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Norwegian comments to the State aid action plan HT.326

Reference is made to the State aid action plan; a road map for State aid reform 2005-2009 (SAAP). The Norwegian Government welcomes the publication of the state aid action plan and is prepared to contribute constructively in the development of the State aid rules in the period ahead.

We note that this is the first time such a comprehensive State aid reform programme is launched. We believe this is a positive initiative that will lead to more transparency and a more open debate on the revision of the State aid rules. Norway shares the view that it is necessary with closer and more transparent cooperation between the Commission, the EFTA Surveillance Authority (ESA) and the EEA Member States. However, at this stage we find it difficult to see the full reach of the current proposals, and will also return to the issues raised in the SAAP at later stages in the reform process.

Specific challenges in the EEA such as the enlargement in 2004, ageing populations, relatively low growth rates vis-à-vis other world economies and the need to maintain a global competitiveness has also created specific challenges for future state aid use. In order to meet these challenges the Norwegian authorities believes that state aid should be better targeted towards areas that contribute to sustainable economic growth, such as research and development, and environmental objectives. We also believe that Members States should retain the possibility to address regional and social cohesion objectives that are not solved by the market alone.

Norwegian state aid policy is described in the Government's White Paper on Competition Policy of February 2005 and in the chapter on structural policy in the

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annual White Paper on the National Budget. The White Paper reiterates Norway's commitment to direct state aid towards market failures and regional cohesion objectives. The White Paper also emphasises that state aid might have distortive effects on competition and effective resource allocations, which again influences costs, prices and value added production. State aid should therefore be targeted at maximising economic efficiency while also taking account of regional and social cohesion objectives.¹ The potentially distortive effects of aid measures should also be assessed when an aid scheme is considered.

Norway also believes that procedural and substantial reforms of the State aid rules should occur in parallel processes. The varying degree of complexity of the rules should be addressed through streamlining of procedures and requirements in each of the frameworks and guidelines up for revision. There should also be more room for new block exemptions.

Refined economic approach

The Norwegian authorities welcome the initiative to introduce a refined economic approach to the state aid rules. We are also most interested in taking part in the process. In the SAAP consultation document it is proposed to *strengthen the economic approach to state aid analysis* by increasing analysis of market failures, in order to determine why markets do not achieve desired objectives of common interest. The general purpose of the proposed refined approach is to achieve the goal of better-targeted aid. One key element in that respect is the analysis of market failure. To avoid unnecessary distortions it is important that state aid guidelines are motivated in specific market failures, are based on a clear analysis of these market failures and that the aid allowed is targeted and proportional to the market failure the aid is intended to correct. We have also taken note of the various definitions of market failures described on page seven in the SAAP. We do not regard the list as exhaustive, however, and will return to the definitions of market failures in the various stages of the reform period.

Although increased use of economic criteria is necessary to achieve better targeted aid, it must also be clarified how any prospective new criteria will be defined in relation to the criteria in art 87.3.c/61.3.c. Any refined economic approach must also consist of criteria that can be universally applied in all EEA members. This is particularly important as social and economic conditions might vary from one Member State to another, and state aid rules must safeguard an equal treatment throughout the EEA.

Any refined economic approach must take account of the current stable framework for granting horizontal aid. Changes to the horizontal aid regime must be carried out while also ensuring stability and predictability for affected regions and businesses.

¹ <http://odin.dep.no/mod/norsk/dok/regpubl/stmeld/050001-040003/dok-bn.html>

Key priorities

R&D and innovation

The Norwegian authorities share the view that innovation and R&D are important drivers of economic growth. The announced communication on state aid to innovation should recognise the role of innovation for economic growth, in addition to the existing possibilities to grant aid to R&D.

"Innovation" is a concept, which covers a wide range of activities and has very different interpretations. In this sense "innovation" is important for the understanding and discussion of economic development, but we would urge caution to use the concept in itself as an appropriate economic and legal definition of activities where state aid is justified. Identifiable market failures in relation to technological improvement and product development must be appropriately defined to avoid distortions and contribute to the aim of better-targeted aid.

A too narrow definition of innovation might make it difficult to support innovative processes that could be genuinely eligible for state aid. This requires a careful assessment of innovative processes that could be eligible for aid. However, we are confident that these questions will be addressed thoroughly by the Commission. Norway awaits the communication on R&D and innovation and will return to the issue at a later stage.

Revision of the R&D guidelines

The current rules for R&D aid in the state aid guidelines are to a large extent based on the approach that R&D occurs in a strict three-step process, from basic research, through industrial research and then pre-competitive development. Research and development processes are in many cases not characterised by the strict separation of research-phases as defined in the three-step process. R&D processes are instead often characterised by repetitive processes where the different stages are closely interwoven. In general, there is a clear case for more subsidies to basic research and industrial research than to pre-competitive development, where the economic effects normally to a larger extent are internalized within each firm. In some cases the three-step process in the guidelines may nevertheless severely complicate the application of the rules on eligible R&D projects. We therefore believe the coming review of the R&D guidelines should take account of the problems encountered when different steps in the R&D-process are closely interwoven.

Revision of the Communication on risk capital

We also take note of the intention to review the Communication on risk capital. We support the view that the revision should be used to encourage increasing entrepreneurship and stimulate further private investment in the form of risk capital. Risk capital may also be important in sustaining R&D activities.

Environment aid

We also urge the Commission to consult closely with all EEA members on other areas that may qualify for further block exemptions. Further to this we also await the Commission's review on the current threshold for de minimis aid to take account of the general economic development.

Reform of secondary legislation

Current secondary legislation is characterised by varying degrees of complexity and a general lack of coherence between the various chapters in the State aid guidelines. There can also be considerable variations in requirements for detailed assessments in notification cases. Over time this has created a complicated system for notification of relatively similar state aid measures that are assessed through different guidelines. In addition, many relatively small aid measures are subject to complicated and cumbersome notification requirements, and thus put a heavy toll on resources.

We have therefore with interest taken note of the Commissions intention to simplify and consolidate existing regulations into a more coherent system of assessment. There is indeed room for making the rules more coherent than in the current framework. We also believe the rules should be made more user friendly and predictable. Our experience is that downstream aid awarding authorities such as municipalities or subordinate agencies often have an imperfect understanding of the different rules in the guidelines. This increases the administrative burden on central authorities, and complicates notification processes unduly.

Norway is positive to the proposals for procedural reform as outlined in the state aid action plan. The key priorities should be on streamlining secondary legislation with a view to achieve better coordination between the different chapters in the State aid guidelines. Norway is also positive to broadening the range of the current exemption regulations and to consolidate these in a general block exemption regulation.

Independent national authorities

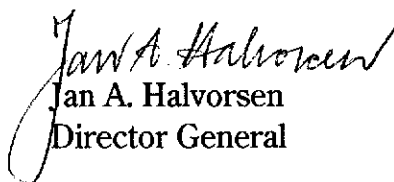
We are sceptical to the idea of independent national authorities. Our main concern is that State aid control also concerns fundamental national sovereignty issues, such as national control over state resources. There are also several other problems in this respect:

- There is a clear conflict of interest when the state controls the state. State aid is very often awarded as the result of a political process. Political and public pressure against national surveillance authorities might be high. Any political or public pressure could be particularly high if the national authorities were to be entrusted with discretionary competence.
- A decentralisation of monitoring and/or enforcement of the state aid rules could lead to different practices in the 28 EEA Member States.

- There is not only the question of whether national authorities in fact are independent or not – the competitors of an undertaking suspected of having received illegal state aid and the public in general must also be able to have confidence in the independence of a national surveillance authority
- Legal independence towards the central government might raise constitutional concerns.
- Strict legal control with regard to the “standstill clause” is already conducted by the courts of law (private enforcement). The effectiveness of national authorities should therefore be measured against the possibility of increased private enforcement.
- In order to harmonise the practices of national authorities, it would probably be desirable to establish a new network of cooperation between the national surveillance authorities. This network would probably have to be distinct from that of the national administrations in order to secure independence, and would increase administrative costs.

The SAAP also refers to the experiences from the new Member States with regard to independent State aid authorities. We have not been able to conduct any analysis of the experiences from the new Member States prior to their accession, and we are unable to comment on this.

Yours sincerely,


Jan A. Halvorsen
Director General


m behalf of Pål Hellesylt
Deputy Director General