

Brussels, 25 November 2020
Case No: 85853
Document No: 1163556
Decision No 137/20/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
NORWAY

Subject: COVID-19 Amendments to the compensation scheme for operators of year-round commercial long-distance scheduled bus or passenger boat services

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified amendments to an existing aid scheme for long-distance bus and passenger boat services (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) By [Decision No 094/20/COL](#), ESA approved a compensation scheme for operators of year-round commercial long-distance scheduled bus or passenger boat services (“the scheme”). For a detailed description of the background, see paragraphs (3) to (10) of that decision.
- (3) The amendments to the scheme were notified by the Norwegian authorities on 23 November 2020.²

3 The notified amendments

- (4) The objective of the scheme is to compensate operators for damages caused by the COVID-19 outbreak and the Norwegian authorities’ infection control measures, in order to ensure the continuity of commercial long-distance bus and passenger boat services.
- (5) The Norwegian authorities have proposed amendments to the scheme, in order to correct a mistake in the text that contradicts the purpose of the scheme as notified. The original text aimed at funding fully commercialised transport operators. However, few routes are fully commercialised in the sense that they do not receive any public funding. The current provision prevents granting aid to operators that receive public funding for public services.

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document Nos 1164728, 1164730 and 1164732.

- (6) The first amendment relates to the wording of Article 2(2) of the Regulation on a temporary compensation scheme for operators offering commercial bus and passenger boat services with a loss in turnover caused by the COVID-19 outbreak (“the [Regulation](#)”),³ which currently states that an operator receiving compensation for public services cannot receive any funding from the scheme. The proposed new wording of Article 2(2) states that compensation will not be granted for routes established by public service obligations, or routes operated on behalf of the competent authorities under public service obligation contracts. This aims at drawing a clearer distinction between routes eligible for aid under the scheme, and routes established by or operated on behalf of the public authorities, which are not eligible under the scheme.
- (7) The second amendment extends the application deadline from four weeks after the last day of the relevant month (June, July or August) to 15 December 2020. This extended deadline may increase the number of applications, since applicants eligible for grants under the scheme may have been prevented from applying due to the original wording of the Regulation.
- (8) The Norwegian authorities have confirmed that when calculating the net loss for a given route, any public funding will be deducted. The beneficiaries are required to keep separate accounts.
- (9) All other conditions of the scheme will remain the same, including the budget of NOK 100 million.

4 Presence of state aid

- (10) 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.”
- (11) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (12) ESA has concluded that the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the measure to alter this conclusion. In light of that, ESA concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (13) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”): “The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter

³ FOR-2020-07-20-1577.

aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”

- (14) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measure

- (15) ESA shall declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b) provided that certain compatibility conditions are fulfilled. That provision reads: “The following shall be compatible with the functioning of this Agreement: aid to make good the damage caused by natural disasters or exceptional occurrences”. ESA has no discretion in assessing the compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.
- (16) The first of the notified amendments aims to make the scheme function as intended. That is, to enable the Norwegian authorities to grant aid to commercial transport operators that do not predominantly receive funding from public service contracts. The application deadline is extended in order to provide all eligible beneficiaries an equal possibility to apply, without extending or altering the compensation period. These amendments do not affect ESA’s conclusion that the scheme is compatible with Article 61(2)(b) of the EEA Agreement. No other changes are made to the scheme since it was approved by [Decision No 094/20/COL](#).
- (17) Accordingly, ESA considers that the measure is compatible with Article 61(2)(b) of the EEA Agreement.

7 Conclusion

- (18) ESA considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b), ESA has no objections to the implementation of the measure.
- (19) The Norwegian authorities have confirmed that the decision does not contain any business secrets or other information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen
President
Responsible College Member

Frank J. Büchel
College Member

Högni Kristjánsson
College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.