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I

(Comunicações)

COMISSÃO

Taxas de câmbio do euro [1]

31 de Março de 2004

(2004/C 82/01)

1 euro =

	Moeda	Taxas de câmbio		Moeda	Taxas de câmbio
USD	dólar americano	1,2224	LVL	lats	0,654
JPY	iene	126,97	MTL	lira maltesa	0,4258
DKK	coroa dinamarquesa	7,4448	PLN	zloti	4,7336
GBP	libra esterlina	0,6659	ROL	leu	40 963
SEK	coroa sueca	9,2581	SIT	tolar	238,38
CHF	franco suíço	1,5594	SKK	coroa eslovaca	40,115
ISK	coroa islandesa	88,27	TRL	lira turca	1 612 187
NOK	coroa norueguesa	8,436	AUD	dólar australiano	1,6052
BGN	lev	1,9464	CAD	dólar canadiano	1,5979
CYP	libra cipriota	0,5862	HKD	dólar de Hong Kong	9,5228
CZK	coroa checa	32,833	NZD	dólar neozelandês	1,8365
EEK	coroa estoniana	15,6466	SGD	dólar de Singapura	2,0459
HUF	forint	249,25	KRW	won sul-coreano	1 401,42
LTL	litas	3,4529	ZAR	rand	7,7788

[1] *Fonte:* Taxas de câmbio de referência publicadas pelo Banco Central Europeu.

Notificação prévia de uma operação de concentração

(Processo COMP/M.3381 — Alba/Beko/Grundig HIS JV)

(2004/C 82/02)

(Texto relevante para efeitos do EEE)

1. A Comissão recebeu, em 23 de Março de 2004, uma notificação de um projecto de concentração, nos termos do artigo 4.º do Regulamento (CEE) n.º 4064/89 do Conselho [1], com a última redacção que lhe foi dada pelo Regulamento (CE) n.º 1310/97 [2], através da qual as empresas Alba plc («Alba», UK) e Beko Elektronik AS («Beko», Turquia), esta controlada pela Koç Holding AS («Koç», Turquia), adquirem, na acepção do n.º 1, alínea b), do artigo 3.º do referido regulamento, o controlo conjunto do Departamento de Home Intermedia Systems («HIS Business») da empresa alemã Grundig AG, actualmente submetida a administração judicial por motivo de insolvência.

2. As actividades das empresas envolvidas são:

— Alba: abastecimento e fornecimento de produtos electrónicos de grande consumo, nomeadamente aparelhos de televisão a cores, gravadores de vídeo, leitores de DVD e aparelhos áudio e de alta fidelidade,

— Beko: produção e venda de aparelhos de televisão a cores sem marca a fabricantes de equipamento de origem (OEM),

— Koç: conglomerado multinacional com actividades que incluem a indústria automóvel, aparelhos electrodomésticos, produtos alimentares, comércio a retalho, energia, etc.,

— HIS Business: desenvolvimento e venda de produtos electrónicos de grande consumo, nomeadamente aparelhos de televisão a cores, gravadores de vídeo, leitores de DVD, aparelhos áudio e de alta fidelidade, câmaras de vídeo e aparelhos receptores por satélite.

3. Após uma análise preliminar, a Comissão considera que a operação de concentração notificada pode encontrar-se abrangida pelo âmbito de aplicação do Regulamento (CEE) n.º 4064/89. Contudo, a Comissão reserva-se a faculdade de tomar uma decisão final sobre este ponto.

4. A Comissão solicita aos terceiros interessados que lhe apresentem as observações que entenderem sobre o projecto de concentração em causa.

As observações devem ser recebidas pela Comissão, o mais tardar, 10 dias após a data da publicação da presente comunicação. Podem ser enviadas por fax ou pelo correio, e devem mencionar o número de processo COMP/M.3381 — Alba/Beko/Grundig HIS JV, para o seguinte endereço:

Comissão Europeia
Direcção-Geral da Concorrência
Registo das Concentrações
J-70
B-1049 Bruxelas
[fax: (32-2) 296 43 01/296 72 44].

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[1] JO L 395 de 30.12.1989, p. 1, e
JO L 257 de 21.9.1990, p. 13 (rectificação).

[2] JO L 180 de 9.7.1997, p. 1, e
JO L 40 de 13.2.1998, p. 17 (rectificação).

Notificação prévia de uma operação de concentração

(Processo COMP/M.3391 — Xchanging/Deutsche Bank/ETB/JV)

Processo susceptível de beneficiar do procedimento simplificado

(2004/C 82/03)

(Texto relevante para efeitos do EEE)

1. A Comissão recebeu, em 23 de Março de 2004, uma notificação de um projecto de concentração, nos termos do artigo 4.º do Regulamento (CEE) n.º 4064/89 do Conselho ([1]), com a última redacção que lhe foi dada pelo Regulamento (CE) n.º 1310/97 ([2]), através da qual as empresas Xchanging BV, controlada pela General Atlantic, USA, e Deutsche Bank AG adquirem, na acepção do n.º 1, alínea b), do artigo 3.º do referido regulamento, o controlo conjunto da empresa European Transaction Bank AG (ETB), mediante aquisição de acções de uma empresa que constitui uma empresa comum. A ETB é actualmente propriedade do Deutsche Bank.

2. As actividades das empresas envolvidas são:

— Xchanging: serviços de externalização para actividades empresariais e funções de *back-office*,

— Deutsche Bank: banco universal que fornece serviços financeiros variados,

— ETB: serviços de processamento de títulos e outros derivados.

3. Após uma análise preliminar, a Comissão considera que a operação de concentração notificada pode encontrar-se abrangida pelo âmbito de aplicação do Regulamento (CEE) n.º 4064/89. Contudo, a Comissão reserva-se a faculdade de tomar uma decisão final sobre este ponto. De acordo com a comunicação da Comissão relativa a um procedimento simplificado de tratamento de certas operações de concentração nos termos do Regulamento (CEE) n.º 4064/89 ([3]), o referido processo é susceptível de beneficiar da aplicação do procedimento previsto na comunicação.

4. A Comissão solicita aos terceiros interessados que lhe apresentem as observações que entenderem sobre o projecto de concentração em causa.

As observações devem ser recebidas pela Comissão, o mais tardar, 10 dias após a data da publicação da presente comunicação. Podem ser enviadas por fax ou pelo correio, e devem mencionar o número de processo COMP/M.3391 — Xchanging/Deutsche Bank/ETB/JV, para o seguinte endereço:

Comissão Europeia
Direcção-Geral da Concorrência
Registo das Concentrações
J-70
B-1049 Bruxelas
[fax: (32-2) 296 43 01/296 72 44].

([1]) JO L 395 de 30.12.1989, p. 1, e
JO L 257 de 21.9.1990, p. 13 (rectificação).

([2]) JO L 180 de 9.7.1997, p. 1, e
JO L 40 de 13.2.1998, p. 17 (rectificação).

([3]) JO C 217 de 29.7.2000, p. 32.

Não oposição a uma operação de concentração notificada

(Processo COMP/M.3399 — PPM Ventures/Triton/Pharmacia Diagnostics)

(2004/C 82/04)

(Texto relevante para efeitos do EEE)

Em 23 de Março de 2004, a Comissão decidiu não se opor à concentração notificada acima referida e declará-la compatível com o mercado comum. Esta decisão é tomada com base no n.º 1, alínea b), do artigo 6.º do Regulamento (CEE) n.º 4064/89 do Conselho. O texto completo da decisão está disponível apenas em inglês e será tornado público depois de liberto do sigilo comercial. Estará disponível:

— em versão papel através dos serviços de vendas do Serviço das Publicações Oficiais das Comunidades Europeias (ver lista na contracapa),

— em formato electrónico na versão «CEN» da base de dados CELEX, com o número de documento 304M3399. CELEX é o sistema de documentação automatizado de legislação da Comunidade Europeia.

Para mais informações sobre as assinaturas é favor contactar:

EUR-OP
Information, Marketing and Public Relations
2, rue Mercier
L-2985 Luxembourg
Tel.: (352) 29 29-427 18; fax: (352) 29 29-427 09.

ESPAÇO ECONÓMICO EUROPEU

ÓRGÃO DE FISCALIZAÇÃO DA EFTA

Anúncio da Noruega relativo à Directiva 94/22/CE do Parlamento Europeu e do Conselho, de 30 de Maio de 1994, relativa às condições de concessão e de utilização das autorizações para a prospecção, pesquisa e produção de hidrocarbonetos

Anúncio de convite à apresentação de pedidos de autorização para produção de petróleo na plataforma continental norueguesa — «Awards in Predefined Areas» (Atribuição em zonas pré-definidas) 2004

(2004/C 82/05)

Pela presente, o Ministério do Petróleo e da Energia norueguês anuncia um convite à apresentação de pedidos de autorização para produção de petróleo na plataforma continental norueguesa, em conformidade com o n.º 2, alínea a), do artigo 3.º da Directiva 94/22/CE do Parlamento Europeu e do Conselho, de 30 de Maio de 1994, relativa às condições de concessão e de utilização das autorizações de prospecção, pesquisa e produção de hidrocarbonetos.

Os pedidos de autorização para produção de petróleo devem ser apresentados ao:

Ministério do Petróleo e da Energia
P.O. Box 8148 Dep.
N-0033 Oslo

até 1 de Outubro de 2004.

A concessão, no quadro de «Awards in Predefined Areas 2004», de autorizações para a produção de petróleo na plataforma continental norueguesa está prevista para Dezembro de 2004.

Podem ser obtidas informações suplementares junto do Ministério do Petróleo e da Energia, através do telefone (47) 22 24 63 33.

Convite para a apresentação de observações, nos termos do n.º 2 do artigo 1.º da Parte I do Protocolo n.º 3 do Acordo que cria um Órgão de Fiscalização e um Tribunal, relativamente ao auxílio — regime de auxílios proposto para a utilização da energia de estações de tratamento de resíduos finais (Auxílio estatal SAM 030.03001)

(2004/C 82/06)

Através da Decisão n.º 257/03/COL de 11 de Dezembro de 2003, publicada na língua que faz fé a seguir ao presente resumo, o Órgão de Fiscalização da EFTA deu início ao procedimento previsto no n.º 2 do artigo 1.º do Protocolo n.º 3 do Acordo entre os Estados da EFTA que cria um Órgão de Fiscalização e um Tribunal (Acordo relativo ao Órgão de Fiscalização e ao Tribunal). O Governo norueguês foi informado através de uma cópia da decisão.

O Órgão de Fiscalização da EFTA convida os Estados da EFTA, os Estados-Membros da União Europeia e as partes interessadas a apresentarem as suas observações sobre a medida em questão no prazo de um mês a contar da publicação da presente comunicação, enviando-as para o seguinte endereço:

Órgão de Fiscalização da EFTA
74, Rue de Trèves/Trierstraat 74
B-1040 Bruxelas

Estas observações serão comunicadas ao governo norueguês. Qualquer interessado que apresente observações pode solicitar por escrito o tratamento confidencial da sua identidade, devendo justificar o pedido.

RESUMO

Procedimento

Por carta de 29 de Janeiro de 2003 (Doc. No 03-654-A), as autoridades norueguesas notificaram ao Órgão de Fiscalização da EFTA, ao abrigo do n.º 2 do artigo 1.º do Protocolo n.º 3 do Acordo relativo ao Órgão de Fiscalização e ao Tribunal, a sua intenção de introduzir, a partir de 1 de Julho de 2003, um novo regime de auxílios destinado a promover a produção de energia a partir de aterros e de instalações de tratamento de resíduos finais.

Em Março de 2003, o Órgão de Fiscalização solicitou informações complementares, nomeadamente informações necessárias para apreciar o regime, ao abrigo das Opções 1 e 3 sobre auxílios ao funcionamento para fontes de energia renováveis do Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais relativos à protecção do ambiente.

Em Maio de 2003, as autoridades norueguesas transmitiram as informações complementares. Dado que as autoridades norueguesas sugeriram que o regime deveria ser apreciado, ao abrigo da Opção 3 sobre os auxílios ao funcionamento para fontes de energia renováveis do Capítulo 15 das Orientações do Órgão de Fiscalização, estas não transmitiram a totalidade das informações requeridas na parte do pedido de informações do Órgão de Fiscalização relativa à Opção 1 do mesmo capítulo. Em Outubro de 2003, foram transmitidas mais informações. As autoridades norueguesas declararam que parte das informações e da documentação requerida pelo Órgão de Fiscalização não estava disponível e que a notificação estava completa. A Noruega informou o Órgão de Fiscalização que a execução do auxílio proposto havia sido adiada até 1 de Julho de 2004.

Por carta de 19 de Novembro de 2003 (Doc. No 03-7885-D), o Órgão de Fiscalização informou o Governo norueguês das suas dúvidas quanto à compatibilidade do regime com o n.º 3, alínea c), do artigo 61.º do Acordo EEE.

Descrição da medida de auxílio

A notificação diz respeito a um regime de auxílios para a utilização da energia produzida a partir de estações de tratamento de resíduos finais sujeitas ao pagamento de taxas sobre o tratamento de resíduos finais («Tilskudd til utnyttelse av energi fra avgiftspliktige sluttbehandlingsanlegg for avfall»).

O objectivo do regime de auxílios consiste em aumentar a produção de energia a partir dos resíduos, o que se coaduna com os objectivos políticos de protecção do clima e gestão dos resíduos. O regime tem em vista não só incentivar a produção de energia a partir de resíduos, mas compensar igualmente os beneficiários do auxílio pelos custos acrescidos a que estão sujeitas as instalações de incineração de resíduos resultantes de um projecto de alteração da taxa sobre o tratamento de resíduos.

Actualmente, existe uma taxa sobre os resíduos finais que é paga pelos operadores de aterros e pelas instalações de tratamento de resíduos, sendo aplicada sobre a tonelagem de resíduos fornecida. A taxa é diferenciada na medida em que existem deduções para as instalações de incineração de resíduos que aproveitam a energia produzida por essa incineração para fins de aquecimento ou de electricidade. O governo norueguês informou o Órgão de Fiscalização que a taxa diferenciada será substituída por um novo regime que aplica taxas sobre as emissões efectivas de poluentes decorrentes da incineração. O presente regime de dedução de taxas foi considerado inadequado enquanto incentivo para a produção de energia a partir dos resíduos. Foi então proposta a adopção de um regime de auxílios separado baseado na energia efectiva produzida e fornecida ao consumidor em vez de reduzir as taxas em função da percentagem de energia utilizada. O regime da dedução de taxas é assim suprimido, o que conduz a um aumento dos custos para as instalações de incineração de resíduos. Segundo as autoridades norueguesas, sem o apoio estatal, as instalações de incineração de resíduos não poderão competir com outros produtores de energia que não estão sujeitos a uma taxa semelhante sobre a emissão de poluentes.

Alteração da taxa sobre o tratamento de resíduos

O Parlamento norueguês decidiu alterar no seu orçamento de 2003 a taxa existente sobre o tratamento de resíduos [cf. St.prp. nr. 1 (2002-2003) Skatte-, avgifts-, og tollvedtak]. A reestruturação da taxa requer a alteração do Regulamento n.º 1451 de 11 de Dezembro de 2001 sobre taxas especiais. A secção 3-13 desta regulamentação diz respeito a disposições especiais sobre as taxas sobre os resíduos finais. O Órgão de Fiscalização considera que a taxa sobre os aterros já entrara em vigor em 1 de Julho de 2003, enquanto que a taxa sobre a incineração de resíduos foi adiada até 1 de Julho de 2004.

A alteração mais importante do regime fiscal consiste no facto de a taxa não ser calculada em função da tonelagem mas com base nas emissões efectivas, sendo que a taxa é fixada consoante os custos ambientais efectivos das emissões de poluentes provenientes das instalações de incineração. A dedução fiscal em função da utilização de energia aproveitada a partir de resíduos é suprimida, o que, segundo as autoridades norueguesas, conduz a custos de produção mais elevados por unidade e a uma desvantagem competitiva para a produção de energia a partir de resíduos em comparação com a produção de energia a partir de outras fontes. O aumento dos custos por unidade de energia para o aproveitamento da energia nas instalações de incineração está estimado em cerca de NOK 0,10 pr. kWh.

O regime de auxílios notificado

O regime de auxílios notificado destinava-se a compensar estes custos acrescidos e a estimular, além disso, a utilização do potencial da produção de energia a partir de resíduos.

Base jurídica

A base jurídica do regime de auxílios será um regulamento especial ao abrigo da secção 33 da Lei de 13 de Março de 1981 n.º 6 sobre a protecção contra a poluição e sobre os resíduos («Lov om vern mot forurensninger og om avfall»), ou seja, um (projecto) de regulamento sobre auxílios a favor do aproveitamento da energia a partir das instalações de tratamento de resíduos finais sujeitas a uma taxa sobre o tratamento de resíduos finais («Utkast til forskrift ... om tilskuddsordning til energiutnyttelse fra avgiftspliktige sluttbehandlingsanlegg for avfall»), a seguir denominado Projecto de Regulamento.

Forma do auxílio e beneficiários

Os potenciais beneficiários do auxílio são instalações de incineração de resíduos ou aterros abrangidos pela taxa sobre o tratamento de resíduos. O auxílio é concedido sob a forma de subvenções.

Custos elegíveis

A subvenção está associada à produção de energia a partir da parte renovável dos resíduos. A produção de energia relacionada com a incineração da parte fóssil não renovável dos resíduos (plástico) é deduzida da subvenção. Tal conduz à criação de duas taxas de auxílio diferentes.

a) Uma taxa elevada será aplicada às instalações de incineração que procedem comprovadamente à incineração de fracções separadas de resíduos que não contenham plástico ou outros materiais fósseis.

A taxa elevada é igualmente aplicável aos aterros.

b) Uma taxa baixa que representa 60 % da taxa elevada será aplicável às instalações de incineração de resíduos que incineram resíduos susceptíveis de conter materiais fósseis.

A diferença entre estas duas taxas assenta em estimativas segundo as quais o teor médio de materiais fósseis nos resíduos domésticos ou nos resíduos urbanos corresponde a 13 %, o que representa 40 % do potencial de energia dos resíduos. Assim, as empresas beneficiárias da taxa reduzida recebem uma subvenção correspondente a 60 % do potencial energético estimado proveniente de fontes renováveis. O governo norueguês afirma que a proporção de 13 % de fontes de energia não renováveis nos resíduos é uma estimativa média. O mesmo é aplicável ao potencial energético (40 %) resultante da utilização de matérias não renováveis. Segundo o governo norueguês, seria difícil obter informações precisas sobre as fracções exactas de cada instalação de incineração. A Noruega apresentou uma fórmula, segundo a qual a aplicação das taxas elevadas e reduzidas exigia um orçamento estimado em 80 milhões de coroas norueguesas para 2003.

Várias estimativas de custos apresentadas pela Noruega

A Noruega apresentou várias estimativas de custos para que o auxílio fosse avaliado no quadro da Opção 3 dos auxílios ao funcionamento a favor das energias renováveis prevista no Capítulo 15 das Orientações do Órgão de Fiscalização. Estas estimativas referiam-se, nomeadamente, aos custos de produção de várias fontes de energia e à comparação dos custos de produção da energia proveniente do tratamento de resíduos com o preço do mercado da electricidade.

Com vista a analisar o regime de auxílios proposto ao abrigo da opção 3 dos auxílios ao funcionamento a favor das energias renováveis, as autoridades norueguesas apresentaram os custos externos de diversos vectores energéticos e uma comparação da produção de energia a partir de resíduos com a produção de energia com óleos pesados para determinar os custos ambientais suportados pelos produtores de energia. Por custos externos, deve entender-se os custos ambientais que a sociedade teria de suportar se a mesma quantidade de energia fosse produzida por instalações de produção que funcionassem a partir de energias convencionais para o tratamento de resíduos.

O texto da decisão infra refere mais pormenores sobre estas estimativas.

Apreciação do auxílio

O regime de auxílios proposto para o projecto constitui um auxílio na acepção do n.º 1 do artigo 61.º do Acordo EEE. O Órgão de Fiscalização examinou, por conseguinte, se o regime de auxílios proposto se podia justificar ao abrigo do n.º 3, alínea c), do artigo 61.º do Acordo EEE, em articulação com o Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais relativas aos auxílios a favor do ambiente.

Opção 3 relativa aos auxílios ao funcionamento a favor das energias renováveis ao abrigo da secção D.3.3.3 do Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais.

O Órgão de Fiscalização avaliou, em primeiro lugar, o regime proposto ao abrigo da Opção 3 da secção D.3.3.3 do Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílio estatais, cujo ponto 58 estabelece que «os Estados da EFTA podem conceder auxílios ao funcionamento a favor das novas instalações de produção de energia renovável, calculados com base nos custos externos evitados». O Órgão de Fiscalização teve as seguintes dúvidas quanto à eventual justificação do regime de auxílios com base na referida disposição:

Os resíduos são uma fonte de energia renovável ao abrigo das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais e da Directiva 2001/77/CE. Contudo, preocupa o Órgão de Fiscalização que o regime de auxílios proposto possa subvencionar igualmente os elementos fósseis contidos nos resíduos mistos. O Órgão de Fiscalização está ciente de que existem duas taxas diferentes para os resíduos mistos que contêm materiais fósseis e para os resíduos que não contêm elementos fósseis. Contudo, segundo as informações transmitidas, o Órgão de Fiscalização não pode ter a certeza de que a taxa reduzida de auxílio proposta pelas autoridades norueguesas não seja excessivamente generosa e subvencione a incineração de resíduos que contenham matérias fósseis em detrimento da separação e da reciclagem de resíduos.

Quanto à comparação dos custos externos suportados e pagos pelos produtores de energia gerada a partir de resíduos com aqueles relativos aos produtores de energia que utilizam óleos pesados, o Órgão de Fiscalização tinha as seguintes dúvidas: Em primeiro lugar, as autoridades norueguesas não explicaram por que omitiram a comparação com os óleos leves para calcular os custos externos evitados. Em segundo lugar, tão-pouco explicaram por que se considerou que a comparação com os óleos pesados era a mais pertinente, sendo que os dados relativos ao aquecimento urbano comprovam que a produção de calor a partir da electricidade (com base na energia hidráulica) é o melhor substituto da produção de energia térmica a partir de resíduos. Em terceiro lugar, o Órgão de Fiscalização pergunta-se se o cálculo dos custos externos da energia gerada a partir de resíduos pode basear-se em instalações de tratamento de resíduos de alta tecnologia, tendo em conta que o regime se aplica a instalações de incineração existentes que não dispõem necessariamente de uma alta tecnologia. Estas instalações poderão gerar custos ambientais mais elevados que não seriam cobertos na totalidade pelos produtores de energia a partir de resíduos.

Ao calcular as taxas de auxílio superiores e reduzidas com base nos custos externos evitados na produção de energia a partir de óleos pesados, o Órgão de Fiscalização não pôde excluir o risco de sobrecompensação. Segundo os cálculos realizados pelo Órgão de Fiscalização com base nos valores apresentados pela Noruega, seria suficiente um orçamento anual bastante inferior a 80 milhões de coroas suecas (isto é, 46 milhões). Ao contrário do que as autoridades norueguesas alegam, a opinião preliminar do Órgão de Fiscalização é que para calcular os custos externos pagos pelo produtor de energia a partir de óleos pesados, deve ter-se em conta o imposto sobre o óleo para aquecimento, dado que tem um efeito positivo evidente no ambiente tal como estabelecido no n.º 7 do Capítulo 15 das Orientações do Órgão de Fiscalização, devendo considerar-se um imposto ambiental.

As informações transmitidas pela Noruega só se referiam à produção de energia térmica por incineradoras. Por conseguinte, o Órgão de Fiscalização não dispõe de informações suficientes para avaliar a compatibilidade do auxílio para a produção de energia eléctrica, nem para avaliar o regime de auxílios face à energia térmica ou à electricidade produzida a partir dos aterros.

O Órgão de Fiscalização também tinha dúvidas se a metodologia utilizada pelas autoridades norueguesas, o chamado método de custo de redução, foi aplicada do mesmo modo que o cálculo de todos os custos ambientais e se, por outro lado, se trata de um método «internacionalmente reconhecido», tal como requerido pelas Orientações do Órgão de Fiscalização no domínio dos auxílios estatais. As informações transmitidas não permitiram que o Órgão de Fiscalização formasse uma opinião definitiva sobre o assunto.

Por último, o Órgão de Fiscalização não dispõe de suficientes dados para saber se o regime de auxílios se destina a «novas instalações» ou a novos investimentos, tal como estipulado na Opção 3 dos auxílios ao funcionamento a favor das energias renováveis do Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais, dado que o regime se destina a subvencionar as instalações existentes. O Órgão de Fiscalização também duvida que esteja cumprida a obrigação de investir todos os auxílios que excedam o montante do auxílios resultante da Opção 1 do Capítulo 15 sobre os auxílios ao funcionamento a favor das energias renováveis.

Apreciação ao abrigo da Opção 1 sobre os auxílios ao funcionamento para as energias renováveis no quadro da secção D.3.3.1 do Capítulo 15 das Orientações

O Órgão de Fiscalização também avaliou o regime ao abrigo da Opção 1 dos auxílios ao funcionamento a favor das energias renováveis, a qual estabelece que «os Estados da EFTA podem conceder auxílios que compensem a diferença entre os custos de produção das energias renováveis e o preço de mercado da energia em questão».

Contudo, tendo em conta as informações transmitidas, o Órgão de Fiscalização tem dúvidas sobre a compatibilidade do regime de auxílios no quadro desta opção. O Órgão de Fiscalização não dispõe de quaisquer informações quanto à produção de energia a partir de aterros.

Quanto aos custos de produção das incineradoras, o Órgão de Fiscalização observa que ainda não recebeu quaisquer dados pormenorizados e precisos sobre o método de cálculo. Não foram ainda recebidas informações sobre a poupança de custos ou sobre as taxas e prazos de amortização.

Além disso, o Órgão de Fiscalização não pode ter a certeza de que o cálculo dos custos de produção cobrirá apenas a parte directamente relacionada com a produção de energia e não os custos resultantes do tratamento de resíduos propriamente dito. O Órgão de Fiscalização assinala as dificuldades encontradas para obter esta informação, mas deve assegurar-se que o auxílio não apoia actividades nem reduz os custos conexos que as empresas têm de suportar para cumprir as obrigações impostas pelas disposições nacionais e comunitárias.

Conclusões

O auxílio proposto para o projecto constitui um auxílio na acepção do n.º 1 do artigo 61.º do Acordo EEE. O Órgão de Fiscalização da EFTA tem dúvidas de que o auxílio notificado possa ser considerado compatível com o funcionamento do Acordo EEE e, em particular, com o n.º 3, alínea c), do artigo 61.º, uma vez que as informações apresentadas pelas autoridades norueguesas não demonstram que as condições estabelecidas no Capítulo 15 das Orientações do Órgão de Fiscalização no domínio dos auxílios estatais se encontram preenchidas.

Por conseguinte, o Órgão de Fiscalização dá início ao procedimento de investigação formal previsto no n.º 2 do artigo 1.º do Protocolo n.º 3 do Acordo que cria um Órgão de Fiscalização e um Tribunal relativamente ao regime de auxílios proposto para a utilização da energia de estações de tratamento de resíduos finais.

«I. **FACTS**

1. Procedure

By letter of 29 January 2003 from the Mission of Norway to the European Union, forwarding letters from the Ministry of Trade and Industry and from the Ministry of Environment both dated 24 January 2003, received and registered by the Authority on 31 January 2003 (Doc. No 03-654-A), the Norwegian authorities notified pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement [1] an aid scheme to utilise energy from final waste treatment plants.

In this letter the Norwegian Government notified the Authority of the intention, as from 1 July 2003, to introduce a new aid scheme aimed at the promotion of energy production from landfills and final waste treatment plants.

By letter of 3 March 2003 (Doc. No 03-682-D) the Authority acknowledged receipt of the notification and requested additional information, in particular information necessary for assessing the scheme under option 1 and 3 on operating aid for renewable energy resources of Chapter 15 of the Authority's Environmental Guidelines.

By letter dated 5 May 2003 from the Mission of Norway to the European Union forwarding letters dated 30 April 2003 from the Ministry of Trade and Industry and the Ministry of the Environment, received and registered by the Authority on 7 May 2003 (Doc. No 03-2862-A), additional information was submitted. Since the Norwegian authorities suggested assessing the scheme under option 3, they did not fully supply the information requested under the part of the Authority's information request which dealt with option 1.

By letter dated 7 July 2003 (Doc. No 03-3716-D), the Authority acknowledged receipt of the additional information and requested further information. On request of the Norwegian authorities, the deadline to respond to this letter was extended by the Authority.

By letter from the Norwegian Mission to the European Union dated 7 October 2003, forwarding letters from the Ministry of Trade and Industry and the Ministry of Environment of 6 October 2003, Norway provided further information. The letter was received and registered by the Authority on 9 October 2003 (Doc. No 03-6911-A). In this letter the Norwegian authorities stated that some of the information and documentation the Authority requested, was not available and that Norway had no further information to give. It also stated, that while there would always be a further possibility of refining the information, the Norwegian authorities had supplied as complete information as possible related to the notification of the proposed aid scheme. Norway thus considered the notification to be complete. The Norwegian authorities indicated, however, as regards the implementation of the proposed aid scheme, which was originally foreseen for 1 July 2003, they would provide further information as requested at a later stage.

By letter from the Norwegian Mission to the European Union dated 21 October 2003, forwarding letters from the Ministry of Trade and Industry and of the Ministry of the Environment both dated 17 October 2003, the Norwegian authorities informed the Authority that the aid scheme would not be implemented before 1 July 2004. This letter was received and registered by the Authority on 22 October 2003 (Doc. No 03-7281-A). The Authority acknowledged receipt by letter dated 31 October 2003 (Doc. No 03-7468-D).

By letter dated 19 November 2003 (Doc. No 03-7885-D), the Authority informed the Norwegian Government about its doubts regarding the compatibility of the scheme with Article 61(3)(c) of the EEA Agreement.

The Norwegian authorities acknowledged receipt of this letter by letter from the Ministry of Trade and Industry dated 8 December 2003 (03-8647-A).

2. Description of the proposed waste-to-energy aid scheme

2.1. Title and objective of the aid scheme

The notification concerns an aid scheme for the utilisation of energy from final waste treatment plants that are required to pay tax on final waste treatment ('Tilskudd til utnyttelse av energi fra avgiftspliktige sluttbehandlingsanlegg for avfall').

The objective of the aid scheme is to increase energy production from waste, thereby achieving Norway's climate and waste policy goals.

2.2. Background

While the scheme aims at increasing energy production from waste, it also aims at compensating the aid beneficiaries for increased costs for waste incinerations plants, resulting from an intended change in the waste treatment tax.

At the present time, there is a tax on final waste which is paid by landfill operators and waste incineration plants and is levied on the tonnage of waste delivered. The tax is differentiated in that tax deductions are available for waste incineration plants which utilise the energy produced by the waste incineration, either for heat or electricity. The Norwegian Government informed the Authority that the differentiated tax will be replaced by a new regime which levies taxes on the actual emissions of pollutants from the incineration. The present system of tax deductions was considered an inadequate stimulus to waste based energy production, and it was proposed to adopt a separate aid scheme related to the actual energy produced rather than having reduced rates according to the percentage of energy utilised. The system of tax deductions is thereby abolished, leading to increased costs for waste incineration plants. According to the Norwegian authorities, without state support, waste incineration plants would not be able to compete with other energy producers which do not have to pay a similar tax on the releases of pollutants.

[1] Article 1(3) in Protocol 3, before the amendments to Protocol 3 of the Surveillance and Court Agreement, agreed upon by the EFTA States on 10 December 2001, entered into force. The amendments entered into force on 28 August 2003. The former Article 1(3) is now laid down in Part I of Protocol 3.

Consequently, the Norwegian authorities propose an aid scheme of direct grants whose potential beneficiaries are those undertakings which are subject to the (amended) tax on final waste treatment.

In order to understand this background, it is appropriate to

— explain the present waste treatment tax (2.2.1),

— present the intended changes in the waste treatment tax about which Norway informed the Authority in the context of the notification of the aid scheme (2.2.2)

before the notified aid scheme is described in 2.3.

2.2.1. *The current tax rules on final waste treatment*

The current tax on final waste treatment was introduced 1 January 1999 as one of several measures designed to fulfil Norway's obligations under the Kyoto Protocol. The purpose of the tax is to put a price on the emissions resulting from final treatment of waste and to provide an incentive to reduce the amount of waste, to recycle waste and to utilise waste for energy purposes. Norway considers the tax to be an environmental tax ([2]).

The tax is paid by waste incineration plants and landfill operators. It is levied on the deposit of waste to landfills and to incineration plants, based on the tonnage of waste delivered. General exemptions from the tax apply for:

— high-risk (hazardous) waste subject to special regulations and delivered to special receiving stations,

— deposits for recycling, reuse or to be sorted out for recycling (not delivered to landfills or incinerations plants),

— deposits of homogenous, inorganic material disposed of in separate storage (not leading to emission of greenhouse gases),

— industrial plants that incinerate processed waste (avfallsbaserte brensler) and utilise the energy recovered for industrial production, are deemed as recovery plants and are not covered by the tax,

— residual waste from utilization of recycled fibres in the pulp and paper industry and

— deposits of waste consisting of polluted soil and waste banks.

As stated by the Norwegian authorities, plants covered by the tax and the proposed scheme in general are plants that incinerate municipal waste or similar waste from business activities, or plants that incinerate 'processed waste' ([3]) and use the energy for heating houses (i.e. not for 'industrial use').

([2]) The current tax is based on the annual tax decisions by the Parliament with further regulations in Section 3-13 of the Regulation on Excise Duties of 11 December 2001 No. 1451.

([3]) Processed waste is defined by the Norwegian authorities as waste that consists of material suitable for incineration; waste that has been sorted and processed in some manner; waste that has a specification in real market and will compete with other energy carriers; waste which has a net caloric value of at least 15 MJ/kg; waste which is stable for storing.

The current tax rate for landfills is NOK 327 ([4]) per tonne waste delivered. The tax rate for waste incineration plants consists of two elements, a basic rate applicable to all plants (at NOK 82) and an additional tax, depending on whether the plant makes use of the energy produced in the waste treatment process, either for electricity or heat (up to a maximum of NOK 245). The basic tax is therefore gradually increased according to the degree to which the waste incineration plant does not make use of the energy produced. A plant that does not use any of its incinerations to produce energy is levied with the same tax rates as landfills (NOK 82 plus NOK 245 = NOK 327). Thus, the tax rate is differentiated according to the degree of energy recovery and utilisation.

2.2.2. *The amendments to the waste treatment tax*

In its budget of 2003, the Norwegian Parliament decided to alter the existing final waste treatment tax. The amendments to the tax framework were proposed in St.prp. nr. 1 (2002-2003) Skatte-, avgifts-, og tollvedtak. The restructuring of the tax requires amending Regulation No 1451 of 11 December 2001 on special taxes. Section 3-13 of this Regulation concerns the special provisions on taxes on final waste disposal. The Authority understands that while the tax on landfills has already entered into force ([5]) on 1 July 2003, the tax on waste incineration is postponed until 1 July 2004.

The main change of the tax scheme is the change of the tax from a tonnage rate to a tax on actual emissions, with a rate based on the actual environmental costs of the releases in incineration plants. According to the Norwegian Government, this reflects the true environmental costs in a more precise manner. The present tax differentiation system will be abolished and the tax deductions for the utilisations of waste energy will be repealed and be replaced by a grant scheme.

The scope of the waste treatment tax

While the amendment of the waste treatment tax brings about a change in the levy of the tax from a tonnage based to an emission based tax, the general scope of the waste treatment tax has not been amended. The exemptions to the waste treatment tax as adopted in 1999 remain the same (see above, point I, 2.2.1).

The tax rates

Waste incineration plants

The tax rates shall be levied on emissions of different pollutants measured, except for CO_2, for which the tax rate is fixed at NOK 39 per tonne waste delivered. According to the Norwegian Government, the taxation based on weight is due to the fact that the Directive 2000/76/EC ([6]) has no requirements to measure emission of CO_2 and that releases of CO_2 cannot be rinsed at a reasonable cost.

([4]) Figure for 2003 (first half). The tax remained largely unchanged over the past four years.

([5]) See 'Budsjett 2004, 14 Resultatområde 6: Avfall og gjenvinning'.

([6]) OJ L 332, 28.12.2000, p. 9, incorporated into Annex XX, point 20 of the EEA Agreement by Joint Committee Decision 57/2003.

The tax rate is based on an average estimate of the contents of fossil material in waste for households. Incineration plants that do not burn fossil material are exempted from this tax.

Landfills

For landfills, no tax rates directly related to the environmental costs of releases have been established. However, there is an increase in the tax rate for landfills not fulfilling the requirements in the Landfill Directive 1999/31/EC (7).

Accordingly, two rates now apply, a rate of NOK 327 for landfills fulfilling the requirements of regulation dated 21 March 2002 (implementing the Landfill Directive), and NOK 427 for landfills not meeting these requirements.

2.3. **The notified aid scheme**

2.3.1. *Introduction*

The new tax regime, as described above, no longer provide for tax reductions depending on energy utilisation. According to the Norwegian authorities, this leads to higher unit production costs and creates a competitive disadvantage for energy production from waste in comparison to energy production from other sources. The increased unit costs of utilising energy in the incineration plants is assessed to be about NOK 0,10 pr. kWh (8).

To stimulate the utilisation of unexploited potential (which according to the Norwegian Government involves an increase by 2 TWH by 2010 and an annual increase of 300 GWh), a grant scheme is proposed, which relates to the actual amount of energy produced, rather than having reduced tax rates according to the percentage of the energy utilised by the plants as under the current system. The Norwegian authorities argue that direct subsidies can be targeted more precisely towards energy utilisation than the former tax differentiations.

2.3.2. *Legal Basis*

The legal basis of the aid scheme will be a special regulation pursuant to Section 33 of Act of 13 March 1981 No 6 relating to Protection against Pollution and on Waste ('Lov om vern mot forurensninger og om avfall'), i.e. (draft) Regulation on aid for the utilisation of energy from final waste treatment plants that are required to pay tax on final waste treatment ('Utkast til forskrift … om tilskudddsordning til energiutnyttelse fra avgiftspliktige sluttbehandlingsanlegg for avfall'), hereinafter the Draft Regulation.

The Legal Basis for the State support is the annual budget decision by Parliament, St.prp.no 1 (2002-2003) Miljøverndepartementet and B.innst S.Nr.9 (2002–2003).

(7) OJ L 182, 16.7.1999, p. 1, incorporated into Annex XX, point 32d of the EEA Agreement by Joint Committee Decision 56/2001.

(8) Based on the value of the tax deductions divided by the amount of energy produced in 2001 (960 GWh).

2.3.3. *Form of aid and aid beneficiaries*

The potential aid recipients must be waste incineration plants or landfills covered by the waste treatment tax (9).

This implies that the waste incineration plants covered by the tax and the proposed scheme in general will be plants that incinerate municipal waste or similar waste from business activities, or plants that incinerate 'processed waste' and use the energy for heating houses, i.e. not for 'industrial use'.

The Norwegian Government has identified 21 waste incineration plants as potential beneficiaries of the scheme, i.e. the undertakings being covered by the current tax on final waste treatment as of 1 January 2002.

As for the landfills, the aid will be given for the energy production from landfill gas. No further details on the expected aid beneficiaries were given, since very few landfills use energy recovered from landfill gas today.

The aid is given in the form of grants.

2.3.4. *Eligible costs*

The aid is granted on the basis of the energy produced and marketed. A distinction is made on energy used for heating purposes and energy converted to electricity.

According to section 3-1 of the Draft Regulation, in the case of energy which is delivered as heat energy for district heating or collective heating, aid shall be given for the number of kWh for which delivery can be documented. Energy converted into electric power, can receive aid for the amount of energy measured in kWh that is delivered as actual electric power to a specific customer or to the power grid. The aid is conditional on invoices or other equivalent documentation confirming the actual energy delivered.

The grant is connected to the energy production from the renewable part of the waste. The energy production that is related to the incineration of the fossil non-renewable part of the waste (plastic) is deducted from the grant. This leads to the creation of two different aid rates.

(a) A high rate will apply to incineration plants which can document that they only incinerate separated fractions of waste that do not contain plastic or other fossil materials.

It also applies to all landfills, which utilise methane gas as energy, because energy production from methane gas from land fillings is solely based on the biodegradable fraction in the waste.

(b) A low rate, which constitutes 60 % of the high rate, will apply to those waste incineration plants, which incinerate waste that may contain fossil material.

(9) The landfills and plants exempted from the tax will not be granted aid in order to avoid the unintended benefit of both avoiding the tax and in addition being eligible for grants.

The difference between the two rates is based on estimates showing that the average content of fossil materials in household or mixed municipal waste is 13 %, which accounts for 40 % of the energy potential contained in the waste. The firms who receive the low rate thus receive a grant corresponding to the estimated 60 % of the energy potential which stems from renewable sources. The Norwegian Government states that the proportion of 13 % of non-renewable energy sources in waste is an average estimate. The same is the case for energy potential (40 %) as a result of using non-renewable material. According to the Norwegian Government, it would be very difficult and costly to get information on the exact fractions for each individual waste incineration plant.

The rates are based on the yearly Parliamentary budget decisions. In the latter half of 2003, the rates are estimated to be respectively NOK 0,10 pr. kWh (high rate) and NOK 0,06 per kWh (low rate). These figures are derived from the following calculation, based on the budgetary allocation of NOK 80 million and on the estimated output from the two types of processes.

1 300 000 000 kWh × 0,60 X + 50 000 000 kWh × X = NOK 80 000 000,

whereby X is the high rate, and 0,60 X the low rate. 1 300 000 000 kWh are expected to be calculated with the low rate (i.e. waste containing fossil material), whereas 50 000 000 kWh are calculated according to the high rate. On that basis, the high rate is calculated and rounded off to NOK 0,10 and the low rate is consequently NOK 0,06 per kWh.

This level would — according to the Norwegian Government — imply a compensation level of the same magnitude as the value of the current tax differentiation.

According to the Norwegian Government, the grant rate will be determined annually and be dependent on the general price of competing energy. The Norwegian Government has accepted that the rate should not exceed the maximum of EUR 0,05 (some 0,40 NOK) per kWh permissible under the Authority's State Aid Guidelines, Chapter 15, paragraph 58, and has proposed to insert this maximum threshold into the Draft Regulation.

2.3.5. *Calculations submitted by the Norwegian authorities for analysis of the aid scheme under the Authority's State Aid Guidelines*

Information submitted for the assessment under option 1 on operating aid for renewable energy sources of Chapter 15 the Authority's State Aid Guidelines

The Norwegian Government submitted that, due to waste-to-energy production requiring a considerable investment in production and cleansing technology, producers of energy from waste will have to bear environmental costs which they will not be able to get credit for in the energy market. The Norwegian authorities submitted a comparative table on estimated production costs in the notification:

TABLE 1

Production costs of various energy sources

Energy source	Energy production costs (EUR/kWh)	Energy production costs (NOK/kWh) (*)
Light oils	0,052	0,420
Heavy oils	0,038	0,310
Gas	0,040	0,326
Waste to energy (100 % energy utilisation)	0,045	0,367
Waste to energy (75 % energy utilisation)	0,060	0,489

(*) Exchange rate: 1 EUR = 8,16 NOK, calculated by the Authority.

This information on the production costs is necessary for an assessment of the aid scheme under option 1 in Chapter 15 regarding operating aid for renewable energy of the Authority's State Aid Guidelines. However, the Norwegian Government had not submitted any market price for the energy concerned, as required under paragraph 54 of Chapter 15.

The Norwegian Government admits that the figures on production costs in Table 1 contain elements of uncertainty, and that the numbers on waste-to-energy are based on a high technology plant. Firstly, as regards the waste-to-energy figures, the Norwegian Government submits that the production cost is connected to a certain size of such plants and that alternative costs related to other energy carriers may vary widely. Other crucial factors could be whether the alternative costs are connected to old or new installations and what prices each project achieves in the market. Secondly, the Norwegian Government states that the costs related to energy productions are difficult to separate from the costs related to waste treatment as a whole.

The Norwegian authorities have later submitted data which compare production costs of heat energy based on waste with market prices for regular electricity for industry and households.

TABLE 2

Production costs of waste-based-energy compared with the market price for electricity

Production cost Waste based energy (based on a medium sized plant, 75 % energy utilisation)	Market price electricity	
	Industry	Households including tax on electricity
NOK 0,45 kWh (*) (not containing negative treatment cost of waste)	NOK 0,176 kWh	NOK 0,357 kWh

(*) Table submitted by the Norwegian authorities. The small deviation compared to the production costs for this type of plant as given in Table 1, results from the conversion factor.

Information submitted for the assessment under option 3 on operating aid or renewable energy sources of Chapter 15 of the Authority's State Aid Guidelines

In its notification, the Norwegian Government first submitted the following table, demonstrating the environmental costs associated with various energy carriers. A background calculation was submitted to the Authority upon request ([10]).

TABLE 3

External costs of different energy carriers

	Waste to energy plant	Light oils	Heavy oils
EUR/kWh	0,0025	0,0063	0,024
NOK/kWh (*)	0,020	0,051	0,196

(*) Exchange rate: 1 EUR = NOK 8,16, calculated by the Authority.

In order to provide a comparison with the environmental costs incurred and not paid by energy sources competing with waste, the Norwegian Government subsequently submitted the three tables below. It should be noted that the comparison provided by the Norwegian authorities only concerned heat production by heavy oil. There is no comparison given between waste-to-energy production and other energy sources as regards electricity production. Electricity production by waste is considered by the Norwegian authorities to be of insignificant amounts and therefore considered as not relevant, due to competition in the electricity market.

As to the tables below, Table 4 provides a review of the emissions caused by a waste-to-energy production plant and the environmental costs of such production. These costs are set equal to the payable taxes on emissions according to the tax rates of the new tax system. The table also provides figures on emissions from a plant of the same energy production capacity, but based on heavy oils. The table finally shows a calculation of theoretical environmental costs by energy production based on such heavy oil. The theoretical environmental costs of the energy production from heavy oil are calculated on the basis of how emissions from such production would be taxed if they were taxed as emissions from waste based production. Thus, the emissions caused by heavy oil energy production are multiplied with the tax rates which apply for waste-to-energy production. As to the parameters used for determining the emissions, the Norwegian authorities refer to the parameters used in Directive 2000/76/EC on the incineration of waste.

According to the Norwegian Government, the tax rates of environmental taxes is the most appropriate manner to measure external costs. The Norwegian Government submits that presently there are three main methods used in the determination of environmental costs:

— damage costs, whereby the physical damage caused by the emissions is described, and then the value of the damages is estimated,

— abatement costs, which present marginal costs on actions to reduce emissions as an indication of what the society is willing to pay to reduce the emissions. An environmental tax can be seen as a valuation of marginal reduction in emissions,

— environmental indexes, which is a method connected to estimation of external costs due to emission of hazardous chemicals.

The Norwegian authorities base themselves on the abatement cost method. As stated by the Norwegian Government that is 'due to that Norway, i.a. is bound by international environmental agreements, which lays down several goals on the complete emission of various substances. Through the negotiation processes that led to the agreements, the Norwegian Authorities have expressed its methods of evaluation of damages caused by the various emissions. Thus, this method also makes the basis of the development of tax rates in the new proposed tax scheme (Rapport 85/00, Miljøkostnader ved avfallbehandling, ECON)' ([11]).

([10]) That background table is not copied in the Decision, because — while explaining the details of the calculation of external costs for waste, heavy and light oil — it is only on heavy oils that the Norwegian Government also presents a calculation for external costs paid by the producer.

([11]) Letter by the Norwegian authorities of 30.4.2003 (Doc. No 03-2862-A).

TABLE 4

Tax rates, emissions and environmental costs for energy plants producing 85 GWh of energy based on waste and heavy oil [1]

		High technology waste-to-energy plant 85 GWh 35 000 tons combustible waste		Heavy oil 85 GWh 8 900 tons heating oil	
Parameter [2]	Tax rates [3] (NOK/kg)	Actual emissions [4] kg	Payable environmental costs [5]	Actual emissions [6] kg	Theoretical environmental costs [7]
Dioxins	2 350 000 000	0,00	15 980,00	0,00	19 975,00
Dust (PM10)	577	225,00	129 825,00	11 560,00	6 670 120,00
Hg (mercury)	27 600	1,80	49 680,00	0,00	0,00
Cd (cadmium)	53 100	0,01	477,90	0,20	10 620,00
Pb (lead)	63 400	0,02	1 426,50	2,40	152 160,00
Cr (chromium)	571 000	0,07	38 542,50	0,20	114 200,00
Cu (copper)	307	0,07	20,72	0,70	214,90
Mn (manganese)	95 000	0,07	6 412,50	0,30	28 500,00
As (arsenic)	9 710	0,01	109,72	0,10	971,00
Ni (nickel)	9 300	0,07	627,75	42,50	395 250,00
HF (hydrogen fluoride)	20 400	0,70	14 280,00	8,50	173 400,00
HCI (hydrogen chloride)	102	1 057,00	107 865,00	238,00	24 276,00
Nox (NO_2) (nitrogen dioxide)	15	15 975,00	239 625,00	37 655,00	564 825,00
Sox (SO_2) (sulphur dioxide)	17	2 295,00	39 015,00	110 330,00	1 875 610,00
CO_2	0,2	7 350 000,00	1 470 000,00	24 114 500,00	4 822 900,00
Environmental costs NOK			2 113 887,60		14 853 021,90
Environmental costs NOK per kWh			0,0249		0,1747

(1) The Authority assumes that some inaccuracies in the figures result from a round off effect.
(2) In accordance with Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.
(3) The tax rates are in accordance with the legal act introducing the new tax scheme for the latter half of 2003, except the tax on CO_2, which is based on an evaluation according to the Kyoto Protocol.
(4) Source: Energos miljønotat Nr. 5 June 2000.
(5) Actual payable environmental tax, according to the external costs produced = Tax rates × actual emissions.
(6) Source: Energos miljønotat Nr. 5 June 2000.
(7) Theoretical environmental costs due to the tax rates (external costs) on incineration of waste.

The following calculations (Table 5 and Table 6) show how much of the estimated external costs are paid by the energy producers who base their production on heavy oil. Firstly the taxes paid by producers from heavy oil are calculated. For this purpose, the taxes on

— heating oil,

— CO_2 and

— sulphur

are taken into account (Table 5).

However, since the Norwegian Government argues that the heating oil tax is not an environmental tax, it provides two calculations, one including, another excluding, that tax.

TABLE 5

Taxes on energy plant using heating oil [1]

Tax rates 2003 NOK/litre	Tax on heating oil converted to NOK/kg	Payable tax	Payable tax, except the tax on heating oil
Tax on heating oil = 0,398	0,410	3 649 000	
Tax on CO_2 = 0,50	0,520	4 583 500	4 583 500
Tax on sulphur = 0,21	0,216	1 922 400	1 922 400
	Total	**8 873 300**	**5 224 300**
	NOK per kWh	**0,119**	**0,077**

[1] Energy plant using 8 900 tons heating oil for producing 85 GWh of heat energy as stipulated in Table 4. The table has been submitted by the Norwegian authorities. Some inaccuracies seem to result from a calculation error.

Table 6 compares the theoretical external costs of energy production from heavy oil with the costs actually paid by the producers. Again, two calculations are presented, depending on whether the heating oil tax is considered to be relevant for the present assessment.

TABLE 6

Heat production from heavy oil: external costs not paid, with and without the tax on heating oil

	Taxes included	Total external costs [1]	External costs paid due to the taxes on oil	External costs not paid
NOK per kWh	CO_2, SO_2, Heating oil	0,175	0,119	0,055
NOK per kWh	CO_2, SO_2	0,175	0,077	0,098

[1] Figure taken from Table 4.

Not taking the heating oil tax into account, the Norwegian Government argues that an amount of 0,098 NOK per kWh of external costs is not paid by the non-renewable energy producers, whereas waste-to-energy producers pay their full environmental costs via the tax scheme.

As to the energy production from methane from landfills, Norway stipulates that waste-to-energy producers pay their full tax. Contrary to the waste incineration tax, this tax is not emission based, but a differentiated tax at NOK 327 and 427 respectively. No calculation is given as to the external costs caused by landfills.

2.3.6. *Cumulation of aid*

Final waste treatment plants might be eligible for investment aid through the Grant program for introduction of new energy technologies, which is a programme funded by the Norwegian Energy Fund and managed by the newly established administrative body Enova. The programme was notified to the EFTA Surveillance Authority on 10 June 2003 (Doc. No 03-3705-A). The Norwegian authorities state that the Norwegian Pollution Control Authority and Enova will coordinate the aid schemes in accordance with Chapter 15 of the Authority State Aid Guidelines and that the rules governing the Energy Fund and the activities of Enova will ensure that the cumulation rules of the State Aid Guidelines are respected.

2.3.7. *Duration/budget*

The notified aid scheme is envisaged to enter into force on 1 July 2004. The scheme is not limited in time, but the Norwegian Government has agreed to a re-notification within five years.

The Norwegian Parliament will decide to continue the scheme through annual budget allocations. For 2003 Parliament had originally foreseen NOK 40 million for the latter half of 2003. NOK 80 million are foreseen on an annual basis.

3. **General comment by Norway**

In its notification, the Norwegian authorities argued that the aid scheme, which grants operating aid for renewable energy sources, falls within the scope of what should be permitted under the Authority's State Aid Guidelines, in particular Chapter 15 on Environmental Aid. In view of the superior objectives of the Environmental Guidelines, the Norwegian Government argues that the Authority's State Aid Guidelines should be interpreted broadly and that option 3 (Chapter 15, section D.3.3.3) and option 1 (Chapter 15, section D.3.3.1) may cover the aid scheme.

The Norwegian Government admits that although various proposals could fit different options under the Guidelines, the complete aid scheme did not completely fit any of the three options under the rules applicable to operating aid for renewable resources. In its correspondence with the Authority subsequent to the notification, Norway asked the Authority to assess the compatibility of the system primarily under option 3.

II. APPRECIATION

1. Scope of the present decision

The present decision deals with the aid scheme for the utilisation of energy from final waste treatment plants that are required to pay tax on final waste treatment, as notified by the Norwegian authorities.

2. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid [. . .]. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

By submitting the notification for the aid scheme for the utilisation of energy from final waste treatment plants that are required to pay tax on final waste treatment by letter dated 29 January 2003 (Doc. No 03-654-A), the Norwegian authorities have complied with the notification requirement. The Authority can therefore conclude that the Norwegian Government has respected its obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

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

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.'

In order for the notified aid scheme to be qualified as State aid within the meaning of Article 61(1) of the EEA Agreement, the following criteria must be fulfilled:

3.1. Presence of State resources

The grants are based on State budgetary allocations and constitute state resources.

3.2. Favouring certain undertakings or the production of certain goods

The grants to waste incinerations plants and landfills, which are subject to the waste treatment tax, give these undertakings a financial advantage which they otherwise would have not enjoyed. The grants indirectly mitigate — at least in part — the charges resulting from the payment of the waste treatment tax.

The support will only favour a limited group of waste incineration plants and landfills (an estimated number of 21 undertakings), namely those which are paying the final waste treatment tax and which provide waste based energy for collective/district heating and/or electricity to the power grid.

The financial assistance provided to this selective group of waste-to-energy producers strengthens their position in the energy market (for heat and electricity). The undertakings receiving financial support under the aid scheme will also enjoy a financial advantage over those waste incineration plants and landfills which do not recover and utilise the waste for energy production.

3.3. Distortion of competition and effect on trade between Contracting Parties

The aid beneficiaries exercise an economic activity on energy and waste treatment markets where there is, or could be, trade between Contracting Parties. As can be seen from Table 7 of this decision, energy production from waste competes with other energy sources, which could be provided by other undertaking in the EEA. The strengthening of the position of the relevant undertakings as compared with other undertakings competing with them within the EEA must therefore be regarded as distorting, or threatening to distort, competition and affecting trade between the Contracting Parties.

3.4. Conclusion

The proposed aid scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. In the following, it will be analysed whether the proposed aid scheme is compatible with Article 61(3) of the EEA Agreement.

4. Compatibility of the aid scheme with Article 61(3) of the EEA Agreement in combination with Chapter 15 of the Authority's State Aid Guidelines on Aid for Environmental Protection

Article 61(3)(c) of the EEA Agreement regards aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the interests of the Contracting Parties, as compatible with the functioning of the EEA Agreement. The Authority has undertaken an assessment of the compatibility of the notified aid scheme under Article 61(3)(c) of the EEA Agreement, in line with the Authority's State Aid Guidelines on Aid for Environmental Protection. The Authority has doubts whether the proposed aid scheme fulfils the criteria set out in the relevant Chapter 15 of the Guidelines.

The aid granted by the Norwegian Government constitutes operating aid, which relieves waste incineration plants and landfills of the expenses which a company normally would have had to bear in its day-to-day management or its usual activities ([12]). Chapter 15 of the Authority's State Aid Guidelines (hereinafter 'the Guidelines') sets out specific rules according to which operating aid for environmental purposes should be assessed.

([12]) For the definition of operating aid, see Case T-459/93 Siemens SA v. Commission [1995] ECR II, p. 1675.

Since the Norwegian Government argued that the proposed scheme should be assessed primarily under Chapter 15, D. 3.3.3 — option 3 — for assessing operating aid, the assessment below will commence with this option.

4.1. **Compatibility of the aid scheme under Chapter 15, D.3.3.3 — Option 3**

Paragraph 58 of the Guidelines stipulate that 'EFTA States may grant operating aid to new plants producing renewable energy that will be calculated on the basis of the external costs avoided'.

4.1.1. *Renewable energy*

According to paragraph 7 of Chapter 15 the Guidelines in conjunction with Article 2(a) of Directive 2001/77/EC [13] renewable energy sources shall mean renewable non-fossil energy sources, *inter alia* comprising biomass and landfill gas. Biomass means the biodegradable fraction of products, for waste the biodegradable fraction of industrial and municipal waste (Article 2(b) of Directive 2001/77/EC). The Norwegian authorities have argued that the proposed aid scheme is limited to energy production based on biomass in the meaning of Directive 2001/77/EC. For landfill gas (methane) the Norwegian authorities confirmed that every utilisation of methane gas from land fillings is solely based on the biodegradable fraction and will therefore receive the high grant rate (see point 2.3.4).

For waste, two aid rates are established, depending on whether the application for support is made for waste which is free from fossil fractions or whether the waste is 'mixed'. Incineration plants using fossil-free waste get the full grant, stipulated presently at NOK 0,10 per kWh. The incineration plants which use mixed waste receive 60 % of this grant, i.e. NOK 0,06 per kWh. For establishing this reduced rate, it is assumed that ordinary municipal waste contains 13 % non-renewable fossil energy material, which constitutes 40 % of the potential energy contained in the waste. Renewable materials, which are non-fossil, are consequently supposed to account for 60 % potential energy in mixed waste. The Norwegian authorities argue that while accepting that in an individual case aid might be given to companies whose waste contains a higher proportion of fossil material than the assumed average of 13 % (which are assumed to result in 40 % of potential energy contained), it would not be possible to calculate the exact amount for each individual firm. According to the Norwegian authorities, a company interested in receiving the high rate, would have all interest to establish mechanisms to demonstrate that its energy production is based on waste with a lesser fraction of fossils.

While the Authority does not, in general, rule out that due to the difficulties in gathering company data, an average calculation might be acceptable, the Authority notes that it has not been given any information, on how the Norwegian Pollution Control Agency established the percentages 13 % of fossil content and 40 % in energy potential. Especially, since the Norwegian Government points out that it does not have access to individual company data, the Authority has no means of assessing on which basis the quoted percentages have been calculated and what any range of deviation from this apparent average figure might amount to. It would for example be of interest to know what the highest possible percentage of fossil material (i.e. the 'worst case' which — due to the proposed average calculation — would still profit from the 60 % rate) a waste treatment undertaking would handle.

Such information is important for the Authority's assessment under the State Aid Guidelines, according to which, aid should be given only to renewable energy sources, i.e. the biodegradable fraction of waste. Support under the Guidelines is not envisaged for fossil material. The information is further necessary, in order to ensure that the Norwegian support scheme does not promote the incineration of non-separated municipal waste, if such promotion undermines the waste treatment hierarchy, as stipulated in recital 8 of Directive 2001/77/EC in combination with Articles 3 and 4 of Directive 75/442/EEC [14]. The Authority notes that there are no general restrictions concerning the amount of plastics in the waste in place, so that it must be ensured that the granting of aid does not lead to wrong incentives which provoke a lessening of recycling. While not excluding that the tax on waste incineration might favour recycling at the expense of incineration, and that the aid scheme favours the utilisation of waste at the expense of landfills in line with the waste hierarchy, the Authority is still concerned that, by allowing a possibly too generous rate of 60 % for mixed wastes containing fossil elements, the general incentives for plants to separate waste for recycling purposes are reduced. Since it appears that waste incineration resulting in energy utilisation cannot automatically be regarded as a recovery operation rather than a disposal operation [15], the Authority is concerned that a too generous low grant rate would support waste incineration to the detriment of separating and recycling waste.

The Authority is not yet convinced that a lower grant rate (based e.g. on the worst case scenario) than the notified low grant rate, would jeopardize the efficiency of the aid system.

4.1.2. *The calculation of external costs avoided*

According to paragraph 58 of Chapter 15 of the Guidelines, aid may be granted on the basis of external costs avoided. According to the Guidelines,

'[external costs] ... are the environmental costs that society would have to bear if the same amount of energy were produced by a production plant operating with conventional forms of energy. They will be calculated on the basis of the difference between, on the one hand, the external costs produced and not paid by renewable energy producers and, on the other hand, the external costs produced and not paid by non-renewable energy producers. To carry out these calculations, the EFTA State will have to use a method of calculation that is internationally recognised and has been communicated to the Authority. It will have to provide among other things a

(13) Directive 2001/77/EC of the European Parliament and of the Council on the promotion of electricity produced from renewable energy electricity market (OJ L 283, 27.10.2001, p. 33).

(14) Directive 75/442/EEC (OJ L 194, 25.7.1975, p. 39), incorporated into Annex XX, point 27 of the EEA Agreement.

(15) Judgement of the European Court of Justice of 13 February 2003, Case C-458/00 Commission v. Luxembourg [2003] ECR I-1553, paragraph 31 seq. See also COM(2003) 301 final, where it is expressed that while e.g. landfill taxes are an incentive to change waste management choices, these taxes must be complemented by other instruments so as to avoid diverting mixed waste in bulk towards incineration.

reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs not covered. At any event, the amount of the aid thus granted to the renewable-energy producer must not exceed EUR 0,05 per kWh . . .'

In their notification, the Norwegian authorities submitted a table which compared the external costs of waste-to-energy production with light oil and heavy oils (see Table 3 above). In further correspondence with the Authority, a more detailed comparison was only submitted with regard to heavy oils (see Table 4, above point I, 2.3.5).

The Authority has the following doubts as to whether the calculation of external costs on that basis can be considered sufficient under paragraph 58 of Chapter 15 of the Guidelines, and as to whether the calculation demonstrates that the aid is a genuine compensation for external costs not covered.

(1) The Norwegian authorities have not explained why the original comparison with light oils was omitted for the purpose of calculating the external costs avoided. The Norwegian authorities have simply stated that waste-to-energy plants will, to a large extent, substitute oil, but have not explained why their comparative cost analysis [16] does not extend to light oils. Furthermore, the Authority cannot exclude that there are other competing sources for heat production (district and collective heat), e.g. electricity, for which no comparative data have been supplied or explained why they are not relevant (see also below).

(2) For district heating — not for collective heating — the Norwegian authorities have submitted an overview of different energy carriers [17], which shows that also bio energy, heat pumps, oil, gas and in particular electricity are used for heat production. However, the Norwegian Government has not provided any comparative data for these other energy carriers, so that it is not possible for the Authority to make an assessment of the external costs avoided under the State Aid Guidelines. In particular it appears that, at least for district heating, the more relevant comparison would have been the production of heat by electricity which is the closest substitute according to the table below.

TABLE 7

Energy sources used for district heating

Coal	0,04 TWh
Waste	0,82 TWh
Waste heat (surplus heat)	0,16 TWh
Bio energy	0,16 TWh
Heat pump	0,16 TWh
Oil	0,16 TWh
Electricity	0,52 TWh
Gas	0,04 TWh

(3) The Authority cannot exclude a risk of overcompensation for heat production. As stated above (see calculation under point I, 2.3.4), the Norwegian Government foresees an annual budget of NOK 80 million in support of waste incineration plants.

The Authority finds, that — following the comparison with heavy oils (see above Table 6 at point I, 2.3.5) — if the external costs avoided were to be quantified at NOK 0,55 per kWh, the budgetary allowance should not exceed NOK 45,65 million [18]. This includes the payment of the heating oil tax by energy production based on heavy oil.

(4) The Norwegian Government argues, however, that the heating oil tax should not be taken into account for calculating the amount of external costs paid. The Authority is not convinced that the heating oil tax should not be regarded as an environmental tax and therefore not be taken into account when calculating the external costs paid by producers of heat using heavy oils as a source. The Norwegian Government has explained that the heating oil tax was introduced to avoid substitution of the use of electricity by the use of heating oil. However, since the introduction of the electricity tax aims at decreasing consumption for environmental purposes [19], the corresponding rise of the heating oil tax likewise follows an environmental purpose, namely preventing that the environmental aim of the electricity tax being jeopardized, due to a switch to heating oil.

Even if this was considered as an indirect environmental effect, in the Authority's preliminary view, this is sufficient to classify the tax as 'environmental' under the Guidelines (Paragraph 7), which stipulate that 'one likely feature for a levy to be considered as environmental would be that the taxable base of the levy has a clear negative effect on the environment. However, a levy could also be regarded as environmental if it has a less clear, but nevertheless discernable, positive effect'. The Norwegian Government had itself argued that the heating oil tax was introduced to 'prevent an environmental unfortunate increase in the use of oil for heating purposes' [20].

(5) The Authority further notes that the calculation of external costs and consequently the level of taxation is based on high technology waste-to-energy plants. However, as the Norwegian Government states, the existing waste incineration plants also cover low technology plants with presumably higher emission levels. While the Authority could possibly accept that due to stringent regulatory demands, in the future low technology plants will close down and should not be used as a reference factor for the future, the Authority also notes that the Norwegian Government has stressed that, for the time being, the scheme is aimed at existing (at the moment 21 identified) waste incineration plants, see also below 4.1.4.

(16) Corresponds to Table 3, Comparative cost analysis in the letter of the Norwegian authorities dated 30.4.2003 (Doc. No 03-2862-A).

(17) Table 1 in the letter of the Norwegian Government of 6.10.2003.

(18) 1 300 000 000 kWh × 0,60 × NOK 0,055 + 50 000 000 kWh × 0,055 = 45 650 000 NOK.

(19) See Str.prp. nr. 1, 1999-2000, point 3.8 avgift på elektrisk kraft.

(20) Letter by the Norwegian Government of 30.4.2003 (Doc. No 03-2862-A).

The Authority has not received information on how many of the existing plants are low technology plants. Consequently, the Authority cannot be sure that an external cost calculation based solely on high technology plants is the correct basis for approving aid under the Authority's State Aid Guidelines. To the extent that waste incineration plants cause more pollution and consequently bring about higher environmental costs than they are charged in taxes, the external costs avoided through such plants will be reduced compared to conventional energy production.

(6) The Authority also notes that as to waste-to-energy production for the purposes of electricity, the Norwegian Government has not submitted a calculation comparing the external costs produced and paid by renewable energy producers and producers producing energy from traditional energy sources. The Norwegian Government stated that in 2001, heat production from waste amounted to 0,9 TWh, while electricity production based on waste constituted 0,05 TWh implying that heat energy constituted about 95 % of all the waste based energy production. However, while it is true that the envisaged aid scheme mainly concerns heat production, the fact cannot be neglected that, with regard to electricity production, the aid scheme has an effect on competition in the electricity market. In that respect, Norway has not submitted any data which would make it possible for the Authority to assess the external costs. Neither has it received sufficient information on the competitive situation in the electricity market.

(7) The Authority notes in particular, that no calculation has been presented for landfills. The Norwegian Government argues that the landfills pay their full external costs through the tax on landfills (NOK 327, respectively NOK 427). However, the Authority notes that the calculation of the tax is not based on emissions and that the low tax rate is the same as the one which was applied in 1999 when the tax was first introduced. The Authority does not have sufficient information on whether the calculation of the landfill tax rate at the time was based on environmental impacts, which are still valid today.

4.1.3. *Internationally recognised method*

The Authority notes that only with regard to heavy oils has a more detailed and reasoned calculation been submitted (see Table 4 under point I, 2.3.5), whereas comparisons with other competing energy sources for heat production and figures regarding the use of waste for electricity production have not been submitted. It is therefore only for the comparison between waste-to-energy and heavy oils for heat production that the Authority is able to assess whether the calculation submitted by the Norwegian authorities is based on an internationally recognised method.

The Norwegian authorities have explained (see above point I, 2.3.5) that there are three methods regarding the calculation of external costs: damage costs, abatement costs and environmental indexes. The method primarily used for the calculation is the abatement cost method, which according to the Norwegian authorities and with references to international environmental agreements, calculate marginal costs on actions to reduce emissions as an indication of what the society is willing to pay to reduce the costs. The Norwegian authorities see environmental taxes as a valuation of marginal reduction in emissions. However, for the following reasons, the Authority has doubts as to whether the calculation can be accepted as being based on an internationally recognised method.

(1) Firstly, the Authority notes that the abatement method has not been used throughout the calculation. As the Norwegian Government stipulates, the valuation of various gases are 'mostly' based on the abatement cost analysis. The Authority can therefore not assess, whether the method is deviated from for certain emissions. The estimate on dust is based on valuation of health damage and the valuations of hazardous substances are bases on indexes that rank these substances according to damage potential. It therefore appears that the calculation of external costs is based rather on a combination of methods than the abatement costs method alone. The Authority does not have sufficient information to assess, and presently doubts, whether this combination is a correct basis for calculating external costs under the Guidelines.

(2) Secondly, Norway has not yet substantiated that this method (or combination of methods as described above) is internationally accepted. Norway has stated that the figures presented in the evaluation of external costs are based on methods used within basic research in Norway which are not different from the internationally approved methods used in other countries. No proof has been given to show that the methods used by Norway are in line with international standards — the report 1999/32 by Norway Statistics has not been submitted to the Authority (Fremskrivning av avfallsmengder og miljøbelastninger til sluttbehandling av avfall).

Norway further has stated that it is bound to use the abatement method by international environmental agreements, and that through the negotiation process that led to the agreements, the Norwegian authorities have expressed its methods of evaluation of damages. However, from the 'expression of methods' the Authority cannot conclude that the methods are indeed internationally accepted. The report 85/00 Miljøkostnader ved avfallsbehandling, ECON, has not been submitted to the Authority.

The Authority further notes that the 2001 external costs study undertaken by the European Commission 'ExternE' concerning environmental costs of electricity production was based on the damage cost (bottom-up) method, which also included waste incineration. That research project was undertaken in 20 sub-research projects over 10 years and has developed a methodology — the impact pathway approach — which measures the emissions and dispersions and assesses the impact of these emissions (e.g. on health, marine life, etc.) [21]. The ExternE cost methods expresses some reservations as regards so-called cost control or abatement method [22].

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[21] Press release 20 July 2001, IP/01/1047. The project is continued with a follow-up project, NewEXT, see publication of 7.11.2002 on http://europa.eu.int/comm/research/news-centre/en/env/02-10-env02.html

[22] http://externe.jrc.es/Method+Approaches.htm. ExternE comments on the cost-control method as follows: 'the method is entirely self-referencing — if the theory was correct, whatever level of pollution abatement is agreed would by definition equal the economic optimum. Although knowledge of control costs is an important element in formulating prescriptive regulations, presenting them as if they were damage costs is to be avoided'.

In the absence of precedents in case practice, the Authority therefore cannot — without further investigation — assess whether for the purpose of calculating aid, the abatement cost methods is appropriate.

4.1.4. *New plants*

According to paragraph 58 of the Authority's State Aid Guidelines operating aid should only be given to new plants. Even if the notion of 'new plants' could possibly be read to cover 'new investments', the Authority is not entirely certain whether and to what extent, the simple continuation of support to waste incineration qualifies under that system. In this regard, the Authority notes that it is still unclear which objectives the scheme intends to follow and in which respect the aid scheme is a means to achieve them. Norway argues that the aid scheme should bring about an increase of waste-to-energy production of 300 GWh annually and a total increase by 2 TWh by 2010. At the same time Norway is arguing that the support is necessary to avoid a decrease in production resulting from the repeal of the tax reductions. While the Authority takes note of Norway's reasoning that there is still capacity for increased productions in the existing plants, for accepting an incentive effect, it needs to understand how this increased production would be possible if the amount of support has the same magnitude as the advantage the undertakings enjoyed under the current tax differentiation scheme. Whether a support scheme which simply aims at avoiding a decrease in production due to a change in the tax system, can qualify under paragraph 58 of Chapter 15 of the State Aid Guidelines, needs to be assessed further. The Authority therefore still has doubts whether aid to existing plants under option 3 can be accepted.

4.1.5. *Re-investment*

According to paragraph 58 of the Authority's State Aid Guidelines, the amount of aid granted to producers that exceeds the amount of aid resulting from option 1 must be reinvested by the firms in renewable sources of energy. This requirement applies to any operating aid below EUR 0,05 per kWh which is otherwise permissible. In this respect, it should be borne in mind that operating aid for renewable energy under option 1 is only allowed for plant depreciation. In order to avoid overcompensation, the Guidelines require a re-investment of that amount of aid authorised under option 3.

The Authority takes into account the argument of Norway that the level of aid is well below the threshold of EUR 0,05 per kWh, as stipulated in the Guidelines, and that the aid — as stipulated in the Norwegian draft regulation — will not exceed the permissible amount of aid under option 1. A reinvestment clause is therefore not considered to be necessary by the Norwegian authorities.

However, the Authority notes that the requirement not to exceed the threshold of EUR 0,05 per kWh is independent from the requirement to avoid overcompensation. According to the Guidelines, every payment which exceeds the amount of aid resulting from option 1 must be reinvested, regardless whether the threshold of EUR 0,05 per kWh is met, or whether the aid stays below that threshold. The Authority has not received sufficient information on the fulfilment of the criteria of option 1. The Authority has doubts as to the compatibility of the aid in this respect.

In particular, if the Authority were to allow aid to existing plants under option 3, it needs to be certain that the plant depreciation, which should not be exceeded, takes into account that, for existing plants, some of the investment might already have been depreciated. In that regard, only the part which has not yet been depreciated should be taken into account.

Conclusion: The Authority presently has doubts — based on the given information — that the proposed aid scheme is compatible with option 3 on operating aid for renewable energy sources in Chapter 15, D. 3.3.3 of the Guidelines.

4.2. **Compatibility of the aid scheme under Chapter 15, D.3.3.1 — Option 1**

Because of the doubts regarding the compatibility with option 3 of Chapter 15, D.3.3.3 of the Guidelines, the Authority has also carried out an assessment of the compatibility of the scheme under option 1 on operating aid for renewable energies in Chapter 15, D.3.3.1 of the Guidelines.

According to paragraph 54 of Chapter 15 of the Guidelines, 'EFTA States may grant aid to compensate for the difference between the production cost of renewable energy and the market price of the form of power concerned. Any operating aid may then be granted only for plant depreciation. Any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a fair return on capital if EFTA States can show that this is indispensable given the poor competitiveness of certain renewable energy sources. In determining the amount of operating aid, account should also be taken of any investment aid granted to the firm in question in respect of the new plant. When notifying aid schemes to the Authority, EFTA States must state the precise support mechanisms and in particular the methods of calculating the amount of aid. If the Authority authorises the scheme, the EFTA State must then apply those mechanisms and methods of calculation when it comes to granting aid to firms'.

According to paragraph 55 of the Guidelines, operating aid might be given to biomass if the State shows that the aggregate costs borne by firms after plant depreciation are still higher than the market price.

In its original notification, the Norwegian authorities submitted the abovementioned Table 1 to show the different productions costs of various energy sources. However, since no market price was delivered to the Authority, an assessment under option 1 in Chapter 15 was not possible. Despite detailed questions in the Authority's letter of 3 March 2003 (Doc. No 03-682-D), the Norwegian authorities did not submit sufficient information — in particular not market prices — to make such an assessment possible [23]. The Authority was therefore requested to assess the system under option 3 of the Guidelines. In its submission of 6.10.2003 (Doc. No 03-6911-A), the Norwegian authorities then confirmed that they would respect the requirements of option 1 (aid only

[23] Letter by the Norwegian authorities dated 30.4.2003 (Doc. No 03-2862-A).

given for plant depreciation, fair return on capital necessary because of the poor competitiveness etc.). The Norwegian authorities also submitted data on the price of regular electricity for households and industry in Table 2, referring to Commission Decision N 239/2001, arguing that this Decision demonstrates that this comparison is appropriate and sufficient to accept the compatibility of aid under option 1. However, the Authority notes that this information and argumentation is given in the context of assessing option 3. The Norwegian authorities did not confirm that they would calculate aid on the basis of the difference between market price and depreciation costs as required by option 1. The Norwegian Government has consequently only suggested amending the Draft Regulation in order to incorporate the necessity of not exceeding plant depreciation and including a fair return on capital. The very principle of option 1 is not integrated into the Draft Regulation.

(1) However, even with the figures presented in Table 2, the Authority has doubts as to the compatibility of the measure under option 1, in particular since it has not been provided with a cost calculation method as required by paragraph 54 of the Guidelines. Firstly, the Authority notes that the production costs of landfills are missing. As to the production costs of waste incineration plants, the Authority notes that it still has not received any detailed and precise cost calculation method. Details on cost savings, as well as on the depreciation rate and time have not yet been given. The Authority can further not assess how many of the potential 21 beneficiaries are medium-sized, large or small waste incineration plants and whether the production costs of medium-sized plants are representative. With regard to plant depreciation, the Authority would in particular have to assess to which extent investments already have been depreciated. This results from the fact that the aid is given to 21 existing undertakings and that it is not clear to the Authority to which degree the envisaged aid mechanism is favouring an increase of renewable energy production or mainly aiming at maintaining the favourable conditions resulting from the existing system of tax differentiation. The Authority notes that in the Dutch case to which the Norwegian authorities have referred, this information was submitted to the European Commission [24]. With regard to the quoted market price for energy, the Authority notes that it has not received any information from which source the market price stems and where future market prices will be taken from.

(2) The Norwegian Government further states that the production costs in paragraph 51 in Chapter 15 of the Guidelines must be interpreted as societal production costs. In line with Commission practice [25], the Authority does not agree with this view, which also makes the distinction between option 1 and option 3 of the Guidelines redundant. Based on that statement, the Authority presently has doubt that the Norwegian authorities would interpret the notion of production costs within the meaning of the State Aid Guidelines, when calculating aid.

(3) Furthermore, the Authority cannot be certain that the calculation of the production costs will only cover that part directly related to the production of energy and leave those costs which result from the treatment of waste aside. The Norwegian Government has stated that it is difficult to separate the costs related to energy production from the costs of waste treatment as a whole. In the Norwegian authorities' view, if special costs related to waste collection, sorting and treatment are left out, there remains a question of how to adjust the price of waste-based fuel for the pre-processing that is inherent in most waste incineration process. While the Authority takes note of these difficulties, it also points out that it must ensure that the aid does not support activities and mitigate the related costs, which the undertakings have to bear according to obligations resulting from regulatory national and European law (i.e. Directive 2001/77/EC and Directive 75/442/EC). The Authority notes that in its latest submission the Norwegian authorities state that the production costs do not include 'negative treatment of waste'. However, the Authority is not certain what this statement implies and would also — on the basis of former statements by the Norwegian authorities which argued that it was impossible to separate waste treatment costs from the costs of waste-to-energy production — require a detailed analysis and calculation of the cost items under the heading 'production costs'.

Conclusion: The Authority presently has doubts — on the basis of the given information — that the proposed aid scheme is compatible with option 1 on operating aid for renewable energies in Chapter 15, D. 3.3.1 of the Guidelines.

4.3. **Other provisions**

The Norwegian authorities have questioned whether paragraph 63 of the Guidelines could serve as a legal basis for approving aid. Paragraph 63 of the Guidelines merely stipulates that 'The Kyoto Protocol calls for a limitation or reduction in greenhouse gas emissions during the period 2008-2012. The Authority takes the view that some of the means adopted to comply with the objectives of the Protocol could constitute State aid but it is still too early to lay down the conditions for authorising any such aid', but does not contain a legal basis for authorising aid. In addition, paragraph 63 addresses flexible mechanisms under the Kyoto Protocol, such as emission quota trading, and does not cover grant schemes like the one notified.

The aid at issue is not degressive and therefore also not compatible according to paragraphs 37 and 40 of Chapter 15 of the Authority's State Aid Guidelines. Paragraph 40 in conjunction with paragraph 37 of the Guidelines provides that operating aid for the promotion of waste management is '. . . subject to a limited duration of five years where the aid is 'degressive'. Its intensity may amount to 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year'. The Authority does not have sufficient information to assess whether the aid would be compatible under paragraph 37 in combination with paragraph 41 of the State Aid Guidelines. The Authority does not have any information on the extra production costs, the aid being in line with the waste hierarchy and respecting the aid intensity of 50 %.

[24] Also in other Commission cases, to which the Authority has drawn Norway's attention in its information request of 30 March 2003, detailed information has been submitted by the notifying EU Member State (N 651/01, N 278/01 and in particular N 707/02).

[25] See e.g. cases referred to in footnote 37.

HAS ADOPTED THIS DECISION:

1. The Authority opens the formal investigation procedure pursuant to Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement against the aid scheme to utilise energy from final waste treatment plants.

2. The Norwegian Government is invited, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit its comments to the present decision within six weeks from receipt of the present decision.

3. The Norwegian Government is requested to submit all information necessary to enable the Authority to examine the compatibility of the proposed State aid under Article 61(3)(c) of the EEA Agreement, in combination with Chapter 15 of the Authority's State Aid Guidelines on Aid for Environmental Protection, within six weeks from receipt of the present decision. Otherwise the Authority will adopt a decision on the basis of the information in its possession.

4. Other EFTA States, EC Member States and interested parties shall be informed by the publishing of this decision in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.

5. The decision is authentic in the English language.

Done at Brussels, 11 December 2003.

For the EFTA Surveillance Authority

Einar M. Bull	Hannes Hafstein
President	*College Member»*

III

(Informações)

COMISSÃO

CONVITE À APRESENTAÇÃO DE PROPOSTAS (VP/2004/006)

Rubrica orçamental 040408: relativa a projectos de cooperação e intercâmbio concebidos para melhorar a mobilidade dos idosos

(2004/C 82/07)

1. ANTECEDENTES

O presente convite à apresentação de propostas foi lançado na sequência da renovação de uma anterior iniciativa do Parlamento Europeu relativa a «Projecto-piloto ENEA em prol da mobilidade dos idosos», que procura demonstrar que as pessoas idosas constituem uma mais-valia para a sociedade e têm um papel activo e dinâmico a representar. Esta dotação destina-se a financiar acções tendentes a «promover a criação de programas de intercâmbio de idosos através de organizações especializadas encarregadas de desenvolver nomeadamente os meios de deslocação, e de adaptar as infra-estruturas».

2. OBJECTIVOS DO CONVITE À APRESENTAÇÃO DE PROPOSTAS

As candidaturas devem consistir em propostas específicas para promover a mobilidade na Europa, de forma a ultrapassar os obstáculos com que os idosos se podem deparar ao pretender desempenhar um papel de pleno direito no âmbito de actividades sociais e culturais ou contactar com pessoas de outras gerações. A mobilidade deverá tomar a forma de estadas de curta duração noutros Estados-Membros da UE. O principal objectivo será permitir que os idosos desenvolvam competências (incluindo proficiências linguísticas), aproveitem da melhor forma possível as competências que já possuem e realizem uma troca de experiências, independentemente da sua situação financeira ou social.

As propostas deverão incluir parceiros provenientes de pelo menos três Estados-Membros [1].

3. ORÇAMENTO DISPONÍVEL

O orçamento cifra-se em três milhões e meio de euros. A assistência financeira da Comissão não excederá os 80 % dos custos elegíveis. A parceria deverá garantir o co-financiamento pecuniário dos restantes custos (pelo menos 20 %); não se aceitam contribuições em espécie. Em função da qualidade e da dimensão dos projectos propostos a subvenção pode ir de 300 000 EUR a 600 000 EUR.

4. CRITÉRIOS DE ELEGIBILIDADE

4.1. Candidaturas

Apenas serão consideradas as propostas:

— enviadas à Comissão, o mais tardar, até 17 de Maio de 2004 (fazendo fé o carimbo dos correios) de acordo com o procedimento indicado infra;

— apresentadas de acordo com os requisitos indicados infra e enunciados de forma desenvolvida no Guia do Candidato.

4.2. Admissibilidade dos candidatos

Para serem elegíveis, os candidatos deverão:

— estar estabelecidos enquanto organização sem fins lucrativos;

— estar devidamente constituídos e registados num Estado-Membro;

— certificar que não se encontram numa das situações enumeradas no artigo 93.º do Regulamento Financeiro (JO L 248 de 16.9.2002) (para mais informações consultar o Guia do Candidato).

4.3. Elegibilidade das acções

— Apenas serão consideradas candidaturas que envolvam a participação de parceiros de pelo menos três Estados-Membros;

— As acções não poderão prolongar-se por mais de 12 meses e deverão ter início em 2004;

— As acções devem respeitar o limite da percentagem de 80 % de co-financiamento comunitário;

— As acções propostas pelo candidato não podem receber, para a mesma actividade, financiamento por parte de outras fontes comunitárias.

4.4. Acções consideradas não elegíveis

São consideradas inelegíveis as candidaturas relativas ao financiamento de:

— despesas de funcionamento ordinárias, despesas com reuniões e manifestações obrigatórias ou custos de serviços normais fornecidos por órgãos ou autarquias locais, regionais ou nacionais;

— actividades que se desenrolem fora do território da União alargada;

— acções de índole lucrativa.

[1] Os novos Estados-Membros que aderem à União Europeia a 1 de Maio de 2004 devem apresentar as suas propostas numa das actuais línguas oficiais. Sugere-se que os formulários sejam preenchidos de preferência num número limitado de línguas (EN, FR, DE).

5. CRITÉRIOS DE SELECÇÃO

Os candidatos devem:

— apresentar documentos que atestem a sua capacidade legal e financeira e idoneidade profissional para levar a efeito a acção subvencionada;

— ter a capacidade técnica e de gestão necessária à realização da acção subvencionada.

6. CRITÉRIOS DE AVALIAÇÃO

Na fase de avaliação, os candidatos serão seleccionados com base na qualidade das propostas e respectiva adequação aos objectivos definidos no ponto 2, relativamente aos seguintes aspectos:

— qualidade das propostas na sua relação com os objectivos e prioridades do convite à apresentação de propostas;

— adequação do projecto relativamente à possibilidade de alcançar os objectivos e resultados esperados;

— envolvimento dos parceiros;

— dimensão transnacional do projecto;

— visibilidade do projecto; divulgação e transferibilidade dos resultados alcançados;

— consideração, em justa medida, da igualdade entre os sexos e dos idosos com deficiências;

— qualidade financeira da proposta.

7. CALENDÁRIO E DURAÇÃO ESTIMADOS PARA A ACÇÃO

— A acção deverá ter início após assinatura da convenção de subvenção por ambas as partes, prevista para Setembro de 2004 [1];

— A duração do período de execução terá de ser respeitada;

— Só em circunstâncias excepcionais e mediante acordo escrito celebrado entre ambas as partes, é que a Comissão pode admitir uma extensão do período de execução até três meses, (para mais pormenores relativamente aos requisitos a cumprir, cf. o Guia do Candidato).

8. PRAZO PARA APRESENTAÇÃO DAS PROPOSTAS

O prazo para apresentação das propostas termina em 17 de Maio de 2004 (fazendo fé o carimbo dos correios). Serão recusadas as candidaturas não enviadas no prazo devido.

9. QUESTÕES DE CARÁCTER PRÁTICO

9.1. Formulário de pedido de subvenção

Os candidatos devem apresentar um dossiê completo em conformidade com as instruções dadas nos formulários elaborados especialmente para o efeito. O formulário de candidatura (composto por quatro partes separadas), o texto do convite à apresentação de propostas e o Guia do Candidato podem obter-se da seguinte maneira:

a) descarregando os respectivos ficheiros da nossa página internet no endereço: http://europa.eu.int/comm/dgs/employment_social/tender_en.htm

b) por correio electrónico: empl-e1-unite@cec.eu.int; com a menção «Request for application form VP/2004/006» em epígrafe.

c) por correio, dirigido a:

Comissão Europeia
Direcção-Geral do Emprego e dos Assuntos Socais
Direcção E.1
JII 27 1/122 (Constantinos Fotakis)
B-1049 Bruxelas

Os formulários deverão ser enviados em duplicado, por carta registada, dentro do prazo previsto (fazendo fé o carimbo dos correios) para a morada acima mencionada, com a menção «candidature à l'appel à propositions No VP/2004/006». Deverá ainda obrigatoriamente ser enviado por correio electrónico, fazendo referência ao número do convite à apresentação de propostas, o nome da organização que apresenta a proposta e o país de origem para o seguinte endereço:
empl-e1-unite@cec.eu.int

9.2. Procedimento de avaliação das candidaturas

1. Recepção e registo pela Comissão.

2. Exame e selecção por uma comissão de selecção. Apenas as candidaturas elegíveis serão avaliadas em função dos critérios de selecção e avaliação especificados no convite e no Guia do Candidato.

3. Adopção da decisão final e comunicação dos resultados aos candidatos.

4. As convenções de subvenção serão assinadas provavelmente em Setembro de 2004.

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[1] A subvenção de acções já iniciadas só pode ser aceite nos casos em que o requerente possa justificar anecessidade do arranque da acção antes da assinatura da convenção. Nestes casos, as despesas elegíveispara financiamento não podem ser anteriores à data de entrega do pedido de subvenção.