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Decision No 027/18/COL

Ministry of Trade, Industries and Fisheries  
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Norway

**Subject: NOx tax exemption for 2018–2025**

## 1 Summary

- (1) The EFTA Surveillance Authority (“the Authority”) wishes to inform Norway that, having assessed the notified scheme on the temporary NOx tax exemption (“the notified scheme” or “the NOx tax exemption scheme”), it considers that the measure 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).
- (2) The Authority has based its decision on the following considerations.

## 2 Procedure

- (3) The Norwegian authorities notified the NOx tax exemption scheme by letter of 22 December 2017.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

- (4) The notified scheme grants undertakings the possibility to benefit from a full exemption from paying the NOx tax, where they have entered into environmental agreements with the Norwegian State under which they commit themselves collectively to reduce NOx emissions, in accordance with a predetermined environmental target.
- (5) As of 2007, the Norwegian State introduced a tax per kilogram of NOx emission. In 2007, the tax rate was NOK 15 per kilogram, in 2017 it was NOK 21.59 per kilogram. For 2018, the Norwegian State has proposed a rate of NOK 21.94 per kilogram.
- (6) The notified scheme constitutes a prolongation of the previous NOx tax exemption scheme covering the period 2011–2017, which the Authority authorised by Decision No 144/11/COL of 19 May 2011.<sup>3</sup>

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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> Document No 891006, 891008, 891010, 891012, 891014, 891016, 891018, 891020, 891022, 891024, 891026, 891028, 891030, and 891032.

<sup>3</sup> The NOx tax exemption scheme 2011–2017 was similar to the NOx scheme covering the period 2008–2010 that was approved by the Authority by Decision No 501/08/COL of 16 July 2008.

- (7) The notified scheme is based on the conclusion of a new environmental agreement between 15 business organisations (“the business organisations”), representing undertakings emitting NO<sub>x</sub>, and the Ministry of Climate and Environment on the implementation of measures to reduce emissions of NO<sub>x</sub>, in accordance with a predetermined environmental target.

### 3.2 Objective

- (8) The objective pursued by the notified scheme is environmental protection in the form of reductions in NO<sub>x</sub> emissions, as well as an increase in the level of environmental protection, by leading to implementation of NO<sub>x</sub> emission reduction measures that go beyond Union Standards and other internationally agreed standards applicable to Norway.<sup>4</sup>
- (9) It is expected that the annual NO<sub>x</sub> emissions encompassed by the notified scheme are to be reduced by 16 000 tonnes over the period from 2016 to 2025, that is to say from 102 255 tonnes in 2016 to an annual average of 86 255 tonnes for the years 2024 and 2025.

### 3.3 National legal basis

- (10) The parliamentary resolution concerning the duty on NO<sub>x</sub> emission lays down the principal legal basis for the NO<sub>x</sub> tax exemption scheme.<sup>5</sup>
- (11) Section 2 of the parliamentary resolution reads:

“An exemption is made on the excise duty for emissions of NO<sub>x</sub> for: [...] d) emission units covered by an environmental agreement signed with the Norwegian Government for initiating measures to reduce NO<sub>x</sub> that are implemented in accordance with established national environmental goals.

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

- (12) The NO<sub>x</sub> tax exemption scheme is based on the conclusion of two agreements: the Environmental Agreement concerning reduction of NO<sub>x</sub> emissions for the period 2018–2025 (“the NO<sub>x</sub> Agreement 2018–2025”) of 24 May 2017 and the Participant Agreement to the NO<sub>x</sub> Agreement 2018–2025 of 24 May 2017 (“the Participant Agreement”).

#### 3.3.1 The NO<sub>x</sub> Agreement 2018–2025

- (13) The NO<sub>x</sub> Agreement 2018–2025 is a collective environmental agreement between business organisations representing undertakings emitting NO<sub>x</sub> and the Norwegian Ministry of Climate and Environment. The main objective of the NO<sub>x</sub> Agreement 2018–2025 is to reduce annual NO<sub>x</sub> emissions from sources covered by the parliamentary resolution on taxes on emissions by 16 000 tonnes until 2025.<sup>6</sup>

<sup>4</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”) and EU Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants (“the NEC directive”), as incorporated into the EEA Agreement.

<sup>5</sup> Proposition to the Parliament (in Norwegian: *Stortinget*) regarding Direct and Indirect Taxes for 2018 (Prop. 1 LS (2017–2018)) and the Budget Recommendation to the Parliament of the Standing Committee on Finance and Economic Affairs (Innst. 3 S 2017–2018).

<sup>6</sup> See Article 2.1.

- (14) The NOx Agreement 2018–2025 pursues the same principles as the NOx Agreement 2011–2017.<sup>7</sup> Certain non-material modifications have been made concerning the formulation of the environmental obligation, and a few other adjustments have been made that also do not change the objective or the main material aspects of the agreement. Otherwise, the agreement remains substantively unchanged.
- (15) *Environmental obligation*: the NOx Agreement 2011–2017 addressed only the direct effect of implementing specific technical emission abatement measures and not total emission ceilings. In the NOx Agreement 2018–2025, the environmental obligation is formulated as biennial emission ceilings for the periods 2018–2019, 2020–2021, 2022–2023 and 2024–2025 respectively.<sup>8</sup> As a result, the business organisations and the undertakings that affiliate themselves with the agreement must take into account historic, current and projected activity levels in the economic sectors encompassed by the agreement, when deciding what emission abatement measures to initiate, in order to fulfil the environmental obligation and ensure that the NOx emissions over a period of two years are not higher than the agreed predetermined emission ceilings. This would improve the environmental as well as the economic effectiveness of the agreement and provide the business organisations and the affiliating undertakings with more flexibility as to how to reduce NOx emissions.
- (16) *Scope*: both the previous and the new agreement encompass all emission sources subject to the NOx tax and non-taxable NOx emissions from industrial processes. The NOx Agreement 2018–2025 (Article 2.1), following the new formulation of the environmental obligation, specifies in terms of NACE codes what emission sources are encompassed by the term “industrial processes” (e.g. emissions from production falling under NACE codes 17.1, 19.2, 20, 23.5, 23.9, 24.1 and 24.4).
- (17) *Non-fulfilment of the environmental obligation*: in the previous agreement, fulfilment of less than 90% of the environmental obligation led to a duty to pay the NOx tax for those emissions. In the NOx Agreement 2018–2025 (Article 5.4) a duty to pay the NOx tax arises if the collective emissions encompassed by the agreement exceed the emission ceilings for a biennial period by more than 3%. If the total emissions are 4% above the emission ceilings for a two-year period, the taxable undertakings in question must pay 60% of the ordinary tax for its emissions for each of the two years.
- (18) *Reporting, control and revision*: following the new formulation of the environmental obligation, new reporting and control provisions have been inserted in the NOx Agreement 2018–2025 to ensure compliance with the fulfilment of the environmental obligation. In addition, a new Article 6 has been introduced, which provides a revision clause that would allow for amendments to the agreement that may be necessary, in order to provide for Norway’s compliance with possible new emission reduction commitments as from 2030 onwards.

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<sup>7</sup> See section 2.2 of the Authority’s Decision 144/11/COL for a detailed description.

<sup>8</sup> Article 2.2 of the NOx Agreement 2018–2025: “The Business Organizations shall ensure that the total NOx emissions over two-year periods from the sources encompassed by the Agreement [...], do not exceed the following levels (emission ceilings): 2018 and 2019: 192 000 tonnes in total (96 000 tonnes/year on average); 2020 and 2021: 182 000 tonnes in total (91 000 tonnes/year on average); 2022 and 2023: 172 000 tonnes in total (86 000 tonnes/year on average); 2024 and 2025: 162 000 tonnes in total (81 000 tonnes/year on average).”

### 3.3.2 *The Participant Agreement*

- (19) By signing the Participant Agreement, an undertaking joins the NOx Agreement 2018–2025. The Participant Agreement creates rights and obligations between the individual undertakings and the Norwegian State. Participation is confirmed through the NOx Fund<sup>9</sup> issuing a Participant Certificate to the undertaking. Undertakings receiving a Participation Certificate are committed to the fulfilment of the obligations and benefit from the conditions provided for in the NOx Agreement 2018–2025.<sup>10</sup>

### 3.4 *Name of aid granting authority*

- (20) The granting authority under the notified scheme is the Norwegian Ministry of Climate and Environment.

### 3.5 *Aid beneficiaries*

- (21) All undertakings that are subject to the NOx tax in Norway may enter into the NOx Agreement 2018–2025 with the Norwegian State by signing the Participant Agreement in order to be granted full relief from the tax.

### 3.6 *Aid instrument*

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

### 3.7 *Budget, duration and retroactivity*

- (23) The notified scheme covers the period 2018–2025 and has an overall budget of around NOK 14 billion (based on the estimated reduction in tax revenue for 2016, which amount to NOK 1750 million).
- (24) The NOx Agreement 2018–2025 contains two retroactive elements: First, undertakings which affiliate themselves with the NOx Agreement 2018–2025 prior to the Authority's approval will be refunded the NOx tax paid between the date they have signed the Participant Agreement and the date of the Authority's approval. Second, undertakings entering into the agreement before 1 July 2018, will be refunded the NOx tax paid as from 1 January 2018 until the date of the Authority's approval.

## 4 **Presence of State aid**

- (25) 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”.*

- (26) The qualification of a measure as aid within the meaning of this provision therefore 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;

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<sup>9</sup> The Business Organizations have established the Business Sector's NOx Fund (“the NOx Fund”), which supports the Business Organizations with fulfilling their obligations under the NOx Agreement 2018–2025.

<sup>10</sup> See section 2.2.3 of the Authority's Decision No 144/11/COL for a more detailed description.

(iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.<sup>11</sup>

#### **4.1 Presence of state resources**

- (27) The measure must be granted by the State or through state resources.
- (28) The Authority takes the view that through the grant of the exemption to participating undertakings from paying the NOx tax, the Norwegian State renounces tax revenue, which it would normally have received from those undertakings. The absence of these revenues represents a burden on state resources from charges that are normally borne from the budgets of participating undertakings.<sup>12</sup> Consequently, the notified scheme will be financed through state resources.

#### **4.2 Advantage**

- (29) The notified scheme must confer on the beneficiaries an advantage that relieves them of charges that are normally borne from their budgets.
- (30) Such an advantage may be provided through a reduction in the undertakings' tax burdens in various ways, including a reduction in the tax base or a total or partial reduction in the amount of tax or a deferment of tax liability. In the present case, undertakings that are usually subject to the NOx tax, but benefit from an exemption under the notified scheme, receive an economic advantage that they would not have received under normal market conditions. Therefore, the notified scheme confers an advantage on the participating undertakings.

#### **4.3 Selectivity**

- (31) The measure must be selective in that it favours "certain undertakings or the production of certain goods".
- (32) According to the case law of the Court of Justice, the selectivity condition is satisfied if a public measure introduces, between operators that are, in the light of the objective pursued by the general tax system concerned, in a comparable factual and legal situation, a distinction that is not justified by the nature and general structure of that system.<sup>13</sup>
- (33) In the case at hand, all undertakings that are subject to the NOx tax may benefit from a full relief from the tax by signing the Participant Agreement, whereby they commit themselves to the fulfilment of the obligations, and benefit from the conditions provided for, in the NOx Agreement 2018–2025.
- (34) Nevertheless, the Authority considers that the measure is selective in nature, due to the discretionary power of the Norwegian authorities as regards the actual implementation of the NOx tax exemption scheme.
- (35) Interventions which *prima facie* apply to all undertakings may be selective, and accordingly be regarded as measures designed to favour certain undertakings or the

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<sup>11</sup> In this regard, the Authority takes account of the aid assessment carried out in its Decision No 144/11/COL.

<sup>12</sup> Judgment in *France v Landbroke Racing Ltd and Commission*, C-83/98 P, EU:C:2000:248, paragraphs 48 to 51.

<sup>13</sup> Judgment in *Paint Graphos and Others*, C-78/08 to C-80/08, EU:C:2011:550, paragraph 49.

production of certain goods, if such measures are limited by the discretionary power of the national authorities.<sup>14</sup>

- (36) According to Section 2(d) of the parliamentary resolution on taxes and emissions, an exemption is made on the tax for NOx emissions from sources of emissions that are regulated by an environmental agreement signed with the Norwegian Government for initiating measures to reduce NOx emissions that are implemented in accordance with established national environmental goals.
- (37) The last sentence after section 2(d) of the parliamentary resolution provides that the Ministry may regulate the implementation of the exemption by way of an environmental agreement. The Norwegian Ministry of Climate and Environment has implemented the exemption by way of the NOx Agreement 2018-2025.
- (38) The parliamentary resolution therefore appears to give the State some discretion with regard to establishing the measures to reduce NOx emissions and consequently the conditions for undertakings to join the NOx Agreement 2018-2025. Only NOx emitting undertakings able to comply with the emission ceilings in the NOx Agreement 2018-2025 will benefit from the full tax exemption.
- (39) The NOx Agreement 2018–2025 therefore favours certain undertakings to the exclusion of others and is, accordingly, selective in nature.

#### ***4.4 Effect on trade and distortion of competition***

- (40) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (41) The NOx Agreement 2018–2025 concerns the manufacturing of all products subject to a tax on NOx emissions (e.g. in sectors such as shipping, aviation, rail transport, energy production etc.). This also includes the manufacturing of pulp, paper and paperboard, the manufacturing of refined petroleum products, chemicals and chemical products, cement, lime and plaster, abrasive products and non-metallic mineral products, basic iron and steel and of ferro-alloys and the manufacturing of basic precious and other non-ferrous metals. Such undertakings are involved in trade between EEA States. The grant of support via tax exemptions to undertakings in such sectors will strengthen their position compared to other undertakings which are located in Norway or in other EEA States and compete in the same sectors.
- (42) The Authority therefore considers that the grant of the NOx tax exemption to undertakings operating in the above-mentioned sectors may distort competition and affect trade.

#### ***4.5 Conclusion***

- (43) The Authority concludes that the notified scheme constitutes state aid pursuant to Article 61(1) of the EEA Agreement.

### **5 Procedural requirements**

- (44) 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*

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<sup>14</sup> Judgment in *DM Transport*, C-256/97, EU:C:1999:332, paragraph 27.

*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.”*

- (45) The Norwegian authorities have submitted a notification of the aid measure before implementing the scheme. Article 2.8 of the NOx Agreement 2018–2015 provides that the agreement shall not give a right to a tax exemption prior to the Authority’s approval.
- (46) The Norwegian authorities have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## **6 Compatibility of the aid measure**

- (47) The Authority can declare State aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (48) The Authority’s assessment is based on the following common assessment principles:
- contribution to a well-defined objective of common interest;
  - need for State intervention;
  - appropriateness of State aid as a policy instrument;
  - existence of an incentive effect;
  - proportionality of the aid amount (aid limited to minimum necessary);
  - avoidance of undue negative effects on competition and trade; and
  - transparency.
- (49) Furthermore, given the nature of the aid instrument having the form of a full exemption from paying the NOx tax, the principles stipulated in section 3.7.1 of the Authority’s Guidelines on State aid for environmental protection and energy 2014–2020 (“the EEAG”)<sup>15</sup>, which refers to aid in the form of reductions in or exemptions from environmental taxes, are also assessed.

### **6.1 Contribution to a well-defined objective of common interest**

- (50) State aid must aim at a well-defined objective of common interest that has been recognised by the Contracting Parties.
- (51) According to the EEAG, the general objective of environmental aid is to increase the level of environmental protection, compared to the level that would be achieved in the absence of the aid.<sup>16</sup>
- (52) The NOx Agreement 2018–2025 contributes to Norway fulfilling its international commitments pursuant to the Gothenburg Protocol and the NEC Directive, and it aims at reducing annual emissions of NOx from sources covered by the parliamentary resolution on taxes on emissions by 16 000 tonnes until 2025.

<sup>15</sup> Available at: [http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L\\_.2015.131.01.0001.01.ENG](http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2015.131.01.0001.01.ENG)

<sup>16</sup> The EEAG, paragraph 25.

- (53) The EEAG also provide in paragraph 163 that the overall objective of environmental taxes to discourage environmentally harmful behaviour should not be undermined by the tax exemptions.
- (54) According to paragraph 165 of the EEAG, the Authority is to take the view that the NOx tax exemption scheme does not undermine the general objective pursued and that it contributes at least indirectly to an increased level of environmental protection, if the Norwegian authorities demonstrate that: (i) the NOx tax exemption is well targeted to undertakings being mostly affected by the NOx tax and (ii) a higher NOx tax is generally applicable than would be the case without the NOx tax exemption.
- (55) In this context, the Authority considers that the aim of the NOx tax is, by imposing a financial contribution proportionate to the pollution made, to encourage undertakings to take concrete measures to reduce NOx emissions. The possibility to be exempted from the NOx tax goes further as it encourages well targeted undertakings in the sectors concerned by the NOx Agreement 2018–2025 to combine their financial resources, in order to enable them to implement measures that on their own they could less easily afford, thus achieving a direct and long-term reduction in NOx emissions, which it would not have achieved in the absence of the exemption.<sup>17</sup>
- (56) In addition, as mentioned above in paragraph (5), as of 2007, the Norwegian State introduced a tax per kilogram of NOx emissions. This tax has been increased by 46.2% between 2007 and 2018 due to the introduction of the NOx exemption scheme over the years. The NOx tax applies to all undertakings emitting NOx without differentiating between sectors or industries and aims to achieve a larger reduction in NOx emission than would have been achieved without the notified scheme and the full exemption from the payment of the NOx tax.
- (57) In view of the above, the Authority concludes that the notified scheme contributes to a well-defined objective of common interest.

## **6.2 Need for State intervention**

- (58) In order to assess whether state aid is effective to achieve the identified objective of common interest, it is necessary first to identify the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure (e.g. negative externalities, positive externalities, asymmetric information or coordination failures – paragraph 30 of the EEAG).
- (59) NOx emissions cause harmful effects on people's health and ecosystems and thus entail socioeconomic costs that are not being paid for by the polluters. 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. Furthermore, investing in new 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

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<sup>17</sup> The Norwegian authorities have submitted a list of the 20 largest beneficiaries covered by the NOx tax exemption scheme, including information about their turnover and the size of their tax base.

reduced NOx emissions. The NOx Agreement 2018–2025 allows 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.

- (60) In addition, paragraph 168 of the EEAG stipulates that three cumulative conditions must be met, in order for an aid measure to be considered necessary:
- a) the choice of the beneficiaries must be based on objective and transparent criteria, and the aid must be granted in principle in the same way for all competitors in the same sector/relevant market if they are in a similar factual situation;
  - b) the environmental tax without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries; and
  - c) the substantial increase in production costs cannot be passed on to customers without leading to significant sales reductions.
- (61) As regards the first condition, 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.
- (62) In terms of increase in production costs (second condition), 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.
- (63) The Norwegian authorities submitted two reports commissioned by the NOx Fund on the economic effects of the NOx tax.<sup>18</sup> The 2014 report shows that the former NOx Agreement had a positive impact beyond the NOx emission reductions. The main conclusion is that the NOx Agreement provides significant financial savings to the affiliated undertakings that were utilised for investments in emission reduction technologies, which would not have taken place without the state financial support (e.g. ship fuel conversion from diesel to liquefied natural gas (LNG)). In addition, technology standards have been developed based on the market generated by the NOx Agreement.
- (64) The 2016 report, using figures from 2014, assessed the impact of the NOx tax on the turnover and market situation for selected sectors affected by the NOx tax. In sectors such as shipping, transport of goods and passengers by sea, car and passenger ferries and passenger transport by high speed light craft, pulp and paper and offshore oil and gas, the report shows that the NOx tax will continue to materially affect the sectors. By way of illustration, for example, in the fishing sector, the 2016 tax of NOK 21.17 per kilogram would provide a 10–15% profit margin in 2014, whereas a tax of NOK 60 per kilogram would reduce the operational profit by 50%. These results are due to increased fuel costs and fish prices. This would have direct negative effects on safety, efficiency and quality of fleets and it would lead to reduced catches, which in turn would affect the fish processing

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<sup>18</sup> Vista Analyse (former ECON Pöyry) report 2014/36 *Næringseffekter av Miljøavtalen om NOx* (Business impacts of the Environmental Agreement for NOx) and Vista Analyse report 2016/30 *Næringsmessige konsekvenser av økt NOx-avgift som alternativ til fornyet miljøavtale* (The effect on business by the increase of NOx tax as an alternative to a renewed environmental agreement).

industry selling fish products in the international market. In other sectors the NOx tax produces similar effects.<sup>19</sup>

- (65) Moreover, according to the Norwegian authorities, in sectors such as oil and gas and industrial products such as paper, metals, and building materials, the Norwegian undertakings are not in a position to independently set the prices of their products. Due to their limited size and the presence of foreign undertakings on the various markets they would be price takers, *i.e.* they have in their business behaviour to take prices on their products as given on the international markets. This means that their possibilities are very limited to pass the increased costs, such as the NOx tax, on to the consumer. A small increase in price would materially diminish any demand and would lead to significant sales reductions (third condition).
- (66) The Authority considers, in light of the above, that all the conditions of paragraph 168 of the EEAG are met.

### 6.3 *Appropriateness of state aid*

- (67) State aid must be an appropriate instrument to address the identified objective of common interest. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the common objective is achievable through other less distortive policy instruments or other less distortive types of aid instruments.
- (68) The aim of the NOx Agreement 2018–2025 is to contribute to a higher level of environmental protection than what would most likely be achieved in the absence of the NOx tax exemption. As explained above (in paragraph (59)), the NOx tax exemption scheme will help undertakings contribute to NOx emission reductions to a larger extent than what the NOx tax would provide for alone.
- (69) The Norwegian authorities have considered other policy measures, such as setting unilateral emission standards for ships operating in Norwegian territorial waters or setting stricter emission standards for certain industrial sources. These measures could not reach the environmental objective of the NOx Agreement 2018–2025, to reduce the annual emissions by 16 000 tonnes, from 102 255 tonnes in 2016 to an annual average of 86 255 tonnes for the years 2024 and 2025.<sup>20</sup>
- (70) The Authority thus considers that the NOx Agreement 2018–2025, committing business organisations and affiliated undertakings to enter into environmental agreements with the Norwegian State in order to collectively reduce NOx emissions in accordance with a predetermined environmental target, is the most appropriate and effective instrument to achieve higher levels of environmental protection.

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<sup>19</sup> For car and passenger ferries and passenger transport by high speed light craft the 2016 NOx tax of NOK 21.17 per kilogram would represent a 15% drop in the sector's total profit in 2014. Although the 2014 report shows that the tax on NOx emissions had only a limited impact on the production costs in the offshore oil and gas sector, the Authority notes that since that period there has been a significant decline in oil and gas turnover and profit in the sector.

<sup>20</sup> In the past, before the conclusion of the NOx Agreement for the period 2008–2010, the Norwegian Government had introduced State aid schemes offering grants to undertakings in order to partly cover costs related to investments in emission abatement measures in the shipping and fishery sectors. These schemes, however, were terminated as soon as the NOx Agreement 2008-2010 was concluded, and no grants were disbursed under those schemes.

#### 6.4 Incentive effect

- (71) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (72) The NOx tax exemption scheme will change the behaviour of undertakings by contributing to NOx emission reductions to a larger extent than what the NOx tax would provide for alone. In addition, the NOx tax exemption scheme will not support activities that have started before the signing of the Participant Agreement.
- (73) The Authority therefore considers that the incentive condition is met.

#### 6.5 Proportionality

- (74) Paragraph 169 of the EEAG provides the framework for conducting the proportionality assessment of the NOx tax exemption scheme. It lists two alternative conditions:
- (a) “aid beneficiaries pay at least 20% of the national environmental tax; or
  - (b) the tax reduction is conditional of agreements between the Contracting Party and the beneficiaries or associations of beneficiaries [...]. Such agreements must satisfy the following cumulative conditions:
    - i. the substance of the agreements is negotiated by the Contracting Party, specifies the targets and fixes a time schedule for reaching the targets;
    - ii. the Contracting Party ensures independent and timely monitoring of the commitments concluded in the agreements; and
    - iii. the agreements are revised periodically in the light of technological and other developments and stipulate effective penalty arrangements applicable if the commitments are not met”.
- (75) As regards the conditions set out in paragraph 169(b) of the Authority’s EEAG (including the three sub-conditions), it follows from the description in section 3 above that these are all met.
- (76) In particular, the NOx Agreement 2018-2025 specifies the NOx emission ceilings that need to be met biennially over the whole period. It also imposes, in its Article 4, 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>21</sup>
- (77) Concerning point (iii) of paragraph 169(b) of the EEAG, Article 6 of the NOx Agreement 2018-2025 provides for possible renegotiations to adjust the emission ceilings as soon as it has been decided which international obligations Norway has committed itself to, concerning NOx emissions from 2030. In addition, in the event that the emission ceilings are renegotiated, Article 6 of the Agreement provides for the possibility for the contracting parties to renegotiate other provisions of the Agreement, such as the obligation to pay tax

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<sup>21</sup> According to Article 4 of the NOx Agreement 2018-2028, “[i]f the Norwegian Environmental Agency finds that the environmental obligation for a given period has not been complied with, the agency shall inform the Norwegian Directorate of Taxes of the percentage-wise exceedance of the emission ceiling, and cc the NOx Fund and the Parties”.

in the event of failure to fulfil the environmental obligation (Article 5.4) and the limitations concerning termination and cessation of the Agreement (Article 7). As regards the effective penalty arrangement applicable when the environmental obligation is not met, as noted above in paragraph (17), Article 5.4 of the Agreement provides for the duty to pay the NOx tax if the collective emissions encompassed by the Agreement exceed the emission ceilings for a biennial period by more than 3%.

- (78) The Authority thus, in the light of the above, concludes that the proportionality condition is fulfilled.

### ***6.6 Avoidance of undue negative effects on competition and trade***

- (79) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (80) In principle, the NOx tax exemption scheme is likely to strengthen the position of the undertakings affiliated with the NOx Agreement 2018–2025 compared to other undertakings located in Norway or in other EEA States, which are liable to pay the NOx tax.
- (81) Nevertheless, it is not expected that this will lead to market distortions, given that any competitive advantage gained through the NOx Agreement 2018–2025 is minimised by the environmental obligation enshrined therein, which commits the business organisations and affiliating undertakings to implement specific technical emission abatement measures in order to reduce NOx emissions and increase therefore the level of environmental protection (see above paragraph (15)). At the same time, as mentioned above, the NOx Agreement 2018–2025 does not prevent efficient environmental outcomes, but rather promotes them (see paragraph (63)).
- (82) In addition, the Authority notes the NOx Agreement 2018–2025 does not unnecessarily exclude other undertakings from competition. Undertakings liable to pay the NOx tax may sign the Participant Agreement and affiliate themselves with the NOx Agreement 2018–2025 and the biennial emission ceilings set out therein in order to be exempted from paying the NOx tax. There is, therefore, a selection process of potential aid beneficiaries that is subject to objective, transparent and non-discriminatory criteria (see paragraph 94 of the EEAG).
- (83) In the light of the above, the Authority considers that any distortions of competition and trade are kept to the minimum.

### ***6.7 Transparency***

- (84) The Authority notes that the full text of the notified scheme and further information, pursuant to section 3.2.7 of the EEAG will be available on the following website: [www.regjeringen.no](http://www.regjeringen.no). Any individual aid award exceeding EUR 500 000 will be published in the Norwegian state aid register: <https://data.brreg.no/rofs/>. The transparency requirement is thus fulfilled.

## **7 Conclusion**

- (85) On the basis of the foregoing assessment, the Authority considers that the NOx tax exemption scheme constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised as to its compatibility with the functioning of the

EEA Agreement pursuant to its Article 61(3)(c), the Authority has no objections to the implementation of the notified scheme.

For the EFTA Surveillance Authority, acting under Delegation Decision No 068/17/COL,

Yours faithfully,

For Bente Angell-Hansen  
President

Carsten Zatschler  
Director

*This document has been electronically authenticated by Frank J. Buechel, Carsten Zatschler.*