EFTA SURVEILLANCE AUTHORITY

Doc.No. 02- 4043 I
Dec.No. 90/02/COL
Ref. No. SAM020.500.041

EFTA SURVEILLANCE AUTHORITY DECISION

OF 31 MAY 2002

ON THE NOTIFICATIONS OF A PROPOSAL FOR AMENDED DEPRECIATION RULES OF THE PETROLEUM TAX ACT FOR PRODUCTION EQUIPMENT AND PIPELINES FOR GAS LINKED TO NEW LARGE-SCALE LIQUEFIED NATURAL GAS (LNG) FACILITIES LOCATED IN FINNMARK COUNTY OR THE MUNICIPALITIES OF KÅFJORD, SKJERVØY, NORDREISA OR KVÆNANGEN IN TROMS COUNTY AND THE APPLICATION OF THESE RULES TO THE SNØHVIT PROJECT.

(AID NO 020.500.041)

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area[1], in particular to Articles 61 to 63 and of Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice[2], in particular to Article 24 and Article 1 of Protocol 3 thereof,

Having regard to the Authority's Guidelines[3] on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

---

[1] Hereinafter referred to as the EEA Agreement.

[2] Hereinafter referred to as the Surveillance and Court Agreement.

[3] Procedural and Substantive Rules in the Field of State Aid, hereinafter referred to as the "State Aid Guidelines", adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in Official Journal L 231, 03.09.1994, p.1, and EEA Supplement to the OJ No 32, 03.09.1994, p.1. The Guidelines were last amended 28 November 2001 (370/01/COL), not yet published.

I. FACTS

1. Introduction.

By letter dated 11 December 2001, received and registered by the EFTA Surveillance Authority on 17 December 2001 (Doc. No: 01-10124 A), the Authority received a letter[4] from the Environmental Foundation Bellona (hereinafter referred to as "Bellona") related to the amendments to the Norwegian Petroleum Tax Act[5] (PTA). The letter was entitled: "*Complaint – Special depreciation rate for production equipment and pipelines for gas linked to a large-scale cooling facility (LNG). Relationship to Article 61(1) of the EEA Agreement*". Bellona alleged that the increased depreciation rate which only applies to the production of LNG[6], and the decision to place the LNG facility within the petroleum tax system, may conflict with the rules of the EEA Agreement on State aid (Article 61(1) EEA). The complaint mentioned in particular the future use of these increased depreciation rates for the planned gas extraction from the "Snøhvit field" in the Barents Sea.

The Authority invited the Norwegian authorities, by letter dated 20 December 2001 (Doc. No: 01-10327 D), to comment on the complaint and requested the Norwegian authorities to submit all relevant information necessary to assess possible State aid elements in connection with the Snøhvit/LNG-project (hereinafter referred to as "Snøhvit"). The information submitted should in particular substantiate why the Norwegian authorities find that the amendments to the PTA are in accordance with the State aid provisions of the EEA Agreement. Furthermore, the Authority requested the Norwegian authorities to substantiate the financial value of the increased depreciation rates.

By letters dated 12 and 15 February 2002, from the Mission of Norway to the European Union, received and registered by the Authority on 14 February 2002 (Doc. No: 02-1234 A) and 15 February 2002 (Doc. No: 02-1314 A) respectively, the Norwegian authorities forwarded a letter dated 8 February 2002 from the Norwegian Ministry of Finance. The information submitted contained relevant correspondence between the Ministry of Finance and the oil company Statoil, translations of the relevant preparatory work and statutory text[7], a description of the relevant main features of the Norwegian tax system, a description of the delineation between the offshore tax regime and the onshore tax regime and a summary of the relationship between the amendments to the PTA and the State aid provisions of the EEA

---

[4] The letter was submitted in the Norwegian language, but has been translated for the Authority by an external translator. In a meeting on 23 May 2002 with the Authority, Bellona submitted a translation of its letter dated 11 December 2001, but the Authority has in the present decision used the first version translated for the Authority.

[5] Ot.prp. No 16 (2001–2002) on the Act amending Act No 35 of 13 June 1975 relating to taxation of subsea petroleum deposits, etc. ("Om lov om endringer i lov av 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumsforekomster m.v. (petroleumsskatteloven)").

[6] LNG=Liquefied Natural Gas.

[7] Proposition no 16 to the Odelsting (2001-2002), Recommendation no 2 to the Odelsting (2001-2002) and Resolution no 2 of the Odelsting (2001-2002).

Agreement. In the letter of 8 February 2002 the Ministry of Finance expressed its view that the amendments did not "constitute State aid".

By letter dated 18 March 2002 (Doc. No: 02-1589 D) the Authority informed the Norwegian authorities that, after a preliminary assessment of the case, the Authority is of the view that the amendment to the PTA may contain State aid in the meaning of Article 61(1) EEA. The Authority furthermore requested the Norwegian authorities in that letter to submit further information on the economic consequences of the amendment to the PTA. The Norwegian authorities were informed that unless they abolished the measures in question, or supplied information showing that they are compatible with the functioning of the EEA Agreement, the Authority would be obliged to open the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian authorities responded by letter dated 19 April 2002, received and registered by the Authority on 23 April 2002 (Doc. No: 02-3057 A). In this letter, the Norwegian authorities again argued that the amendment to the PTA does not contain any element of State aid within the meaning of Article 61(1) EEA. The letter also states that *"if the Authority should be of the opinion that the amendment to the PTA contains elements of State aid within the meaning of Article 61(1), the Norwegian Government is of the view that the amendment is compatible with the EEA Agreement due to the derogation in Article 61(3)(c) EEA"*.

A meeting between the Norwegian authorities and representatives of the Authority took place in Oslo on 24 April 2002. At this meeting, the Authority reiterated its view that the amendment to the PTA may constitute State aid. The information submitted by the Norwegian authorities in the letter dated 23 April 2002 was discussed. The Norwegian authorities were also requested to submit additional information, in particular, on the compatibility of any aid.

The Norwegian authorities responded to this by letter from the Mission of Norway dated 3 May 2002, received and registered by the Authority on 6 May (Doc. No: 02-3392 A), forwarding a letter dated 30 April from the Ministry of Trade and Industry. In this letter, the Norwegian authorities submitted further information on the investment stream, compatibility with Article 61(3)(c) EEA and commercial implications of a delay in the development of the Snøhvit project.

Based on the correspondence between the Authority and the Norwegian authorities mentioned above, Bellona submitted extended comments by letter dated 13 May 2002, received and registered by the Authority on 16 May 2002 (Doc. No: 02-3674 A)[8]. In this letter Bellona focused *i.a.* on issues that were not addressed in the complaint of 11 December 2001, particularly on the grounds for opening a formal examination procedure, according to Article 1(2) of protocol 3 to the Surveillance and Court Agreement, the scope of the derogation from the State aid rules in Article 61(1) EEA

[8] The letter dated 13 May 2002 was also sent by e-mail on 13 May 2002 and by telefax on 13 May 2002 (registered on 14 May 2002). An English translation of the letter was submitted by e-mail on 17 May 2002.

(the Norwegian Government's subsidiary argumentation) and the consequences of the omitted notification.

A meeting between the Norwegian Minister of Finance and representatives from the Authority took place in Brussels on 16 May 2002. On the same date, the Ministry of Finance sent out a press release stating that the Government would propose a new amendment to the PTA, delimiting the increased depreciation rates to a defined geographical area.

A meeting between Bellona and representatives of the Authority took place in Brussels on 24 May 2002. At this meeting, Bellona representatives reiterated some of the arguments raised in the complaint.

By telefax dated 27 May 2002 from the Norwegian authorities, received and registered by the Authority on 28 May 2002 (Doc. No: 02-4025 A), the Norwegian authorities submitted a notification of a proposed new amendment to the PTA, including a copy of the proposal from the Norwegian Government to the Parliament (Ot.prp. no 84 (2001-2002)) and copies of two letters from the Ministry of Finance.

By telefax dated 28 May 2002, received and registered by the Authority on 28 May 2002 (Doc. No: 02-4035 A), Bellona submitted comments to Ot.prp. no 84 (2001-2002).

By telefax dated 30 May 2002 from the Norwegian authorities, received and registered by the Authority on 31 May 2002 (Doc. No: 02-4102 A), the Norwegian authorities submitted a notification of the application of the depreciation rules of the PTA, as proposed amended by Ot.prp. no 84 (2001-2002), for the Snøhvit project.

2. Ot.prp. No 16 (2001–2002) on the Act amending Act No 35 of 13 June 1975 relating to taxation of subsea petroleum deposits, etc. ("Om lov om endringer i lov av 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumsforekomster m.v. (petroleumsskatteloven)").

2.1 Main features of the Norwegian tax system

The Act on taxation of wealth and income (the Tax Act) of 26 March 1999 No 4, provides the legal authority for taxation of individuals and corporations. Corporate profits are taxed at a rate of 28%. Tangible operating assets are depreciated in accordance with the declining balance method. Operating assets are divided into depreciation groups. The rate of depreciation applicable for 2002 varies from 30% of the remaining balance for office equipment down to 2% for commercial buildings. The rate of depreciation applicable to plant and equipment is 4% of the remaining balance.

The PTA sets out a tax regime that is specially adapted to income from extraction and transportation by pipeline on the Norwegian continental shelf. Income is subject to corporate tax on ordinary income at a rate of 28% and special tax at a rate of 50% on net income adjusted for uplift, *i.e.* a total rate of 78%. Uplift is shielding part of the income from the special tax. The PTA also contains special provisions on the

calculation of income, including the use of norm prices for purposes of tax assessment. Expenses incurred in acquiring tangible operating assets relating to extraction and pipeline activities may be depreciated at a maximum rate of 16 2/3% per year.

2.2 Background

Statoil and the other Snøhvit licensees have for a long time been considering extraction of gas reserves from the Snøhvit field in the Barents Sea. The submitted copies of correspondence between the Ministry of Finance and Statoil[9] shed light on some of the considerations concerning the tax measures for Snøhvit.

In the letter from Statoil to the Ministry of Finance dated 19 June 2000 (annex 1), Statoil presents its views on the delineation between the offshore tax regime and the onshore tax regime. Statoil argues that the part of the installation specific for LNG production (removal of CO2, mercury and water, cooling of the gas stream into LNG, including the extraction of LPG[10], as well as storage and loading of prepared LNG and LPG) shall be subject to the onshore tax regime. By letter dated 25 January 2001 to Statoil (annex 4), the Ministry of Finance confirms that the "proposal" from Statoil is acceptable.

In a letter dated 19 June 2001 from the Ministry of Finance to Statoil (annex 7), the Ministry took a decision delineating in more detail the scope of taxation pursuant to the PTA. Pursuant to this decision the specific LNG installation falls outside the scope of the PTA.

The letter dated 2 July 2001 from the Minister of Finance to Statoil (annex 9), states that the Government will propose to the Parliament that the uplift granted for the investment in the transport system between the Snøhvit field and land is increased from 5 to 8 1/3 per cent. The total uplift for this investment will then increase from 30 to 50 per cent. It is furthermore said that this amendment must be notified to the Authority.

By letter dated 13 September 2001 from the Ministry of Finance to Statoil, the Norwegian Oil Industry Association (OLF) and the Petroleum Tax Office, the Ministry describes two possible alternative amendments to the PTA. The first is a depreciation rate of 50 percent *per annum*, provided that the LNG installation falls within the scope of the onshore tax regime. The second alternative is a depreciation rate of 33 1/3 per cent *per annum*, provided that the LNG installation falls within the scope of the offshore tax regime. The Ministry asked for comments by 20 September 2001. A majority of the licensees preferred the second alternative.

On 21 September 2001, Statoil, on behalf of the Snøhvit licensees, submitted a plan for development, installation and operation of the Snøhvit LNG facility to the Ministry of Petroleum and Energy. Amongst other factors, the plan is based on the

---

9 Annex 1-10 in the letter of 8 February 2002 from the Ministry of Finance to the Authority.

10 LPG=Liquefied Petroleum Gas.

implementation of amendments to the PTA in line with the proposals set out in Ot.prp. no 16 (2001-2002).

2.3 Ot. prp. no 16 (2001-2002)

The Norwegian Parliament ("Stortinget") approved an amendment[11] to the PTA[12] on 22 November 2001. Under the proposal, expenses for the acquisition of pipelines and production equipment will fall under the offshore tax regime (PTA) and may be depreciated for tax purposes by up to 33 1/3 per cent per year where the object, according to an approved plan for development and operation and a plan for installation and operation in accordance with the PTA, is the production and pipeline transport of gas which is to be cooled to liquid form in a new large-scale cooling plant.

Only facilities where a plan for development and operation and a plan for installation and operation, in accordance with the PTA, have been approved after 1 January 2001 are defined as *"new"*. *"Large-scale"* is defined as a minimum production capacity of four billion standard cubic metre/year[13].

According to the general applicable rules in the PTA, expenses for the acquisition of pipelines and production equipment may be depreciated for tax purposes by up to 16 2/3 per cent per year. The amendment to the PTA, approved on 22 November 2001, implies, in other words, that investment in conjunction with the production and pipeline transport of gas that is to be cooled to liquid form in a new large-scale cooling plant can be depreciated over three years instead of over six years as in the ordinary rules in the PTA.

Changing the depreciation period will provide lower tax income for the Norwegian State in the three first years and correspondingly higher income in the next three years. This means a loss for the State at present values and a corresponding gain for the companies. The size of this present value loss depends on the discount rate used as a basis. With an approximate risk-free discount rate the present value loss due to the amended depreciation rules seen in isolation will be something over four per cent of total investment (measured at present values), according to Ot.prp. no 16 (2001-2002).

In Ot prp. no 16 (2001-2002)[14], the Ministry assumed that the licensees would request that the Ministry's decision of 19 June 2001 regarding the delineation of the scope of taxation (see point 2.1 above) be amended.

In a letter of 1 November 2001, Statoil has requested that the Ministry of Finance takes a new decision whereby it is confirmed that the activities and operating assets relating to the terminal installation in their entirety fall within the scope of the PTA. Such a decision has been taken and Statoil was informed of that decision by way of a

---

11 See footnote 5.

12 Act 13 June 1975 no 35 relating to taxation of subsea petroleum deposits etc.

13 Ot.prp. No 16 (2001-2002), chapter 4.2.

14 Section 4.2.

letter dated 31 January 2002. The decision implies that the LNG-installation is deemed to constitute part of the pipeline transportation system[15].

3. The letter from Bellona of 11 December 2001

In the letter dated 11 December 2001, Bellona considers that the speeding up of the depreciation rate which only applies to the production of LNG, and the decision to place the facility within the petroleum taxation system may conflict with the rules of the EEA Agreement. Bellona referred to Article 61(1) EEA that sets out four cumulative conditions which must all be met for illegal State aid to exist as understood by the provision and elaborates on why it considered that each of these conditions were met.

Ot.prp. no 16 (2001-2002) indicates a loss of NOK 1.4 billion for the Norwegian state as a result of lower tax income in the first three years of the project. Bellona consequently assumed that the increased depreciation rate must be considered as covered by the concept of State aid in Article 61(1) EEA. Secondly, the condition that the aid must be specific was met, according to Bellona, as the amendment to the PTA applied only to LNG facilities and only to the production of a specific product, namely cooled gas. Thirdly, Bellona alleged that LNG from Snøhvit will compete on the European gas market and that the aid will distort or threaten to distort competition. Finally, trade between Contracting Parties would be affected, according to Bellona, because the proposed tax concessions would strengthen the financial position for the production of LNG in a way which gives this product a competitive advantage over gas supplied to the European market via a pipeline.

Bellona also alleged that the decision to place the LNG facility in its entirety within the PTA conflicts with the rules of the EEA Agreement on State aid. Defining the facility as falling under the PTA will give the facility a tax-deductible percentage of 78% compared to the usual 28% for onshore facilities. Bellona refered to the tax treatment of the gas processing facilities in Kollsnes and Kårstø in southern Norway and found it surprising that they should be treated differently. Bellona furthermore alleged that the decision to include the Snøhvit plant under the scope of the PTA would be an individual decision under the Public Administration Act and thus specific to this project. In Bellona's view, none of the exemptions in Article 61(2) or (3) EEA would apply to this case.

4. Correspondence between the Norwegian authorities and the Authority

An overview of the letters that have been exchanged between the Authority and the Norwegian authorities is given in point 1 above. In the following, the Authority will elaborate on the substantive arguments from the Norwegian authorities regarding the existence of State aid (Article 61(1) EEA) and compatibility of the aid (Article 61(3)(c) EEA).

In the first response from the Norwegian authorities, the Ministry of Finance stated, in the letter dated 8 February 2002, that it was unable to see that a delineation of the

[15] Point 4.4 of the letter dated 8 February 2002 from the Ministry of Finance.

scope of the PTA in respect of the Snøhvit installations, which implied that the LNG installations would fall within the scope of the special tax regime under the PTA, should amount to any form of financial benefit, suggesting that State aid is being granted. The Ministry argued furthermore that the amendment to the PTA was both formally and *de facto* of a general nature, and that it has been assessed and found to be in compliance with the State aid provisions of the EEA Agreement.

In the second response from the Norwegian authorities dated 19 April 2002, the Ministry of Trade and Industry stated that the Norwegian Government is of the view that the amendment to the PTA does not contain any element of State aid within the meaning of Article 61(1) EEA. The Ministry argued that the amendment to the PTA introduced a rule of general application that is a general measure. The Government submitted that the amendment to the PTA *"amounts to nothing more than an "investment" that must be juxtaposed with an investor's decision to make an investment under normal market conditions. Accordingly, no aid is granted through State resources."* Secondly, the Norwegian authorities alleged that it seems that the measure does not distort or threaten to distort competition within the relevant market. Thirdly, the depreciation rate at issue must, according to the Norwegian authorities, be deemed to be justified by the nature and general scheme of the system. And finally, "*the amendment is justified by the fact that it applies to undertakings being in a distinct different legal and factual situation as compared to their competitors in the gas market, and, furthermore, that the amendment facilitates competition in compliance with Community objectives by creating a level playing field."*

In the third response from Norway, the letter dated 30 April 2002 from the Ministry of Trade and Industry, the Norwegian authorities submitted *i.a.* more arguments on the compatibility of the Snøhvit project with Article 61(3)(c) EEA. The Ministry pointed at that Snøhvit is located within the regional aid map and that the aid intensities are below the maximum applicable aid ceiling of 25% NGE[16]. The Norwegian authorities also gave figures for the employment effect of the Snøhvit project, in the execution phase and in the operational phase.

In the notification dated 27 May 2002, the Norwegian authorities stated that the Norwegian Government is of the opinion that the depreciation rules of the PTA in force do not contain any element of State aid in the meaning of Article 61(1) EEA. Furthermore, the Government deemed the depreciation rules of the PTA to be compatible with Article 61(3)(c) EEA, and referred in this respect to Chapter 17B, 25 and 26 of the State Aid Guidelines. The Norwegian authorities argued that the proposed measure had a positive regional effect and that the aid intensity is below the maximum applicable aid ceiling. In the notification dated 30 May 2002 the Norwegian authorities refer to the notification dated 27 May 2002 and previous letters from the Norwegian Government regarding the issue.

5. The letter from Bellona of 13 May 2002

By letter dated 13 May 2002, received and registered on 16 May 2002 (Doc. No: 02-3674 A), Bellona submitted extended comments to its letter of 11 December 2001.

16 NGE=Net Grant Equivalent.

Bellona referred to the correspondence between the Norwegian authorities and the Authority (see points 1 and 4 above) and argued that the conditions for opening a formal examination procedure, according to Bellona, were fulfilled. In particular, Bellona referred to Ot. prp. no 16 (2001-2002) where it stated that the loss in revenue would be slightly above 4 per cent of the total investment (with an almost risk free discount rate), which equalled NOK 1.4 billion, while the Norwegian authorities, in the letter dated 19 April 2002 (p. 22) argued that the loss was estimated to be NOK 250 million. Bellona considered that there was doubt concerning the economic calculations and that this doubt would justify opening a formal investigation procedure.

Bellona also argued that it had not been clarified whether the Snøhvit tax and the amendment to the PTA would fall under the derogation in Article 61(3)(c) EEA. The Norwegian Government had not, according to Bellona, presented an adequate evaluation of the aid in an EEA-context.

6. Ot.prp. no 84 (2001–2002) on the proposed Act amending Act no 35 of 13 June 1975 relating to taxation of subsea petroleum deposits, etc. ("Om lov om endringer i lov av 13. juni 1975 nr. 35 om skattlegging av undersjøiske petroleumsforekomster m.v. (petroleumsskatteloven)").

The Norwegian Government put forth a proposal to the Parliament on 27 May 2002 to amend the geographical scope of the PTA Section 3 b, third sentence, to the effect that the rules on depreciation contained therein will be applicable only in cases where the large-scale LNG facility be located within the geographical areas of Finnmark County or the municipalities of Kåfjord, Skjervøy, Nordreisa or Kvænangen in Troms County. Otherwise the increased depreciation rates and the other provisions of the PTA are the same as in Ot.prp. no 16 (2001-2002) as described above.

7. The letter from Bellona of 28 May 2002

By letter dated 28 May 2002, Bellona submitted additional comments regarding Ot.prp. no 84 (2001-2002). Bellona argues that the Government's claim that the tax measure now falls within the derogation in Article 61(3)(c) EEA is dubious. In Bellona's view there still exists a considerable amount of doubt regarding the measure's compatibility with the EEA Agreement.

II. APPRECIATION

1. Notification formalities

Article 1(3) of Protocol 3 of the Surveillance and Court Agreement states: *"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"*. Aid provided without notification or aid that is notified late, *i.e.* notified after being "put into effect" is considered unlawful aid (see Chapter 3 and 6 of the State Aid Guidelines).

In the letter dated 18 March 2002 from the Authority to the Norwegian authorities, the Authority stated that after a preliminary assessment of the case, "*the Authority is of the view that the amendment to the PTA may contain State aid in the meaning of Article 61(1) EEA"*. The Authority also reminded the Norwegian authorities that State aid implemented without notification is unlawful on procedural grounds, and that in negative decisions on cases of unlawful aid the Authority orders, as a rule, the EFTA State to reclaim the aid from the recipient.

The Norwegian authorities have, by telefax dated 27 May 2002, received and registered on 28 May 2002 (Doc. No: 02-4025 A), notified an amendment to the PTA (Ot.prp. no 84 (2001-2002)). The Norwegian authorities argue that the amendment is consistent with Article 61(3)(c) EEA. However, the Norwegian authorities still argue that the depreciation rules of the PTA do not contain any element of State aid.

By telefax dated 30 May 2002 from the Norwegian authorities, received and registered by the Authority on 31 May 2002 (Doc. No: 02-4102 A), the Norwegian authorities submitted a notification of the application of the depreciation rules of the PTA, as proposed amended by Ot.prp. no 84 (2001-2002), for the Snøhvit project.

The Authority considers that the notified amendment to the PTA (as well as the amendment adopted in November 2001), as well as the application of the depreciation rules of the PTA for the Snøhvit project, results in aid funded by State resources in the meaning of Article 61(1) EEA. As the aid favours certain undertakings or the production of certain goods and the benefiting enterprises are actually or potentially in competition with similar undertakings in Norway and other EEA states, the proposed aid (as well as the amendment adopted in November 2001) may affect trade and distort competition. On these grounds, the Authority finds that the amendment to the PTA and the application of the depreciation rules to the Snøhvit project, constitutes State aid in the meaning of Article 61(1) EEA (this is discussed in more detail below). The Authority therefore regrets that the Norwegian authorities did not notify the increased depreciation rates adopted in November 2001 (Ot.prp. no 16 (2001-2002)).

However, based on the notifications submitted by the Norwegian authorities dated 27 May 2002 and 31 May 2002, respectively, as well as the information previously submitted, the Authority is obliged to assess the following: Do the amendments to the PTA (as proposed in Ot. prp. no 84 (2001-2002)), constitute State aid in the meaning of Article 61(1) EEA, and secondly, if that is the case, is the amendment to the PTA compatible with the EEA Agreement?

The Authority would like to draw the attention of the Norwegian authorities to the fact that the rules on accelerated depreciation, which are designed as a regional aid scheme, are based on the current Regional Aid Map of Norway, which will expire at the end of 2006. The future compatibility of the current accelerated depreciation rules, after that date, will thus depend on an approved new Regional Aid Map of Norway.

2. Does the amendment to the PTA constitute State aid in the meaning of Article 61(1) EEA?

Article 61(1) of the EEA Agreement provides that: *"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 the Contracting Parties, be incompatible with the functioning of this Agreement."*

Aid falling within this provision is incompatible with the EEA Agreement and hence prohibited, provided that the following four conditions are fulfilled:

1. the aid is granted by *"EC Member States, EFTA States or through State resources in any form whatsoever";*
2. the aid *"distorts or threatens to distort competition";*
3. the aid favours *"certain undertakings or the production of certain goods";* and
4. the aid *"affects trade between the Contracting Parties"*.

Rulings from the European Court of Justice (ECJ) and the EFTA Court, the State Aid Guidelines (Chapter 17B, Application of State aid rules to measures relating to direct business taxation)[17] as well as previous decisions by the Authority and the European Commission, provide clarification as to whether or not a tax measure is to be qualified as aid under Article 61(1) of the EEA Agreement.

- Condition 1: State resources

Condition 1 above is directed at all aid financed from public resources, including aid granted by regional or local bodies. Chapter 17B.3 of the State Aid Guidelines makes it clear that *"a loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure"*. It is thus not restricted to contributions in the form of transfer of tangible resources, but also extends to *i.a.* depreciation arrangements. In Ot.prp. no 16 (2001-2002)[18] it is stated that: *"With an approximate risk-free discount rate, the present value loss* [to the State] *due to the amended depreciation rules seen in isolation will be something over four percent of total investment (measured as present values)."* The Norwegian authorities state in the response letter dated 12 February 2002 that this amounts to a net present loss of approximately NOK 900 million. In Ot.prp. no 84 (2001-2002) the Norwegian Government elaborates further on the economic consequences of increased depreciation rates and states that the present value loss is 4.5% (due to an increased discount rate). The Authority therefore considers that condition 1 above is met.

---

[17] Chapter 17B of the Authority's State aid Guidelines was published in OJ L 137, 08.06.2000, and in the EEA Supplement thereto No 26 on the same date. It is based on the Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p.3), taking into account the particular scope and objectives of the EEA Agreement.

[18] Point 5, Financial and administrative consequences.

- Conditions 2 and 4: Distortion of competition and affect on trade

Conditions 2 and 4 entail that the measure must distort or threaten to distort competition and affect trade between the Contracting Parties. In Case 730/79 *Philip Morris v. Commission*, the ECJ[19] said that: "*When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-community trade the latter must be regarded as affected by that aid.*" Chapter 17B.3(4) of the State aid Guidelines makes it clear that: *"Under settled case-law for the purposes of this provision, the criterion of trade being affected is met if the recipient firm carries on an economic activity involving trade between Contracting Parties. The mere fact that the aid strengthens the firm's position compared with that of other firms, which are competitors in intra-EEA trade, is enough to allow the conclusion to be drawn that intra-EEA trade is affected."* The undertakings (licensees) selling the gas from Snøhvit are active in a market in which there is competition among producers from various EEA States. The Authority therefore considers that conditions 2 and 4 above are met.

- Condition 3: Selectivity/Specificity

Condition 3 above means that the measure must be specific or selective, *i.e.* that it affects the balance between the beneficiary and its competitors. The selective advantage may derive from an exemption to the tax provisions of a legislative, regulatory or administrative nature or from a discretionary practice on the part of the tax authorities[20]. In Case 173/73 *Italy v. Commission*[21], the ECJ held that any measure intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system *"without there being any justification for this exemption on the basis of the nature or general scheme of this system"* constituted State aid. The EFTA Court referred to the same case in Case E-6/98[22] when it found *"that the system of regionally differentiated social security contributions must be seen as favouring certain undertakings within the meaning of Article 61(1) EEA, unless it can be shown that the selective effect of the measures is justified by the nature or general scheme of the system itself. Any direct or indirect discrimination which is to be considered justified must derive from the inherent logic of the general system and result from objective conditions within that general system. In the opinion of the Court, these criteria are not satisfied in the present case, where differentiation is based on regional criteria alone"*[23].

The main criterion in applying Article 61(1) EEA to a tax measure is, therefore, that the measure provides in favour of certain undertakings in the EFTA State an exception to the application of the tax system. The common system applicable should

19 [1980] ECR 2671.

20 State aid Guidelines, Chapter 17.B.3(5).

21 [1974] ECR 709.

22 Application for annulment of Decision No 165/98/COL of 2 July 1998 of the EFTA Surveillance Authority with regard to State aid in the form of regionally differentiated social security taxation (Norway)(Aid No. 95-010). Judgment of the Court of 20 May 1999 in Case E-6/98. Published in Report of the EFTA Court 1999.

23 Paragraph 38.

thus first be determined. It must then be examined whether the exception to the system or differentiations within that system are justified by the nature or general scheme of the tax system, that is to say, whether they derive directly from the basic or guiding principles of the tax system in the State concerned. If this is not the case, then State aid is involved[24]. The State Aid Guidelines also state: *"According to well-established practice and case-law, a tax measure whose main effect is to promote one or more sectors of activity constitutes aid".*[25]

The common system applicable is the Norwegian PTA with the normal depreciation rate of 16 2/3 per cent. This has applied to all projects falling under the scope of the PTA, regardless of their profitability. In the case at issue, only expenses incurred in acquiring pipelines and production facilities that include a *"new large-scale"* cooling installation located in the *county of Finnmark and the municipalities Kåfjord, Skjervøy, Nordreisa or Kvænangen in the county of Troms* will fall within the scope of the amendment to the PTA, *i.e.* benefit from increased depreciation rates. The amendment will not be applicable to field developments involving the construction of cooling installations on a smaller scale or to cooling installations that otherwise do not fall within the scope of the PTA. The increased rate will also only apply for a specific geographical area, *i.e.* they are based on a regional criterion. The increased depreciation rate is, in the Authority's view, therefore specific and provides for an exception to the common system.

The fact that the LNG installation falls within the scope of the stricter tax regime of the PTA compared to onshore taxation implies that the measure as such does not imply any involvement of State aid. The Norwegian authorities have submitted information demonstrating that the net present value of taxes (based on Statoil's requested tariffs) is higher when the whole of the LNG facility is under the PTA than in an alternative where part of the LNG facility is placed under the onshore tax regime.

The Authority considers that the increased depreciation rate is not justified by the nature or general scheme of the system, *i.e.* favours *"certain undertakings or the production of certain goods"*. Condition 3 above is thus also met, as well as the other conditions, and the amendment to the PTA amounts, therefore, to State aid within the meaning of Article 61(1) of the EEA Agreement.

3. Is the PTA as amended by Ot.prp. no 84 (2001-2002) compatible with the EEA Agreement?

3.1 Introduction

The notification dated 27 May 2002 implies that all new large-scale LNG facilities within the defined geographical area can benefit from the increased depreciation rates. The amendment thus becomes an *'aid scheme'*, while the aid to Snøhvit becomes

24 State Aid Guidelines, Chapter 17.B.3.1(4).

25 Authority's State aid Guidelines, Chapter 17.B.3.2(2).

'individual aid' (notifiable award of aid on the basis of an aid scheme)[26] because Snøhvit fulfils the notification requirement of Chapter 26.2 of the State Aid Guidelines (discussed in point 4.1 below). In the following, the Authority will therefore first assess the *'scheme'*, and in point 4 below the *'individual aid'* to Snøhvit.

3.2 Object of the aid

If a tax measure constitutes aid that is caught by Article 61(1) EEA, it may nevertheless, like aid granted in other forms, qualify for one of the derogations provided for in Article 61(2) and (3) EEA[27].

The Norwegian authorities argue in the notification dated 27 May 2002 that the depreciation rules of the PTA are compatible with Article 61(3)(c) EEA as permissible regional aid.

Article 61(3)(c) EEA reads: *"The following may be considered to be compatible with the functioning of this agreement: (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest."* Aid to "*facilitate the development of certain economic activities"* covers sectoral aid, while aid to "*certain economic areas"* covers regional aid.

The proposed amendment to the PTA is limited to new large-scale LNG facilities within a certain geographical area. It may thus facilitate "*the development of certain economic activities or of certain economic areas"*.

In the State Aid Guidelines[28] it is *i.a.* stated that: *"If it is to be considered by the Authority to be compatible with the functioning of the EEA Agreement, State aid intended to promote the economic development of particular areas must be in proportion to, and targeted at, the aims sought. Where a derogation is granted on the basis of regional criteria, the Authority must ensure in particular that the relevant measures contribute to regional development and relate to activities having a local impact."* According to Chapter 17B.4(5) of the State Aid Guidelines, the Authority must also ensure that the measures "*relate to real regional handicaps*" and "*are examined in an EEA context*[29]*. The Authority must in this respect take account of any negative effects, which such measures may have on trade between Contracting Parties"*.

Furthermore, according to Chapter 25.2(3) and (4) of the State Aid Guidelines, the Authority considers that aid confined to one area of activity cannot qualify for

---

[26] As for example defined in 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.

[27] State aid Guidelines, Chapter 17B.4.

[28] State aid Guidelines, Chapter 17B.4(5).

[29] Cf. Case 730/79 Philip Morris v. Commission [1980] ECR 2671.

regional aid unless it can be shown that the industrial sector envisaged has the possibility to develop the less favoured region in question.

The fact that an aid is confined to a certain activity does thus not preclude an assessment of that aid under the regional derogations in Article 61(3) EEA. In such cases, however, it is necessary to assess the effects of such aid in the EEA context[30]. Such an aid could be considered as having a regional objective and be compatible with the functioning of the EEA Agreement, if it contributes to the long-term development of the region, without adversely affecting the common interest and competition conditions within the EEA[31].

The notified amendment to the PTA will be applied *i.a.* on the basis of regional criteria. The Authority decided on 16 December 1999 not to raise objections to the proposed system for regional aid in Norway, *i.e.* the proposal for a map of assisted areas and maximum aid intensities in Norway (327/99/COL). According to this decision, Finnmark County and the municipalities of Kåfjord, Skjervøy, Nordreisa, and Kvænangen are part of the regional aid map with a maximum general aid ceiling of 25% NGE. This area qualifies for the 61(3)(c) EEA derogation on the basis of Chapter 25.3(17) of the State Aid Guidelines (low population density). The notified area has a population density of 1.7 inhabitants per square kilometre. It is thus clear that the geographical scope of the notified measure is within an approved regional aid area in Norway.

The profitability of LNG facilities, as opposed to transport by pipelines, depends primarily on the distance to the markets. The gas fields outside the notified geographic areas are situated a long distance from the markets, and from existing infrastructure in the form of pipelines for transportation of the gas to the export markets. Building an LNG facility is therefore necessary in order to be able to exploit the gas resources in these areas.

As mentioned above, the geographical area in question was approved as a regional aid area on the basis of Chapter 25.3(17) of the State Aid Guidelines. The low population criterion was introduced because the northern regions have special features deriving from their geography, *i.e.* the remote northern location of some areas, harsh weather conditions and very long distances, as well as very low population density in some parts. A special development problem arising out of demography are thus a criterion in its own right in an assessment of eligibility.

In the correspondence referred to above, the Norwegian authorities have also submitted further information on the regional handicaps of the areas in question. The Norwegian authorities allege that the region has a worrying age and business structure,

---

30 See for example ECJ, Joined Cases C-278/92, C-279/92 and C-280/92, *Kingdom of Spain* v *Commission* [1994] ECR I-4103 and Case C-169/95, *Kingdom of Spain* v *Commission* [1997] ECR I-135.

31 See similar cases in the Community context: Commission Decision of 22 December 1999 in State aid case No. C22/99 – Spain – Ayudas de Estado en favour de Ramondin S.A. y Ramondin Capsulas S.A.; Commission Decision of 14 December 2000 in State aid case No. N676/2000 – Spain (Valencia) – Plan de gasificacion en pequeños y medianos municipios.

recruitment problems and high transport costs. According to a study[32], no administrative county in the Nordic Countries has a higher depopulation ratio than Finnmark. For the period 1995-2000 Finnmark's population decreased by 12.3%.

The Authority considers that the amendment to the PTA will contribute to the long-term regional development in the area in question. It clearly relates to activities in these areas and the amendment relates to the fact that the areas (and gas fields) in question are located a long distance from the markets, *i.e.* they have a regional handicap.

As acknowledged also by the European Commission, LNG facilities could have a positive effect from an EEA perspective. The European Commission stated in this context: "*As regards gas supply, the European Union is geographically well placed, thanks to the existence of gas pipelines, in relation to the export centres of Norway, Russia and Algeria. LNG supply completes and diversifies the supply of natural gas...*"[33]. It is a Community policy to promote the exploitation of gas and to reduce excessive dependency of the EEA on external sources for the supply of gas. LNG facilities would enhance the diversity and the security of gas supplies to the rest of the EEA.

As already stated by the European Commission: "*As long as the European Union's external supply of gas depends on 41% of imports from Russia and almost 30% from Algeria, geographical diversification of our supplies would appear desirable, particularly in LNG*".[34]

As gas demand increases over the coming decades and domestic EU gas production is expected eventually to decline, the EU will need to import more gas. The capacity of the existing import routes is limited and new gas import capacity is therefore required to meet growing gas demand mainly driven by power generation. The issue will be to ensure that the necessary economic incentives prevail for investments in production and transportation infrastructure to bring the gas to EU markets. Very significant investments will be required in gas supply projects to meet increasing European gas demand and import dependence[35].

Aid to LNG facilities, as described in the amendment, is therefore not adversely affecting trading conditions to an extent contrary to the common interest.

3.3 Level of aid

The State aid Guidelines[36] state that: "*Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out*

---

[32] Nordregio Report 2002:2. Regional Development in the Nordic Countries 2002.

[33] COM(2000) 769 final, 29.11.00, page 45.

[34] COM(2000) 769 final, 29.11.00, page 46.

[35] COM (2001) 775 final, page 12.

[36] State aid Guidelines, Chapter 17B.4(3).

the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified."

As stated above the maximum general aid ceiling for the geographical area in question is 25% NGE.

The Norwegian authorities have, in the notification dated 27 May 2002, submitted information on the economic consequences of the amendment to the PTA. Section 3.2 in Ot.prp. no 84 (2001-2002) contains information on the economic consequences, as well as a letter (that is part of the notification) dated 27 May 2002 from the Ministry of Finance. In this letter the Ministry has elaborated on the economic consequences of the amendment with a special emphasis on establishing the maximum conceivable gain (as a percentage of investment) for companies with a project that is subject to the accelerated depreciation scheme.

The Ministry remarks that the direct gain per NOK invested (measured in present value terms) is independent on both the size and the timing of the investment. A higher depreciation rate (shorter length of the depreciation period) implies that the companies receive their deductions in taxable income at an earlier point in time. Therefore the gain for the companies is solely related to an increased present value of deductions in taxable income and there is a constant, linear relationship between the value of an investment and the value of tax deductions due to depreciation for a given depreciation scheme. Changes in the value of investments will therefore lead to proportional changes in the value of tax deductions, leaving the ratio of the two entities unchanged.

The Ministry states that, in general, the value of tax deductions, NV(I), for a linear depreciation scheme is determined by the following set of equations:

$$NV(I) = \sum_{t=n}^{N} (sa_t / (1+k)^t), \sum_{t=n}^{N} a_t = I, a_t = a$$

In the equations, I is investment, s is the tax rate, a is depreciation for tax purposes each year, t is time, n is the first year of depreciation, N is the last year of depreciation and k is the discount rate (which for simplicity is assumed constant for the whole period). Changing the depreciation scheme amounts to changing n and N, thus changing the constant part of the investment that is depreciated each year. All parameters in the equations are defined by the depreciation scheme or the tax system, with the exception of the discount rate that is market-based and possibly also may differ between different companies.

The resulting economic gains with different discount rates are as follows:

Table 1. Direct economic gain with different discount rates

Discount rate (%)	Economic gain (%)
4.68	4.5
6.32	5.8
10.0	8.0

The Ministry of Finance argues that, in the PTA, the value of depreciation for tax purposes may be seen as approximately risk free due to the rules of carrying forward deficits with interest and transfer of remaining deficits in mergers etc, cf. § 3 c in the PTA and that it therefore would be correct to use an approximately risk free rate of interest when evaluating these tax deductions. A risk-free nominal rate of interest of 4.68% after tax corresponds to a rate of 6.5% before tax. A discount rate of 6.32% corresponds to the Authority's reference rate of interest. A discount rate of 10% has also been used to illustrate the effects on the economic gain. The Ministry of Finance considers that this last alternative reflects a theoretical upper limit for the direct gain that may be received by any single company at any point in time.

In addition to the direct effects above, accelerated depreciation has consequences for deductible interest that is of relevance in estimating the overall effects of the depreciation scheme. The period of depreciation affects the maximum interest bearing debt the companies may incur within the scope of Section 3 h of the Petroleum Tax Act (the provision on "thin capitalisation"). The provision calls for a scaling down of deductible interest payments in cases where a company's debt exceeds 80% of the total balance sheet. Accelerated depreciation for tax purposes leads to an increased differential between depreciation for accounting purposes and depreciation for tax purposes, and thus to increased deferred tax on the liability side of the balance sheet. Increased deferred tax is regarded as debt in relation to the provisions of Section 3 h, and thus reduces the scope for the companies of incurring interest-bearing debt without being subject to a scaling down of their deductible interest expenditure. A reduction in the deductible interest will increase the tax payments of the companies, and will thus, to some extent, counterbalance the net present value gain resulting from shortened periods of depreciation.

The net effect of the accelerated depreciation scheme when changes in interest bearing debt are taken into account, is given in table 2 for the same discount rates as in table 1. It is assumed that the companies have a debt ratio of 80% and are therefore not subject to a scaling down of deductible interest expenditure. The borrowing rate is held constant at 7% (before tax) even if the discount rate varies. For high discount rates, this assumption would tend to underestimate the effect of increased deferred tax and thereby tend to overestimate the net gain from accelerated depreciation.

Table 2. Net economic gain with different discount rates

Discount rate (%)	Economic gain (%)
4.68	1.4
6.32	3.2
10.0	6.5

The Ministry of Finance argues that, given the financial structure of companies on the Norwegian Continental Shelf, the calculations in table 2 would seem most relevant for an assessment of the net economic gain of the accelerated depreciation scheme. The Ministry of Finance therefore concludes that approximately 1.4% of the investment cost is the best estimate of the net economic gain for the companies of the accelerated depreciation scheme while the 8% figure from table 1, where no scaling-down effect is taken into account, is a theoretical upper limit to the effect of the accelerated depreciation scheme.

The Authority considers that the Norwegian authorities have demonstrated that the upper limit of the accelerated depreciation scheme is in the range of 8% and thus well below the maximum general aid ceiling of 25% for the geographical area in question.

4. Is the aid to Snøhvit compatible with the EEA Agreement?

4.1 Notification requirement

Chapter 26.2(1) of the State Aid Guidelines states that:

"Under this Framework EFTA States are required to notify pursuant to Article 1(3) of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereafter referred to as the Surveillance and Court Agreement), any proposal to award regional investment aid[37] *within the scope of an approved scheme*[38]*, where either of the following two criteria are met:*

> *(i) the total project cost is at least ECU 50 million*[39]*, and the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50% of the regional aid ceiling for large companies in the area concerned and aid per job created or safeguarded amounts to at least ECU 40 000*[40]*; or*
> (ii) *the total aid is at least ECU 50 million".*

The purpose of the framework outlined in chapter 26 of the State Aid Guidelines is to limit the incentive for investment in large projects to a level which avoids as much as possible adverse sectoral effects caused by the project. This is done by determining maximum aid ceilings that normally are lower than the general regional aid ceilings.

The total aid amount to the Snøhvit project also depends, as described above, on the discount rate applied. In the letter of 27 May 2002, which forms part of the

---

37 Regional investment aid awarded solely for the creation of jobs as described in the EFTA Surveillance Authority regional aid guidelines is not covered by this Framework.

38 The notification requirement also applies, of course, to proposals to award ad hoc aid.

39 ECU 15 million in the case of projects carried out in the textile and clothing sector.

40 ECU 30 000 in the case of projects carried out in the textile and clothing sector.

notification, the Norwegian authorities have described the direct economic consequences of the accelerated depreciation scheme for the Snøhvit project.

The starting point of the calculation is the net present value of the companies' expected yearly investments in the Snøhvit project with different discount rates. Furthermore, the expected yearly investments make it possible to calculate the yearly depreciation figures for the accelerated and ordinary depreciation schemes respectively. Taking the difference between the yearly depreciation figures under the two schemes, multiplying it with the marginal tax rate (78%) and discounting gives the direct economic gains of the accelerated depreciation schemes for different discount rates. The results are given in table 3:

Table 3. Direct economic gain for the Snøhvit project with different discount rates

Discount rate (%)	Net present value of companies' investment (billion NOK)	Direct economic gain (billion NOK)
4.68	17.4	0.78
6.32	15.9	0.92
10.0	13.1	1.05

The results for the Snøhvit project are in accordance with the general figures in table 1 in point 3.2 above.

These maximum aid amounts are, for each of the three discount rates in Table 3 above, 50 Million Euros, assuming an exchange rate of some NOK 7.50 per Euro. The aid amounts shown in Table 3 are gross before any deduction for possible scaling down of interest payments as referred to above. To calculate the exact magnitude of this effect would necessitate detailed information on the Snøhvit licensees' balance sheet. The Authority is not in possession of such information, but if the figures from Table 2 are used as an illustration, the aid amount would still be above 50 million Euros except in the case of a discount rate of 4.68%. Applying the Authority's reference rate of interest, the aid would amount to some 68 million Euros.

Against the background of the figures referred to above, the Authority has found it justified to assess whether the aid to Snøhvit is compatible with Article 61(3)(c) EEA according to the provision in Chapter 26.2(1) of the State Aid Guidelines as referred to above.

4.2 Object of the aid

As mentioned above, the fact that an aid is confined to a single undertaking or to a certain activity does thus not preclude an assessment of that aid under the regional derogations in Article 61(3) EEA. In such cases, however, it is necessary to assess the effects of such aid in the EEA context[41]. Such aid could be considered as having a regional objective and is compatible with the functioning of the EEA Agreement, if it

[41] See for example ECJ, Joined Cases C-278/92, C-279/92 and C-280/92, *Kingdom of Spain* v *Commission* [1994] ECR I-4103 and Case C-169/95, *Kingdom of Spain* v *Commission* [1997] ECR I-135.

contributes to the long-term development of the region, without adversely affecting the common interest and competition conditions within the EEA[42].

The Norwegian authorities have argued that the regional impact of the Snøhvit project is high. The regional employment effect in Finnmark during the development stage is likely to be 1245 man-labour years distributed through the period 2002-2006. Of these, 825 are likely to be directly employed in production for local suppliers, 65 in production for subcontractors and 355 in activities coming from regional consumption effects. The operational stage will, according to the Norwegian authorities, increase the level of employment in Hammerfest with 350-400 jobs during the operation of the plant.

The Authority considers that the Norwegian authorities have demonstrated that the Snøhvit project will contribute to the long-term development of the region.

The Norwegian authorities have also submitted arguments regarding the implications of the project in an EEA context. The Norwegian Government stresses that the European Commission has noted the importance of developing the resources in the Barents Sea[43] and that the Commission has listed LNG supplies from Norway among the key gas supply projects for Europe[44]. The Norwegian authorities refer to the Commission's statement that the development of LNG could have a positive effect in an EEA perspective[45].

The Authority has in point 3.2 above assessed the aid in an EEA context. The Authority considers that the aid to Snøhvit, in the same way as argued in point 3.2 above, does not adversely affect the common interest and competition conditions within the EEA.

4.3 Level of aid

According to Chapter 26.3 of the State Aid Guidelines, the Authority will determine the maximum allowable aid intensity (MAAI) in accordance with the following formula:

MAAI = R x T x I x M, where

R = authorized maximum aid intensity for large companies in the assisted area concerned (regional ceiling)
T = competition factor
I = capital-labour factor

---

42 See similar cases in the Community context: Commission Decision of 22 December 1999 in State aid case No. C22/99 – Spain – Ayudas de Estado en favour de Ramondin S.A. y Ramondin Capsulas S.A.; Commission Decision of 14 December 2000 in State aid case No. N676/2000 – Spain (Valencia) – Plan de gasificacion en pequeños y medianos municipios.

43 Green Paper-Towards a European strategy for the security of energy supply. COM (2000) 769 final, part one, I, B, 1, c).

44 COM (2001) 775 final, Annex IV, page 38.

45 COM (2001) 775, final, page 12.

M = regional impact factor

In the case at issue, R= 25% (see point 3.2 above).

The Authority considers that the State aid to the Snøhvit project does not benefit companies which are in structural overcapacity and that the aid has no likely negative effects in terms of creating structural overcapacity and/or a declining market (see Chapter 26.3 (2)-(6) and (10) in the State Aid Guidelines). T therefore equals 1.

The capital-labour factor is the total amount of proposed capital divided by the number of jobs created or safeguarded. The total number of jobs directly created by the Snøhvit project is 198 (weighted average of employment (man-labour years) in the development and operational phase). The new capital/jobs, *i.e.* the total amount of capital divided by the number of jobs created is 10.8 Million Euro. The capital-labour factor, I, is thus 0.6 (see Chapter 26.3 (7)-(8) and (10) of the State Aid Guidelines).

The number of jobs created at the LNG facility on Melkøya is 180. The indirect job creation is 345 in the operational phase. The degree of indirect creation for each job created by the aid recipients, *i.e.* the number of indirect jobs divided by the number of direct jobs is 1.7, giving a regional impact factor, M, of 1.2 (see Chapter 26.3 (9)-(10) of the State Aid Guidelines).

MAAI can then be estimated as: 25 x 1 x 0.6 x 1.2 = 18.

The aid intensity for Snøhvit has been described in point 3.2 (table 1) and point 4.2 (table 3) above and amounts to maximum 8%. The aid intensity for Snøhvit is therefore well within the maximum allowable aid intensity.

5. Cumulation

The Norwegian authorities have undertaken, in the notification dated 27 May 2002, to ensure that any regional aid granted to undertakings in accordance with the PTA, section 3 b, will be cumulated with aid from other sources.

6. Conclusion

In view of the above facts and considerations, the Authority considers that the proposed amendment to the PTA (ref. Ot.prp. no 84 (2001-2002)), and the aid to the Snøhvit project, as notified by the Norwegian authorities by telefax dated 27 May 2002, received and registered on 28 May 2002 (Doc. No: 02-4025 A), and telefax dated 30 May 2002, received and registered on 31 May 2002 (Doc No: 02-4102 A), qualifies for exemption under Article 61(3)(c) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed amendments to the Norwegian Petroleum Tax Act (Ot.prp. no 84 (2001-2002)), as notified to the Authority by telefax dated 27 May 2002, received and registered by the Authority on 28 May 2002 (Doc. No: 02-4025 A).

2. The EFTA Surveillance Authority has decided not to raise objections to the proposed application of the depreciation rules of the Norwegian Petroleum Tax Act to the Snøhvit project, as notified to the Authority by telefax dated 30 May 2002, received and registered by the Authority on 31 May 2002 (Doc. No: 02-4025 A).

3. This Decision is addressed to Norway.

Done at Brussels, 31 May 2002

For the EFTA Surveillance Authority

Einar M. Bull
President

Hannes Hafstein
College Member