

## EUROPEJSKI OBSZAR GOSPODARCZY

## URZĄD NADZORU EFTA

**Zaproszenie do składania uwag zgodnie z art. 1 ust. 2 części I protokołu 3 do Porozumienia o Nadzorze i Trybunale w sprawie propozycji zróżnicowanych ze względu na regiony składek na ubezpieczenie społeczne w Norwegii (sprawa nr 56310 — dawna sprawa nr 55463)**

(2005/C 60/09)

Na podstawie decyzji 245/04/COL z dnia 6 października 2004 r. przedstawionej po niniejszym podsumowaniu w języku oryginalnym, Urząd Nadzoru EFTA wszczął dochodzenie zgodnie z art. 1 ust. 2 części I protokołu 3 Porozumienia pomiędzy Państwami EFTA w sprawie utworzenia Urzędu Nadzoru oraz Trybunału Sprawiedliwości (Porozumienie o Nadzorze i Trybunale). Rząd Norwegii został o tym poinformowany na podstawie kopii wspomnianej decyzji.

Urząd Nadzoru EFTA niniejszym zaprasza Umawiające się Strony Porozumienia EOG oraz zainteresowane strony do przedstawienia uwag dotyczących przedmiotowego środka w ciągu jednego miesiąca od opublikowania tego zaproszenia. Uwagi należy kierować do:

EFTA Surveillance Authority  
35, rue Belliard/Belliardstraat 35  
B-1040 Brussels

Uwagi te zostaną przekazane rządowi Norwegii. Zainteresowane strony przekazujące uwagi mogą wystąpić z odpowiednio umotywowanym pisemnym wnioskiem o objęcie ich tożsamości poufnością.

## STRESZCZENIE

**Procedura**

Pismem Norweskiej Misji przy Unii Europejskiej z dnia 26 kwietnia 2004 r. władze Norwegii poinformowały Urząd zgodnie z art. 1 ust. 3 części I protokołu 3 do Porozumienia o Nadzorze i Trybunale o swoim zamiarze zastosowania obniżonych stawek składek na ubezpieczenie społeczne od przedsiębiorstw działających w określonych sektorach oraz mających swoje siedziby w wyznaczonych strefach geograficznych 2, 3 i 4 w Norwegii.

**Opis środków pomocowych**

Władze Norwegii zaproponowały zastosowanie od stycznia 2005 r. obniżonych stawek składek na ubezpieczenie społeczne płatnych przez pracodawców, obowiązujących do końca 2003 r. w norweskich strefach podatkowych 2, 3 i 4. Zaproponowano następującą wysokość stawek: strefa 2, stawka obowiązująca 10,60 %; strefa 3, stawka obowiązująca 6,4 % oraz strefa 4, stawka obowiązująca 5,1 %. Stawki te istnieją obok pełnej stawki obowiązującej w strefie 1, wynoszącej 14,1 %. Składka naliczana jest na podstawie wynagrodzeń brutto.

Notyfikowany program będzie miał zastosowanie wobec 209 sektorów NACE <sup>(1)</sup> określonych na podstawie sprawozdania ekonomicznego sporządzonego przez firmę konsultingową ECON, która dokonała oceny połączeń konkurencyjnych („konkurranseflater”) pomiędzy przedsiębiorstwami prowadzącymi działalność w Norwegii a przedsiębiorstwami w innych Państwach EOG <sup>(2)</sup>.

<sup>(1)</sup> Klasyfikacja sektorów przemysłowych.

<sup>(2)</sup> Tabela poniżej przedstawia oznaczone kody NACE. Kod 0 oznacza, że według władz norweskich nie ma negatywnego wpływu na działalność handlową w tych sektorach, natomiast kod 0/2 oznacza, że niektóre przedsiębiorstwa działające w danych sektorach w obrębie konkretnej strefy są narażone na konkurencję z innych państw EFTA, podczas gdy inne na taką konkurencję nie są narażone.

Podstawę powiadomienia stanowiło założenie, zgodnie z którym rodzaje działalności w notyfikowanych sektorach nie podlegają wewnętrznym regułom EOG dotyczącym handlu. W związku z powyższym, według rządu Norwegii, przedsiębiorstwa działające w tych sektorach mogą korzystać z obniżonych stawek składek na ubezpieczenie społeczne bez otrzymywania pomocy państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG.

W tym kontekście należy poczynić odniesienie do programu zróżnicowanych ze względu na regiony stawek na ubezpieczenie społeczne, zatwierdzonego przez Urząd decyzją 218/03/COL z dnia 12 listopada 2003 r. <sup>(1)</sup> We wspomnianym programie przewidziano zastosowanie w strefach 3 i 4 obniżonych i zróżnicowanych ze względu na regiony stawek składek na ubezpieczenie społeczne od wszelkich przedsiębiorstw prowadzących działalność w obrębie tych stref. Po zatwierdzeniu okresu przejściowego przez Urząd wspomniane stawki należy stopniowo podwyższyć w okresie trzech lat, aż do osiągnięcia jednolitej stawki wynoszącej 14,1 %.

Inaczej niż w poprzednim programie, notyfikowany program obniżonych stawek na ubezpieczenie społeczne zakłada stosowanie przez czas nieokreślony zróżnicowanych ze względu na regiony stawek na ubezpieczenie społeczne w odniesieniu wyłącznie do określonych sektorów gospodarki, głównie w segmencie usług.

### Ocena

Urząd ma wątpliwości czy notyfikowany program rzeczywiście nie jest pomocą państwa, jak twierdzą władze Norwegii.

Zastosowanie obniżonych składek na ubezpieczenie społeczne oznacza dla państwa obniżone dochody z tytułu ubezpieczenia społecznego. Kiedykolwiek państwo rezygnuje z normalnie należnego mu dochodu, dochodzi do zużycia zasobów państwowych.

Uprzywilejowane stawki składek na ubezpieczenie społeczne dawałyby zatem przewagę przedsiębiorstwom prowadzącym działalność w którymkolwiek z wymienionych sektorów znajdujących się w strefach 2, 3 i 4 w Norwegii.

Środek ten nie tylko spowodowałby zakłócenie konkurencji w odniesieniu do przedsiębiorstw działających w tym samym sektorze na terenach nie mogących korzystać z notyfikowanego programu, ale również w odniesieniu do przedsiębiorstw działających na terenach inaczej traktowanych w obrębie programu, ponieważ obowiązujące stawki są różne w różnych strefach.

Urząd ma wątpliwości dotyczące metody i podejścia zastosowanych w celu dowiedzenia braku negatywnego wpływu na handel pomiędzy Umawiającymi się Stronami Porozumienia EOG. Urząd wyraża tym większe wątpliwości co do tego, czy zastosowane podejście jest zgodne z wykładnią kryterium „wpływu na handel” w rozumieniu art. 61 ust. 1 Porozumienia EOG przedstawioną w orzecznictwie Trybunału.

Uwzględniając szeroki zasięg sektorowy obejmujący ponad 209 sektorów NACE, brak precyzyjnych i jasnych kryteriów kwalifikujących, jak również brak wdrożenia mechanizmu kontroli i oceny celem zapewnienia pewności prawnej i ekonomicznej niezbędnej w zastosowaniu programu, Urząd wyraża wątpliwości co do faktu, czy wspomniany program kwalifikuje się jako pomoc państwa w rozumieniu art. 61 ust. 1 Porozumienia EOG.

### Wniosek

Urząd ma wątpliwości związane z mającym charakter pomocy państwa notyfikowanym programem zróżnicowanych ze względu na regiony stawek ubezpieczenia społecznego w rozumieniu art. 61 ust. 1 Porozumienia EOG. Jeżeli wspomniany środek stanowi pomoc państwa, Urząd ma wątpliwości co do tego, czy można go uważać za zgodny z funkcjonowaniem Porozumienia EOG. Zgodnie z powyższym, Urząd jest zobowiązany do wszczęcia formalnej procedury dochodzenia określonej w art. 1 ust. 2 części I protokołu 3 Porozumienia o Nadzorze i Trybunale.

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<sup>(1)</sup> Dotychczas nieopublikowane w Dzienniku Urzędowym. Decyzje Urzędu Nadzoru EFTA dotyczące pomocy państwa można znaleźć na jego stronach internetowych: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

**EFTA SURVEILLANCE AUTHORITY DECISION****No 245/04/COL****of 6 October 2004****on a proposal for regionally differentiated rates of social security contributions for certain sectors  
(Norway)**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area <sup>(1)</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice <sup>(2)</sup>, in particular to Article 24 thereof and Article 1(2) in Part I of Protocol 3 thereof,

Having regard to the Authority's Guidelines <sup>(3)</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

Whereas:

**I. FACTS****1. Procedure**

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, the Norwegian authorities notified their intention to apply reduced rates of social security contributions to undertakings active in certain sectors and located in designated geographical Zones 2, 3 and 4 in Norway. The notification was sent by letter dated 26 April 2004 from the Norwegian Mission to the European Union, forwarding a letter from the Ministry of Trade and Industry together with a letter from the Ministry of Finance both dated 23 April 2004, received and registered by the EFTA Surveillance Authority (hereinafter: „the Authority”) on 27 April 2004 (Event No 278992).

On 3 May 2004, a meeting was held in Oslo between representatives of the Authority and the Norwegian authorities to discuss the notification.

Following this meeting, by letter dated 23 June 2004 (Event No 279843), the Authority requested additional information and clarification from the Norwegian authorities.

The Norwegian authorities replied to the information request by letter dated 12 August 2004 from the Norwegian Mission to the European Union, received and registered by the Authority on 13 August 2004 (Event No 290198).

A further discussion between representatives of the Authority and the Norwegian authorities was held in the framework of a package meeting which took place in Oslo on 23 September 2004.

**2. Background**

On the basis of the Norwegian Social Security Act of 28 February 1997 („Lov om folketrygd”), all employers in Norway are subject to compulsory contributions to the national social security scheme. These contributions are calculated in relation to gross salaries of employees and differentiated according to the place of residence of the employees. For this purpose, Norway is divided into five geographical zones. Zone 1 covers the most central parts of the southern part of the country. Zone 2 comprises less central parts of Southern Norway. Zone 3 covers mostly certain mountain regions in Southern Norway. Zone 4 is made up of the most northern part of South Norway and North Norway south of Zone 5. Zone 5 covers the very northernmost part of the country. A detailed overview of the geographical zones is given in Annex I to this Decision.

<sup>(1)</sup> Hereinafter referred to as „the EEA Agreement”.

<sup>(2)</sup> Hereinafter referred to as „the Surveillance and Court Agreement”.

<sup>(3)</sup> Procedural and Substantive Rules in the Field of State Aid — Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No 32, last amended by the Authority's Decision No 195/04/COL of 14 July 2004, not yet published, hereinafter referred to as „the State Aid Guidelines”.

The Authority opened the formal investigation procedure with respect to the regionally differentiated social security contribution rates in Norway on 19 November 1997 <sup>(1)</sup>. On 2 July 1998, the Authority adopted a decision <sup>(2)</sup> in which it found that the system provided, through the State budget, a benefit to certain undertakings, which could not be justified on the basis of the general nature and character of the system and which distorted or threatened to distort competition within the European Economic Area. The system of regionally differentiated social security rates was declared incompatible State aid and had to be brought in line with the rules of the EEA Agreement.

On 2 September 1998, the Norwegian authorities brought an action under Article 36(1) of the Surveillance and Court Agreement before the EFTA Court requesting the annulment of the Decision of 2 July 1998.

The Court dismissed the application for annulment on 20 May 1999 <sup>(3)</sup> and upheld the Authority's decision which considered that the system of differentiated social security contributions constituted State aid within the meaning of Article 61(1) of the EEA Agreement.

With a view to complying with the Authority's decision of 2 July 1998, the Norwegian authorities proposed new regulations in the regionally differentiated social security contributions scheme. On 22 September 1999, the Authority approved the new regulations for a limited period of time, not going beyond 31 December 2003 <sup>(4)</sup>.

On 21 December 2000, the European Commission took a negative decision concerning a reduced social security contributions aid scheme notified by Sweden <sup>(5)</sup>. In the decision, the Commission pointed out that Norway, by letter dated 27 July 2000, not only submitted comments to the decision to initiate the procedure regarding the Swedish case but also confirmed that it operates a similar scheme.

In the light of the Swedish decision, the Norwegian system was thereafter discussed at several meetings between the Norwegian authorities and the Authority, as well as between the Authority and the services of the European Commission. In view of the similarities between the Norwegian and the Swedish schemes and in order to assure a level playing field within the EEA, the Authority considered it necessary to examine the compatibility of the Norwegian scheme and initiated a formal review of the Norwegian system by letter to the Norwegian authorities dated 4 June 2002 (Doc. No: 02-4189 D).

In its Decision of 25 September 2002 <sup>(6)</sup>, the Authority concluded that the regionally differentiated social security contributions scheme did not qualify for the derogation provided for under Article 61(3)(c) of the EEA Agreement and proposed the adoption of appropriate measures requesting the elimination of any incompatible aid involved in the system or to render it compatible with effect from 1 January 2004.

By letter from the Mission of Norway to the European Union dated 29 October 2002, received and registered by the Authority on 31 October 2002 (Doc. No: 02-7855 A), the Norwegian authorities accepted the appropriate measures.

In March 2003, the Norwegian authorities notified the Authority of a three-year transitional period, from 2004 to 2007, for the progressive adjustment of the rates of social security contributions applicable in Zones 3 and 4 (Doc. No: 03-1846 A). According to the notification, the social security rates would be as follows <sup>(7)</sup>:

	Rates 2003	Rates 2004	Rates 2005	Rates 2006	Rates 2007
Zone 1	14,1	14,1	14,1	14,1	14,1
Zone 2	10,6	14,1	14,1	14,1	14,1
Zone 3	6,4	8,3	10,2	12,1	14,1
Zone 4	5,1	7,3	9,5	11,7	14,1

<sup>(1)</sup> Decision No 246/97/COL. All EFTA Surveillance Authority's State Aid Decisions mentioned hereinafter can be found at the Authority's website:

<http://www.eftasurv.int/fieldsowork/fieldstateaid/stateaidregistry/>

<sup>(2)</sup> Decision No 165/98/COL.

<sup>(3)</sup> Case E-6/98, *The Government of Norway v EFTA Surveillance Authority* [1999] Report of the EFTA Court, page 76.

<sup>(4)</sup> Decision No 228/99/COL.

<sup>(5)</sup> Published on the OJ L 244 of 14 September 2001, page 32.

<sup>(6)</sup> Decision No 172/02/COL.

<sup>(7)</sup> Undertakings in certain economic sectors would pay the full rate of 14,1 % as they already did according to the scheme approved by the Authority's decision of 22 September 1999. The Norwegian authorities also informed about their intention to continue applying the rates for 2003 to the extent that that would be in compliance with the *de minimis* rule.

Zone 1 covers 76,6 % of the total population in Norway whereas Zone 2 only covers 9,4 %, Zone 3 covers 2,6 % and Zone 4 covers 9,4 %.

By letter dated 15 April 2003 (Doc. No:03-2467 A), the Norwegian authorities had also notified a continuation of regionally differentiated social security contributions in Nord-Troms and Finnmark (Zone 5). This notification was however withdrawn by letter from the Norwegian Ambassador to the European Union dated 4 July 2003 (Doc. No: 03-4403 A) as the EFTA States, by common accord in the Standing Committee of the EFTA States on 1 July 2003 (No 2/2003/SC), and by reference to Article 1(2) of Protocol 3 to the Surveillance and Court Agreement, had decided that the present scheme in Zone 5 was compatible with the EEA Agreement due to the exceptional circumstances in this zone.

After opening the formal investigation procedure by a decision dated 16 July 2003 <sup>(1)</sup>, the Authority authorised the notified three-year transitional period for the regionally differentiated social security contributions in Zones 3 and 4 by Decision No 218/03/COL of 12 November 2003. In this decision, the Authority noted that without a transitional period, the increase in the social security payments would lead to adverse employment effects. The Authority observed that a gradual phasing out of the differentiated tax rates over a period of three years would mean that the annual cost increases for the undertakings would be spread over the period. On the contrary, an immediate abolishment of the current system would have implied a cost shock to the enterprises concerned. An appropriate transition period seemed advisable in order to mitigate the shock effects and give the undertakings time to adjust to the new economic environment.

### 3. Detailed description of the notified measure

The Norwegian authorities have notified the Authority of their intention to apply, for certain economic sectors, from 1 January 2005 onwards, the regionally differentiated rates of social security contributions that existed until the end of 2003 <sup>(2)</sup>.

Zone 5 is kept outside the notification as the rate there continues to be zero following the Decision of the Standing Committee of the EFTA States No 2/2003/SC of 1 July 2003.

The notified scheme will only be applicable for certain sectors which, according to the Norwegian authorities, are not exposed to competition from undertakings in other EEA States. The Norwegian authorities assessed the exposure to competition on the basis of an economic report prepared by an independent consultancy firm ECON in cooperation with a Norwegian law firm (hereinafter: „the ECON report”). The ECON report is based on the assessment of the competition interfaces („konkurransflater”) between undertakings located in Zones 2, 3 and 4 in Norway and those in other EEA States.

The ECON report contains a list of sectors supposedly not affected by competition from other EEA States. This list has been drafted on the basis of data on export and import figures to the relevant zones provided by Statistics Norway. In addition, several telephone interviews were made with a selection of enterprises in the services sector in Zones 2, 3 and 4 in Norway. In the introduction to the report, ECON states that there was not enough time or resources to conduct a thorough analysis within all sectors covered by the report. In most cases, the assessment was built on interviews with selected enterprises. Due to this fact, there is a risk of failure. ECON is nonetheless of the opinion that a reasonable picture of competition between EEA States can be drawn from the outcome of the report.

The current notification is thus based on the assumption that activities in the notified sectors are not subject to intra-EEA trade. The Norwegian authorities consider that the notified scheme does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement because, on the basis of the ECON report, there is no trade effect in the sectors benefiting from the intended application of reduced social security rates. Consequently, in view of the Norwegian authorities, undertakings in these sectors can benefit from reduced social security contributions without being granted State aid within the meaning of Article 61(1) of the EEA Agreement.

Contrary to the approved three-year transitional period (Decision No 218/03/COL), the scheme of regionally differentiated social security rates currently notified proposes an indefinite application of regionally differentiated social security rates exclusively to certain sectors of the economy, mainly within the services segment of the economy.

The list of sectors <sup>(3)</sup> subject to the current notification breaks down as follows, whereby the cipher 0 means that according to the Norwegian authorities there is no effect on trade in these sectors and the ciphers 0/2 indicates that some undertakings of the given sectors within the actual zone are exposed to competition from other EEA States whereas others are not:

<sup>(1)</sup> Decision No 141/03/COL.

<sup>(2)</sup> Reference is made to the table above.

<sup>(3)</sup> NACE list of sectors according to the classification of the Norwegian Statistical Office.

NACE Code	Zone 2	Zone 3	Zone 4
01.300 Growing of crops combined with farming of animals (mixed farming)	n.a. (!)	n.a.	0
22.120 Publishing of newspapers	0/2	0/2	0/2
22.210 Printing of newspapers	0/2	0/2	0/2
35.111 Building and repairing of ships and hulls more than 100 g.r.tons	0/2	0/2	0/2
35.113 Building and repairing of ships less than 100 g.r.tons	0/2	0/2	0/2
40.120 Transmission of electricity	0	0	0
45.110 Demolition and wrecking of buildings; earth moving	0	0	0
45.212 General construction of civil engineering works	0	0	0
45.221 Tinsmith work	n.a.	n.a.	0
45.229 Other erection of roof covering and frames	n.a.	n.a.	0
45.230 Construction of motorways, roads, airfields and sport facilities	0	0	0
45.240 Construction of water projects	0	n.a.	n.a.
45.250 Other construction work involving special trades	0	0	0
45.310 Installation of electrical wiring and fittings	0	0	0
45.320 Insulation work activities	n.a.	n.a.	0
45.330 Plumbing	0	0	0
45.340 Other building installation	0	n.a.	0
45.442 Glazing	n.a.	n.a.	0
45.450 Other building completion	0	n.a.	0
45.500 Renting of construction or demolition equipment with operator	n.a.	0	0
50.200 Maintenance and repair of motor vehicles	0	0	0
50.301 Commission- and wholesale of motor vehicle, motor vehicle parts and accessories	0	n.a.	0
50.302 Retail sale of motor vehicle parts and accessories	0	0	0
50.500 Retail sale of automotive fuel	0	0	0
51.170 Agents involved in the sale of food, beverages and tobacco	n.a.	n.a.	0/2
51.180 Agents specializing in the sale of particular products or ranges of products n.e.c.	n.a.	n.a.	0
51.210 Wholesale of grain, seeds and animal feeds	0	0	0
51.220 Wholesale of flowers and plants	n.a.	n.a.	0
51.389 Wholesale of molluscs n.e.c.	n.a.	n.a.	0
51.390 Non-specialized wholesale of food, beverages and tobacco	n.a.	0	0
51.421 Wholesale of clothing	0	0	0
51.434 Wholesale of gramophone records, tapes, CD, DVDs and videos	n.a.	n.a.	0
51.460 Wholesale of pharmaceutical goods	n.a.	n.a.	0
51.477 Wholesale of sport goods, games and toys	0	n.a.	n.a.
51.479 Wholesale of household goods and personal goods n.e.c.	n.a.	n.a.	0
51.520 Wholesale of metals and metal ores	n.a.	n.a.	0
51.532 Wholesale of lumber	0	0	0
51.533 Wholesale of paints and varnish	n.a.	n.a.	0
51.539 Wholesale of construction materials n.e.c.	0	n.a.	0
51.561 Wholesale of paper and paperboard	0	n.a.	0
51.840 Wholesale of computers, computer peripheral equipment and software	0	0	0

NACE Code	Zone 2	Zone 3	Zone 4
51.850 Wholesale of other office machinery and equipment	n.a.	n.a.	0
51.872 Wholesale of shipping equipment and fishing tackle	n.a.	n.a.	0
51.900 Other wholesale	0	0	0
52.110 Retail sale in non-specialized stores with food, beverages or tobacco predominating	0/2	0/2	0/2
52.120 Other retail sale in non-specialized stores	0	0/2	0/2
52.220 Retail sale of meat and meat products	0	n.a.	n.a.
52.230 Retail sale of fish, crustaceans and molluscs	n.a.	n.a.	0
52.241 Retail sale of bread, cakes and flour confectionery	0	n.a.	0
52.271 Retail sale of health food	n.a.	n.a.	0
52.279 Retail sale of food, beverages and tobacco in specialised stores n.e.c.	n.a.	n.a.	0
52.310 Dispensing chemists	0	0	0
52.330 Retail sale of cosmetic and toilet articles	n.a.	n.a.	0
52.410 Retail sale of textiles	0	0	0
52.420 Retail sale of clothing	0	0	0/2
52.431 Retail sale of footwear	0	0	0
52.441 Retail sale of lighting equipment	n.a.	n.a.	0
52.442 Retail sale of china and glass ware	n.a.	n.a.	0
52.443 Retail sale of furniture	0	0	0/2
52.449 Retail sale of non electrical household articles n.e.c.	n.a.	0	0
52.451 Retail sale of electrical household appliances, and radio and television goods	0	0	0
52.453 Retail sale of musical instruments and musical notes	n.a.	n.a.	0
52.461 Retail sale of variety of hardware, paints and glass	0/2	0/2	0/2
52.463 Retail sale of paints and varnish	0	0	n.a.
52.464 Retail sale of wood	n.a.	n.a.	0/2
52.469 Retail sale of hardware, paints and glass n.e.c.	n.a.	0	0
52.481 Retail sale of watches, photographic and optical goods	n.a.	0	0
52.482 Retail sale of gold and silver ware	n.a.	0	0
52.483 Retail sale of sport goods, games and toys	n.a.	n.a.	0
52.484 Retail sale of flowers and plants	n.a.	n.a.	0
52.485 Retail sale of computers, office and telecommunication equipment	n.a.	n.a.	0
52.489 Retail sale in specialised stores n.e.c.	n.a.	0	0
52.612 Retail sale of textiles, clothes, footwear, travel accessories and leather goods via mail order houses	0	n.a.	n.a.
52.619 Other retail sale of specialised assortment of goods via mail order houses	0	n.a.	0
52.630 Other non-store retail sale	n.a.	n.a.	0
52.720 Repair of electrical household goods	n.a.	n.a.	0
55.301 Operation of restaurants and cafés	0	0	0
55.302 Operation of snack bars, salad bars and hot dog bars	n.a.	0	0
55.401 Pubs	0	0	0
55.510 Canteens	0	n.a.	0
55.520 Catering	0	n.a.	0
60.220 Taxi operation	n.a.	0	0
63.110 Cargo handling	0	n.a.	0

NACE Code	Zone 2	Zone 3	Zone 4
63.120 Storage and warehousing	n.a.	n.a.	0
63.211 Central agencies for goods and transportation procurement	0	0	0
63.212 Parking places and parking houses	n.a.	n.a.	0
63.213 Toll bar stations	n.a.	n.a.	0
63.219 Other services allied to land transport	0	0	0
63.221 Operation of harbours	n.a.	n.a.	0
63.229 Other supporting water transport activities	n.a.	n.a.	0
63.230 Other supporting air transport activities	0	0	0
63.302 Tourist offices	n.a.	0	0
63.401 Freight forwarding services	0	0	0
63.409 Other forwarding services	n.a.	n.a.	0
64.110 National post activities	0	0	0
64.120 Courier activities other than national post activities	n.a.	0	0
64.210 Fixed telecommunications carriers	0	n.a.	0
64.220 Mobile telecommunications carriers	0	n.a.	0
64.230 Internet service providers	n.a.	n.a.	0
64.240 Other telecommunication activities	n.a.	n.a.	0
65.120 Other monetary intermediation	0	0	0
65.220 Other credit granting	0	n.a.	0
65.239 Other security management	n.a.	n.a.	0
66.010 Life insurance	n.a.	n.a.	0
66.030 Non-life insurance	0	0	0
67.130 Activities auxiliary to financial intermediation	n.a.	n.a.	0
67.200 Activities auxiliary to insurance and pension funding	n.a.	0	0
70.111 House building cooperatives	n.a.	n.a.	0
70.112 Other development and sale of real estate	n.a.	n.a.	0
70.120 Buying and selling of own real estate	n.a.	0	0
70.202 Other letting of own property	0	0	0
70.310 Real estate agencies	n.a.	n.a.	0
70.321 Management of real estate on a fee or contract basis	n.a.	0	0
70.322 Caretaker services	n.a.	n.a.	0
71.110 Renting of automobiles	n.a.	n.a.	0
71.320 Renting of construction and civil engineering machinery and equipment	n.a.	n.a.	0
71.340 Renting of other machinery and equipment n.e.c.	n.a.	n.a.	0
71.400 Renting of personal and household goods n.e.c.	0	n.a.	0
72.500 Maintenance and repair of office, accounting and computing machinery	n.a.	n.a.	0
74.110 Legal activities	n.a.	n.a.	0
74.121 Accounting, book-keeping	0	0	0
74.122 Auditing	0	0	0
74.130 Market research and public opinion polling	n.a.	n.a.	0
74.140 Business and management consultancy activities	0	n.a.	0
74.203 Geological surveying	n.a.	n.a.	0
74.300 Technical testing and analysis	0	0	0
74.400 Advertising	0	n.a.	0
74.501 Labour recruitment of personnel	0	0	0



NACE Code	Zone 2	Zone 3	Zone 4
74.600 Investigation and security activities	0	0	0
74.700 Industrial cleaning	0	0	0
74.810 Photographic activities	n.a.	n.a.	0
74.820 Packaging activities	n.a.	n.a.	0
74.851 Secretarial activities	n.a.	0	0
74.852 Translation activities	n.a.	n.a.	0
74.871 Bill collecting, credit granting activities	n.a.	n.a.	0
74.877 Activities of fairs, exhibitions and congress organisers	n.a.	n.a.	0
74.879 Other business activities n.e.c.	0	0	0
75.110 General (overall) public service activities	0	0	0
75.120 Regulation of the activities of agencies that provide health care, education, cultural services and other social services, excluding social security	0	0	0
75.130 Regulation of and contribution to more efficient operation of business	0	0	0
75.140 Supporting service activities for the government as a whole	0	n.a.	0
75.220 Defence activities	0	0	0
75.230 Justice and judicial activities	0	0	0
75.240 Public security, law and order activities	0	0	0
75.250 Fire service activities	0	0	0
75.300 Compulsory social security activities	0	0	0
80.102 Primary and lower secondary education	0	0	0
80.103 Specialised education for handicap	0	0	0
80.210 General secondary education	0	0	0
80.309 Education at other colleges	n.a.	n.a.	0/2
80.410 Driving school activities	n.a.	n.a.	0
80.421 Folk high school education	0	0	0
80.423 Activities of adult education associations	n.a.	0	0
80.424 Activities of municipal music schools	n.a.	0	0
80.429 Other education	0	0	0
85.114 Rehabilitation institutions	0	0	0
85.116 Mental health hospitals for adults	0	0	n.a.
85.118 Nursing homes	0	0	0
85.121 General practitioners	n.a.	n.a.	0
85.122 Physicians, specialist other than psychiatrist	n.a.	n.a.	0
85.130 Dental practice activities	0	0	0
85.142 Physiotherapy services	n.a.	n.a.	0
85.143 School health services, maternal and child health care	0	n.a.	n.a.
85.144 Other preventive health care	n.a.	0	0
85.147 Ambulance services	0	0	0
85.149 Other health activities	0	0	0
85.200 Veterinary activities	0	0	0
85.311 Child welfare institutions	0	n.a.	n.a.
85.312 Institutions for alcoholic and drug addicts	0	0	0
85.319 Other social care institutions	n.a.	0	0

NACE Code	Zone 2	Zone 3	Zone 4
85.321 Home help services	n.a.	n.a.	0
85.322 Dwellings with accommodation for elderly and disabled	n.a.	n.a.	0
85.323 Child welfare services	0	n.a.	0
85.324 Social welfare services without accommodation for alcoholic and drug addicts	n.a.	0	0
85.325 Family counselling services	n.a.	n.a.	0
85.326 Municipal social service offices activities	n.a.	n.a.	0
85.327 Early childhood education and care institutions	0	0	0
85.331 School-age child care	n.a.	n.a.	0
85.333 Day care activities for elderly and disabled	n.a.	n.a.	0
85.334 Training for work activities for ordinary labour market	0	0	0
85.335 Permanent sheltered work activities	0	0	0
85.336 Social welfare organisations activities	n.a.	n.a.	0
85.337 Reception centres for asylum seekers	0	0	0
85.338 Employment/training for work activities under the municipal health and social departments	0	n.a.	n.a.
85.339 Other social work activities without accommodation	n.a.	0	n.a.
90.010 Collection and treatment of sewage	0	n.a.	0
90.020 Collection and treatment of other waste	0	0	0
91.110 Activities of business and employers organizations	n.a.	0	0
91.200 Activities of trade unions	n.a.	n.a.	0
91.310 Activities of religious organizations	0	0	0
91.330 Activities of other membership organizations n.e.c.	0	n.a.	0
92.110 Motion picture and video production	n.a.	n.a.	0
92.130 Motion picture projection	n.a.	n.a.	0
92.200 Radio and television activities	0	n.a.	0
92.320 Operation of arts facilities	0	n.a.	0
92.330 Fair and amusement park activities	n.a.	n.a.	0
92.400 News agency activities	n.a.	n.a.	0
92.510 Library and archives activities	0	n.a.	0
92.521 Museum activities	0	0	0
92.522 Preservation of historical sites and buildings	n.a.	0	0
92.610 Operation of sports arenas and stadiums	0/2	0	0
92.621 Sport clubs and associations	0	0	0
92.629 Other sporting activities n.e.c.	n.a.	n.a.	0
92.721 Activities and adventure companies	n.a.	0	n.a.
92.729 Other recreational services n.e.c.	0	0	0
93.010 Washing and dry-cleaning of textile and fur products	0	0	0
93.020 Hairdressing and other beauty treatment	n.a.	0	0
93.030 Funeral and related activities	n.a.	n.a.	0
93.040 Physical well-being activities	0	0	0

(<sup>1</sup>) The reference „n.a.“ hereinafter means „not applicable“.

Regarding the sectors marked with the ciphers 0/2, the following criteria have been established in order to differentiate between undertakings not subject to competition from undertakings located in other EEA States and those undertakings which are affected by EEA-wide competition in that only the former are entitled to benefit from reduced social security rates:

— *NACE Code 22.120 and 22.210: publishing and printing of newspapers*

Due to language, culture and distance, the publishing and printing of local newspapers is considered to operate only in local markets. A newspaper is considered local as long as it is not nationwide.

— *NACE 35.111 and 35.113: building and repairing of ships and hulls over 100 tons and under 100 tons*

As long as the repair concerns ships operating in Norwegian waters or in acute difficulties, the given shipyards are considered to operate locally and thus not subject to competition from other EEA States.

— *NACE 51.170: agents involved in the sale of food, beverages and tobacco*

The Norwegian authorities have not provided any further explanation on the eligibility criteria applicable to undertakings of this sector. According to the ECON report, on the basis of the retail shops they distribute, it was not possible to separate enterprises subject to competition from those which are not.

— *NACE 52.110: retail sale in non-specialised stores with food, beverages or tobacco predominating*

Undertakings that are located at a distance of more than 150 kilometres from competitors on the other side of the national border are considered not to be exposed to competition from other EEA States. According to the information submitted by the Norwegian authorities, the use of a critical distance of 150 km was established by identifying the nearest competitors situated on the other side of the border to undertakings with the standard industrial classification 52.110, non specialised retail sales. The competition conditions were considered with respect to undertakings located at varying distances from the nearest competitor on the other side of the border. On the basis of the conclusions of the ECON report, the Norwegian authorities stated that the probability that undertakings situated more than 150 km from a competitor are exposed to competition from undertakings in other EEA states is low. The Norwegian authorities acknowledge that whether there is actual competition depends on the assortment of goods offered.

— *NACE 52.120, 52.420 and 52.443: other retail sale in non-specialised stores, retail sale of clothing and retail sale of furniture*

Although the distance to competitors on the other side of the border is of significance, the Norwegian authorities acknowledge that it is difficult to determine an absolute and decisive limit between undertakings affected by intra-EEA trade and those which are not affected. Whereas undertakings located approximately 200 km from a relatively large shopping centre on the other side of the border are exposed to competition, according to the findings of the ECON report, undertakings located closer to the border, but without having any large shopping centre on the other side, are not exposed to competition. Nevertheless, following the same assessment as for NACE 52.110, the Norwegian authorities have explained in the notification that a distance of 200 km seems an appropriate objective criterion to determine the effect on trade for this sector.

— *NACE 52.461 and 52.464: retail sale of variety of hardware, paints and glass and retail sale of wood*

The Norwegian authorities have explained that undertakings located at „a very long distance to the national border” are not exposed to competition from undertakings of other EEA States. On the basis of the information provided, „a very long distance to the national border” means that it would not be worth traveling back and forth in one day, whereby the distance depends on i.a. the road standard and traffic conditions. Undertakings situated in the counties Rogaland, Hordaland, Sogn og Fjordane and Møre og Romsdal can benefit from reduced social security rates since they are not exposed to competition from other EEA States. Undertakings in other counties are excluded.

— *NACE 80.309: education at other colleges*

The notification only covers adult education courses.

— *NACE 92.610: operation of sports arenas and stadiums*

An athletic club is considered to be local when it does not participate in the highest division in its branch of athletics. Other sports installations are considered to be local when they are mainly used by local clubs, the local population in the municipality and daytrip visitors, having no competitive offers in other EEA States.

## II. APPRECIATION

### 1. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, „*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 (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.*”

By submitting a notification by letter dated 26 April 2004 (Event No 278992) for the scheme of reduced social security rates applicable from 1 January 2005, the Norwegian authorities have complied with the above mentioned notification requirement.

### 2. The presence of State aid

In the notification, the Norwegian authorities claim that the proposed scheme of reduced rates of social security contributions does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement because it does not affect trade between the Contracting Parties to the EEA Agreement.

Article 61(1) of the EEA Agreement reads as follows:

„Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

Thus, in order for a measure to be considered State aid, it must constitute a selective advantage in favour of certain undertakings, be granted through state resources and affect competition and trade between the Contracting Parties to the EEA Agreement. These are cumulative criteria. Accordingly, the failure to fulfil one of them determines that the measure under assessment does not qualify as State aid within the meaning of Article 61(1) of the EEA Agreement.

#### 2.1. State resources

The application of reduced social security contributions represents reduced social security revenues for the State. Whenever the State is foregoing income normally due, there is a consumption of state resources within the meaning of Article 61(1) of the EEA Agreement. Under the notified scheme, the application of reduced rates would diminish the income that the State would receive in the form of social security contributions. This foregone income constitutes state resources.

#### 2.2. Selective advantage

In order to be caught by Article 61(1) of the EEA Agreement, the measure must be selective in that it favours „*certain undertakings or the production of certain goods*”. Moreover, it must confer on certain undertakings an advantage that reduces the costs they normally bear in the course of business and relieves them of charges that are normally borne from their budgets.

Undertakings benefiting from the application of the notified reduced rates of social security contributions are subject to payment of contributions lower than any other undertaking located in Norway subject to the general social security rate of 14,1 %. Instead of paying social security contributions for their employees for an amount equivalent to 14,1 % of their salaries, undertakings active in the selected sectors which are located in Zones 2, 3 and 4 of Norway will, according to the notification, pay contributions corresponding to 10,6 %, 6,4 % and 5,1 % respectively of their employees' salaries.

The favourable rates of social security contributions thus provide a selective advantage to any undertaking active in any of the sectors included in the list above which are located in Zones 2, 3 and 4 in Norway<sup>(1)</sup>.

<sup>(1)</sup> The EFTA Court has already stated in Case E-6/98, *The Government of Norway v EFTA Surveillance Authority*, [1999] Report of the EFTA Court, page 76, paragraph 38, that the application of regional differentiated reduced social security rates confers a selective advantage to certain undertakings which neither derives from the inherent logic of the general system nor results from objective conditions within that general system.

### 2.3. *Distortion of competition*

In order to be caught by Article 61(1) of the EEA Agreement, the measure must distort competition.

A State intervention may distort competition between undertakings of the same sector competing within the national boundaries. Undertakings benefiting from an economic advantage granted by the State which reduces their normal burden of costs are placed in a better competitive position than those who cannot enjoy this advantage.

Social security contributions constitute running or operational costs which undertakings must put up with in the normal course of business. The reduction of such costs in the form of lower social security contributions in favour of certain undertakings located in a number of regions in Norway offers an appreciable advantage to the beneficiaries of that tax concession *vis-à-vis* their competitors. Undertakings other than those to which the measure at issue applies will have to pay their social security contributions on less advantageous terms, subject to full rates. The fact that the social security costs are reduced makes the undertakings more competitive. Lower costs as a result of reduced social security contributions may allow undertakings to charge lower prices for their products. They may also offer better economic conditions for employees than undertakings subject to the full rate of social security contributions.

In the opinion of the Authority, given that the rates applicable to the various zones benefiting from the notified scheme would be different, competition would be distorted not only with respect to undertakings located in areas outside the scheme but also amongst those located within the zones covered by the scheme.

### 2.4. *Effect on trade*

Finally, for Article 61(1) of the EEA Agreement to be applicable, the notified measure must have an effect on trade between the Contracting Parties to the EEA Agreement.

The Norwegian authorities consider that the notified scheme of reduced rates of social security contributions does not qualify as State aid because it will not have an effect on trade within the meaning of Article 61(1) of the EEA Agreement.

The Norwegian authorities have put forward that the potential beneficiaries of the scheme at hand only participate in purely local activities which do not have an effect on trade. They base their assessment on the ECON report on competition interfaces which has identified a list of sectors supposedly not affected by competition from other EEA States. This list has been drafted on the basis of statistical data on export and import to Zones 2, 3 and 4 as well as on telephone interviews with a selection of enterprises in the services sector. Following the explanations provided in the notification, undertakings in the identified sectors are not exposed to intra-EEA trade. Due to the lack of effect on trade, any state financing granted to undertakings in these sectors will not qualify as State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts both with regard to the method of data collection, which does not seem systematic, and to the approach followed to determine the lack of effect on trade between the Contracting Parties to the EEA Agreement.

Furthermore, the ECON report produces only a, although not complete, picture of the *status quo*. It bears no analysis of the future situation. Since trade patterns can change at any time, there is no guarantee that the results of the ECON report, although already questionable now, would also remain valid in the future.

The Authority has even more doubts whether the approach followed in the notified scheme is in line with the interpretation of the EFTA Court and the Community Courts of the criterion „effect on trade” within the meaning of Article 61(1) of the EEA Agreement.

The criterion of „effect on trade” as an element for the application of Article 61(1) of the EEA Agreement has traditionally been broadly interpreted by the case law of the Courts of Justice of the European Communities. Whenever an undertaking is placed in an advantageous position there is a distortion of competition which inextricably leads to an effect on trade<sup>(1)</sup>. Following the case law, this criterion cannot be interpreted in a restricted way to the effect that only aid having a direct effect on trade between EEA States and distorting competition is covered by Article 61(1) of the EEA Agreement<sup>(2)</sup>. In general terms, a measure is considered to be State aid if it is „capable” of affecting trade between the EEA States. An aid may affect trade between EEA States even if the recipient undertaking, which is in competition with undertakings from other EEA States, does not itself participate in cross border activities<sup>(3)</sup>. Where a State grants aid to an undertaking, internal supply may be maintained or increased, with the consequence that the opportunities for undertakings established in other EEA States to offer their services to the market of that State are reduced<sup>(4)</sup>.

<sup>(1)</sup> Case 730/79, *Philip Morris v Commission* [1980] ECR 2671, paragraph 11.

<sup>(2)</sup> Joined Cases T-298/97, T-312/97 e.a., *Alzetta a.o. v Commission* [2000] ECR-2319, paragraphs 76-78.

<sup>(3)</sup> See in this context, Case T-55/99, *CETM v Commission* [2000] ECR II-3207, paragraph 86.

<sup>(4)</sup> Case C-303/88, *Italy v Commission* [1991] ECR I-1433, paragraph 27; Case T-55/99, *CETM v Commission* [2000] ECR II-3207, paragraph 86.

The very circumstances in which the aid has been granted may show whether it is liable to affect trade between EEA States or not <sup>(1)</sup>. The fact that aid is granted in respect of purely local activities or to undertakings operating solely at local level and therefore not in competition with other undertakings in EEA States does not by itself preclude the possibility of an effect on trade <sup>(2)</sup>. The relatively small amount of aid or the relatively small size of the undertakings which receive it do not as such exclude the possibility that intra-EEA trade might be affected <sup>(3)</sup> although it may constitute one of the features to be taken into account for the assessment of whether there is an effect on trade <sup>(4)</sup>. Anyway, no reference is made in the notification to the size of the undertakings which benefit from the application of reduced social security rates.

The Authority has doubts whether the notified scheme provides the necessary mechanisms to guarantee the absence of effect on trade in all instances.

There are no clear criteria for the eligibility of undertakings under the proposed scheme of reduced rates of social security contributions within the sectors identified in the ECON report. As a rule, a general scheme should contain precise and clear criteria to ensure that the Authority has no doubts that the undertakings possibly benefiting from it are also entitled to such aid. Contrary to individual aid awards, a scheme can only be approved in abstract terms whereby it must be ensured that trade is not affected for single undertakings which may benefit from it <sup>(5)</sup>.

Reference should be made to the Authority's Decision of 12 November 2003 <sup>(6)</sup> authorising a transitional period of three years in order to progressively adjust the reduced social security rates applicable to Zones 3 and 4 in Norway to the generally valid rate of 14,1 %. This scheme, from which all undertakings located in Zones 3 and 4 benefit regardless of the sector of activity, was considered to constitute State aid, exception being made of „*de minimis*” aid amounts.

The scheme notified at this time proposes the application of reduced social security rates which vary amongst the three zones. Contrary to the scheme mentioned-above, not all undertakings located in the selected Zones 2, 3 and 4 would benefit from the proposed reduced rates, but only those which operate within a given list of economic sectors.

The scheme covers a very broad and varied spectrum of undertakings <sup>(7)</sup>. It is impossible to ensure that all beneficiaries within each of the 209 notified NACE sectors are not exposed to trade within the meaning of Article 61(1) of the EEA Agreement. Trade would be affected whenever an undertaking would take advantage of its reduced running costs to expand its market outside the Norwegian borders or would carry this advantage over to more competitive pricing which would prevent foreign undertakings from entering the market. The Authority questions whether it is feasible to assure the lack of effect on trade with respect to a scheme which covers such a varied range of undertakings. In this respect, the Norwegian authorities have themselves acknowledged the difficulty of determining clear and absolute limits between the pure local operation of an activity and its operation with a potential effect on trade.

Moreover, in some of the notified sectors, which are characterised by deregulation and liberalisation, it is difficult to demonstrate that any financial intervention from the State in general does not have an effect on trade. In all areas where secondary legislation has been adopted to open and regulate the establishment of the internal market, such as financial services, telecommunications, etc. or in areas which are subject to specific State aid rules, such as shipbuilding, it cannot be taken for granted that the given activity is sheltered from intra-EEA trade.

<sup>(1)</sup> Joined Cases 296 and 318/82, *Netherlands and Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 809.

<sup>(2)</sup> Case C-280/00, *Altmark Trans GmbH a.o v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I (not yet reported).

<sup>(3)</sup> See in this context, *inter alia*, Case C-142/87, *Belgium v Commission* [1990] ECR I-959, paragraph 43; Case T-55/99, *CETM v Commission* [2000] ECR II-3207, paragraph 92 or Case T-214/95, *Vlaams Gewest v Commission* [1998] ECR II-2319, paragraph 85.

<sup>(4)</sup> See in this context, *inter alia*, Commission Decision N711/2001, *United Kingdom — Community Investment Tax Credit*.

<sup>(5)</sup> See in this context, *inter alia*, Case E-6/98 *The Government of Norway v EFTA Surveillance Authority*, [1999] Report of the EFTA Court, page 76, paragraphs 56 and 57 where the EFTA Court stated that, in particular, as far as the rules of a scheme are general and abstract in character, the analysis of the impact on trade of a scheme can only be carried out at a general abstract level whereby the impact of the scheme on a market, sector or specific product does not have to be established.

<sup>(6)</sup> Decision No 218/03/COL.

<sup>(7)</sup> According to the Norwegian authorities, whereas most but not all sectors in manufacturing industry are supposed to be exposed to foreign competition and consequently not supposed to benefit from the currently notified reduced social security rates, 213 branches out of a total of 285 branches in the service sector in Zones 2, 3 and 4 are presumed not to be exposed to foreign competition and thus not to affect trade. In other words, according to the notification, all undertakings in 75 % of all service sectors are not exposed to competition and trade within the EEA.

The Norwegian authorities have not explained in the notification why some sectors are exposed or partially exposed to competition in certain areas but not in others. This is for instance the case of retail sale in non-specialised stores (NACE 52.120), retail sale of clothing (NACE 52.420) or retail sale of furniture (NACE 52.443). According to the notification, undertakings active in these sectors and located in Zones 2 and 3 are not subject to EEA-wide trade while they are partially exposed if they are located in Zone 4.

The same differentiation can be found in the notification in sectors which are not supposed to be exposed to intra-EEA trade in some areas and accordingly are subject to the notification in one of the zones whereas they are not notified in others. By way of example, this is the case of wholesale of household goods (NACE 51.479) or renting of automobiles (NACE 71.110) amongst others.

The ECON report, on the basis of which the notified social security scheme has been prepared, follows a sectoral approach. Therefore, it seems inconsistent not to include in the notification all sectors identified in the report as supposedly not being exposed to intra-EEA trade in all three areas covered by the scheme.

The scheme of regionally differentiated social security rates as it has been notified does not contain any general safeguards to ensure the necessary legal and economic certainty in its application concerning the effect on trade.

Furthermore, the scheme is unlimited in time and does not provide for a review clause of the criteria and conditions of application.

Under these circumstances, the Authority has serious doubts whether the effect on trade can automatically be excluded with respect to all potential beneficiaries of reduced rates of social security contributions.

#### 2.5. Conclusion

In view of the foregoing, the Authority cannot exclude that the proposed regionally differentiated social security rates might affect trade between the Contracting Parties to the EEA Agreement.

For these reasons, the Authority has serious doubts about the classification of the notified scheme as a non-aid measure falling outside the scope of Article 61(1) of the EEA Agreement.

### 3. Compatibility of the aid

Should the measure constitute State aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has doubts regarding its compatibility with the rules of the EEA Agreement.

The Norwegian authorities have argued that the measure at issue does not constitute State aid. Therefore, they have not put forward any arguments concerning its compatibility. However, after assessing the likely involvement of State aid, it has to be considered whether such aid could be compatible on the basis of Article 61(2) and (3) of the EEA Agreement.

The Authority is of the opinion that none of the derogations mentioned in Article 61(2) of the EEA Agreement can be applied to the case at hand.

The Authority has doubts whether the system of reduced rates of social security contributions can be considered compatible on the basis of Article 61(3) of the EEA Agreement. A reduction in the running costs of an undertaking such as the social security contributions constitutes operating aid. Such aid, given to undertakings in certain regions, is normally prohibited.

The application of reduced rates of social security contributions cannot be considered within the framework of Article 61(3)(a) of the EEA Agreement since none of the Norwegian regions qualify for this provision which requires an abnormally low standard of living or serious underemployment. Furthermore, the aid granted in the form of reduced rates of social security contributions does not satisfy the requirements laid down in the regional aid guidelines.

The reduced rates of social security contributions do not seem to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a State, as it is requested for compatibility on the basis of Article 61(3)(b) of the EEA Agreement.

Concerning Article 61(3)(c) of the EEA Agreement, in its Decision No 218/03/COL of 12 November 2003, with regard to State aid in the form of regionally differentiated social security contributions, the Authority considered that a continuation of the Norwegian scheme would be incompatible with Article 61(3)(c) of the EEA Agreement and the State Aid Guidelines. However, the Authority deemed a transitional period to be necessary for Zones 3 and 4 to dampen the shock effects that would follow from an immediate application of the full social security tax rates. A period of three years was considered appropriate on the basis of the information provided by the Norwegian authorities, which demonstrated that undertakings would need three years to adjust to the new economic reality.

For undertakings located in Zones 2, 3 and 4 which are active in the sectors listed in the notification, the notified measure implies a return to the rules which were declared incompatible aid by the Authority in 2002 for not qualifying for a derogation under Article 61(3)(c) of the EEA Agreement. The fundamental features of the notified scheme are the same as the ones of the scheme subject to the prior decision of the Authority mentioned above with the difference of the sectoral scope of application of the notified measure which is limited to undertakings active in a given list of sectors. Consequently, there is a negative presumption regarding the compatibility of the notified measure with the State aid rules of the EEA Agreement.

On the basis of the information currently available to it, the Authority is not in a position to declare the reduced rates of social security contributions regarding all sectors included in the notified list which are located in Zones 2, 3 and 4 in Norway to be compatible with the EEA Agreement.

#### 4. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude that the notified measure involves aid within the meaning of Article 61(1) of the EEA Agreement.

Furthermore, the Authority has doubts that the measure can be declared compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement.

Consequently, and in accordance with Article 4(4) in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, requests Norway to submit its comments and to provide all such information as may help to assess the aid scheme notified, within one month of the date of receipt of this Decision.

The Norwegian authorities are reminded not to put the proposed measure into effect,

HAS ADOPTED THIS DECISION:

1. The Authority has decided to open the formal investigation procedure pursuant to Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement regarding the notified scheme of reduced rates of social security contributions in Zones 2, 3 and 4 in Norway.
2. The Norwegian Government is invited, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit its comments on the opening of the formal investigation procedure within one month from the notification of this Decision.
3. Other Contracting Parties to the EEA Agreement and interested parties shall be informed by the publishing of this Decision in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication of this Decision.
4. This Decision is authentic in the English language.

Done at Brussels, 6 October 2004.

For the EFTA Surveillance Authority

Hannes HAFSTEIN  
President

Einar M. BULL  
College Member



## ANNEX

**Geographical zones and 2003 tax rates***Zone I: 14,1 per cent tax*

This zone includes all municipalities not mentioned below under zone II-V.

*Zone II: 10,6 per cent tax*

This zone includes:

- in Nord-Trøndelag county, the municipalities of Meråker, Frosta, Leksvik, Mosvik, Verran,
- in Sør-Trøndelag county, the municipalities of Ørland, Agdenes, Rissa, Bjugn, Rennebu, Meldal, Midtre Gauldal, Selbu,
- in Møre og Romsdal county, the municipalities of Vanylven, Sande, Herøy, Norddal, Stranda, Stordal, Rauma, Nesset, Midsund, Sandøy, Gjemnes, Tingvoll, Sunndal, Haram, Aukra, Eide,
- in Sogn og Fjordane county, all municipalities,
- in Hordaland county, the municipalities of Etne, Ølen, Tysnes, Kvinnherad, Jondal, Odda, Ullensvang, Eidfjord, Ulvik, Granvin, Kvam, Modalen, Fedje, Masfjorden, Bømlo,
- in Rogaland county, the municipalities of Hjelmeland, Suldal, Sauda, Kvitsøy, Utsira, Vindafjord, Finnøy,
- in Vest-Agder county, the municipalities of Åseral, Audnedal, Hægebostad, Sirdal,
- in Aust-Agder county, the municipalities of Gjerstad, Vegårshei, Åmli, Iveland, Evje og Hornnes, Bygland, Valle, Bykle,
- in Telemark county, the municipalities of Drangedal, Tinn, Hjartdal, Seljord, Kviteseid, Nissedal, Fyresdal, Tokke, Vinje, Nome,
- in Buskerud county, the municipalities of Flå, Nes, Gol, Hemsedal, Ål, Hol, Sigdal, Rollag, Nore and Uvdal,
- in Oppland county, the municipalities of Nord-Fron, Sør-Fron, Ringebu, Gausdal, Søndre Land, Nordre Land,
- in Hedmark county, the municipalities of Nord-Odal, Eidskog, Grue, Åsnes, Våler, Trysil, Åmot.

*Zone III: 6,4 per cent tax*

This zone includes:

- in Nord-Trøndelag county, the municipality of Snåsa,
- in Sør-Trøndelag county, the municipalities of Hemne, Snillfjord, Oppdal, Røros, Holtålen, Tydal,
- in Oppland county, the municipalities of Dovre, Lesja, Skjåk, Lom, Vågå, Sel, Sør-Aurdal, Etnedal, Nord-Aurdal, Vestre Slidre, Øystre Slidre, Vang,
- in Hedmark county, the municipalities of Stor-Elvdal, Rendalen, Engerdal, Tolga, Tynset, Alvdal, Folldal, Os.

*Zone IV: 5,1 per cent tax*

This zone includes:

- in Troms county, municipalities not included among those listed below under zone V,
- in Nordland county, all municipalities,
- in Nord-Trøndelag county, the municipalities of Namsos, Namdalseid, Lierne, Røyrvik, Namsskogan, Grong, Høylandet, Overhalla, Fosnes, Flatanger, Vikna, Nærøy, Leka,
- in Sør-Trøndelag county, the municipalities of Hitra, Frøya, Åfjord, Roan, Osen,
- in Møre og Romsdal county, the municipality of Smøla.

*Zone V: 0 per cent tax*

This zone includes:

- in Finnmark county, all municipalities,
- in Troms county, the municipalities of Karlsøy, Lyngen, Storfjord, Kåfjord, Skjervøy, Nordreisa and Kvænangen.