

2024/1000

4.4.2024

EFTA SURVEILLANCE AUTHORITY DECISION No 185/23/COL
of 13 December 2023
on certain State aid granted under the Catapult-scheme [2024/1000]

THE EFTA SURVEILLANCE AUTHORITY ('ESA'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 and 62,

Having regard to Protocol 26 to the EEA Agreement,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24,

Having regard to Protocol 3 SCA to the Surveillance and Court Agreement ('Protocol 3'), in particular to Articles 7(5) and 14 of Part II, and

Having called on interested parties to submit their comments ⁽¹⁾, and having regard to their comments,

Whereas:

I. FACTS

1. Procedure

- (1) By letter dated 7 November 2017, the Norwegian authorities submitted to ESA the summary information on the Catapult-scheme ('the Scheme') ⁽²⁾. According to the Norwegian authorities, the Scheme complied with the General Block Exemption Regulation ('the GBER') ⁽³⁾, and the summary information was submitted as per Article 11(1) of that regulation. By letter dated 4 December 2020, the Norwegian authorities submitted summary information on prolonging the Scheme ⁽⁴⁾.
- (2) In keeping with Chapter II of the GBER, ESA monitors aid measures considered by the EEA EFTA States ⁽⁵⁾ to comply with the GBER. During its 2018 monitoring cycle, ESA assessed aid granted under the Scheme ⁽⁶⁾. As part of the monitoring exercise, ESA recommended ⁽⁷⁾ the Norwegian authorities to recover the below aid amounts from the following beneficiaries ('the Recovery Recommendation'):

⁽¹⁾ Decision No 173/22/COL of 7 September 2022 to initiate the formal investigation procedure on State aid granted under the aid scheme Norwegian Catapult (OJ C 428, 10.11.2022, p. 7 and EEA Supplement No 73, 10.11.2022, p. 2).

⁽²⁾ Summary information sheet reference GBER 38/2017/R&D&I.

⁽³⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, see Joint Committee Decision No 152/2014, published in the OJ L 342, 27.11.2014, p. 63, and EEA Supplement No 71, 27.11.2014, p. 61, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1), see Joint Committee Decision No 185/2017, published in the OJ L 174, 27.6.2019, p. 56, and the EEA Supplement No 67, 19.10.2017, p. 668, and Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215, 7.7.2020, p. 3), see Joint Committee Decision No 115/2020, not yet published, and Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270, 29.7.2021, p. 39), see Joint Committee Decision No 196/2022, not yet published.

⁽⁴⁾ Summary information sheet reference GBER 58/2020/R&D&I.

⁽⁵⁾ Iceland, Liechtenstein and Norway.

⁽⁶⁾ The correspondence concerning the monitoring is filed on Case 87323.

⁽⁷⁾ See paragraph 7 of the Opening Decision.

- *Future Materials*: NOK 58,8 million,
 - *Manufacturing Technology*: NOK 42,9 million,
 - *Sustainable Energy*: NOK 57,4 million,
 - *Ocean Innovation*: NOK 18,5 million,
 - *Digicat*: NOK 21,9 million.
- (3) After the Norwegian authorities informed ESA of their decision not to follow the Recovery Recommendation, ESA's monitoring team closed the monitoring case with a recommendation for ESA to open a formal investigation ⁽⁸⁾.
 - (4) By Decision No 173/22/COL ('the Opening Decision') ⁽⁹⁾, ESA initiated the formal investigation procedure. The procedure prior to the adoption of the Opening Decision is described in Section 2 thereof.
 - (5) The Opening Decision addressed certain individual aid awards granted under the Scheme as investment aid for tangible assets under Article 27 GBER ⁽¹⁰⁾. These aid awards were identified in Sections 3.2 to 3.6 of the Opening Decision ('the Individual Aid Awards') ⁽¹¹⁾.
 - (6) In paragraph 149 of the Opening Decision, ESA invited the Norwegian authorities to submit their comments by 6 October 2022. ESA also published a meaningful summary of the Opening Decision and invited interested parties to submit comments within one month of the date of publication of the Opening Decision in the Official Journal of the EU and the EEA Supplement thereto ⁽¹²⁾.
 - (7) By letter dated 5 December 2022, after having the extensions of the deadline approved by ESA ⁽¹³⁾, the Norwegian authorities submitted comments to the Opening Decision together with annexes ⁽¹⁴⁾. No other interested party submitted comments to ESA.
 - (8) By letter dated 24 May 2023, ESA requested additional information from the Norwegian authorities ⁽¹⁵⁾. By letter dated 6 July 2023, the Norwegian authorities submitted the additional information ⁽¹⁶⁾.
 - (9) On 29 November 2023, ESA requested additional information from the Norwegian authorities ⁽¹⁷⁾. By letter received on 4 December 2023, the Norwegian authorities submitted additional information ⁽¹⁸⁾. ESA also asked for additional information on 1 December 2023 ⁽¹⁹⁾, which the Norwegian authorities submitted on 6 December 2023 ⁽²⁰⁾. On 8 December 2023, the Norwegian authorities submitted an additional clarification ⁽²¹⁾.

2. Description of the Scheme

2.1. Background information

- (10) As explained by the Norwegian authorities, the Scheme stems from a previously identified need for an instrument to finance infrastructure for development and innovation ⁽²²⁾.

⁽⁸⁾ See paragraphs 8 and 9 of the Opening Decision.

⁽⁹⁾ See footnote 1.

⁽¹⁰⁾ See paragraph 13 of the Opening Decision. ESA notes that it considered in the Opening Decision (Sections 3.2.1, 3.3.1, 3.4.1 and 3.6.1) that some of the funding designated as establishment aid appeared to have been granted in line with the operating aid provisions under Article 27 GBER and did not raise doubts as regards this aid. Norway has confirmed that ESA understanding was correct.

⁽¹¹⁾ See also Sections 4.1 to 4.5 of the present decision.

⁽¹²⁾ OJ C 428, 10.11.2022, p. 7, and EEA Supplement No 73, 10.11.2022, p. 2.

⁽¹³⁾ Documents Nos 1329262 and 1330232.

⁽¹⁴⁾ Document No 1334726 together with Annexes 1-16.

⁽¹⁵⁾ Document No 1358377.

⁽¹⁶⁾ Document No 1386374 together with Annexes 1-20.

⁽¹⁷⁾ Document No 1418389.

⁽¹⁸⁾ Document No 1420121 together with Annexes 1-25.

⁽¹⁹⁾ Document No 1419444.

⁽²⁰⁾ Document No 1421792 together with Annexes 1-8.

⁽²¹⁾ Document No 1422151 and an Annex.

⁽²²⁾ See, for instance, *Tools for growth – on Innovation Norway* and Siva SF, 2012.

- (11) In a 2015 report, Siva SF, Innovation Norway and the Research Council of Norway proposed the new programme 'Norwegian Catapult', covering an increased need to test, simulate and visualise technology, components, products, services, processes and solutions ⁽²³⁾.
- (12) In a 2017 white paper ⁽²⁴⁾, the Norwegian Government noted the importance of test-before-invest capacity, with a special focus on SMEs ⁽²⁵⁾.
- (13) On 20 December 2016, the Norwegian Parliament adopted a resolution on the Government's 2017 budget proposal ⁽²⁶⁾. The 2017 budget proposal called on Siva SF to establish a scheme for supporting investments in test and demonstration facilities and collaboration projects ⁽²⁷⁾.
- (14) By the 2017 Assignment Letter, the Ministry of Business and Fisheries ('the Ministry') instructed Siva SF to set up an aid scheme supporting investments in catapult centres, which several companies and possibly R&D actors can use on a shared basis to promote collaborative projects with high investment costs ⁽²⁸⁾.
- (15) Siva SF ('Siva') ⁽²⁹⁾ is the Industrial Development Corporation of Norway, established in 1968 and owned by the Ministry. Siva's main tasks include facilitating national infrastructure for innovation consisting of incubators, business gardens, catapult centres, innovation enterprises, innovation centres and industrial real estate ⁽³⁰⁾.

2.2. *The main features of the Scheme*

- (16) The Scheme was implemented under Article 27 GBER as investment aid for the construction or upgrade of innovation clusters, and Article 25 GBER as aid for research and development projects related to experimental development ⁽³¹⁾. The Scheme is financed through the Norwegian State Budget.
- (17) Based on the 2017 Assignment Letter, Siva adopted a programme description for the Scheme. The programme description specifically addresses the aim of the Scheme as well as the State aid rules under which the Scheme fell.
- (18) Siva published a call for admission to the Scheme in 2017 ⁽³²⁾. In 2019, Siva announced two additional calls for reinforcement, and expansion of Catapult Centres ⁽³³⁾. Under the 2019 calls, Catapult Centres could apply for funding to complete and purchase new test and laboratory equipment as well as necessary adaptations connected thereto. Siva also adopted financing and audit guidelines.
- (19) Following the main call in 2017, Siva received extensive applications. The applicants accepted into the programme obtained Catapult Centre status and entered into a Main Agreement with Siva. The applicants had to enclose investment plans and annual budgets ⁽³⁴⁾, with maximum 50 % aid intensity. Prior to awarding aid, Siva conducted

⁽²³⁾ «NORSK KATAPULT», Forslag til program for å dekke økt behov for å teste, simulere og visualisere. 9 February 2015.

⁽²⁴⁾ Meld. St. nr. 27 (2016-2017). Industrien – grønnere, smartere og mer nyskapedem, March 2017. Summary in English: A greener, smarter and more innovative industry authorities.

⁽²⁵⁾ Small and medium-sized enterprise.

⁽²⁶⁾ Statsbudsjettet for 2017. Saldert budsjett for 2017 vedtatt i Stortinget høsten 2016. See also Prop. 1 S (2016 – 2017). Proposisjon til Stortinget (forslag til stortingsvedtak). FOR BUDSJETTÅRET 2017.

⁽²⁷⁾ The 2017 budget resolution, pages 128 and 193.

⁽²⁸⁾ Statsbudsjettet 2017 – Oppdragsbrev til Siva, pages 4 and 5. ESA notes that the Ministry's 2018, 2019 and 2020 assignment letters to Siva contained essentially the same instructions as regards the catapult centres: The 2017 assignment letter, the 2018 assignment letter, the 2019 assignment letter and the 2020 assignment letter.

⁽²⁹⁾ SF or Statsforetak mean State Enterprise, a type of company in Norway. SFs are wholly owned by the Government of Norway, but it does not hold limited liability in the company.

⁽³⁰⁾ See siva.no/English, and Section 2 of Sivas Statutes of 16 June 2021 (the Statutes).

⁽³¹⁾ See footnotes 2 and 4, information sheets with references GBER 38/2017/R&D&I and GBER 58/2020/R&D&I.

⁽³²⁾ Document No 1420115.

⁽³³⁾ Documents Nos 1420117 and 1420111.

⁽³⁴⁾ As the financing of the Scheme was based on the State budget, adopted annually, Siva also asked for annual budgets identifying the detailed investment plans from each centre.

investment dialogues with the applicants, including assessing the need for new equipment against the existing equipment and facilities, and the applicant's strategic development. Siva also participated as an observer in the governing bodies of the Catapult Centres, ensuring full overview of the projects.

3. The Catapult Centres

- (20) The Scheme and the Individual Aid Awards were aimed at supporting Catapult Centres. Based on the information submitted by the Norwegian authorities, the Catapult Centres were set up under a contractual framework between Siva, Facilitators and the industrial companies or research organisations ('the Core Partners').
- (21) Pursuant to the funding agreements between Siva and the five Catapult Centres, the Facilitators act as interlinks between Siva and the Core Partners forming a centre. The Facilitators were also tasked with mobilising customers and promoting the Scheme. The Facilitators are established as limited liability companies and are often owned by the Core Partners.
- (22) The Facilitators also took part in concluding consortium agreements between the Core Partners for setting up and negotiated investment agreements with the Core Partners concerning the centres' asset base needs.
- (23) The Norwegian authorities have further explained that the Catapult Centres activities mostly take place through the Core Partners by making their technological infrastructures available for third parties as set out in the consortium agreements. The Core Partners also develop the centre's routines and organisational capacity and services; and set up industrial expert teams for the centre users' projects.

4. Beneficiaries

- (24) As explained by the Norwegian authorities, the Individual Aid Awards were addressed to the following Catapult Centres, consisting of both Facilitators and Core Partners.

4.1. Future Materials

- (25) Future Materials is a national development and testing centre, offering test facilities, competence and network to develop sustainable advanced materials ⁽³⁵⁾.
- (26) The centre offers facilities in areas such as battery technology, circular economy and recycling, plastic and composite, handling and treatment of minerals and metals and powder technology. Companies can develop, test, measure and frame their products and materials at lab scale or in full-scale pilot testing in an industrial environment. The centre's particular focus is on sustainable material selection, design for reuse and recycling and handling of industrial side streams to reduce the amount of waste sent to landfill.
- (27) Future Materials consists of a Facilitator: Future Materials AS ⁽³⁶⁾ and Core Partners: Elkem AS, Norner AS, ReSiTec AS, Mechatronics Innovation Lab AS, and Arendals Fossekompani AS.
- (28) The Opening Decision covered the following investment aid awards granted to Future Materials by Siva ⁽³⁷⁾: letter dated 9 November 2018 for activities in 2018 ⁽³⁸⁾, letter also dated 9 November 2018 for activities in 2019 ⁽³⁹⁾, and letter dated 24 February 2020 for activities in 2020 ('the Future Materials 2020 Letter') ⁽⁴⁰⁾.

⁽³⁵⁾ See About Future Materials.

⁽³⁶⁾ Future Materials AS shareholders are Arendals Fossekompani ASA, Elkem ASA, Norner AS, ReSiTec AS and the University of Agder.

⁽³⁷⁾ See Sections 3.2 and 6.6.1 of the Opening Decision.

⁽³⁸⁾ Document No 1191214.

⁽³⁹⁾ Document No 1191216.

⁽⁴⁰⁾ Document No 1191224.

4.2. *Manufacturing Technology*

- (29) Manufacturing Technology provides infrastructure and expertise contributing to making the goods-production industry greener, smarter, and more innovative, in turn contributing to reduced industry emissions. The centre provides both small scale and full-scale facilities for tailor-made testing and prototyping of products and processes and cover areas such as design (e.g. manufacturing, sustainability), industry 4.0, additive manufacturing and joining, automated injection molding and fibre winding, metal forming and processing, automated and flexible assembly.
- (30) Manufacturing Technology consists of a Facilitator ⁽⁴¹⁾: Manufacturing Technology Norwegian Catapult Centre AS ⁽⁴²⁾ and Core Partners: NCE Manufacturing AS, SINTEF Manufacturing AS and Total.
- (31) The Opening Decision covered the following investment aid awards to Manufacturing Technology by Siva ⁽⁴³⁾: letter dated 17 October 2018 for activities in 2018 ⁽⁴⁴⁾; letter also dated 17 October 2018 for activities in 2019 ⁽⁴⁵⁾; and letter dated 26 February 2020 for activities in 2020 ⁽⁴⁶⁾.

4.3. *Sustainable Energy*

- (32) Sustainable Energy operates within the main areas of floating offshore wind, green shipping, and green energy systems. The centre provides full-scale facilities and test cells available on land, at sea and on ships to simulate sustainable energy solutions. The centre provides services such as full-scale testing under real operational conditions on land (Energy House) and on vessels in different segments (deep ocean fast moving vessels and offshore vessels) and within different types of energy systems.
- (33) Sustainable Energy consists of a Facilitator: Sustainable Energy AS ⁽⁴⁷⁾ and Core Partners: Alltec Services AS, SEAM AS, Unitech Offshore AS, The Switch Marine Drives Norway AS, Future Energy Solutions AS, Alma Clean Power AS, SINTEF Ocean AS and Testbygg AS.
- (34) The Opening Decision covered the following investment aid awards to Sustainable Energy by Siva ⁽⁴⁸⁾: letter dated 27 June 2019 for activities in 2019 ⁽⁴⁹⁾; and letter dated 26 February 2020 for activities in 2020 ⁽⁵⁰⁾.

4.4. *Ocean Innovation*

- (35) Ocean Innovation builds and makes available expertise and infrastructure to accelerate growth and sustainable development of the marine industries. The centre focuses on three main areas: Aquaculture, Subsea Technology, Additive manufacturing as an enabling technology within the ocean industry. It provides a test infrastructure with everything from small labs to mini- and full-scale aquaculture facilities. The facilities are of particular use to subcontractors to the oil and gas industry who adapt to deliver solutions to other ocean-related industries. The facilities are also important for developing more effective salmon lice control and to reduce algal blooms.

⁽⁴¹⁾ In 2018-2020, SINTEF Manufacturing AS served as the facilitator organisation in the catapult centre. In January 2021, Manufacturing Technology Norwegian Catapult Centre AS was established as a separate legal entity.

⁽⁴²⁾ Manufacturing Technology AS shareholders are SINTEF Manufacturing AS, NCE Manufacturing and Total.

⁽⁴³⁾ See Sections 3.3 and 6.6.2 of the Opening Decision.

⁽⁴⁴⁾ Document No 1191218.

⁽⁴⁵⁾ Document No 1191220.

⁽⁴⁶⁾ Document No 1191222.

⁽⁴⁷⁾ Sustainable Energy AS shareholders are Haugland Kraft AS, NCE Maritime CleanTech, Vestlandets Innovasjonsselskap, Unitech Energy Group AS, The Switch Marine Drives Norway AS, NORCE Norwegian Research Centre and Norwegian Marine & Energy Complex.

⁽⁴⁸⁾ See Sections 3.4 and 6.6.3 of the Opening Decision.

⁽⁴⁹⁾ Document No 1191228.

⁽⁵⁰⁾ Document No 1191230.

- (36) Ocean Innovation consists of a Facilitator: Ocean Innovation AS ⁽⁵¹⁾ and Core Partners: Marineholmen RASlab AS, Additech AS and Aquacloud AS.
- (37) The Opening Decision covered the following investment aid award to Ocean Innovation by Siva ⁽⁵²⁾: letter dated 3 June 2019 for activities in 2019 ⁽⁵³⁾.

4.5. **Digicat**

- (38) Digicat aims at reducing the growing gap in innovation speed between the major companies and the smaller subcontractors in the SME segment in the maritime industry. Digicat offers testing facilities, expertise and networks for virtual prototyping and development of digital twins for all types of industries across all sectors. Small and large actors can test and validate ideas, concepts, and tools faster, more efficiently and with less risk than testing in the physical world.
- (39) Digicat consists of a Facilitator: ÅKP AS ⁽⁵⁴⁾ and Core Partners: OSC AS, NTNU, SINTEF Narvik AS and SINTEF Ocean AS, Smart Construction Cluster, Ulstein Group AS, Kongsberg Maritime AS, Ocean Visioneering AS, ÅKP Blue Innovation Arena AS, and Invig AS.
- (40) The Opening Decision covered the following investment aid awards to Digicat by Siva ⁽⁵⁵⁾: letter dated 3 June 2019 for activities in 2019 ⁽⁵⁶⁾; and letter dated 26 February 2020 for activities in 2020 ⁽⁵⁷⁾.

5. **Grounds for initiating the formal investigation procedure**

- (41) In the Opening Decision, ESA's preliminary view was that the Individual Aid Awards constituted State aid as defined in Article 61(1) of the EEA Agreement.
- (42) Pursuant to Article 27(5) GBER, investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs are specified as the investment costs in intangible and tangible assets.
- (43) ESA raised doubts regarding the aid awards granted as investment aid for tangible assets under Article 27(5) GBER. ESA's preliminary understanding was that the investment aid in question had, except for some of the investments by Manufacturing Technology, exclusively been granted in respect of tangible assets not owned by the beneficiaries ⁽⁵⁸⁾. ESA's understanding, formed on the basis of the then available information, was that the beneficiaries were the Facilitators of the Catapult Centres.
- (44) It was further ESA's understanding that, in those cases where the tangible assets were not owned by the beneficiaries, the costs considered eligible by the Norwegian authorities under Article 27(5) GBER were asset lease costs. ESA's preliminary understanding was that the lessees had no obligation to purchase these leased assets.
- (45) For these reasons, ESA preliminarily considered that the aid – qualified as investment aid by the Norwegian authorities – was granted in relation to costs not eligible under Article 27(5) GBER. Further, ESA considered on a preliminary basis that these aid awards would not fulfil the conditions for receiving operating aid under Article 27(7) to (9) GBER.

⁽⁵¹⁾ Ocean Innovation AS shareholders are GCE Ocean Technology, Vestlandets Innovasjonsselskap, NCE Seafood Innovation Cluster, Additech and Marineholmen Raslab AS.

⁽⁵²⁾ See Sections 3.5 and 6.6.4 of the Opening Decision.

⁽⁵³⁾ Document No 1191212.

⁽⁵⁴⁾ ÅKP AS is jointly owned by public bodies and the industry and, with Siva and Ålesund Municipality as the largest shareholders.

⁽⁵⁵⁾ See Sections 3.6 and 6.6.5 of the Opening Decision.

⁽⁵⁶⁾ Document No 1191228.

⁽⁵⁷⁾ Document No 1191230.

⁽⁵⁸⁾ Paragraph 49 of the Opening Decision.

- (46) As regards the Future Materials 2020 Letter, it was not clear whether the related aid application of 20 December 2019 concerned one or several projects/activities. It appeared that parts of the budgeted costs were incurred prior to the application being submitted. This would entail that aid granted in respect of the project/activity to which these costs relate, did not have an incentive effect within the meaning of Article 6(2) GBER (see Section 6.4 of the Opening Decision).
- (47) Accordingly, ESA's preliminary view was that the investment aid granted under the Individual Aid Awards did not comply with the GBER and amounted to unlawful aid.
- (48) ESA further had doubts that the aid would be compatible with the functioning of the EEA Agreement.
- (49) First, ESA doubted that the aid could be declared compatible on the basis of the Guidelines on State aid for research and development and innovation ('the R&D&I Guidelines')⁽³⁹⁾. With respect to aid for the construction or upgrade of innovation clusters, the eligible costs are defined in these guidelines as the investment costs in intangible and tangible assets. Based on reasoning similar to that in relation to Article 27(5) GBER, ESA preliminarily concluded that the aid would not fulfil the conditions set out in the R&D&I Guidelines.
- (50) As regards declaring the aid compatible directly under Article 61(3)(c) of the EEA Agreement, ESA identified several factors raising doubts as to the compatibility of the aid. According to the Opening Decision, these factors include, in particular, the questions of whether the aid was appropriate and proportional. Further, ESA considered that an actual incentive effect would have to be established concerning investment aid granted under the Future Materials 2020 Letter.

6. Comments by the Norwegian authorities

6.1. Compliance with the GBER

Investment aid in compliance with Article 27(5) GBER

- (51) The Norwegian authorities explained that the Scheme was aimed at supporting Catapult Centres, consisting of Facilitators and Core Partners (see also Section 3 above). Accordingly, aid under the Individual Aid Awards was granted in relation to investments undertaken by either the Facilitators or the Core Partners for the needs of the centres.
- (52) The Norwegian authorities further explained that the investment aid in question was implemented under the following three scenarios:

Scenario 1: purchasing of an asset by a Facilitator

An investment is made by a Facilitator by purchasing an asset for the benefit of a Catapult Centre.

Scenario 2: purchasing of an asset by a Core Partner

An investment is made by a Core Partner by purchasing an asset for the benefit of a Catapult Centre. Whereas an asset remains in the ownership of the Core Partner, they are handed over for the use by the centre.

Scenario 3: Core Partner's existing asset

Under that scenario, a Core Partner remains the owner of an existing asset that it hands over to a Catapult Centre. The investment aid is granted only for the purpose of upgrading the asset to make it suitable for the use by the Centre.

⁽³⁹⁾ ESA Decision No 271/14/COL of 9 July 2014 amending for the 97th time the procedural and substantive rules in the field of State aid by adopting new Guidelines for research and development and innovation [2015/1359], published in the OJ L 209, 6.8.2015, p. 17 and the EEA Supplement No 44, 6.8.2015, p. 1, at paragraph 14. The Guidelines were amended by ESA Decision No 090/20/COL of 15 July 2020, published in the OJ L 359, 29.10.2020, p. 6 and the EEA Supplement No 68, 29.10.2020, p. 4.

- (53) Under both scenarios 2 and 3, the relevant consortium agreements require that the assets (including in-kind contribution) are to remain with and cannot be withdrawn from a Catapult Centre without Siva's consent ⁽⁶⁰⁾. As confirmed by the Norwegian authorities, all such assets remain with and have not been withdrawn from the respective centres.
- (54) Investment aid may be matched by the beneficiaries as cash financing and/or contribution in-kind (equipment and related hours of work ⁽⁶¹⁾). Valuation of in-kind contributions are conducted in line with Siva's audit guidelines, also submitted to ESA. The valuation of assets can either be carried out by an authorised valuer or a relevant supplier. Alternatively, the depreciated value of the equipment may be determined based on the core partners' previous annual accounts.
- (55) In addition to equipment purchased or upgraded with Siva support, the Core Partners have made other assets available for the benefit of users of the centres, leading to a considerable value increase in the available asset base. For such equipment, Siva has not granted aid to the Core Partners.
- (56) In sum, the Norwegian authorities consider that the investment aid granted under the Individual Aid Awards is in line with Article 27(5) GBER.

The Future Materials 2020 Letter and compliance with Article 6(2) GBER

- (57) As regards the Future Materials 2020 Letter, the Norwegian authorities do not consider that any costs were incurred prior to submission of an aid application.
- (58) The Future Materials 2020 Letter relates to the centre's core area expansion to include battery technology infrastructure. The investments that Future Materials first applied Siva funding for in 2019 concern Norner AS, a Core Partner of the centre since 2019. Future Materials initially applied for aid as regards these Norner AS investments undertaken for the benefit of the centre on 29 March 2019, and reapplied on 20 December 2019 ⁽⁶²⁾. Having to reapply for that aid was due to administrative reasons related to the Scheme ⁽⁶³⁾. The costs in question were incurred in quarters 2 to 4 of 2019. Accordingly, works had not started prior to submission of the aid application.

6.2. Compatibility assessment under the R&D&I Guidelines and the EEA Agreement

- (59) The Norwegian authorities consider that the Individual Aid Awards may be declared compatible under Article 61(3)(c) of the EEA Agreement in conjunction with the R&D&I Guidelines.

Facilitation of economic activities, markets affected and incentive effect

- (60) According to the Norwegian authorities, the aid awards facilitated the economic activities of Catapult Centres and have a positive impact on the economic activities of the users. The five Catapult Centres offer access to facilities in their respective fields that are also the affected markets.
- (61) The Catapult Centres are established as a combination of new and existing assets adapted for the needs of the centres and made available to third parties (see also Section 6.1 above). These investments and open access to the facilities of the Core Partners would not have taken place without the aid. The aid awards therefore have an incentive effect.

⁽⁶⁰⁾ As explained by the Norwegian authorities, in 2017-2020, the use of the assets was regulated in the investment- and cooperation agreements in the catapult centres, based on the same principles.

⁽⁶¹⁾ Limited to work hours needed for setting up equipment at a centre.

⁽⁶²⁾ As explained by the Norwegian authorities, Siva decided to announce two additional calls in 2019 for reinforcement and expansion of Catapult Centres in view of allowing other centres to apply for funding as well.

⁽⁶³⁾ The Norwegian authorities note that an item in the 2019 aid budget also concerns an investment in 2019 by another Core Partner. However, Future Materials had submitted aid application for that item already in 2018.

Positive effects

- (62) According to the Norwegian authorities, the rapid technological developments pose a challenge to existing expertise, production processes, business models and ultimately products and services. Based on several examples, the Norwegian authorities consider that the aid has allowed businesses, in particular SMEs, to have open and easy access to equipment and expertise for testing, visualisation and simulation of their ideas and products.

Limited negative effects

- (63) The Norwegian authorities consider that the aid awards allowed addressing coordination problems in a cost-efficient way by combining new and existing assets. The active engagement of the Core Partners facilitates exchange of expertise and competence at the centres. The aid awards are also in line with the aid intensity rules of the R&D&I Guidelines. On balance, the Norwegian authorities submit that the positive effects of the Individual Aid Awards outweigh their potential negative effects on competition and trade, which are limited in any event.

II. ASSESSMENT**7. Presence of State aid**

- (64) 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'.
- (65) 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; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (66) In the Opening Decision, ESA considered the Scheme and the Individual Aid Awards to amount to State aid within the meaning of Article 61(1) of the EEA Agreement. In the comments to the Opening Decision, the Norwegian authorities did not argue against qualifying the Scheme nor the Individual Aid Awards as State aid. ESA has no information suggesting that the Scheme or the Individual Aid Awards would not amount to State aid.
- (67) ESA recalls that the Individual Aid Awards provide for direct grants which are financed from the State budget and managed and awarded by a State-owned company, which was appointed for that purpose by the State. Further, the Individual Aid Awards favour the beneficiaries which engage in economic activities in various sectors of the economy open to competition with intra-EEA trade impact.
- (68) Against this background, ESA has no reasons to depart from its initial conclusion in the Opening Decision and considers that the Individual Aid Awards constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

8. Aid scheme or individual aid and lawfulness of the aid

- (69) The Individual Aid Awards were granted on the basis of a measure, implemented by Norwegian authorities as an aid scheme. ESA shared that assessment in the Opening Decision ⁽⁶⁴⁾. ESA has no reasons to depart from that assessment.
- (70) According to Article 1(e) of Part II of Protocol 3, 'individual aid' shall mean aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme.

⁽⁶⁴⁾ Aid scheme as defined in Article 1(d) of Part II of Protocol 3. Paragraph 58 of the Opening Decision.

- (71) The Opening Decision questioned the Individual Aid Awards compliance with certain conditions set out in Chapters I and III of the GBER ⁽⁶⁵⁾. As further explained in the Opening Decision ⁽⁶⁶⁾, under Article 3 GBER, an aid measure is compatible with the functioning of the EEA Agreement and exempted from the notification requirement under Article 1(3) of Part I of Protocol 3, provided that the measure fulfils the conditions in Chapter I, as well as the specific conditions for the concerned category of aid in Chapter III of the GBER.
- (72) Under Article 1(f) of Part II of Protocol 3, 'unlawful aid' shall mean new aid put into effect in contravention of Article 1(3) in Part I. Article 1(c) of Part II of Protocol 3 defines 'new aid' as aid schemes and individual aid, which is not existing aid, including alterations to existing aid. None of the conditions for finding existing aid ⁽⁶⁷⁾ appear to, nor have been argued to be, present by the Norwegian authorities. Therefore, not complying with the GBER conditions leads to the conclusion that the Individual Aid Awards are unlawful aid ⁽⁶⁸⁾.
- (73) In light of the scope of the Opening Decision, ESA proceeds by assessing whether the investment aid granted under the Individual Aid Awards complies with Article 27(5) GBER. Concerning the Future Materials 2020 Letter, ESA will also assess whether the investment aid is compliant with Article 6(2) GBER.

9. The Individual Aid Awards' compliance with the GBER

9.1. Article 27(5) GBER (investment aid)

9.1.1. Introduction

- (74) ESA's initial understanding was that investment aid was granted in relation to assets not owned by the beneficiaries, i.e. the Facilitators, and that some of the funded assets were leased without purchasing obligations ⁽⁶⁹⁾. ESA's preliminary conclusion therefore was that the aid was granted in respect of costs not eligible for investment aid under Article 27(5) GBER ⁽⁷⁰⁾.
- (75) In view of the comments submitted by the Norwegian authorities, ESA finds it first necessary to examine the circle of beneficiaries under the Individual Aid Awards. Thereafter, ESA assesses whether the Individual Aid Awards comply with Article 27(5) GBER. Pursuant to Article 27(5) GBER, investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs are specified as the investment costs in intangible and tangible assets.

9.1.2. Beneficiaries of the Individual Aid Awards

- (76) As explained by the Norwegian authorities, the rules of the Scheme under which the Individual Aid Awards were granted aimed at establishing Catapult Centres (see also Sections 2 and 3). Accordingly, investment aid under the Individual Aid Awards was granted to the Catapult Centres rather than to the Facilitators only.
- (77) The Norwegian authorities have explained that the Catapult Centres consist of the Facilitators and Core Partners. The rights and obligations of the Facilitators and the Core Partners in the setting-up phase, investing in and managing the Catapult Centres are established in the Main Agreements with Siva for State funding, the investment agreements, and the Consortium Agreements. The Norwegian authorities also submitted the agreements to ESA.

⁽⁶⁵⁾ Section 6.6 of the Opening Decision.

⁽⁶⁶⁾ Paragraph 60 of the Opening Decision.

⁽⁶⁷⁾ Article 1(b) of Part II of Protocol 3.

⁽⁶⁸⁾ Section 6.7 of the Opening Decision. See, for instance, Judgment in of the General Court of 9 September 2020, *Kerkosand v Commission*, T-745/17, EU:T:2020:400, paragraph 40 and the case-law cited.

⁽⁶⁹⁾ See Sections 3, 6.2 and 6.6 of the Opening Decision.

⁽⁷⁰⁾ See paragraph 71 of the Opening Decision.

- (78) Based on these explanations and the evidence submitted following the adoption of the Opening Decision, ESA agrees with the Norwegian authorities that the Scheme and the Individual Aid Awards were aimed to provide investment aid to the Catapult Centres, consisting of the Facilitators and the Core Partners. The aid awards were not supposed to be limited to granting aid to the Facilitators only.
- (79) Under the Main Agreements with Siva and the Consortium Agreements, the Catapult Centres were formed and operated as a joint effort of the Facilitators and Core Partners, with tasks contractually divided between these actors.
- (80) According to the Main Agreements with Siva, investment aid was aimed at the realisation and development of the Catapult Centres. These agreements acknowledged the organisational set ups and functioning of the centres that consisted of various actors (i.e. the Facilitators and the Core Partners).
- (81) The same can be concluded based on the wording of the Siva aid award letters, constituting the Individual Aid Awards, where the Facilitators act on behalf of the centres.
- (82) The investments funded by Siva were detailed in investment plans and budgets. As an observer in the Catapult Centres governing bodies (see paragraph 19), Siva had full information of the structure, operating principles, and individual investment decisions of the Catapult Centres.
- (83) ESA concludes that under the Individual Aid Awards, the investment aid beneficiaries were the Catapult Centres, as represented by the Facilitators and consisting of the Facilitators and the Core Partners.

9.1.3. *Compliance with Article 27(5) GBER*

- (84) In the Opening Decision, ESA questioned whether Siva had granted investment aid in relation to assets not owned by the beneficiaries.
- (85) However, as ESA concluded in the preceding section, investment aid under the Individual Aid Award Decisions was granted to the Catapult Centres, consisting of the Facilitators and the Core Partners.
- (86) ESA refers to Section 6.1, describing in more detail the implementation of the investment aid granted under the Individual Aid Awards. The evidence submitted by the Norwegian authorities shows that the aided assets were acquired and owned by either the Facilitators or the Core Partners of the relevant Catapult Centres.
- (87) The Norwegian authorities have confirmed that as the investment aid in question was not granted to any person other than the Facilitators and the Core Partners, nor has aid been granted for asset lease without purchasing obligation. Siva funding has also not been granted as a payment of compensation to a Core Partner for handing an asset over to a Catapult Centre. ESA has no information pointing to such possibilities either.
- (88) ESA therefore considers that its initial concerns expressed in Section 6.2 of the Opening Decision have been alleviated, as investment aid was granted in relation to assets acquired by the Facilitators and Core Partners for the benefit of the Catapult Centres. Accordingly, ESA concludes that the aid in question was granted in relation to costs eligible for investment aid under Article 27(5) GBER.

9.2. **Article 27(7) to (9) GBER (Operating Aid – Section 6.3 of the Opening Decision)**

- (89) In Section 6.2 of the Opening Decision, ESA preliminarily considered that investment aid granted under the Individual Aid Awards did not comply with Article 27(5) GBER. Therefore, in Section 6.3 of the Opening Decision, ESA found it appropriate to examine whether that aid fulfilled the conditions for operating aid under Article 27(7) to (9) GBER.

- (90) As ESA concluded in Section 9.1.3 of the present decision, the aid in question constitutes investment aid that complies with Article 27(5) GBER. Consequently, assessing whether that same aid is operating aid in compliance with Article 27(7) to (9) GBER is no longer relevant.

9.3. Article 6(2) GBER (*Future Materials 2020 Letter*)

- (91) According to Article 6(2) GBER, 'aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts'.
- (92) Under Article 2(23) GBER, "start of works" means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. [...]
- (93) In the Opening Decision (Section 6.4), ESA considered it not to be clear whether the investment aid granted under the Future Materials 2020 Letter concerned costs incurred prior to submitting the aid application of 20 December 2019. In particular, the budget related to the 20 December 2019 aid application appeared to include costs incurred in the three last quarters of 2019 (Q2, Q3 and Q4).
- (94) Following the adoption of the Opening Decision, the Norwegian authorities submitted additional explanations and evidence concerning that aid.
- (95) As explained by the Norwegian authorities, the investments at stake concern expanding the centre's core area to include battery technology infrastructure (see paragraph 58).
- (96) The evidence submitted reveals that the investments that Future Materials first applied for aid in 2019 concern Norner AS, the Catapult Centre's Core Partner since 2019. Future Materials initially applied for aid concerning these Norner AS investments for the benefit of the centre on 29 March 2019, and reapplied on 20 December 2019, due to administrative reasons not related to the Catapult Centre and Norner AS (see paragraph 58). The costs in questions were incurred in quarters 2 to 4 of 2019.
- (97) Thus, based on the information submitted by the Norwegian authorities, Norner AS's costs covered by the Future Materials 2020 Letter were incurred after having applied for aid on 29 March 2019. Having had to reapply for aid due to reasons external to Future Materials does not change the fact that the relevant costs were first incurred after 29 March 2019. Therefore, ESA considers that Future Materials had submitted the aid application before the start of works, in line with Article 6(2) GBER.
- (98) ESA also notes that an item in the 2019 aid budget concerns an investment in 2019 by a Core Partner other than Norner AS. However, the evidence submitted by the Norwegian authorities confirms that Future Materials first applied for aid concerning that investment already in 2018.
- (99) On this basis, ESA considers that its initial concerns as regards the Future Materials 2020 Letter have been alleviated and concludes that the aid award complies with Article 6(2) GBER.

9.4. Conclusion as regards fulfilment of Article 6(2) and 27(5) GBER

- (100) As regards Article 6(2) GBER and the Future Materials 2020 Letter, ESA concludes that the aid in question complies with that provision (see Section 9.3).
- (101) As regards Article 27(5) GBER, ESA concludes that the investment aid granted under the Individual Aid Awards complies with that provision (see Section 9.1).

- (102) Since the Opening Decision was limited to assessing the compliance of the investment aid granted under the Individual Aid Awards with Articles 6(2) ⁽⁷¹⁾ and 27(5) GBER ⁽⁷²⁾, ESA considers the aid to be exempted from the notification requirement in Article 1(3) of Part I of Protocol 3 and compatible with Article 61(3) of the EEA Agreement, in line with Article 3 GBER.
- (103) ESA notes that, for the above reasons, assessing the compatibility of that aid with the functioning of the EEA Agreement either in conjunction with the R&D&I Guidelines or directly is no longer necessary.

10. Conclusion

- (104) On the basis of the foregoing assessment, ESA considers that the investment aid granted under the Individual Aid Awards constitutes State aid with the meaning of Article 61(1) of the EEA Agreement.
- (105) According to Article 3 GBER, ESA considers that aid to be compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3), and exempted from the notification requirement in Article 1(3) of Part I of Protocol 3,

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 3 GBER, the investment aid granted under the Individual Aid Awards is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3) and exempted from the notification requirement in Article 1(3) of Part I of Protocol 3. The formal investigation procedure is hereby closed.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 13 December 2023.

For the EFTA Surveillance Authority,

Arne RØKSUND
President
Responsible College Member

Árni Páll ÁRNASON
College Member

Stefan BARRIGA
College Member

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

⁽⁷¹⁾ As regards the Future Materials 2020 Letter.

⁽⁷²⁾ See Section 6.6 of the Opening Decision.