DET KONGELIGE
FINANSDEPARTEMENT
*Royal Ministry of Finance*

EFTA Surveillance Authority
Rue Belliard 35
1040 Brussels , Belgium

| Your ref | Our ref | Date |
|---|---|---|
| | 01/1943 SA AEL/rla | .03.2006 |

**Norwegian environmental taxes, the Authoritys decision 148/04/COL of 30 June 2004 - Recovery**

Reference is made to the Competition and State Aid Directorate's (CSA) letter dated 20 January 2006 in which the CSA comments upon the recovery procedure suggested in the Ministry of Finance' letter dated 29 November 2005. The CSA also asks the Norwegian authorities to provide more detailed information on the envisaged approach.

## 1. Status of the Recovery

Please find attached the Ministry of Finance' letter dated 15 December 2005 to the Customs and Excise Directorate (CED). In that letter the CED is requested to start the recovery procedure. The Ministry has limited itself to give the CED some general guidance in that respect, in order not to undermine the Ministry's position to handle possible appeals.

The CED shall proceed in accordance with the Public Administration Act[1] and the State Aid Act.[2] The Minstry has recently been informed that certain legal issues are addressed before the formal notices are issued. As soon as these notices are issued, the Ministry will provide the CSA with copies. Unfortunately, it is not possible to set out a more detailed time frame as the length of the procedure also depends on circumstances controlled by the recipients.

## 2. The envisaged non recovery of aid given in relation to electricity used for non-fuel purposes

The CSA does not agree with the suggested procedure and refers to Article 14 in Part II of Protocol 3 to the Surveillance and Court Agreement (SCA).

[1] Act 10 February 1967 relating to procedure in cases concerning the public administration.
[2] Act No. 117 of 27 November 1992 relating to State aid.


Postal address
PO Box 8008 Dep
N-0030 Oslo, Norway

Office address
Akersg. 40
postmottak@finans.dep.no

Telephone
+47 22 24 90 90
Org. no

Tax Law Department
Telephone +47 22 24 44 31/33
Telefax +47 22 24 95 11

The Ministry agrees with the CSA's starting point, but will again emphasize the difference between the scheme as such – which was dealt with in decision 148/04/COL – and particular advantages under that scheme.[3] The Authority may of course then take the view that particular advantages, assessed on its own merits, can not be excluded, but the Authority is not precluded from making this assessment.

The Ministry agrees also with the CSA's opinion that the Authority's decision is to be judged on its own merits. However, the Ministry is of the opinion that this does not mean that the execution of the recovery decision in Sweden is of no relevance.

As recalled the Swedish exemption was in its main effects limited in the same way as the Norwegian exemption, and the Ministry assumes that there has been cooperation between the Authority and the Commission in these parallel cases according to the principles enshrined in Article 62 (2) EEA. The value in it self of equal implemenation is also reflected in Article 64 (1) EEA. Under these circumstances it should not be necessary for the Authority to be made aware of any particular circumstances or national provisions in Norway in order to have a legal basis to accept equal implementation. Rather, it is the opposite result that should be substantiated.

In this regard the result in Sweden is to our knowledge based on a provision that has been inactive due to the industrial exemption. The implementation is thus seemingly based on a retroactive application of that provision. In effect this creates a result where the recovery order is based on the difference between the old illegal system, and the new approved system. The Ministry can not see any basis that should prevent the Authority from reaching the same result. In addition both the aim of maintaining equal conditions of competition and ensuring uniform surveillance calls for this result.

## 3. Application of the *de minimis* rules

The Authority is not opposed to the suggested procedure, but finds it necessary that certain aspects regarding combinations with other *de minimis* aid are clarified.

*The social security tax scheme*

The regional *de miminis* scheme in relation to social security contribution is framed in such a way that no undertaking receives more than one third of the permitted *de minimis* amount per year. *De minimis* in relation to social security was first given in 2004. If the relevant period is defined as 2003-2004-2005, the undertakings in question have received a maximum of to third of the permitted amount of *de minimis* in connection with the social security contribution. This leaves a minimum of one third of the permitted amount left for other *de minimis* aid in 2003.

[3] See also para. 59 in the opinion in Case C-66/02.

Calculations from Statistics Norway show that only about 25 percent of the undertakings in question are located in areas where *de minimis* aid in connection with the social security contribution is received, i.e. they are located in zone 2 – 4.[4]

Of the 25 percent of the undertakings located in zone 2 - 4, the Ministry should, in order to ensure that cumulation does not occur with regard to the social security scheme, contact all undertakings with a level of zero-rate electricity consumption corresponding to one third of the permitted *de minimis* aid (i.e. 67 GWh; full amount of permitted *de minimis* corresponds to consumption of about 200 GWh).

The CED has identified undertakings with a consumption level of 150 GWh. However, estimations from Statistics Norway show that the number of undertakings to contact in zone 2-4 if the limit is set to 67 GWh would differ negligible from the number to contact when the limit is set to 150 GWh. The social security scheme should thus not prevent the suggested procedure of contacting undertakings with a consumption level above 150 GWh.

*Other de minimis aid*
The undertakings not contacted have electricity consumption in the relevant period not exceeding 150 GWh.

*Undertakings in zone 1* has received no *de minimis* under the social security scheme. As 150 GWh corresponds to a level of *de minimis* aid of about 75 percent of the permitted amount, i.e. approximately 555 000 NOK, this leaves room for additional *de minims* aid of a minimum of 170 000 NOK.

*The undertakings in zone 2 - 4* have room for other *de minimis* aid if (i) they did not receive the full amount of permitted aid through the social security tax scheme (one third in 2004 and one third in 2005), and/or (ii) their level of electricity consumption is lower than the level that corresponds to one third of the permitted *de minimis* amount (i.e. lower than 67 GWh).

The Ministry has access to information about total electricity consumption in different sectors and number of undertakings located in each sector. Considerations based on *average* consumption in different sectors show that the average consumption level for undertakings with average consumption below 150 GWh is very low. This information does not specify where the undertakings are located.

The use of this average for *undertakings in zone 1* leaves a spacious room for additional *de minimis* beyond the minimum level of 170 000 NOK.

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[4] The calculations from Statistics Norway are burdened with some uncertainty, mainly because they are based on electricity consumption in 2001.

As mentioned above, calculations from Statistics Norway show that, with few exceptions, undertakings with electricity consumption between 67 GWh and 150 GWh are located in zone 1 (cf. above that "the CED has identified undertakings with a consumption level of 150 GWh. However, estimations from Statistics Norway show that the number of undertakings to contact in zone 2-4 if the limit is set to 67 GWh would differ negligible from the number to contact when the limit is st to 150 GWh.").

For zone 2-4, focus can terefore be set on undertakings with consumption below 67 GWh. Based on the same average considerations as above, these undertakings have a very low average electricity consumption in 2001. The use of this average for *undertakings in zone 2-4* leaves a spacious room for other *de minimis* aid also for these undertakings.

The Ministry is aware of the fact that setting thresholds (150 GWh and 67 GWh) based on average calculations does not necessary give a proper impression of the number of undertakings within the thresholds. The Ministry will therefore contact Statistics Norway to count the number of companies under certain threshold limits and make further calculations based on this material.

*De minimis* aid has been awarded from two sources mainly; from Innovation Norway and municipal funds.

Innovation Norway is the principal operator of state aid schemes, and is the main source of de minimis aid. The Ministry will contact Innovation Norway in order to identify recipients under that scheme, that have received *de minimis* in excess of the room for other *de minimis* identified above.

With regard to the municipal funds the amounts given per undertaking under that scheme seem to be so small that this should not prevent the Ministry from applying the suggested procedure. [5]

The Ministry emphasises that for the undertakings not contacted, future *de minims* is of no consideration. The moving time period of three years is, for these undertakings,

[5] Source: Rapport 04/06, Kartlegging av kommunale næringsfond (av Espen Køhn, Gro Marit Grimsrud og Svein Erik Hagen), page 5 second paragraph.

closed in both ends (2001-2002-2003 at one end and 2003-2004-2005 at the other end).

Yours sincerely,

Tor Lande
Deputy Director General

Heidi Heggenes
Deputy Director General

Enclosure

DET KONGELIGE
FINANSDEPARTEMENT

15.12.2005

Toll- og avgiftsdirektoratet
Postboks 8122 Dep
0032 OSLO

Deres ref

Vår ref
01/1943 SA AEL/KR
-46

Dato
15.12.2005

**El-avgift - ESAs vedtak om etterbetaling - gjennomføring**

Vi viser til direktoratets brev 3. oktober 2005 hvor direktoratet har identifisert foretak som i perioden 6. februar 2003 tom 31. desember 2003 mottok mer enn 150 GWh elektrisk kraft.

I brev 24. oktober 2005 etterspør ESA opplysninger om gjennomføringen av ESAs etterbetalingsvedtak. Vedlagt følger departementets svar på dette brevet. I vårt svarbrev gir vi uttrykk for at hensynet til likebehandling av konkurrenter i EØS-området tilsier lik gjennomføring av de parallelle vedtak mot hhv. Sverige og Norge.

En slik parallell gjennomføring vil innebære at foretakenes el-forbruk i de prosesser som faller utenfor EUs energiskattedirektiv, ikke inngår i beregningsgrunnlaget for kravet. Foretakene må på denne bakgrunn kunne opplyse om totalt forbruk fordelt på null eller normal sats, og igjen fordele null-satset forbruk på unntatte prosesser og annet. Det bør også opplyses om organisasjonsnummer og næringskode for de enkelte foretak. Kravet (inklusive renter) beregnes ellers i tråd med det som fremgår av vårt brev til ESA.

Foretakene som nå varsles må få anledning til å opplyse om mottatt bagatellmessig støtte. Etterbetalingskravet (inkl. renter) som endelig fastsettes kan reduseres i den grad slik støtte ikke er gitt med kr 824 000 i løpet av en gitt treårs periode.

På denne bakgrunn bes det om at Toll- og avgiftsdirektoratet starter gjennomføringen

Postadresse
Postboks 8008 Dep
0030 Oslo

Kontoradresse
Akersg. 40
postmottak@finans.dep.no

Telefon
22 24 90 90
Org. nr.
972 417 807

Skattelovavdelingen
Telefon 22 24 44 31/33
Telefaks 22 24 95 11

ESAs vedtak. Gjennomføringen må skje iht. lov om offentlig støtte med forskrifter, og forvaltningsloven.

Med hilsen

Heidi Heggenes e.f.
avdelingsdirektør

for Atle E Lunder
seniorrådgiver

Vedlegg

Gjenpart: Moderniseringsdepartementet