

EFTA SURVEILLANCE AUTHORITY

COMPETITION AND STATE AID DIRECTORATE

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**Subject: State aid – Regionally differentiated social security taxation
("Geografisk differensiert arbeidsgiveravgift").**

Dear Sir/Madam,

1. Introduction

The EFTA Surveillance Authority refers to its letter dated 29 November 2001 (Doc. No: 01-9557-D) concerning the above case and the meetings on 18 September 2001 in Oslo, 18 October 2001 in Brussels, 1 March 2002 in Brussels and 25 April 2002 in Oslo between officials from the Authority and the Norwegian authorities.

In the letter dated 29 November 2001 (Doc. No: 01-9557-D) the Authority invited the Norwegian authorities to submit proposals for the review of the Guidelines on national regional aid¹, in particular the transport aid provisions of the guidelines. The Norwegian authorities responded by letter from the Mission of Norway to the European Union dated 10 May 2002, received and registered by the Authority on 13 May 2002 (Doc No: 02-3529-A), forwarding a letter from the Norwegian Ministry of Finance dated 6 May 2002. The letter from the Ministry of Finance has been forwarded to the European Commission, DG Competition, by letter dated 21 May 2002 (Doc. No: 02-3827-D).

In the meeting on 25 April 2002 in Oslo, the Authority informed your authorities of its intention to initiate the procedure regarding existing aid schemes. The Authority hereby informs the Norwegian authorities that it initiates a review of the Norwegian system of regionally differentiated social security tax².


2. Background

On 22 September 1999 the EFTA Surveillance Authority decided³ not to raise objections to the proposed new scheme of regionally differentiated social security contributions ("geografisk differensiert arbeidsgiveravgift") as notified by the Norwegian authorities. The system involves State aid in the meaning of Article 61(1) of the EEA Agreement, but the Authority found that the aid, as notified in its current form, could be exempted

¹ Chapter 25 of the Authority's State Aid Guidelines. Chapter 25 corresponds to Communication from the Commission - Guidelines on national regional aid (OJ C 74, 10.03.1998).

² See Chapter 7 of the State Aid Guidelines.

³ Dec. No. 228/99/COL

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according to Article 61(3)(c) of the EEA Agreement. The Decision *i.a.* defines which activities, although located in preferential zones, cannot benefit from lower social security contributions. Such activities are related to hydropower production, mining of metal ores and certain minerals, gas and oil production, shipbuilding, steel, telecommunications, financial services, and freight transport by road. As to the service sector and other non-manufacturing activities (other than telecommunications, financial services, and freight transport by road), the Authority found that, to the extent that they fall within the scope of article 61(1) EEA, the lower tax rates are justified as aid for regional development on the basis of article 61(3)(c) EEA. The approval of the system is limited in time, not going beyond 31 December 2003.

The European Commission decided on 21 December 2000⁴ that a Swedish reduced social contributions aid scheme, as notified by the Swedish authorities, was incompatible with the common market. The scheme was a modification and extension of a scheme that expired by the end of 1999. The scheme provided for a reduction of 8 percentage points in the social security contributions payable for persons employed mostly in service sectors in the north of Sweden. The eligible area had a population coverage of 4.8% of the total Swedish population. The budget for the scheme for 2000 was SEK 313,7 million. The scheme was due to expire on 31 December 2000.

In its decision of 21 December 2000, the Commission concluded that the Swedish scheme did not satisfy the conditions regarding transport aid as specified in the Guidelines⁵ on national regional aid⁶. The Commission considered that there was no direct link between the aid received by beneficiaries under the scheme and the additional costs of transport of goods actually incurred by these beneficiaries. The aid granted under the scheme was not quantifiable on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio. As a result, there was also no guarantee that there would be no over-compensation for the additional transport costs.

In a letter from the European Commission to the Authority dated 19 February 2001, the Commission suggested that it might be appropriate for the Authority to examine the Norwegian system with a view to maintaining equal conditions of competition within the territory covered by the EEA Agreement. The Commission considered that such an examination appeared justified given the similar character of the two countries' schemes and the identical nature of the rules regarding transport aid as laid down in the Commission's Guidelines on national regional aid and in the Authority's corresponding Guidelines.

3. Procedure regarding existing aid schemes

Chapter 7.4.1.(1) and (2) of the State Aid Guidelines state that: *"Whenever the EFTA Surveillance Authority believes that existing aid may not be compatible with the progressive development or the functioning of the EEA Agreement, it begins a review by writing for information to the EFTA State concerned. The initiation of a review does not require operation of the aid scheme to be suspended. So far the EFTA Surveillance Authority has not laid down detailed internal procedural rules for the application of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement. The only clear requirement that emerges from the paragraph is the obligation to co-operate with the*

⁴ OJ L 244, 14.09.2001, p. 32.

⁵ OJ C 74, 10.03.1998, p.8.

⁶ In particular the criteria provided for in footnote 37 and in the first, second and third indents of Annex B of the Guidelines.

EFTA State. The EFTA Surveillance Authority considers to fulfil this obligation by writing for information to the State concerned before it proposes "appropriate measures".

In the procedural Regulation⁷ (which still has not entered into force for the EFTA Member States), Article 17.2, it is said that: *"Where the Commission considers that an existing aid scheme is not, or is no longer, compatible with the common market, it shall inform the Member State of its preliminary view and give the Member State concerned the opportunity to submit its comments within a period of one month"*. In Article 18 it is furthermore stated that: *"Where the Commission, in the light of the information submitted by the Member State pursuant to article 17, concludes that the existing scheme is not, or is no longer, compatible with the common market, it shall issue a recommendation proposing appropriate measures to the Member State concerned. The recommendation may propose, in particular:*

(a) substantive amendment of the aid scheme,

or

(b) introduction of procedural requirements,

or

(c) abolition of the aid scheme.

4. Request for information

In our Decision of 22 September 1999 (Dec. No. 228/99/COL) the Norwegian authorities were obliged to submit simplified annual reports to the Authority on the application of the regionally differentiated social security contributions, in accordance with point 2 b)-e) of the Authority's Decision of 2 July 1998 (Dec. No. 165/98/COL), Chapter 32 and Annex IV of the Guidelines.

The Authority has so far not received any simplified annual reports on the application of the regionally differentiated social security contributions. The Authority requests that the Norwegian authorities submit a simplified annual report covering the years 2000 and 2001 in accordance with the Decision of 22 September 1999.

The Authority furthermore requests that the Norwegian authorities submit all necessary information for a review, in co-operation with the Norwegian authorities, of the existing system of geographically differentiated social security tax in Norway.

5. The Authority's preliminary view

The preliminary view of the Authority is that the Norwegian geographically differentiated social security taxation scheme, to the extent it provides State aid in the sense of Article 61(1) of the EEA Agreement, may not be in conformity with the provisions of Chapter 25.4(27) of the Authority's guidelines regarding aid to offset the additional transport costs in regions qualifying for exemption under Article 61(3)(c) on the basis of the population test.

⁷ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty. OJ L 83, 27.03.1999.

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When the Authority approved the notification in 1999 (228/99/COL), the Norwegian authorities used a random sample survey⁸ to prove the existence of additional transport costs. The study showed that enterprises located in the most remote and sparsely populated areas did have a substantial disadvantage, compared to enterprises in more central areas, due to higher direct and indirect transport costs. The study also showed that in aggregate terms additional transport costs exceeded by far the estimated benefits to the enterprises with lower social security contributions. No company in the survey had a greater advantage from reduced social security charges than the extra transport cost caused by remote localization.

The study was also a basis for the Authority's Decision of 2 July 1998 (165/COL/98) where the Authority accepted "*that manufacturing enterprises not belonging to sectors excluded from the referred study, and located in tax zones 2-5, face significant additional transport costs, and that the additional transport costs are not overcompensated by the financial benefits associated with the lower social security contribution rates in the same regions.*"

However, in view of the decision by the European Commission in relation to the Swedish scheme, in light of increased trade in services, and, in the view of the Authority, a need to analyse compatibility issues in detail for a broad range of economic activities, it is necessary to have a fresh look at how the differentiated social security contributions in Norway stand up against the State aid provisions of the EEA Agreement. Against this background the preliminary view of the Authority is that the Norwegian system of regionally differentiated social security tax might no longer be compatible with the EEA Agreement.

This letter is to be understood as the type of letter referred to in Chapter 7.4.1(2) of the State aid Guidelines and in Article 17.2 of the Procedural Regulation as referred to above.

The Authority invites the Norwegian authorities to submit their comments within 30 working days.

Yours faithfully,

Amund Utne

Director

⁸ Karl-Erik Hagen (1996): "Industribedrifters transportvolum og kostnader", Institute of Transport Economics in Norway (TØI), Nr. 0-2273.