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Case No: 92189  
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Decision No 084/24/COL

Ministry of Trade, Industry and Fisheries  
P.O. Box 8090 Dep  
0032 Oslo  
Norway

**Subject: Prolongation of the temporary NOx tax exemption**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the prolongation of the temporary exemption from tax on emissions of nitrogen oxides (“NOx”) for undertakings encompassed by an environmental agreement with the Norwegian State (“the measure”), it considers that it constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections<sup>1</sup> to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the prolongation of the NOx tax exemption on 16 May 2024.<sup>2</sup>

## 3 Description of the measure

### 3.1 Introduction

- (3) The measure grants undertakings an exemption from NOx tax, where they have affiliated themselves with the environmental agreement between 15 business organisations and the Norwegian State, under which the business organisations commit themselves collectively to reduce NOx emissions in accordance with a predetermined environmental target.
- (4) The tax on NOx emissions was introduced in Norway in 2007. For 2024, the NOx tax rate is 25.59 NOK per kilogram of emissions.
- (5) The notified measure is a prolongation of a NOx tax exemption scheme (“the scheme”) that was authorised by the Authority for the period 2011-2017<sup>3</sup> and

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<sup>1</sup> Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>2</sup> The cover letter is filed as Document No 1456841. The notification memorandum, with 11 appendixes, is filed as Document Nos 1456843, 1456847, 1456849, 1456845, 1456831, 1456827, 1456829, 1456837, 1456833, 1456839, 1456835, 1456825. In the following, the notification memorandum is referred to as “the notification”.

<sup>3</sup> Decision No 144/11/COL. Norway also had an approved NOx tax exemption for the period 2008-2010, approved by ESA Decision No 501/08/COL.

subsequently for the period 2018-2025.<sup>4</sup> The measure prolongs the NOx tax exemption scheme until the end of 2027.

- (6) The Norwegian authorities consider that the measure should be declared compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in conjunction with the Guidelines on State aid for climate, environmental protection and energy (“the CEEAG”).<sup>5</sup>

### 3.2 Objective

- (7) The objective pursued by the scheme is environmental protection in the form of reductions in NOx emissions, which will contribute to fulfilling Norway’s obligations set by the Gothenburg Protocol<sup>6</sup> and Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants (“the NEC Directive”).<sup>7</sup>
- (8) Specifically, the final biennial emission ceiling (2026-2027), as set out by the environmental agreement, is set at a total of 161,000 tonnes NOx (80,500 tonnes per annum), in accordance with Norway’s obligations under the NEC Directive.<sup>8</sup>
- (9) The scheme offers incentives for investments in emission abatement measures, operational changes, adjustments at the production level and the transition to more sustainable economic activities. The scheme is therefore directed towards a broad range of economic activities, within different industries and sectors of the economy.

### 3.3 National legal basis

- (10) The principal legal basis for the scheme is the annual Parliamentary Resolution. The resolution establishes, amongst other things, the NOx tax rate, which sources of NOx emissions are taxable, and the exemptions from the NOx tax.
- (11) The NOx tax exemption for 2024 is laid down in Parliamentary Resolution of 14 December 2023, under the headline “Tax on NOx emissions”:<sup>9</sup>

“An exemption is made on the excise duty for emissions of NOx for: [...] d) emission units covered by an environmental agreement with the Norwegian Government on reduction of NOx emissions.

The Ministry may regulate the implementation, limitations and conditions for the exemptions.”

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<sup>4</sup> Decision No 027/18/COL.

<sup>5</sup> OJ L 277, 27.10.2022, p. 218.

<sup>6</sup> Protocol to Abate Acidification, Eutrophication and ground-level Ozone of 30 November 1999 to the Convention on Long-Range Transboundary Air Pollution of 13 November 1979 (“the Gothenburg Protocol”).

<sup>7</sup> Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, OJ L 309, 27.11.2001, p. 22, referred to in point 21ar in Annex XX to the EEA Agreement, see [EEA Joint Committee Decision No 149/2009 of 4 December 2009](#), published in the OJ L 62, 11.3.2010, p. 49 and EEA Supplement No 12, 11.3.2010, p. 48.

<sup>8</sup> Article B of the Supplementary Agreement for the period 2026-2027 to the NOx Agreement 2018-2025.

<sup>9</sup> In Norwegian: “Avgift på utslipp av NOx”. Available at: <https://lovdata.no/dokument/STV/forskrift/2023-12-14-2075/>.

- (12) The NOx tax and its exemptions are regulated in more detail in section 3-19 of [the Regulation on excise duties](#).<sup>10</sup>

### **3.4 The NOx Agreement and ancillary agreements**

#### *3.4.1 Introduction*

- (13) The main framework of the scheme is based on three agreements: The Environmental Agreement concerning the reduction of NOx emissions for the period 2018-2025 (“the NOx Agreement 2018-2025”) of 24 May 2017; the Supplementary Agreement for the period 2026-2027 to the NOx Agreement 2018-2025 (“the Supplementary Agreement”) of 5 May 2022; and the Participant Agreement to the Supplementary Agreement (“the Participant Agreement”).

#### *3.4.2 The NOx Agreement*

- (14) The NOx Agreement 2018-2025 is an environmental agreement between 15 business organisations representing undertakings emitting NOx, and the Ministry of Climate and Environment (“the Ministry”) to reduce NOx emissions for the relevant period. The NOx Agreement 2018-2025 establishes a collective obligation on the business organisations to reduce total emissions of NOx from sources specified in Article 2.1 and in accordance with biennial emission ceilings specified in Article 2.2. Individual undertakings are exempted from the NOx tax, provided that they affiliate themselves with the NOx Agreement 2018-2025 by entering into the Participant Agreement.
- (15) As an instrument to facilitate the implementation of NOx emission reductions, the business organisations have set up and are responsible for the operation of the Business Sectors NOx Fund (“the NOx fund”). The purpose of the NOx fund is to finance the implementation of NOx emission abatement measures.<sup>11</sup> The operation of the NOx fund is governed by the NOx Agreement 2018-2025, the Participant Agreement and the statutes of the NOx fund. By affiliating themselves with the NOx Agreement 2018-2025, the undertakings are committed to pay contributions to the NOx fund based on their amount of NOx emissions.<sup>12</sup> Consequently, all participating undertakings contribute to the financing of emission abatement measures. The payment rate per kilogram of NOx emissions is determined by the Board of the NOx fund.<sup>13</sup>
- (16) Payment to the NOx fund is determined based on the need for financial support to undertakings that are expected to invest in NOx emission abatement measures. In other words, the total payment to the NOx fund is determined by the efforts needed to comply with the biennial emission ceilings.
- (17) In the event that the total NOx emissions exceed a biennial emission ceiling by more than 3%, the exempted undertakings are subject to a fee pursuant to section 3-19-12 of the Regulation on excise duties (“the NOx fee”).<sup>14</sup> In the event that the

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<sup>10</sup> In Norwegian: “Forskrift om særavgifter”. The Regulation is provided on the basis of [the Act on excise duties](#).

<sup>11</sup> Article 2.4 of the NOx Agreement 2018-2025.

<sup>12</sup> Article 3 of the Participant Agreement.

<sup>13</sup> Article 3 of the Participant Agreement.

<sup>14</sup> Article 5.4 of the NOx Agreement 2018-2025. There is a collective breach when the total NOx emissions exceed a biennial emission ceiling.

total NOx emissions exceed the emission ceiling in the final biennial period (2026-2027), the NOx fee pursuant to section 3-19-12 is activated.<sup>15</sup>

- (18) Where there is a breach of a biennial emission ceiling as described in the previous paragraph, the NOx fee is calculated by the following formula:<sup>16</sup>

$$\text{NOx fee} = 15 * X * Y.$$

Where X is the size of the breach of the emission ceiling (in percentage), and Y is the NOx tax rate as it is decided in the annual Parliamentary Resolution.

To illustrate, where the collective NOx emissions amount to a 4% breach of a biennial emission ceiling, the individual undertaking affiliated with the Environmental Agreement will be obliged to pay 60% of the ordinary NOx tax for its emissions for each of the two years.

### 3.4.3 The Supplementary Agreement 2026-2027

- (19) The notified prolongation is based on the conclusion of a Supplementary Agreement between the 15 business organisations, representing undertakings emitting NOx, and the Ministry, to extend the duration of the Environmental Agreement by two years. The Environmental Agreement, and thereby the aid scheme, will consequently extend to the years 2026 and 2027.
- (20) The Supplementary Agreement prolongs the Environmental Agreement, including its fundamental principles and main rights and obligations. While retaining the biennial emission ceilings for the period 2018-2025, the Supplementary Agreement also provides a new and tightened emission ceiling for the years 2026-2027.<sup>17</sup> More specifically, the emission ceiling for the last biennial period is a total of 161,000 tonnes NOx emissions (80,500 tonnes/year on average).

### 3.5 Aid granting authority

- (21) The aid granting authority is the Norwegian Ministry of Climate and Environment.

### 3.6 Beneficiaries

- (22) Individual undertakings are granted full exemption from NOx tax, provided that they affiliate themselves with the NOx Agreement 2018-2025 through a Participant Agreement.<sup>18</sup> Any undertaking that is responsible for NOx emissions that is subject to NOx tax may enter into the Participant Agreement, and thereby receive the NOx tax exemption.<sup>19</sup>
- (23) Furthermore, the Norwegian authorities have committed to respecting the condition in point 14 of the CEEAG that aid cannot be awarded to undertakings in

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<sup>15</sup> Article 5.4 of the NOx Agreement 2018-2025.

<sup>16</sup> Article 5.4 of the NOx Agreement 2018-2025.

<sup>17</sup> Article B of the Supplementary Agreement.

<sup>18</sup> Article 5.2 of the NOx Agreement 2018-2025.

<sup>19</sup> Article 5.1 in conjunction with Article 2.1 of the NOx Agreement 2018-2025. An exemption is made for state enterprises that are financed by the state budget, cf. Article 2.1(1) of the NOx Agreement 2018-2025.

difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.<sup>20</sup>

### 3.7 Aid instrument

- (24) The aid is in the form of a full exemption from paying the NOx tax.

### 3.8 Budget and duration

- (25) The measure covers the period 2026-2027 and has an estimated overall budget of around NOK 3640 million, based on the estimated total reduction in tax revenue for the two years.

## 4 Presence of State aid

- (26) 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.”
- (27) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (28) By its Decision No 027/18/COL (“2018 approval decision”)<sup>21</sup> ESA concluded that the existing scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.<sup>22</sup> The changes introduced by the notified measure, i.e. the prolongation of the temporary NOx tax exemption, do not alter ESA’s conclusion in this regard. Consequently, the measure constitutes State aid pursuant to Article 61(1) of the EEA Agreement.

## 5 Aid scheme or individual aid

- (29) The legal basis of the measure is an act which does not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner. The aid is therefore granted on the basis of an aid scheme.

## 6 Lawfulness of the aid

- (30) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”): “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.”

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<sup>20</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015, p. 1). The consolidated Guidelines are [available electronically on ESA’s webpage](#). See the notification p. 3.

<sup>21</sup> See para. 5 above and footnote 4.

<sup>22</sup> Decision No 027/18/COL, paras. 25-43.

- (31) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## **7 Compatibility of the aid**

### **7.1 Compatibility on the basis of Article 61(3)(c) of the EEA Agreement in conjunction with the CEEAG**

- (32) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement. The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measure.
- (33) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “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”. Therefore, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.<sup>23</sup>
- (34) Under the first condition, ESA examines how the aid facilitates the development of certain economic activities or areas. Under the second condition, ESA weighs up the positive effects of the aid for the development of said activities or areas and the negative effects of the aid in terms of distortions of competition and adverse effects on trade.
- (35) In the CEEAG, ESA has set out conditions according to which aid measures in respect of environmental protection and energy will be declared compatible with the EEA Agreement on the basis of its Article 61(3)(c). Therefore, where an EEA EFTA State has demonstrated that an aid measure fulfils the applicable conditions in CEEAG, ESA will approve the measure in question.

### **7.2 Facilitation of development of certain economic activities or areas**

#### *7.2.1 Economic activities supported*

- (36) Under Article 61(3)(c) of the EEA Agreement, in order to be considered compatible, the measure must contribute to the development of certain economic activities or areas.
- (37) Aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned.<sup>24</sup> The aid can also ensure that the activity can continue in the future without creating disproportionate environmental damage and by supporting the creation of new economic activities and services (supporting the development of the “green economy”).<sup>25</sup>

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<sup>23</sup> Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paras. 18–20.

<sup>24</sup> CEEAG, point 24.

<sup>25</sup> CEEAG, point 24.

- (38) Furthermore, the EEA EFTA State must describe how the aid will contribute to the achievement of objectives of EEA climate policy, environmental policy or energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market.<sup>26</sup>
- (39) As explained by the Norwegian authorities, the NOx tax exemption, along with the NOx Agreement 2018-2025 and the Supplementary Agreement, facilitates the development of economic activities in the form of incentivizing investments in new emission abatement measures, operational changes, adjustments at the production level and other transitions to less NOx polluting economic activities. The scheme thereby facilitates an increase of the sustainability of the economic activities concerned, and the scheme will most likely have a material contribution to environmental protection.
- (40) Furthermore, in relation to aid in the form of reductions in environmental taxes, the CEEAG stipulates that such reductions may be needed where the beneficiaries would otherwise be placed at such a competitive disadvantage that it would not be feasible to introduce the environmental tax in the first place.<sup>27</sup> Where this is the case, granting a more favourable treatment to some undertakings may allow to achieve a higher general level of contribution to the environmental taxes. However, the reductions shall not undermine the overall objective of the environmental tax to discourage environmentally harmful behaviour and/or increase the cost of such behaviour where satisfactory alternatives are not available.<sup>28</sup>
- (41) Following this, ESA will, in accordance with point 295 of the CEEAG, consider that environmental tax reductions may be granted if: (a) the reductions are targeted at the undertakings most affected by the environmental tax that would not be able to pursue their economic activities in a sustainable manner without the reduction; and (b) the level of environmental protection actually achieved by implementing the reductions are higher than the one that would be achieved without the implementation of these reductions.
- (42) To demonstrate that the conditions in point 295 of the CEEAG are fulfilled, the Norwegian authorities have provided ESA with the information as set out by point 296 of the CEEAG.<sup>29</sup> Furthermore, as held by ESA in its 2018 approval decision, the NOx tax exemption scheme encourages well targeted undertakings in the sectors concerned by the NOx Agreement 2018-2025 to combine their financial resources, enabling them to implement measures that they could less easily afford on their own.<sup>30</sup> As a result, the scheme facilitates for a direct and long-term reduction of NOx emissions, which likely would not have been achieved in the absence of the scheme.
- (43) In view of the above, ESA considers that the NOx tax exemption scheme constitutes aid to facilitate the development of certain economic activities, as required by Article 61(3)(c) of the EEA Agreement.

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<sup>26</sup> CEEAG, point 25.

<sup>27</sup> CEEAG, points 293 and 295. The notion of “environmental tax” is defined in point 19(40) of the CEEAG.

<sup>28</sup> CEEAG, point 294.

<sup>29</sup> Document No 1456835 and the notification, p. 11 *et seq.*

<sup>30</sup> Decision No 027/18/COL, para. 55.

### 7.2.2 Incentive effect

- (44) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect and so effectively facilitates the development of certain economic activities. To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertakings concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner.
- (45) In addition, ESA will consider that the aid does not have an incentive effect for the beneficiary in cases where the start of works on the project or activity took place prior to a written aid application by the beneficiary.<sup>31</sup>
- (46) In this context, ESA considers that the NOx tax exemption scheme changes the behaviour of the undertakings concerned, compared to what would be the case without the aid scheme. Considering that NOx emission reducing measures can involve a considerable financial and operational risk, the NOx Agreement 2018-2025 and the ancillary NOx fund enable the undertakings to combine their financial resources, and consequently enable the undertakings to implement emission abatement measures to a larger extent than what the NOx tax itself would provide as an incentive.
- (47) In addition, the Norwegian authorities have confirmed that the NOx tax exemption scheme will not support activities that have started before the signing of the Participant Agreement.
- (48) In view of the above, ESA considers that in the absence of the notified measure, the NOx emission abatement measures would not have taken place to the same extent, and consequently the development of the economic activities would not have been facilitated. Therefore, the aid measure has an incentive effect.

### 7.2.3 The measure complies with relevant EEA law

- (49) If a State aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the state aid measure), or the activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.<sup>32</sup>
- (50) On the basis of the information submitted by the Norwegian authorities, ESA has no indications that the measure, the conditions attached to it, or the activity it finances entail a violation of relevant EEA law.

## 7.3 Whether the aid adversely affects trading conditions to an extent contrary to the common interest

### 7.3.1 Introduction

- (51) ESA has not only identified positive effects of the planned aid for the development of the abovementioned economic activities and economic areas, but also possible negative effects that it may have in terms of distortions of competition and

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<sup>31</sup> CEEAG, point 29.

<sup>32</sup> Judgment of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, para. 78; Judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paras. 94–116; Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, para. 44; Judgment of 14 October 2010, *Nuova Agricast*, C-390/06, EU:C:2008:224, paras. 51–51.



adverse effects on trade. These positive and negative effects must then be weighed up.

- (52) The NOx tax exemption is in principle available to all undertakings subject to the NOx tax. Consequently, the scheme may affect markets within different sectors: Oil and gas extraction, inland water transport, air transport, railway transport, mining, manufacturing and other industries.
- (53) Meanwhile, as explained by the Norwegian authorities, the aid scheme is likely to induce greater reductions in NOx emissions, as compared to a counterfactual NOx tax scheme that does not open for the possibility of a tax exemption. More specifically, the scheme offers the possibility to reduce emissions at lower financial risk for individual undertakings, which consequently will provide for a higher level of environmental protection.
- (54) Against this background, ESA will in the following demonstrate that the aid does not adversely affect trading conditions to an extent contrary to the common interest, and that the positive effects of the measure outweigh possible distortions of competition and impact on trade.

### *7.3.2 No adverse affect on trading conditions to an extent contrary to the common interest*

#### 7.3.2.1 Introduction

- (55) Article 61(3)(c) of the EEA Agreement requires an assessment of any negative effects on competition and on trade. The aid must not adversely affect trading conditions to an extent contrary to the common interest. As set out below, ESA has concluded that the NOx tax exemption scheme is both necessary, appropriate, and proportionate in accordance with the CEEAG.

#### 7.3.2.2 Necessity of the aid

- (56) A State aid measure is necessary if it is targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself. However, the mere existence of market failures is not sufficient to prove the necessity of State aid. ESA will consider that the aid is necessary if it is demonstrated that the aid effectively targets market failures that are unaddressed by other policies and measures, also taking into account any other policies and measures already in place to address the market failures identified.<sup>33</sup>
- (57) Furthermore, the EEA EFTA State must demonstrate that the project, or in the case of schemes, the reference project, would not be carried out without the aid.<sup>34</sup>
- (58) Finally, in respect of aid in the form of exemptions from environmental taxes, ESA will consider that the aid is necessary if the following cumulative conditions, as set out in point 302 of the CEEAG, are fulfilled:
- a) the selection of beneficiaries is based on objective and transparent criteria, and the aid is granted in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure;

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<sup>33</sup> CEEAG, points 35-36.

<sup>34</sup> CEEAG, point 38.

- b) the environmental tax or parafiscal levy without the reduction would lead to a substantial increase in production costs, calculated as a proportion of the gross value added for each sector or category of beneficiaries;
  - c) the substantial increase in production costs could not be passed on to customers without leading to significant reductions of sales volumes.
- (59) Regarding the market failure addressed by the notified scheme, ESA notes that NOx emissions cause harmful effects on people's health and ecosystems and thus entail socioeconomic costs. These are negative externalities that undertakings may have insufficient incentives to take into account when deciding on a particular production technology or production level. The NOx tax provides an incentive for those undertakings to reduce NOx emissions. For most of them, the NOx tax would lead to a substantial increase in production costs, which could not easily be passed on to the end consumers.
- (60) Following this, investing in effective NOx emission reduction measures can involve a considerable financial and operational risk, in particular for small enterprises. Thus, the NOx tax itself is not considered sufficient to trigger the necessary investments in abatement measures to reach the emission reduction targets, as the costs of abatement measures are higher than any potential savings resulting from the reduced NOx emissions. The NOx tax exemption scheme induces undertakings to combine their financial resources, in order to implement measures to a larger extent than what they would have done under the NOx tax system alone, and to a larger extent than what each individual undertaking would be able to finance.
- (61) In this context, the Norwegian authorities have provided ESA with information substantiating that the reference projects, i.e. representative investment scenarios in a counterfactual situation where the NOx tax is implemented without exemptions, would not be carried out.<sup>35</sup> Following this, the Norwegian authorities have demonstrated that the reference project would not be carried out without the aid scheme.
- (62) As regards the first condition in point 302 of the CEEAG, undertakings emitting NOx may benefit in the same manner from the exemption if they enter into a collective agreement with the State and meet the biennial emission ceilings set out therein. ESA is also of the view that the selection of the beneficiaries is based on objective and transparent criteria, as all undertakings subject to the NOx tax are in principle eligible to affiliate themselves with the NOx Agreement 2018-2025, and thereby benefit from the NOx tax exemption.
- (63) In respect of the second condition in point 302 of the CEEAG, the Norwegian authorities have submitted that without the tax exemption, the NOx tax would lead to substantial increases in production costs for undertakings in the majority of sectors affected by the tax. On this basis, ESA considers that the NOx tax exemption scheme provides significant financial savings to the affiliated undertakings, as the NOx tax in itself would significantly affect the relevant sectors.

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<sup>35</sup> The notification, pp. 15-16.

(64) Finally, in respect of the third condition in point 302 of the CEEAG, the Norwegian authorities have explained that undertakings within a wide range of sectors are not in a position to independently set the prices of their products, as they are effectively price takers on international markets.<sup>36</sup> As a consequence, many undertakings subject to NOx tax are not in a position to pass the increased cost on to the consumer, as even a small increase in price would materially reduce the demand. In light of the foregoing considerations, ESA considers that the third condition in point 302 of the CEEAG is fulfilled.

(65) Based on the above considerations, ESA concludes that the NOx tax exemption scheme is necessary for inducing investments in NOx emission abatement measures.

#### 7.3.2.3 Appropriateness of the aid

(66) EEA EFTA States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 61(1) of the EEA Agreement can only be justified by the appropriateness of a particular instrument to contribute to the development of the targeted economic activities or areas.

(67) ESA normally considers that a measure is an appropriate instrument where the EEA EFTA State can demonstrate that alternative policy options would not be equally suitable to contribute to the development of economic activities or areas and where it can demonstrate that alternative, less distortive, aid instruments would not deliver equally efficient outcomes.<sup>37</sup>

(68) The Norwegian authorities have considered other policy measures, such as setting unilateral emission standards for ships operating in Norwegian territorial waters, setting stricter emission standards for certain industrial sources, and introducing an emission trading system for NOx across emitting sectors. In addition, the Norwegian authorities have considered maintaining the NOx tax without providing the possibility of exempting undertakings. These alternative measures are considered to not be able to reduce the annual NOx emissions to the same degree as the notified scheme.

(69) In particular, the Norwegian authorities have concluded that a possible emission trading system likely will not function because of the existence of large NOx emitting enterprises and the risk of market power being exercised by price makers.<sup>38</sup>

(70) Furthermore, the Norwegian authorities have explained that maintaining the NOx tax without providing the possibility of exempting undertakings, likely would not provide effective NOx emission reductions, unless the NOx tax rate was increased substantially.<sup>39</sup> In this context, as mentioned in paragraph 64 above, NOx emitting undertakings would likely not be able to pass such an increase in costs on to the consumer, without necessarily providing equally efficient reductions in NOx emissions.

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<sup>36</sup> The notification, p. 13.

<sup>37</sup> CEEAG, points 39-46 and 304-306.

<sup>38</sup> The notification, p. 17.

<sup>39</sup> The notification, p. 17-18.

(71) In light of the foregoing considerations, ESA considers that there are no alternative policy options that would be equally suitable to contribute to the development of the relevant economic activities, and that alternative, less distortive, aid instruments would not deliver equally efficient outcomes.<sup>40</sup>

#### 7.3.2.4 Proportionality of the aid

(72) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.

(73) In respect of environmental tax reductions, ESA will, in accordance with point 308 of the CEEAG, consider the aid to be proportionate if at least one of the following conditions are fulfilled:

- a) each aid beneficiary pays at least 20% of the nominal amount of the environmental tax or parafiscal levy that would otherwise be applicable to that beneficiary in the absence of the reduction;
- b) the tax or levy reduction does not exceed 100% of the national environmental tax or parafiscal levy and is conditional on the conclusion of agreements between the EEA EFTA State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve environmental protection objectives which have the same effect as if beneficiaries or associations of beneficiaries paid at least 20% of the national tax or levy. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions and other pollutants, or any other environmental protection measure.

(74) In accordance with point 309 of the CEEAG, agreements as mentioned in point 308(b) of the CEEAG must fulfil the following cumulative conditions:

- a) the substance of the agreements is negotiated by the EEA EFTA State, specifies the targets and fixes a time schedule for reaching the targets;
- b) the EEA EFTA State ensures independent and regular monitoring of the commitments in the agreements;
- c) the agreements are revised periodically in the light of technological and other developments and provide for effective penalties in the event that the commitments are not met.

(75) Concerning the conditions under point 308(b) of the CEEAG, the NO<sub>x</sub> tax exemption does not exceed 100% of the NO<sub>x</sub> tax, and the exemption is not granted unless the beneficiaries have committed themselves to the collective environmental objectives by affiliating themselves with the NO<sub>x</sub> Agreement 2018-2025. Furthermore, as explained by the Norwegian authorities, the obligations set out in the NO<sub>x</sub> Agreement are expected to result in reductions in NO<sub>x</sub> emissions that exceed the effect of paying 20% of the NO<sub>x</sub> tax.

(76) In respect of the conditions set out by point 309(a) of the CEEAG, the substance of the NO<sub>x</sub> Agreement has been negotiated by the Norwegian authorities, and the

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<sup>40</sup> The objectives of the scheme are further set out in chapter 3.2 above.

NOx Agreement 2018-2025 specifies both the emission ceilings and the time limit for when the annual total emissions shall be below the biennial thresholds.

- (77) In addition, and in accordance with point 309(b) of the CEEAG, the NOx Agreement 2018-2025 imposes biennial reporting obligations in the form of statements to be provided by the business organisations on a biennial preliminary assessment by the Norwegian Environmental Agency as to whether the environmental obligations determined in Article 2.2 of the Agreement have been complied with.<sup>41</sup>
- (78) Regarding point 309(c) of the CEEAG, the NOx Agreement 2018-2025 will be effective until the end of 2027, after which the Agreement may be revised by the parties in light of recent developments. In addition, in the event that the environmental objectives are not met, the NOx Agreement 2018-2025 establishes a duty on the beneficiaries to pay a NOx fee as further specified above in chapter 3.3.2. Therefore, the condition in point 309(c) of the CEEAG is fulfilled.
- (79) Following this, ESA considers that the NOx tax exemption scheme satisfies the conditions in points 308 and 309 of the CEEAG, and that the scheme is therefore proportionate.

### *7.3.3 Balancing positive and negative effects of the aid*

- (80) For the aid to be compatible with the functioning of the EEA Agreement, the limited negative effects of the aid measure in terms of distortion of competition and adverse impact on trade between Contracting Parties must be outweighed by positive effects, in terms of contribution to the facilitation of the development of economic activities or areas. It must be verified that the aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (81) As explained in section 7.3.2 above, ESA considers that the NOx tax exemption does not have an adverse effect on trading conditions. Furthermore, as there is no harmonised tax on NOx emissions within the EEA, undertakings located in most other EEA States are not subject to tax on NOx emissions. Hence, the notified tax exemption primarily relieves undertakings operating in Norway of a competitive disadvantage as compared to competitors operating in other parts of the EEA.
- (82) Furthermore, ESA considers that any competitive advantage gained through the NOx tax exemption is minimised by the environmental obligation enshrined in the NOx Agreement 2018-2025, which collectively commits the beneficiaries to implement technical emission abatement measures to reduce NOx emissions.
- (83) In addition, ESA considers that the NOx Agreement 2018-2025 does not unnecessarily exclude other undertakings from competition. Any undertaking that is liable to pay NOx tax may affiliate itself with the NOx Agreement, and thereby benefit from the NOx tax exemption. As such, any distortion on competition and trade is kept to the minimum.
- (84) On the other hand, and in respect of the positive effects of the aid, ESA considers that the scheme promotes a higher level of environmental protection than what would be the case in the counterfactual scenario.<sup>42</sup> Investing in effective NOx

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<sup>41</sup> Article 4 of the NOx Agreement 2018-2025.

<sup>42</sup> See paras. 39 and 61 above.

emission abatement measures can involve a considerable financial and operational risk, in particular for small enterprises. Therefore, the NOx tax itself is not likely to trigger extensive investments in abatement measures. The NOx tax exemption, however, enables the beneficiaries to implement emission abatement measures to a larger extent than what the NOx tax itself would provide an incentive to, and to a larger extent than what each individual undertaking would be able to finance.

- (85) Following this, and in light of the limited negative effects of the measure, ESA concludes that the positive effects of the measure outweigh possible distortions of competition and impact on trade. Therefore, the aid does not unduly affect trading conditions to an extent contrary to the common interest.

#### **7.4 Transparency**

- (86) The full text of the notified scheme and further information pursuant to section 3.2.1.4 of the CEEAG will be available on the website of the Norwegian authorities.<sup>43</sup> The Norwegian authorities have also confirmed that any individual aid award exceeding EUR 100 000 will be published in the Norwegian State aid register.<sup>44</sup>
- (87) Therefore, the measure fulfils the transparency requirements.

### **8 Conclusion**

- (88) On the basis of the foregoing assessment, ESA considers that the temporary prolongation of the NOx tax exemption scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), it has no objections to the implementation of the temporary prolongation of the NOx tax exemption.
- (89) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority, acting under [Delegation Decision No 068/17/COL](#),

Yours faithfully,

Arne Røksund  
President  
Responsible College Member

Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*

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<sup>43</sup> Available on: <https://www.regjeringen.no/no/tema/klima-og-miljo/forurensning/innsiktsartikler-forurensning/nox/id2587877/>.

<sup>44</sup> <https://data.brreg.no/rofs/nob>.