Brussels, 10 July 2024
Case No: 92375
Document No: 1463239
Decision No 111/24/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
Norway

Subject: The Green Industry Financing Fund

1 Summary

(1) The EFTA Surveillance Authority ("ESA") wishes to inform Norway that, having assessed the Green Industry Financing Fund ("GIFF") ("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[1] 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 measure on 27 June 2024.[2]

3 Description of the measure

3.1 Background

(3) The Norwegian Government has, in its roadmap for raising the prospects of green industry,[3] clearly emphasised the need for industry to play a major role in reducing greenhouse gas emissions, furthering the green transition, and reducing the vulnerabilities in the value chains that are central for the green transition. In the process, it is vital to create attractive jobs, value and welfare for the future. These considerations have become increasingly important as the energy and security situation in Europe has changed considerably.

(4) According to the Norwegian authorities, while Norwegian industry has the principal responsibility with regard to exploiting the business opportunities provided by the green transition commercially, the societal challenges are so great that a certain degree of government intervention is necessary to initiate the desired transition. The GIFF has an important mission in assisting innovative and green industrial projects to achieve their potential for scale and growth, both nationally and internationally. This assistance will be provided in the form of loans on better-than-

[1] 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.
[2] Document No 1467016.
[3] Veikart Grønt industriløft [Grønt industriløft (regjeringen.no)](regjeringen.no)

market terms ("the scheme"). To ensure that the investments made possible by the scheme are of real relevance to the goals of the roadmap, only projects with real environmental impact will be offered financing.

(5) The scheme has been designed to comply with Article 61(3)(c) of the EEA Agreement, in light of the requirements of the Temporary Crisis and Transition Framework ("TCTF") sections 1 and 2.8, especially point 85.[4]

3.2 Supported projects and beneficiaries

(6) The aid is set to incentivise activities that are within the scope of point 85(a) TCTF, namely:

i. The production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage ("CCUS"); or

ii. the production of key components designed and primarily used as direct input for the production of the equipment defined under (i); or

iii. the production or recovery of related critical raw materials necessary for the production of the equipment and key components defined in (i) and (ii) above.

(7) In accordance with the general financing policy of Innovation Norway ("IN"),[5] which will be the granting authority managing the scheme, aid under the GIFF will not be granted to undertakings engaged in the following economic activities (all codes NACE Rev. 2)

i. the extraction of crude petroleum and natural gas (NACE 06),

ii. water transport (NACE 50) with the exception of short sea shipping (in Norwegian: *nærskipsfart*),

iii. air transport (NACE 51), and

iv. telecommunications (NACE 61).

(8) The GIFF applies to the whole territory of Norway. In order to be eligible for aid under the GIFF, the beneficiary must be registered in Norway. However, beneficiaries are not required to have their headquarters in Norway or to be predominantly established in Norway. An enterprise that is not present in Norway is eligible if it plans to create an establishment or branch in Norway as part of the investment.[6]

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[4] Under the GIFF, loans will be granted partly on the basis of the TCTF and partly on the basis of the GBER. As aid granted under the GBER is exempt from the notification obligation, only the loans granted on the basis of the TCTF are subject to the notification and the present decision.

[5] Section 9(b) of the IN general financing policy of 10 February 2023, in Norwegian: "Overordnet policy for finansieringstjenestene".

[6] Similar to the Commission Decision of 14 May 2024 in Case SA.113231 (Spain) TCTF Asturias, at footnote 16.

(9) Both SMEs, as defined in Annex 1 to the GBER,[7] and large enterprises, as defined in Article 2(24) of the GBER, are eligible to receive aid under the scheme.

(10) Undertakings in difficulty[8] are not eligible for aid under the scheme.

(11) Beneficiaries that have an outstanding recovery order following an ESA decision declaring aid to the beneficiary illegal and incompatible with the internal market are not eligible for aid.[9]

(12) The aid under the scheme will not be granted to undertakings under sanctions adopted by the Norwegian authorities or the European Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by those sanctions; or (iii) undertakings active in industries targeted by those sanctions, insofar as the aid would undermine the objectives of the relevant sanctions.

(13) The aid under the GIFF will not be conditioned on the relocation of an activity between EEA States. Nor is the aid provided to facilitate relocation of activities between EEA States. For this purpose, the beneficiary must: (i) confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place, and (ii) commit not to carry out such a relocation up to a period of two years after the completion of the investment.

(14) The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment does not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.

3.3 National legal basis

(15) The national legal basis consists of the following: (i) the revised national budget for 2024, Prop. 104 S (2023-2024),[10] (ii) the assignment letter from the Ministry of Trade to IN,[11] (iii) the rules of the scheme,[12] and (iv) the IN general financing policy of 10 February 2023.[13]

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[7] 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 as amended by the Commission lastly on 23 June 2023, incorporated into Article 1j of Annex XV to the EEA Agreement.

[8] As defined in ESAs guidelines on state aid for rescuing and restructuring non-financial undertakings in difficulty, adopted by ESA Decision No 321/14/COL as amended lastly on 13 December 2023.

[9] See judgment of the Court of First Instance of 13 September 1995, *TWD* v *Commission*, T-244/93 and T-486/93, EU:T:1995:160, paragraph 56.

[10] Prop. 104 S (2023-2024), adopted by Parliament on 21 June 2024.

[11] The assignment letter is yet to be finalised.

[12] The rules of the scheme have yet to be finalised.

[13] https://cdn.sanity.io/files/loal7n8w/inno-prod/754b7dd559752b23f8efc1820bad6bc55940ae5a.pdf

3.4 Budget and duration

(16) The aid is granted on the basis of a scheme. The total budget is NOK 5 billion,[14] which amounts to EUR 437.6 million.[15]

(17) Although the budget of the scheme is NOK 5 billion, the actual loss fund is limited to NOK 1.75 billion.[16] The loss fund works as a cap on the total losses under the scheme. For each loan awarded, an amount equal to the estimated loss, e.g. 50%, will be set aside in the loss fund. In this way, the funds from the State budget ("the loss fund") are "geared". Similarly, IN will set aside the resources needed to cover the costs associated with interest free periods, by drawing on the same loss fund of NOK 1.75 billion. When an actual loss is realized, it will be covered by the loss fund. When the loss fund is depleted, no further loans can be granted under the GIFF. The net interest margin, or "success fees", from successful projects and coverage from collaterals, will reduce the amount that is drawn on in the loss fund. As loans are repaid, the loss fund is replenished and thus the overall loan capacity (limited to NOK 5 billion) is restored.

(18) As long as the loss fund is not depleted, IN may award loans that nominally accumulate to NOK 5 billion. However, IN must administer the portfolio in a responsible way and with regard for the long term, which necessitates a balanced approach with regard to the overall risk. Therefore, the portfolio will likely grow at a measured rate. On balance, these long-term considerations will likely reduce the actual State aid awarded in terms of gross grant equivalent.

(19) The aid will be granted in 2024 and 2025. No new loans will be provided under the GIFF (on the basis of the TCTF)[17] after 31 December 2025.

3.5 The nature and form of the aid

(20) The aid is granted in the form of loans. No aid will be channelled through financial intermediaries.

(21) The (soft) loans granted in accordance with the limits set out above, will contain an element of State aid, as the interest rates will be lower than market terms. Debtors may also, when necessary for the orderly repayment of the loan, be awarded interest free periods and grace periods in excess of what the loan market could offer, although not in excess of what is strictly necessary from a creditor perspective.

(22) Eligible costs under the scheme comprise all investment costs in tangible and intangible assets required for the production or recovery of the relevant goods.

[14] IN will, from the same budget resources (NOK 5 billion), also grant aid, in the form of soft loans, on the basis of the GBER. This gives IN the opportunity to finance projects other than those set out in point 85 TCTF, provided that the rules set out in the GBER are respected. It is not yet clear, which percentage of the scheme's budget will be granted on the basis of the TCTF and the GBER rules, respectively. The funds granted on the basis of the GBER are not part of the notification and fall outside the scope of the present decision.

[15] Using the average annual exchange rate of the European Central Bank for 2023, EUR 1 equals NOK 11.4248.

[16] Prop_104_S_(2023–2024)_Forel_utg_(regjeringen.no), page 152.

[17] Loans granted under the GIFF on the basis of the GBER fall outside the scope of this decision and are consequently not subject to this limitation. According to the Norwegian authorities, the GBER scheme is expected to continue existing beyond 31 December 2025.

Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).

(23) For large enterprises, the aid intensity (calculated by reference to the nominal amount of the underlying loan) will not exceed 20% of the eligible investment costs, and the total aid amount (defined as the nominal amount of the underlying loan) cannot exceed EUR 150 million per undertaking. For medium-sized enterprises the aid intensity will not exceed 30%. For small enterprises the aid intensity will not exceed 40%. For investments in assisted areas designated in the applicable regional aid map[18] in accordance with Article 61(3)(c) of the EEA Agreement ("c"-areas), the aid intensity is increased by 5% of the eligible costs. The overall amount of aid with a "c"-area bonus cannot exceed EUR 200 million per undertaking per EEA State.

	Max. aid intensity	Max. aid intensity in "c"-areas
Large enterprise	20%	25%
Medium enterprise	30%	35%
Small-size enterprise	40%	45%

Table 1 – maximum aid intensities under the scheme

3.6 Administration of the scheme

(24) The GIFF will be managed by IN. This entails, *inter alia*:

- In depth analysis of the applicants and the projects that the loans will finance, hereunder business plans, budgets (including sensitivity analysis) and collateral.
- Use of expert third party evaluations when necessary, e.g. with regard to technological feasibility.
- Evaluations by internal legal resources regarding the State aid requirements of the TCTF.

(25) The beneficiary must apply for aid before the start of works.[19] The aid application will include the information required in Annex II to the TCTF.

(26) The application must be accompanied by a business plan describing the project. The aid applicant will specify whether it applies for a subsidised loan. Before granting aid from the GIFF, IN will verify the concrete risks of the productive investment not taking place within the EEA, and that there is no risk of relocation

[18] The currently applicable map is the Norwegian regional aid map 2022-2027, as approved by ESA Decision No 276/21/COL.

[19] "Start of works" means 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, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

as described above. This verification is based on the information provided by the beneficiary as set out in Annex II to the TCTF.

3.7 Cumulation

(27) The aid under the GIFF may be cumulated with other aid in relation to the same eligible costs, partly or fully overlapping. The Norwegian authorities will ensure that such cumulation will not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. The Norwegian authorities will ensure that the total cumulated aid never will exceed 100% of the eligible costs.

3.8 Compliance with relevant provisions of EEA law

(28) The Norwegian authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of EEA law. In keeping with this, the following types of aid will not be granted under the GIFF:

- Aid for export-related activities which would be directly linked to the quantities exported.

- Aid that is contingent upon the use of domestic over imported goods or services.

- Aid to establish and operate a distribution network or to cover any other expenditure linked to export activities.

3.9 Information – publication, reporting and record keeping

(29) The Norwegian authorities will inform ESA within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II to the TCTF.

(30) The Norwegian authorities will publish relevant information on each individual aid award above EUR 100 000 in the Norwegian register for State aid (Registeret for offentlig støtte, "ROFS"). The information will be published within 6 months from the moment of granting.

(31) The Norwegian authorities will submit annual reports to ESA on the GIFF in accordance with the implementing provisions decision[20] and point 89 TCTF.

(32) The Norwegian authorities will keep detailed records regarding the granting of aid under the GIFF. These records will be maintained for at least 10 years.

4 Presence of State aid

4.1 Introduction

(33) 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

[20] ESA Decision No 195/04/COL, as amended lastly on 4 July 2017.

shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement."

(34) 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.

(35) The GIFF is financed over the State budget and managed by IN, a publicly owned enterprise under the control of the Norwegian authorities. It is therefore financed through State resources and imputable to the State.

(36) The measure confers an advantage on its beneficiaries in the form of loans that are more advantageous for the beneficiaries than what they could obtain on the market. The loans thus provide an economic advantage to the beneficiaries, which they would not have received under normal market conditions.

(37) The advantages under the GIFF are selective. They are only granted to certain undertakings, as described above. Other undertakings in a comparable legal and factual situation (considering that all economic operators should in principle cover their own costs) are not eligible for aid, and thus will not receive the same advantage. The scheme is also selective since it only favours the production of certain goods and excludes certain sectors.

(38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between EEA States, since those beneficiaries are active in sectors in which intra-EEA trade exists.

(39) In view of the above, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

(40) 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."

(41) 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.

6 Compatibility of the aid

6.1 Introduction

(42) 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.

(43) Pursuant to Article 61(3)(c) of the EEA Agreement, ESA may declare compatible with the internal market "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".

(44) The TCTF sets out that State aid can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU for a limited period of time if it contributes to accelerating the economic transition and addressing the productive investment gap in sectors strategic for the transition towards a net-zero economy by providing incentives for their fast deployment, also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA. Article 107(3)(c) TFEU corresponds to Article 61(3)(c) of the EEA Agreement. In order to ensure uniform application of the State aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA will also apply the TCTF. Therefore, in cases where all relevant applicable conditions in the TCTF are fulfilled, ESA will declare the measure in question compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c).

6.2 Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy

(45) Based on the information provided by the Norwegian authorities, as set out above, ESA concludes that the measure fulfils all of the applicable conditions under section 2.8 of the TCTF, entitled "Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy". In particular:

- The measure is aimed at investment projects with strategic importance for the transition towards a net-zero economy. The measure will support the following activities: the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage; the production of key components designed and primarily used as direct input for the production of the equipment; the production or recovery of related critical raw materials necessary for the production of the equipment and key components (paragraph (6) above). The measure therefore complies with point 85(a) TCTF.

- The aid is granted on the basis of a scheme, i.e. an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner, with an estimated budget (paragraph (16) above). The measure therefore complies with point 85(b) TCTF.

- Aid under the measure can be granted until 31 December 2025 at the latest (paragraph (19) above). The measure therefore complies with point 85(c) TCTF.

- The measure provides that beneficiaries must apply for aid before the start of works and must provide the information required in

Annex II of the TCTF (paragraph (25) above). The measure therefore complies with point 85(d) TCTF.

- Aid under the measure will be granted in the form of loans (paragraph (20) above). The measure therefore complies with point 85(e) TCTF.

- The eligible costs relate to all investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know-how or other intellectual property) required for the production or recovery of the goods listed in point 85 (a) TCTF. Further, the intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs). Therefore, the calculation of eligible costs (paragraph (22) above) fulfils the requirements of point 85(f) TCTF.

- The aid intensities and the overall aid amounts under the measure (paragraph (23) above) correspond to the ceilings in point 85(g) TCTF. For investments made by small enterprises, the aid intensities may be further increased by 20 percentage points and for those investments made by medium-sized enterprises, the aid intensities may be increased by 10 percentage points. The measure therefore complies with point 85(h) TCTF.

- The beneficiaries under the measure are required to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment, and to respect the additional conditions set in line with point 85(i) TCTF (paragraph (14) above). The measure therefore complies with point 85(i) TCTF.

- Prior to granting aid under the scheme, IN will verify, on the basis of the information provided by the beneficiaries, the concrete risks of the productive investment to be supported under the measure not taking place within the EEA and that there is no risk of relocation within the EEA (paragraph (26) above). The measure therefore complies with point 85(j) TCTF.

- Beneficiaries under the measure will have to: (i) confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place; and (ii) commit not to carry out such relocation up to a period of two years after completion of the investment (paragraph (13) above). The measure therefore complies with point 85(k) TCTF.

- Aid under the measure will not be granted to undertakings in difficulty (paragraph (10) above). The measure therefore complies with point 85(l) TCTF.

- Aid under the measure may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules (paragraph (27) above). Under no circumstances may the total aid amount exceed 100% of the eligible costs. The measure therefore complies with point 85(m) TCTF.

- Additional requirements as referred to in point 85(n)[21] TCTF will not be implemented under the GIFF.

- ESA will be informed, within 60 days from the moment of granting individual aid under the measure, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary (paragraph (29) above). The measure therefore complies with point 85(o) TCTF.

(46) The Norwegian authorities confirm that the aid under the GIFF is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of Norway (paragraph (13) above). The measure therefore complies with the principle set out in point 51 TCTF.

(47) The Norwegian authorities confirm that the aid under the GIFF will not be granted to undertakings under sanctions adopted by the Norwegian authorities or the European Union (paragraph (12) above). The measure therefore complies with point 52 TCTF.

(48) The Norwegian authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of EEA law (paragraph (28) above). In addition, ESA has no indications of any possible breach of EEA law that would prevent the notified measure from being declared compatible with the internal market. The measure therefore complies with the principle set out in point 53 TCTF.

(49) As for publication and information requirements - the Norwegian authorities will: (i) publish relevant information in the Norwegian register for State aid in line with point 87 TCTF (paragraph (30) above), (ii) submit annual reports to ESA on the GIFF in accordance with point 89 TCTF (paragraph (31) above), and (ii) keep detailed records regarding the granting of aid under the GIFF in accordance with point 90 TCTF (paragraph (32) above).

(50) Based on the foregoing, ESA finds that the measure facilitates the development of certain economic activities and contributes to accelerating the economic transition to overcome the current crisis. ESA considers that the positive effects of the

[21] Point 85(n) TCTF sets out that Member States may consider including in a non-discriminatory way requirements related to environmental protection or related to social protection or employment conditions.

measure outweigh its potential negative effects on competition and trade, and it is compatible with the internal market pursuant to Article 61(3)(c) of the EEA Agreement since it meets all the relevant conditions of the TCTF.

7 Conclusion

(51) On the basis of the foregoing assessment, ESA considers that the measure 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 measure.

(52) 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,

Yours faithfully,

For Arne Røksund President Responsible College Member	Stefan Barriga College Member	Árni Páll Árnason College Member

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

This document has been electronically authenticated by Arni Pall Arnason, Melpo-Menie Josephides.