators that operate charter flights to Northern Norway will benefit directly from the Scheme. Similarly, only operators (service providers) that are located in the three Counties will indirectly benefit from the Scheme.
- (56) The Authority therefore considers that the measure is selective.

1.4. *Distortion of competition*

- (57) State aid is covered by Article 61(1) of the EEA Agreement if it distorts or threatens to distort competition and affects trade between the Contracting Parties to the EEA Agreement. For the application of Article 61(1) of the EEA Agreement, it is sufficient that aid threatens to distort competition by granting a selective advantage. Aid is regarded as distorting competition if it is granted to an undertaking which carries out activities in competition with others.
- (58) The direct aid beneficiaries of the Scheme are tour operators chartering aircraft to Northern Norway (non-scheduled flights). The tour operators are active in several countries and in a sector characterised by strong competition. The indirect beneficiaries of the Scheme are service providers in the tourist industry in Northern Norway, who will benefit from the aid in the form of an increase in demand from foreign tourists. The aid may encourage tourists to choose to travel to Northern Norway instead of travelling to holiday destinations in other countries. The distortion of competition does not only occur at the level of tour operators but possibly also at the level of tourist service providers. In addition, airports compete internationally to attract new flights and new routes. Therefore, the aid may also possibly lead to a distortion of competition between airports.
- (59) The Authority takes the view that the Scheme might strengthen the position of operators directly or indirectly benefitting from the Scheme as compared to competitors that do not receive a similar benefit. Therefore, any aid granted under the Scheme may be regarded as distorting or threatening to distort competition.

1.5. *Effect on trade between Contracting Parties*

- (60) State aid to specific undertakings is regarded as affecting trade between the Contracting Parties to the EEA Agreement if the recipient carries out an economic activity involving trade between the Contracting Parties. The aid will be granted to tour operators which offer holiday packages that bring tourists from abroad to Norway. This is, by definition, a cross-border activity. In addition, the tourist industry in Northern Norway, which will indirectly benefit from the Scheme, competes with the tourist industries in other EEA countries.
- (61) Therefore, state funding under the notified measure will affect trade between the Contracting Parties to the EEA Agreement.

1.6. *Conclusion*

- (62) The Authority considers that all of the conditions set out in Article 61(1) of the EEA Agreement are met and therefore, that the notified Scheme entails state aid. The state aid is only compatible with the functioning of the EEA Agreement if it qualifies for one of the derogations in Article 61(3) of the EEA Agreement.

2. Procedural requirements

- (63) The aid measure envisaged by the Scheme is considered as operating aid. The Regional Aid Guidelines provide that 'operating aid schemes are not covered by the regional aid maps, and are assessed on a case by case basis on the basis of a notification by the EFTA State concerned pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement' ⁽⁴³⁾.
- (64) Pursuant to Article 1(3) of Part I of Protocol 3, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.
- (65) By submitting a notification in relation to the Charter Fund on 2 May 2012 ⁽⁴⁴⁾, the Norwegian authorities have complied with the notification requirement in Article 1(3) of Part I of Protocol 3.
- (66) By not implementing the notified Scheme, the Norwegian authorities have complied with the standstill obligation provided for under Article 3 of Part II of Protocol 3.
- (67) As required by the formal procedure, the Authority has examined the comments made by the Norwegian authorities and the comments made by third parties.

3. Compatibility of the aid

3.1. Assessment of the aid measure under Article 61(3) of the EEA Agreement in conjunction with the Regional Aid Guidelines

- (68) On the basis of the derogation in Article 61(3)(c) of the EEA Agreement, the following may be considered to be compatible with the functioning of the EEA Agreement:

'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

- (69) With a view to assessing the compatibility of the aid, as already noted, it constitutes operating aid. Operating aid releases an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities ⁽⁴⁵⁾. Operating aid is normally prohibited.
- (70) The Regional Aid Guidelines provide that:

'on the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, state aid granted to promote the economic development of certain disadvantaged areas within the EEA may be considered to be compatible with the functioning of the EEA Agreement. This kind of state aid is known as national regional aid. National regional aid consists of aid for investment granted to large companies, or in certain limited circumstances, operating aid, which in both cases are targeted on specific regions in order to redress regional disparities' (emphasis added) ⁽⁴⁶⁾.

- (71) The Guidelines also provide that:

'In derogation from the previous paragraph, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions' ⁽⁴⁷⁾. The least populated regions represent or belong to regions at NUTS-II level for Norway and NUTS IV level for Iceland with a population density of 8 inhabitants per km² or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion' (emphasis added) ⁽⁴⁸⁾.

⁽⁴³⁾ The Regional Aid Guidelines at paragraph 81.

⁽⁴⁴⁾ Event Nos 632837 and 322824.

⁽⁴⁵⁾ See Case T-348/04 *SIDE v Commission* [2008] ECR II-625, paragraph 99, Case T-162/06 *Kronoply GmbH v Commission* [2009] ECR II-1, paragraph 75.

⁽⁴⁶⁾ The Regional Aid Guidelines at paragraph 1.

⁽⁴⁷⁾ It is the task of the EFTA State to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation (see the Regional Aid Guidelines at footnote 65).

⁽⁴⁸⁾ The Regional Aid Guidelines at paragraph 69.

3.2. *The aid may only be authorised in the least populated regions*

3.2.1. The three Counties belong to the least populated regions

- (72) As provided by the Regional Aid Guidelines, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, insofar as it is intended to prevent or reduce the continuing depopulation of those regions. The least populated regions are regions with a population density of 8 inhabitants or less per square kilometre ⁽⁴⁹⁾.
- (73) The three Counties have a population density of 4,2 inhabitants per square kilometre. Therefore they meet the conditions set out in the Regional Aid Guidelines to benefit from the more flexible compatibility assessment for an operating aid measure.

3.2.2. The direct beneficiaries of the Scheme are not necessarily located in the least populated regions — link between the aid measure and the regional development of Northern Norway

- (74) The aid as such will be paid to tour operators which may be located outside of Norway/the EEA. The direct beneficiary of the aid will therefore not necessarily be located in the least populated regions.
- (75) In its opening Decision, the Authority questioned whether a scheme providing for the grant of operating aid to beneficiaries that may be located outside the least populated regions may be held to be compatible with the Regional Aid Guidelines. The Authority questioned whether the fact that the undertakings in the region concerned are indirectly targeted by the Scheme constitutes a sufficiently strong link for the regional development of the area.
- (76) The Norwegian authorities have argued that the link between the aid to the tour operator and the regional development of Northern Norway is sufficient for the following reasons:
- The Scheme will apply to charter flights to Northern Norway exclusively;
 - Only packages including a ‘*land arrangement*’ will be eligible for aid under the Scheme; and
 - The aid will be paid from the Charter Fund to tour operators after flights to the target area have been completed.
- (77) The Authority notes that a tour operator will only receive aid if it operates a charter series to a regional airport in Northern Norway. The aid will not be granted for the transport of tourists on charter flights outside this region. It is clear that the target area of the Scheme is Northern Norway, among the least populated areas of Norway. The Authority also notes the requirement that the Scheme only applies to packages which include a ‘*land arrangement*’ in this region. This means that the Scheme may have a direct effect in the region by way of bringing in tourists that would otherwise not come to the region. The ‘*land arrangement*’ should ensure that tourists stay in the region during their vacation in Northern Norway. The ‘*land arrangement*’ is required by the Scheme to have a value of at least NOK 800 per tourist. Aid from the Charter Fund will be granted once the charter series has been completed and after it has been documented that the award criteria are met. One of the award criteria is that the application be supported by a destination provider of tourist services. Aid will not be awarded to ‘*air-only packages*’. The service providers located in the three Counties will gain from an increase in tourists and the consequent increase in demand for their services and, as such, will indirectly benefit from the Scheme. The tables in Section 2.2 in Part I above on tourists spending in the region, show that an increase in tourists will have a direct economic impact on the tourism sector in the region. The Authority finds it likely that the main economic effects of the Scheme will be channelled to the Scheme’s target area.

⁽⁴⁹⁾ The Regional Aid Guidelines at paragraph 22(a).

- (78) The Authority also notes that the EU Commission has accepted the grant of regional aid to beneficiaries located outside regions eligible for regional aid. For example, in a decision concerning Italy (Sicily), the Commission found that grants covering costs aimed at promoting tourist transport by charter flights were compatible with Article 107(3)(a) TFEU. The grants were available to tour operators that hired aircraft for carrying tourists to Sicily. Grants to cover transport costs to Sicily awarded to Italian and foreign travel agencies for providing tourist travel as part of inclusive tours and for carrying tourists by rail or sea were also found to be compatible ⁽⁵⁰⁾.
- (79) On this basis, the Authority comes to the conclusion that even though the direct beneficiary of the aid may be located outside Northern Norway, the Scheme contains a sufficient link to the region where the intended effects are aimed to be produced.

3.3. *The aid must be necessary and appropriate to prevent or reduce continuing depopulation*

- (80) It is the task of the EFTA State concerned to demonstrate that aid is necessary and appropriate in order to prevent or reduce continuing depopulation ⁽⁵¹⁾.
- (81) In order for the notified measure to be considered *necessary*, the Norwegian authorities must demonstrate that there is a need for state intervention in order to achieve the objective of preventing or reducing continuing depopulation.
- (82) The Norwegian authorities have informed the Authority that Northern Norway, one of Europe's least populated areas, has always been extremely sparsely populated and has suffered from depopulation for decades. The Norwegian authorities therefore consider that it is necessary to take further measures to stabilise settlement in the region and to prevent further depopulation. The Scheme is one of the tools necessary to achieve that objective. The Norwegian authorities recognise that the establishment of the Charter Fund will not on its own solve the problem of depopulation, but consider that it will, as a part of a general policy, increase economic activity in the region and maintain and create new jobs. Employment opportunities and expected income are the most decisive factors influencing an individual's choice of residence.
- (83) In order for the Scheme to be considered *appropriate*, the Norwegian authorities must demonstrate that it is not apparent that other measures would be better suited in order to achieve the aim of preventing or reducing depopulation in the least populated areas ⁽⁵²⁾.
- (84) The Norwegian authorities argue that the Scheme is appropriate as it is the best measure available with which to increase tourism, create jobs in the tourist industry and thus to contribute to a reduction in depopulation in the region. In its view, traditional investment aid alone is not always the most adequate instrument to address the specific problems in the region. Jobs are crucial to support population levels. Tourism is a growing sector, and is both labour-intensive and dependent on a local work force. One of the challenges in developing a tourist industry in Northern Norway is profitability and the seasonal nature of the tourism sector. The Charter Fund is intended to increase tourism in the low season, thus contributing to year-round jobs. The Norwegian authorities argue that an aid instrument, which only would have limited aid to local companies in the region, would not result in an increase in the number of flights to relevant airports (and thereby in tourism in the area) or prevent depopulation. In their view, the Charter Fund is the instrument with the highest chance of success and minimal distortive effects. In that light, they consider that the Scheme is appropriate.
- (85) In its opening Decision, the Authority expressed doubts in relation to the notified measure and in particular questioned whether the stated objectives of the Scheme could not be achieved by means other than providing operating aid to tour operators organising holiday packages using charter flights (non-scheduled) (for example, through packages using scheduled flights).

⁽⁵⁰⁾ Decision 1999/99/EC of 3.6.1998 concerning Sicilian Regional Law No 25/93 on measures to promote employment (OJ L 32, 5.2.1999, p. 18).

⁽⁵¹⁾ See the Regional Aid Guidelines at footnote 65.

⁽⁵²⁾ See e.g. the Authority's Decision No 228/06/COL of 19.7.2006 on the notified scheme concerning regionally differentiated social security contributions: 'On the basis of the information provided by the Norwegian authorities, the Authority finds that it is not apparent that measures other than operating aid would be better suited in order to achieve the aim of preventing or reducing depopulation in the least populated areas' (p. 23).

- (86) The Authority considers that the Norwegian authorities have satisfied some of the Authority's doubts in that regard and thus demonstrated that there is a need for state intervention and that the Scheme is necessary as a tool to prevent depopulation in the region of Northern Norway. The Authority also considers that the Charter Fund can be viewed as a tool with which to increase tourism in the region and in turn increase employment in one of Norway's least populated regions. This finding is supported by third parties from various businesses in the tourist sector in the region, which have expressed themselves in favour of the Scheme. However, the Authority has been in doubt as regards the appropriateness and the effects of the Scheme for the development and the prevention of de-population of the region. It is not obvious that the objectives could not have been achieved through other means, such as arranging packages by using scheduled flights.
- (87) In its assessment the Authority has taken into account the Regional Aid Guidelines, which provide that:
- ‘where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm or aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy’ (emphasis added) ⁽⁵³⁾.
- (88) Northern Norway is considered a priority in terms of regional development and the aim of the Norwegian Government is to prevent depopulation and encourage settlement in this region. Support for the tourist industry is seen as a key factor for the development of the region and the Norwegian authorities argue that the creation of employment possibilities is of particular importance in order to achieve the aim of preventing or reducing depopulation in the region.
- (89) The Institute of Transport Economics estimated that in 2007 foreign air-bound tourists spent NOK 7 480 on prepaid purchases and NOK 6 730 on local purchases. It is estimated that in 2012 travellers to Northern Norway will spend NOK 9 000 per person ⁽⁵⁴⁾.
- (90) In that light, the Authority finds that the tourist industry could play an important role in the development of the region. The economic impact the Scheme may have on Northern Norway, through an increase in tourism to the area and it becoming better known as an international tourist destination, could contribute to stabilising, and possibly increasing, population in the region.
- (91) Nevertheless, while scheduled flights and non-scheduled flights may form two separate markets ⁽⁵⁵⁾, and that for the purposes of increasing tourism in the region direct scheduled flights to Northern Norway may be a less viable alternative (in particular during the low-season), the Authority remains of the view that it is not entirely obvious why scheduled domestic flights cannot be used as part of a travel holiday package, for example when tour operators arrange ‘round-trip packages’. The Authority notes that Norway has a well-developed, decentralised airport system due to the important role air travel plays as a mean of transport, in particular in regions in the periphery of the EEA such as Northern Norway. Indeed, the Norwegian authorities have identified a number of domestic air transport routes as eligible for public service compensation and in respect of which the State compensates a selected airline to operate routes that would not otherwise be commercially viable. In the Authority's view, it is not entirely clear why the stated aim of the Scheme — to contribute to the development of one of the least populated regions in Norway through aid for charter flights from abroad to Norway with a view to increasing tourists numbers during the low season and thereby contributing to year-round jobs — could not also be achieved, at least in part, through the use of scheduled flights.
- (92) In that light, the Authority considers that certain doubts remain as to whether the Scheme is the best instrument with which to achieve the stated objectives with minimal distortive effects. In particular, the Authority considers that the Scheme could have potential distortive effects on the market for the provision of scheduled flights.

⁽⁵³⁾ The Regional Aid Guidelines at paragraph 10.

⁽⁵⁴⁾ See reference to the TØI Report No 941/2008 in footnote 23 above and the notification p. 11 (Event No 632837).

⁽⁵⁵⁾ The EU Commission has in its merger decisions held that scheduled and non-scheduled flights are not in the same market. See for instance Case No COMP/M.5141 — KLM/Martinair, where the Commission regarded the supply of airline seats to tour operators (that is the ‘wholesale market’) as a market distinct from the market for supply of scheduled air transport services to end users. The Commission noted that ‘the market for sales of seats to tour operators is a market which is upstream to the market for sales of seats to individuals. Accordingly, the competitive conditions on this market are manifestly different since tour operators have different requirements than individual customers (for example, buying large seat packages, negotiation of rebates, taking into account of customers' needs in terms of flight times etc.)’ (OJ C 51, 4.3.2009, p. 4).

- (93) For that reason, the Authority finds that the establishment of the Scheme is appropriate only for a limited period of time in order to assist in establishing a viable tourist industry in the least populated area of Norway. The 10-year duration for the Scheme, argued for by the Norwegian authorities, would appear to be excessive in order to reach this goal. The Authority considers that the Scheme should be limited to a 'start-up' period of three years, which will allow the evaluation of the appropriateness of the Scheme. Therefore, the Norwegian authorities should evaluate the effects of the Scheme at the expiry of this period, taking into account both the positive effects of the Scheme and any negative effects on competition.

3.4. *The aid must be proportionate to the objective of the Scheme*

- (94) Pursuant to Article 61(3)(c) of the EEA Agreement, aid granted in order to facilitate the development of certain economic areas may be considered to be compatible with the functioning of the Agreement 'where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In order to be compatible with the common market, the scheme must be proportionate to the objective of the scheme.
- (95) The Norwegian authorities are of the view that the Scheme has been designed so that only the necessary level of aid is granted. Maximum support (25 %) from the Charter Fund will be given at a cabin factor of 60 % or less. The aid intensity will gradually decrease to zero when the cabin factor reaches an average of 80 % ⁽⁵⁶⁾.
- (96) The Norwegian authorities submit that the Scheme, which reduces the risk for tour operators, is likely to lead to a cabin factor exceeding 60 %, and therefore, it is unlikely that the aid intensity will correspond to 25 % of the charter costs.
- (97) The Authority finds that the main feature of the Scheme is to establish a guarantee for tour operators so that they do not cancel flights with a low cabin factor. The maximum support is 25 % of the charter costs. Additional costs incurred on charter flights with a cabin factor below 60 % will not be reimbursed. The total yearly amount of aid granted from the Charter Fund is estimated to be below NOK 10 million per year. The Authority finds that this relatively low amount of aid is proportionate. Such a low amount is unlikely to be liable to affect trade in an unduly adverse manner.
- (98) The Scheme can thus be distinguished from the EU Commission's decision in relation to a premium scheme for tour operators in Greece ⁽⁵⁷⁾. That scheme provided that tour operators would receive EUR 40 per tourist. As the Authority understands that scheme, it was not limited to compensation for extra transport costs incurred in bringing tourists to Greece ⁽⁵⁸⁾. This is, in contrast to the Charter Fund, which aims to encourage tour operators to enter into contractual obligations prior to receiving bookings from tourists by compensating them in the event that they are not being reimbursed for the transport costs of bringing tourists to Northern Norway.
- (99) The Authority also notes, as already described, that beneficiaries of the Scheme can be located either in Norway or abroad and that they can enter into charter flight agreements with either Norwegian or non-Norwegian air carriers. Equal situations are treated equally under the Scheme. Therefore, the Authority does not consider the Scheme to be discriminatory.
- (100) In light of the above, the Authority finds that the aid is proportionate to the object of the Scheme.

⁽⁵⁶⁾ See the description of the Scheme in Section 2.5 in Part I above.

⁽⁵⁷⁾ Decision 2003/262/EC of 27.11.2002 on a premium scheme for tour operators in Greece (OJ L 103, 24.4.2003, p. 63).

⁽⁵⁸⁾ In that case, the EU Commission also held that the Greek authorities had not supplied the Commission with information relevant for an assessment of the appropriateness of the aid in terms of its contribution to regional development (see paragraph 22 of the decision).

4. Duration of authorization

- (101) The Authority in its Decision No 246/12/COL of 27 June 2012 raised doubts as to whether the Scheme could be approved for a period extending beyond 31 December 2013. In the light of the comments received, a longer period is necessary to achieve a measurable impact on the development of the region. Given the doubts expressed by the Authority in its Decision No 246/12/COL as regards the effect of the Scheme on the development and the prevention of depopulation in that region a period of three (3) years is more appropriate. In all cases, the need for and level of operating aid should be regularly re-examined to ensure its long-term relevance to the region concerned ⁽⁵⁹⁾. Such a longer period will facilitate the evaluation of the Scheme's durable effects.
- (102) Therefore, after a period of three (3) years Norway should submit a report evaluating the effects of the Scheme on the development of tourism and the prevention of depopulation in the region and its effects on competition so that the Authority can assess the necessity and appropriateness of the Scheme.

5. Conclusion

- (103) The Authority considers that all of the conditions set out in Article 61(1) of the EEA Agreement are met and that consequently the Charter Fund Scheme entails state aid.
- (104) On the basis of the above assessment, the Authority considers that the Charter Fund Scheme is compatible with the EEA Agreement pursuant to the derogation in Article 61(3)(c) of the EEA Agreement.
- (105) The Authority has, however, been in doubt as regards the appropriateness and the effects of the Scheme for the development and the prevention of de-population of the region. In particular in relation to whether the objectives could be achieved through other means. Therefore, the Authority has concluded that the Scheme can be approved for a period of three years from the date of this Decision. In addition, the Norwegian authorities shall be committed to prepare and produce an evaluation of the Scheme, documenting its effects on the development of tourism and the prevention of depopulation in the region and its effects on competition. The evaluation is to be made by an independent expert and shall be submitted to the Authority.
- (106) The Norwegian authorities are reminded of the obligation under Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of the Implementing Provisions Decision ⁽⁶⁰⁾ to provide annual reports on the implementation of the Scheme.
- (107) The Norwegian authorities are also reminded that all plans to modify this Scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Charter Fund Scheme for Northern Norway as notified by the Norwegian authorities constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The aid scheme is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c) subject to the condition that it is implemented for a period of three (3) years from the date of this Decision. At the expiry of this three (3) year period, Norway shall submit a report to the Authority with an evaluation of the effects of the Scheme on the development of tourism and the prevention of depopulation in the region and its effects on competition.

Article 3

This Decision is addressed to the Kingdom of Norway.

⁽⁵⁹⁾ The Regional Aid Guidelines at paragraph 71.

⁽⁶⁰⁾ Available at: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, 10 July 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member
