NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Invitation to submit comments pursuant to Article 1(2) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on state aid issues

(2016/C 236/10)

By means of Decision No 489/15/COL, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority notified the Norwegian authorities of its decision to initiate proceedings pursuant to Article 1(2) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning the abovementioned measure.

Interested parties may submit comments on the measure in question within one month of the date of publication to:

EFTA Surveillance Authority
Registry
Rue Belliard 35/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

The comments will be communicated to the Norwegian authorities. The identity of the interested party submitting the comments may be withheld following a request in writing stating the reasons for the request.

SUMMARY

Procedure

The Norwegian authorities notified the regionally differentiated social security scheme contributions 2014-2020, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 13 March 2014 ([1]). On the basis of that notification and information submitted thereafter ([2]), the Authority approved the notified aid scheme by its Decision No 225/14/COL of 18 June 2014.

By its judgment of 23 September 2015 in case E-23/14 *Kimek Offshore AS* v *ESA* ([3]) the EFTA Court annulled, in part, the Authority's decision.

By letter dated 15 October 2015 ([4]), the Authority requested information from the Norwegian authorities. By letter dated 6 November 2015 ([5]), the Norwegian authorities replied to the information request.

Description of the measure

The objective of the general scheme on differentiated social security contributions as such is to reduce or prevent depopulation in the least inhabited regions in Norway, by stimulating employment. The operating aid scheme offsets employment costs by reducing the social security contribution rates in certain geographical areas. As a main rule, the aid intensities vary according to the geographical area in which the business unit is registered. Norwegian law requires undertakings to register sub-units for each separate business activity performed ([6]). If an undertaking performs different kinds of business activities, separate sub-units must be registered. Moreover, separate units must be registered if the activities are performed in different geographical locations.

([1]) Documents No 702438-702440, 702442 and 702443.
([2]) See paragraph 2 of Decision No 225/14/COL, available online: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf
([3]) Not yet reported.
([4]) Document No 776348.
([5]) Documents No 779603 and 779604.
([6]) The Act on the Coordinating Register for Legal Entities (LOV-1994-06-03-15).

By way of exemption from the main rule on registration, the scheme also applies to undertakings registered outside the eligible area where they hire out workers to the eligible area and where their employees are engaged in mobile activities within the eligible area (for the purposes of this decision, this is referred to as 'ambulant services'). This is the exemption rule under scrutiny in the decision at hand. The national legal basis for the scheme as such is Section 23-2 of the National Insurance Act ([1]). The national legal basis for the exemption is provided for by section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 on determination of the tax rates etc. under the National Insurance Act.

The exemption applies only when the employee spends half or more of his or her working days in the eligible area. Further, the reduced rate is only applicable for the part of the work carried out there.

Assessment of the measure

The Authority must assess whether the exemption rule is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in line with the Authority's Guidelines on Regional State Aid for 2014-2020 (the RAG) ([2]).

Regional aid can be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas ([3]). Regional operating aid can only fall under Article 61(3)(c) EEA if it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions ([4]).

There is no question that the geographical scope of the scheme as such is restricted to disadvantaged regions. The scope of this decision is limited to the exemption rule. The question is whether that rule, which entails that undertakings registered outside the disadvantaged regions covered by the scheme can benefit from aid under the scheme to the extent that they carry out economic activities in the disadvantaged regions is compatible with the state aid rules. In other words, does the exemption rule tackle specific or permanent handicaps faced by undertakings in the disadvantaged regions?

It is for the Norwegian authorities to demonstrate the risk of depopulation in the absence of the exemption rule ([5]). The Norwegian authorities have underlined the benefits of the exemption rule for local undertakings. They can access, at a lower cost, specialised labour that would otherwise not be available. Moreover, the exemption rule leads to increased competition between ambulant services in the eligible areas, which again is beneficial for local undertakings (other than those providing ambulant services) since lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. The use of aid under the scheme is an indirect tool in the sense that it is used to reduce the cost of employing workers as a measure to reduce or prevent depopulation. The idea is that the labour market is the most important factor influencing where people live.

The Norwegian authorities have further argued that the firms registered outside the eligible area occasionally will hire workers in the eligible areas. Thereby the firms will provide jobs that, although of a more temporary nature, will nevertheless contribute to increased wage income in the eligible regions. This also stimulates economic activity. The Norwegian authorities furthermore argue that employees who temporarily stay in the eligible area will buy local goods and services and thereby contribute to the local economy. This applies in particular to employees commuting to the location especially on short or medium term as they are likely to stay in hotels, eat in restaurants, etc. The Norwegian authorities have estimated the amount of aid resulting from the exemption rule to be two percent of the total aid for 2015 which they stress is an uncertain estimate. Two percent amounts to approximately EUR 19 million ([6]). The Authority invites the Norwegian authorities to provide more precise information about the financial effect of the rule.

Apart from the above remarks of a general nature, the Norwegian authorities have not demonstrated the risk of depopulation of the relevant area in the absence of the exemption rule. It is the view of the Authority that a measure, in order to meet the requirements of the RAG, must have effects exceeding a marginal increase of temporary employment possibilities and spending in the eligible area. On this basis, the Authority invites the Norwegian authorities to provide more information to demonstrate the risk of depopulation in the absence of the exemption rule.

([1]) LOV-1997-02-28-19.
([2]) OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p. 1.
([3]) Para. 6 of the RAG.
([4]) Para. 16 of the RAG.
([5]) Para. 43 of the RAG.
([6]) Based on the notified 2013 budget, see para. 49 of the Authority's Decision No 225/14/COL.

In terms of effect on competition and trade of the exemption rule, the Norwegian authorities argue that the exemption rule creates a level playing field for all undertakings active in the disadvantaged areas as it applies equally to any EEA-based undertaking. The consequence is that it ensures that undue adverse effects on competition are avoided. It is the view of the Authority that this is a positive feature in light of paras. 3 and 53 of the RAG. However, the undertakings registered within the eligible area may, in general, face more permanent difficulties than the undertakings that merely send their employees to work in the area on a non-permanent basis. The Norwegian authorities argue that undertakings registered outside the eligible zone may have a competitive disadvantage compared to local firms due to *i.a.* costs of transporting and lodging of personnel. The Norwegian authorities have not presented any data or further reasoning to back up this assumption. The Authority invites the Norwegian authorities to further clarify why it is that the exemption rule does not have undue adverse effects on competition and to submit further information to back this up.

The Norwegian authorities have stressed that it is evident that the exemption rule has an incentive effect. Incentive effect of an aid cannot merely be assumed. While it is not necessary to provide individual evidence that aid under a scheme provides each beneficiary with an incentive, on an individual basis, to carry out an activity it would not otherwise have carried out, the incentive effect must, at the least, be based on sound economic theory. It is not sufficient merely to refer to an alleged obviousness. While it is true that the exemption rule for companies registered outside the eligible areas reduces labour costs for ambulant services in the eligible areas, the Norwegian authorities have not provided evidence or arguments to the effect that it is likely that, in the absence of aid, the level of economic activity in the area would be significantly reduced due to the problems that the aid is intended to address ([1]).

The Norwegian authorities have explained that undertakings performing ambulant services to some extent can register sub-units in the eligible area. Moreover, they are required to do so when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there.

The Norwegian authorities argue that in the absence of the exemption rule for ambulant services in the eligible area, there would be an unjustified difference in treatment depending on whether the service providing undertaking had established a sub-unit in the eligible area.

Firstly, it is not clear to the Authority what the requirement that 'at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there' entails. The Authority therefore invites the Norwegian authorities to clarify this.

Secondly, the the principle of equal treatment is a general principle of EEA law. However, this cannot in and of itself serve as a basis to justify the exemption rule. The exemption rule must itself be compatible with the functioning of the EEA Agreement.

In conclusion, the absence of the relevant information, as described above, leads the Authority to have doubts about the compatibility of the exemption rule with the functioning of the EEA Agreement.

EFTA SURVEILLANCE AUTHORITY DECISION

No 489/15/COL

of 9 December 2015

opening a formal investigation into the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020

(Norway)

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61,

Protocol 26 to the EEA Agreement,

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,

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

([1]) Para. 71 of the RAG.

Whereas:

I. FACTS

1. Procedure

(1) The Norwegian authorities notified the regionally differentiated social security contributions scheme 2014-2020 pursuant to Article 1(3) of Part I of Protocol 3 by letter of 13 March 2014. [1] On the basis of that notification and information submitted thereafter, [2] the Authority approved the notified aid scheme by its Decision No 225/14/COL of 18 June 2014.

(2) By its judgment of 23 September 2015 in case E-23/14 *Kimek Offshore AS* v *ESA* [3] the EFTA Court annulled, in part, the Authority's decision.

(3) By letter dated 15 October 2015, [4] the Authority requested information from the Norwegian authorities. By letter dated 6 November 2015, [5] the Norwegian authorities replied to the information request.

2. The scheme as such is not the subject of the formal investigation

(4) By its judgment the EFTA Court partly annulled the Authority's decision approving the aid scheme. The aid scheme as such is not subject to the renewed scrutiny carried out by the Authority in the present formal investigation. The subject of this formal investigation is merely the part of the scheme (an exemption rule for ambulant services) for which the Authority's approval was annulled.

3. The scheme

3.1 *Objective*

(5) The objective of the general scheme on differentiated social security contributions as such is to reduce or prevent depopulation in the least inhabited regions in Norway, by stimulating employment. The operating aid scheme offsets employment costs by reducing the social security contribution rates in certain geographical areas. As a main rule, the aid intensitites vary according to the geographical area in which the business unit is registered. The rules on registration are explained in greater detail below.

3.2 *National legal basis*

(6) The national legal basis for the scheme as such is Section 23-2 of the National Insurance Act. [6] This provision sets out the employer's general obligation to pay social security contributions calculated on the basis of gross salary paid to the employee. According to paragraph 12 of that section, the Norwegian Parliament may adopt regionally differentiated rates, as well as specific provisions for undertakings within certain sectors. Thus, it is the National Insurance Act, in conjunction with the annual decisions of the Norwegian Parliament, that forms the national legal basis for the scheme.

(7) For further detail on the aid scheme as such, reference is made to the Authority's Decision No 225/14/COL.

3.3 *Rules on registration*

(8) As a main rule, aid eligibility depends on whether a business is registered in the eligible area. As noted above, the main rule of the scheme is that aid intensities vary according to the geographical area in which the business is registered.

(9) Norwegian law requires undertakings to register sub-units for each separate business activity performed. [7] If an undertaking performs different kinds of business activities, separate sub-units must be registered. Moreover, separate units must be registered if the activities are performed in different geographical locations.

(10) According to the Norwegian authorities, the 'separate business activitiy' criterion is met when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there. Each sub-unit forms its own basis for the calculation of the differentiated social security contribution, depending on their registered location. Thus, an undertaking registered outside the area eligible for aid under the scheme will be eligible for aid if, and in so far as, its economic activities are performed within a sub-unit located within the eligible area.

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[1] Documents No 702438-702440, 702442 and 702443.
[2] See paragraph 2 of Decision No 225/14/COL, available online: http://www.eftasurv.int/media/state-aid/Consolidated_version_-_Decision_225_14_COL__NOR_Social_Security_contributions_2014-2020.pdf
[3] Not yet reported.
[4] Document No 776348.
[5] Documents No 779603 and 779604.
[6] LOV-1997-02-28-19.
[7] The Act on the Coordinating Register for Legal Entities (LOV-1994-06-03-15).

3.4 *Ambulant services – the measure under scrutiny*

(11) By way of exemption from the main rule on registration, the scheme also applies to undertakings registered outside the eligible area where they hire out workers to the eligible area and where their employees are engaged in mobile activities within the eligible area (for the purposes of this decision, this is referred to as 'ambulant services'). This is the exemption rule under scrutiny in the decision at hand. The national legal basis for that exemption is provided for by section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 on determination of the tax rates etc. under the National Insurance Act for 2014.

(12) The exemption applies only when the employee spends half or more of his working days in the eligible area. Further, the reduced rate is only applicable for the part of the work carried out there. As a principal rule, the tax registration period is one calendar month.

(13) This entails that if an employee of an Oslo-registered entity (Oslo is in Zone 1, an ineligible zone, where the rate therefore is the standard 14,1 %) completes 60 % of his work one calendar month in Vardø (which is in Zone 5 where the applicable rate is 0 %) and the rest in Oslo, the undertaking will be eligible for the zero-rate on the salary to be paid for the work carried out in Vardø, but not for the work carried out in Oslo.

4. **The judgment of the EFTA Court**

(14) The EFTA Court annuled the Authority's decision in so far as it closed the preliminary investigation as regards the aid measure in section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 on determination of the tax rates etc. under the National Insurance Act for 2014. Section 1(4) is drafted in such a way as to conflate, together with the exemption rule (which is the subject of the present decision), an anti-circumvention measure designed to prevent undertakings from claiming aid under the scheme by virtue of simply registering their business within an area with a lower rate of social security contributions, even if they then proceed to conduct ambulatory activities or hire out their employees to work in an area with a higher rate. The anti-circumvention measure is not subject to the present procedure. ([1])

5. **Comments by the Norwegian authorities**

(15) The Norwegian authorities argue that the exemption rule for ambulant services is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) and that it is in line with the Authority's Guidelines on Regional State Aid for 2014-2020 (the RAG). ([2])

(16) The Norwegian authorities have explained that the exemption rule accounts for about two percent of the total aid granted under the scheme for 2015. They stress that this calculation is based on uncertain estimates.

(17) The Norwegian authorities have explained that in Norway, access to employment is the most influential factor when it comes to peoples' choice of residence. The social security contribution is as a main rule calculated on the basis of the rate applicable in the zone in which the employer is considered to carry out business activity. This rule is based on the premise that only undertakings performing economic activity in the eligible area should receive aid, and only to the extent that they are performing business activities in that area. This is a fundamental premise for the aid scheme.

(18) Where a company is registered, is not, and should not be, decisive. There are many sectors that frequently provide ambulant services. As an example, it would be too burdensome to require all construction firms to register their activities locally wherever they were to carry out work in order to be eligible for reduced social security rates. Neither Article 61(3)(c) nor the RAG or the GBER ([3]) contain requirements on where regional aid beneficiaries need to be registered. A formalistic approach where the registered location of the beneficiary is decisive in all cases has no basis in Article 61(3)(c). To the contrary, it would be difficult to reconcile with the RAG which focusses on whether the aid promotes economic activity in disadvantaged areas and not whether beneficiaries are registered within the area covered by the scheme. The underlying realities, i.e. whether the undertaking carries out economic activity within the eligible area, should be decisive. Furthermore, undertakings performing ambulant services can to some extent register sub-units in the eligible area. In the absence of the exemption rule for ambulant serices in the eligible area, there would be an unjustified difference in treatment depending on whether the service providing undertaking had established a sub-unit in the eligible area.

([1]) See Order of the EFTA Court of 23.11.2015 in Case E-23/14 INT *Kimek Offshore AS* v *ESA* (not yet reported).
([2]) OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p. 1.
([3]) The General Block Exemption Regulation (GBER). Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), incorporated into the EEA Agreement by EEA Joint Committee Decision No 152/2014 (OJ L 342, 27.11.2014, p. 63 and EEA Supplement No 71, 27.11.2014, p. 61) at point 1j of Annex XV to the EEA Agreement.

(19) The Norwegian authorities contend that the exemption rule contributes to an objective of common interest in a number of ways. They firstly note that undertakings in the eligible area can access, at a lower cost, specialised labour that would otherwise not be available. Secondly, the rule leads to increased competition between ambulant services in eligible areas. This is beneficial for local undertakings, other than those providing ambulant services, as lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. Thirdly, employees with a temporal stay in the eligible area will buy local goods and services and thereby contribute to the local economy. This applies in particular to employees commuting to the location especially in the short or medium term as they are likely to stay in hotels, eat in restaurants etc. Fourthly, undertakings located in central areas may also hire personnel residing in the area where the ambulant services are performed. Even if the jobs are temporary in nature, they will contribute to increased wage income in the eligible regions, which also stimulates economic activity. Finally, undertakings registered outside the eligible zone may have a competitive disadvantage compared to local firms due to *i.a.* costs of transporting and lodging of personnel.

(20) In the view of the Norwegian authorities, it is evident that the exemption rule has an incentive effect as it reduces labour costs for ambulant services.

(21) Finally, the Norwegian authorities stress that the exemption rule creates a level playing field for all undertakings active in the disadvantages areas. The rule applies equally to any EEA-based undertaking. This ensures that undue adverse effects on competition are avoided.

II. **ASSESSMENT**

1. **The presence of state aid**

(22) 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.*'

(23) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: (i) there must be an intervention by the state or through state resources, (ii) that intervention must confer a selective economic advantage on the recipients, (iii) it must be liable to affect trade between EEA States and (iv) it must distort or threathen to distort competition.

(24) In Decision No 225/14/COL, the Authority concluded that the scheme on differentiated social security contributions 2014-2020 constitutes an aid scheme. The Authority refers to its reasoning in paragraphs 68-74 of that decision. The exemption rule for ambulant services is part of the provisions providing for that aid scheme. It increases the scope of the scheme in the sense that it widens the circle of potential beneficiaries to undertakings that are not registered in the eligible areas. As with the other aid granted under the scheme, extending the scheme to the undertakings registered outside of the eligible areas results in state resources conferring selective advantages on undertakings. These advantages are liable to affect trade and distort competition.

2. **Procedural requirements**

(25) 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*'.

(26) The Norwegian authorities implemented the exemption rule after the Authority approved it by Decision No 225/14/COL. With the annulment of the Authority's approval of the rule by the EFTA Court, the aid has become unlawful.

3. **Compatibility of the aid**

(27) The Authority must assess whether the exemption rule is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in line with the RAG.

(28) The exemption rule for ambulant services entitles undertakings that are not registered in the eligible area to benefit from reduced social security charges when and to the extent that they carry out economic activities in the registered area. Neither Article 61(3)(c) EEA nor the RAG (nor the regional aid rules in the GBER) formally require that regional aid beneficiaries are registered in the assisted areas.

(29) Regional aid can be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas. ([1]) Regional operating aid can only fall under Article 61(3)(c) EEA if it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions. ([2])

([1]) Para. 6 of the RAG.
([2]) Para. 16 of the RAG.

(30) There is no question that the geographical scope of the scheme as such is restricted to disadvantaged regions. The scope of this decision is limited to the exemption rule. The question is whether that rule, which entails that undertakings registered outside the disadvantaged regions covered by the scheme can benefit from aid under the scheme to the extent that they carry out economic activities in the disadvantaged regions is compatible with the state aid rules. In other words, does the exemption rule tackle specific or permanenet handicaps faced by undertakings in the disadvantaged regions?

(31) It is for the Norwegian authorities to demonstrate the risk of depopulation in the absence of the exemption rule. ([1]) The Norwegian authorities have underlined the benefits of the exemption rule for local undertakings. They can access, at a lower cost, specialised labour that would otherwise not be available. Moreover, the exemption rule leads to increased competition between ambulant services in the eligible areas, which again is beneficial for local undertakings (other than those providing ambulant services) since lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. The use of aid under the scheme is an indirect tool in the sense that it is used to reduce the cost of employing workers as a measure to reduce or prevent depopulation. The idea is that the labour market is the most important factor influencing where people live.

(32) The Norwegian authorities have further argued that the firms registered outside the eligible area occasionally will hire workers in the eligible areas. Thereby the firms will provide jobs that, although of a more temporary nature, will nevertheless contribute to increased wage income in the eligible regions. This also stimulates economic activity. The Norwegian authorities furthermore argue that employees who temporarily stay in the eligible area will buy local goods and services and thereby contribute to the local economy. This applies in particular to employees commuting to the location especially on short or medium term as they are likely to stay in hotels, eat in restaurants, etc. The Norwegian authorities have estimated the amount of aid resulting from the exemption rule to be two percent of the total aid for 2015 which they stress is an uncertain estimate. Two percent amounts to approximately EUR 19 million. ([2]) The Authority invites the Norwegian authorities to provide more precise information about the financial effect of the rule.

(33) Apart from the above remarks of a general nature, the Norwegian authorities have not demonstrated the risk of depopulation of the relevant area in the absence of the exemtion rule. It is the view of the Authority that a measure, in order to meet the requirements of the RAG, must have effects exceeding a marginal increase of temporary employment possibilities and spending in the eligible area. On this basis, the Authority invites the Norwegian authorities to provide more information to demonstrate the risk of depopulation in the absence of the exemption rule.

(34) In terms of effect on competition and trade of the exemption rule, the Norwegian authorities argue that the exemption rule creates a level playing field for all undertakings active in the disadvantaged areas as it applies equally to any EEA-based undertaking. The consequence is that it ensures that undue adverse effects on competition are avoided. It is the view of the Authority that this is a positive feature in light of paras. 3 and 53 of the RAG. However, the undertakings registered within the eligible area may, in general, face more permanent difficulties than the undertakings that merely send their employees to work in the area on a non-permanent basis. The Norwegian authorities argue that undertakings registered outside the eligible zone may have a competitive disadvantage compared to local firms due to *i.a.* costs of transporting and lodging of personnel. The Norwegian authotities have not presented any data or further reasoning to back up this assumption. The Authority invites the Norwegian authorities to further clarify why it is that the exemption rule does not have undue adverse effects on competition and to submit further information to back this up.

(35) The Norwegian authorities have stressed that it is evident that the exemption rule has an incentive effect. Incentive effect of an aid cannot merely be assumed. While it is not necessary to provide individual evidence that aid under a scheme provides each beneficiary with an incentive, on an individual basis, to carry out an activity it would not otherwise have carried out, the incentive effect must, at the least, be based on sound economic theory. It is not sufficient merely to refer to an alleged obviousness. While it is true that the exemption rule for companies registered outside the eligible areas reduces labour costs for ambulant services in the eligible areas, the Norwegian authorities have not provided evidence or arguments to the effect that it is likely that, in the absence of aid, the level of economic activity in the area would be significantly reduced due to the problems that the aid is intended to address. ([3])

(36) The Norwegian authorities have explained that undertakings performing ambulant services to some extent can register sub-units in the eligible area. Moreover, they are required to do so when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there.

(37) The Norwegian authorities argue that in the absence of the exemption rule for ambulant services in the eligible area, there would be an unjustified difference in treatment depending on whether the service providing undertaking had established a sub-unit in the eligible area.

([1]) Para. 43 of the RAG.
([2]) Based on the notified 2013 budget, see para. 49 of the Authority's Decision No 225/14/COL.
([3]) Para. 71 of the RAG.

(38) Firstly, it is not clear to the Authority what the requirement that 'at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there' entails. The Authority therefore invites the Norwegian authorities to clarify this.

(39) Secondly, the the principle of equal treatment is a general principle of EEA law. However, this cannot in and of itself serve as a basis to justify the exemption rule. The exemption rule must itself be compatible with the functioning of the EEA Agreement.

(40) In conclusion, the absence of the relevant information, as described above, leads the Authority to have doubts about the compatibility of the exemption rule with the functioning of the EEA Agreement.

4. **Conclusion**

(41) As set out above, the Authority has doubts as to whether the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020 is compatible with the functioning of the EEA Agreement.

(42) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measure is compatible with the functioning of the EEA Agreement.

(43) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by 10 January 2016 their comments and to provide all documents, information and data needed for the assessment of the compatibility of the measure in light of the state aid rules.

(44) The Authority reminds the Norwegian authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless this recovery would be contrary to a general principle of EEA law, such as the protection of legitimate expectations.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020.

Article 2

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure by 10 January 2016.

Article 3

The Norwegian authorities are requested to provide by 10 January 2016, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 9 December 2015

For the EFTA Surveillance Authority

Sven Erik SVEDMAN
President

Helga JÓNSDÓTTIR
College Member