Brussels, 10 May 2022
Case No: 88678
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Decision No 101/22/COL

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

Subject: Temporary Crisis Framework: loan guarantee scheme

1 Summary

(1) The EFTA Surveillance Authority ("ESA") wishes to inform Norway that, having assessed the loan guarantee scheme for undertakings with a significant customer base in Russia, Belarus and/or Ukraine ("the measure"), ESA considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections[1] to it, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

2 Procedure

(2) The Norwegian authorities notified the measure on 9 May 2022.[2]

3 Description of the measure

3.1 Background

(3) According to the Norwegian authorities, Russia's aggression against Ukraine and the sanctions imposed to meet this aggression have impacted a limited number of Norwegian companies that have a significant customer base in Russia, Belarus and/or Ukraine ("RBU"). The Norwegian authorities have further explained that there are numerous and considerable obstacles that interrupt trade flows, which can lead to liquidity issues for the Norwegian counterparts. As a result, undertakings with RBU based customers have either had to stop doing business in these countries or are faced with significant uncertainty, as to their established and on-going operations to RBU based customers. Until the impacted businesses adapt and find new markets, some need liquidity to stay afloat.

(4) The Norwegian authorities have confirmed that the eligible undertakings for aid are undertakings that have stopped trading with RBU based customers due to the sanctions as well as undertakings that are engaged in providing goods and

[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 1287958, Document No 1287960, Document No 1288092 and Document No 1288093.

services (i) not subject to sanctions either by the EU or Norway, and (ii) not owned by individuals that are subject to sanctions.

(5) Based on the above, the Norwegian authorities have notified the measure to support undertakings that had at least 40% of their turnover from customers in RBU, before the military aggression against Ukraine by Russia took place and the sanctions were imposed by Norway, the EU and its international partners.

(6) The measure is notified in light of the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia ("Temporary Crisis Framework").[3]

3.2 Objective

(7) The objective of the measure is to secure liquidity in the form of guarantees provided by the Norwegian State for undertakings suffering a lack of liquidity due to the inability of their RBU customers to settle their outstanding balances as a direct or indirect result of Russia's aggression against Ukraine and/or the imposition of sanctions.

(8) The undertakings concerned are based in Norway, and are profitable under normal market conditions, with a significant historical exposure to customers based in RBU.

(9) The Norwegian authorities have confirmed that the measure may not in any way be used to undermine the intended effects of sanctions imposed by Norway, the EU or its international partners, and will be in full compliance with the national Regulation on the sanctions against Russia and Belarus.[4]

3.3 National legal basis

(10) The national legal basis of the measure is the Parliamentary Decision authorising the scheme and its budget as set out in Innst. 270 S (2021–2022),[5] amending the budget proposed by the Government in Prop. 78 S (2021–2022),[6] and the regulation to be adopted by the Ministry of Trade, Industry and Fisheries for Export Finance Norway (Eksfin).[7]

3.4 Aid granting authority

(11) The aid granting authority will be Eksfin, a governmental financial enterprise. Eksfin will also administer the measure.

3.5 Beneficiaries

(12) The direct beneficiaries of the measure are undertakings that derive a minimum of 40% of their annual gross turnover from RBU customers. According to the Norwegian authorities, this concerns a limited number of undertakings in Norway,

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[3] Communication from the Commission on the Temporary Crisis Framework for state aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 131 I of 24.3.2022, p. 1.

[4] Regulation of 15 August 2014 No 1076, as amended by Regulation of 29 April 2022 No 647 (*forskrift om endring i forskrift om restriktive tiltak vedrørende handlinger som undergraver eller truer Ukrainas territorielle integritet, suverenitet, uavhengighet og stabilitet*).

[5] https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=88801.

[6] Prop. 78 S (2021–2022) (regjeringen.no).

[7] Regulation to be adopted for Export Finance Norway (*regelverk for Eksportfinansiering Norge (Eksfin) sine ordninger*).

mainly small and medium-sized enterprises in the maritime sector. The Norwegian authorities expect the number of beneficiaries under this measure to be less than 10.

(13) The calculation of the 40% share of turnover will be based on 2021 turnover data or an average of turnover data for 2019–2021.

(14) Indirect beneficiaries will be financial institutions providing the loans to the undertakings.

(15) The Norwegian authorities have further confirmed that aid under the measure will not be granted to undertakings under sanctions adopted by Norway and the EU, including but not limited to: (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (c) undertakings active in industries targeted by sanctions adopted by Norway and the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

3.6 Aid instrument and intensity

3.6.1 General

(16) The guarantees under the measure will only be provided for new individual loans. The guarantee can cover up to 90% of the loan principal, which will decrease proportionately, as the loan is reimbursed. The guarantee will cover the losses incurred by the financial institution from defaults on loans that occur within the term of the loan.

(17) The loans can be in the form of repayment loans and overdrafts. Repayment loans can be granted with a grace period of up to 36 months. Furthermore, the loans can be secured or unsecured.

(18) Guarantees can also be granted for loans to undertakings that, as of 31 December 2021, were in difficulty.[8]

(19) Loans granted under the measure can only be used to cover operating expenses/working capital loans or financing investments, defined as:

(i) Operating expenses/working capital loans: include all current expenses, including expenses for servicing existing debt. The loan shall not cover dividends or repayment of loans to owners or management.

(ii) Financing investments: the financial institution providing the loan shall obtain and assess information from the loan applicant, documenting that investments are necessary to ensure continued operation during the term of the loan.

(20) The loans may be granted by financial Institutions established in Norway or in another EEA State through a subsidiary or a cross-border activity.[9]

[8] See footnote 30 of the Temporary Crisis Framework.
[9] Financial Undertakings Act of 10 April 2015 No 17 (*finansforetaksloven*).

3.6.2 The specific criteria

(21) The Norwegian authorities have confirmed that the measure will adhere to the following criteria:

(a) The guarantee provides up to 90% risk relief with risk for default.

(b) The loans shall not amount to more than (i) 15% of the average annual turnover of the undertaking for the last three closed accounting periods, or (ii) 15% of the beneficiary's average total annual turnover over the last two closed accounting periods where only two closed annual accounts are available, or (iii) 15% of the beneficiary's total annual turnover over the last closed accounting period where only one closed annual account is available. In exceptional cases, a higher amount may be granted to SMEs (for up to 12 months) or large enterprises (for up to 6 months), for enterprises active in sectors particularly affected by the Russian military aggression against Ukraine. In these exceptional cases, the loan amount will be limited to the liquidity needs of the undertaking.

(c) The guaranteed loan shall not amount to more than NOK 50 million per undertaking.

(d) The loans can have a maximum duration of 6 years. The loans can be granted with a shorter term. Loans with a shorter term can be extended on the same terms within the framework of 6 years.

(e) The undertakings must submit a declaration of compliance with the sanctions imposed by both the EU and Norway as a result of the Russian aggression against Ukraine.

(f) The financial institution is responsible for the customer relationship with the undertaking and compliance with laws and regulations that are not covered by the regulations governing the measure. This includes the assessment of compliance with sanctions and the rules on anti-money laundering and terrorism financing. Eksfin must verify that the criteria set out in the award letter and the regulations governing the measure are complied with in each individual case. Eksfin will also be responsible to verify the declaration of compliance with the sanctions submitted by the undertaking.

(g) To the extent possible, the loans shall have the same terms as a similar loan to a comparable borrower under normal market conditions.

(h) The financial institution shall ensure that loans are not used for early repayment of existing debt to the financial institution or other financial institutions.

(i) The financial institution must document that the financial benefit of the guarantee has been transferred to the undertaking to the greatest possible extent. The Norwegian authorities have explained that the financial institution giving the loan must also, for each loan, quantify the value of reduced interest rates, lowered collateral requirements or other relevant modifications to the loan agreement, compared with what the terms would have been without the public guarantee. If the calculations show that the value of the public guarantee exceeds the value of the modifications to the loan agreement for the beneficiary, the financial institution giving the loan, must pay the difference in double, as an extra guarantee fee. Half of the extra fee shall be paid to the beneficiary to ensure that the advantage of the public guarantee is fully transferred to the beneficiary. The other half of the extra fee shall be paid to the administrator of the scheme. The additional fee to the administrator is intended to financially motivate the financial institution to pass the guarantee advantages on to the loan agreement and thereby the final beneficiary via modifications.

(j) The financial institution shall, on behalf of the Norwegian State, demand an annual guarantee premium from the borrower. The guarantee premium shall be calculated on the basis of the outstanding guaranteed loan amount at the time of payment for the guarantee premium. The financial intermediary shall pay the guarantee premium to the State as soon as the loan has been disbursed, and thereafter annually for loans with a maturity of more than one year.

(k) The Norwegian authorities commit to enforce the levels of guarantee premiums provided in paragraph 47(b) of the Temporary Crisis Framework. The guarantee premiums will therefore be set at the following levels:

Type of Recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th years**
SMEs	25 bps	50 bps	100 bps
Large enterprises	50 bps	100 bps	200 bps

3.6.3 In case of default

(22) In the event of default, Eksfin will be responsible to pay compensation, in accordance with the guarantee, to the financial institution. The financial institution must document that the undertakings has defaulted on the loan agreement.

(23) The guarantee covers the financial institution's losses *pro rata*. The coverage applies to loss of principal and interest and losses related to the financial institutions' costs.

(24) The guarantee does not cover overdue, unpaid interest beyond 90 days, or interest that accrues after debt negotiations, reorganisation or the opening of the bankruptcy of the borrower.

(25) The financial institution shall recover the loan until all collateral has been realised, including guarantees and third-party mortgages, and a possible final loss has been established. All payments or settlements from collateral, after deduction of the financial intermediary's external collection costs, shall be distributed proportionally between the financial institution and the State.

(26) Eksfin may, at the request of a financial institution, consent to an agreement on restructuring, where loans guaranteed under the measure are included if this is considered to be in the State's interest, including that the State's financial loss is assumed to be lower than by default. The terms of the restructuring must be market-based.

3.6.4 Monitoring, reporting and cumulation

(27) Eksfin shall ensure that all applicable monitoring and reporting obligations are complied with. This includes the obligation to register all guarantees provided under the measure in the national register of state aid, where the nominal value of the guarantee exceeds EUR 100 000.

(28) These guarantees shall be registered in the national register of state aid within 12 months of the guarantee being awarded.

(29) The Norwegian authorities have further confirmed that, for the same underlying loan principal, guarantees granted under this measure, cannot be cumulated with aid granted under Section 2.3 of the Temporary Crisis Framework or with aid granted under Sections 3.2 or 3.3 of the COVID-19 Temporary Framework.

(30) Guarantees granted under the measure may be cumulated with other loans, provided that the overall loan amount per beneficiary do not exceed the ceilings set out in paragraph 47(e)(i) of the Temporary Crisis Framework. According to paragraph 47(e)(i) of the Temporary Crisis Framework, the beneficiaries may benefit from the guarantees on new loans up to 15% of the average annual turnover for the last three closed accounting periods. The Norwegian authorities have, in order to not exclude undertakings that do not hold three closed annual accounts, indicated that these undertakings can benefit from the guarantees on new loans up to (i) 15% of the beneficiary's total annual turnover for the two closed accounting period where only two closed annual accounts are available, or (ii) 15% of the beneficiary's total annual turnover for the last closed account, where only one closed account is available.

(31) A beneficiary may benefit in parallel from multiple guarantees under this measure provided that the overall amount of loans per beneficiary does not exceed the ceilings set out in paragraph 47(e)(i) of the Temporary Crisis Framework. Guarantees granted under this measure may also be cumulated with aid under the *de minimis* Regulations,[10] or with aid under the General Block Exemption Regulation,[11] provided the provisions and cumulation rules of those Regulations are respected.

3.7 Budget and duration

(32) The measure will cover loans with a value of up to NOK 50 million per undertaking.

(33) The estimated budget for the whole scheme is NOK 400 million, which are the expected guarantee amounts under the measure.

(34) The premium income from the measure is transferred to the Treasury on a quarterly basis.

(35) The measure will enter into force the day after the measure is approved by ESA and no aid will be granted under the measure after 31 December 2022.

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[10] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), referred to at point 1ea of Annex XV to the EEA Agreement.

[11] Commission Regulation (EU) No 651/2014 of 17 June 2014 (OJ L 187, 26.6.2014, p. 1) as amended by Commission Regulation (EU) 2017/1084 of 4 June 2017 (OJ L 156, 20.6.2017, p. 1, as corrected by OJ L 26, 31.1.2018, p. 53) and Commission Regulation (EU) 2020/972 of 2 July 2020 (OJ L 215, 7.7.2020, p. 3), referred to at point 1j of Annex XV to the EEA Agreement.

4 Presence of state aid

4.1 Introduction

(36) 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.”

(37) 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.

(38) The measure is imputable to the State, since it is administered by Eksfin (see paragraph (11)) and financed through State resources, since it is financed by public funds (see paragraphs (10) and (33)).

(39) The measure confers an advantage on its beneficiaries in the form of non-market conform guarantees on loans. The measure therefore relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(40) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings affected by the current crisis (see paragraphs (12) and (13)).

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

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

5 Aid scheme

(43) ESA notes that the legal basis of the measure is an act, which does not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner.[12] The aid is therefore granted on the basis of an aid scheme.

6 Lawfulness of the aid

(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 submit its comments, of any plans to grant or alter aid. … The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”

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[12] See Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”).

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

7 Compatibility of the aid

7.1 Introduction

(46) Under Article 61(3)(b) of the EEA Agreement, state aid can be considered compatible with the functioning of the EEA Agreement "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State".

(47) The disturbance must affect the whole or an important part of the economy of the State concerned and not merely that of one of its regions or part of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.

(48) The Commission adopted the Temporary Crisis Framework on 23 March 2022, which sets out temporary state aid measures that it considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement.

(49) In the Temporary Crisis Framework, the Commission has acknowledged that the military aggression against Ukraine by Russia, the sanctions imposed by the EU or its international partners and the counter-measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. The Commission has concluded that state aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter-measures taken so far, for example by Russia.

(50) 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 applies the compatibility conditions set out in the Temporary Crisis Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the serious disturbance of the economy caused by the Russian military aggression against Ukraine and the imposition of corresponding sanctions.

7.2 Liquidity support in the form of guarantees

(51) The measure is one of a series of measures conceived at national level by the Norwegian authorities to remedy a serious disturbance in their economy. ESA notes the importance of the measure to stimulate lending by credit institutions to companies during the current crisis. Moreover, the measure can be reasonably anticipated to produce the desired effects and contribute to the overall recovery of the Norwegian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Liquidity support in the form of guarantees*") described in Section 2.2 of the Temporary Crisis Framework and the requirements for aid in the form of guarantees channelled through credit

institutions or other financial institutions described in paragraph 47(h) of the Temporary Crisis Framework.

(52) During the current circumstances, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution in order to ensure access to liquidity to undertakings facing sudden shortage.

(53) The guarantee premiums under the measure meet all the relevant conditions of the Temporary Crisis Framework. ESA notes in particular:

(i) The guarantees are provided only to new individual loans made to undertakings (see paragraph (16)). The measure therefore complies with paragraph 47(a) of the Temporary Crisis Framework.

(ii) The measure sets minimum levels for guarantee premiums of 25, 50 and 100 bps for SMEs and 50, 100 and 200 bps for large enterprises on loan with a maturity of respectively 1 year, 2 to 3 years and 4 to 6 years (see paragraph (21)(k)). It therefore complies with the minimum levels for guarantee premiums provided in paragraph 47(b) of the Temporary Crisis Framework.

(iii) Guarantees under the measure will be granted by 31 December 2022 at the latest (see paragraph (35)). The measure therefore complies with paragraph 47(d) of the Temporary Crisis Framework.

(iv) The measure limits the duration of the guarantees to a maximum of six years (see paragraph (21)(d)), and will not exceed 90% of the loan principal, which will decrease proportionately as the loan is reimbursed (see paragraph (16)). The measure therefore complies with paragraph 47(f) of the Temporary Crisis Framework.

(v) The overall amount of the loan per beneficiary, for which the guarantee is granted, will not exceed 15% of the beneficiary's average total annual turnover over the last three closed accounting periods in line with paragraph 47(e)(i) of the Temporary Crisis Framework. ESA notes that the Norwegian authorities will apply the same percentage of turnover also for undertakings that do not yet have three closed annual accounts (see paragraph (21)(b)).[13]

(vi) The guarantee is related to loans for working capital loans and/or financing investment (see paragraph (19)). The measure therefore complies with paragraph 47(g) of the Temporary Crisis Framework.

(vii) The Norwegian authorities have introduced safeguard measures in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. The credit institutions are to quantify the value of reduced interest rates, lowered collateral requirements or other relevant modifications to the loan agreement, and pay an extra guarantee fee in the case calculations exceed the value of the modifications made to the loan agreement. ESA finds that this safeguard ensures that the financial institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (see paragraph (21)(i)).The measure therefore complies with paragraph 47(h) of the Temporary Crisis Framework.

[13] See Commission decision of 7 April 2022, SA.102395, paragraph 38.

(viii) The cumulation rules set out in paragraph 46 of the Temporary Crisis Framework are respected, see paragraphs (30) and (31).

(54) ESA notes that the Norwegian authorities have confirmed that aid under the measure 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 the State granting the aid, pursuant to paragraph 32 of the Temporary Crisis Framework.

(55) Moreover, as noted under paragraph (9) above, the Norwegian authorities have confirmed that the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, pursuant to paragraph 33 of the Temporary Crisis Framework.

(56) Finally, the Norwegian authorities have confirmed that the monitoring and reporting rules laid down in Section 3 of the Temporary Crisis Framework will be respected. Moreover, the Norwegian authorities have confirmed that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected.

(57) ESA therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EEA EFTA State pursuant to Article 61(3)(b) of the EEA Agreement, since it meets all the relevant conditions of the Temporary Crisis Framework.

7.3 Transparency

(58) The Norwegian authorities have confirmed that the aid award, should it exceed EUR 100 000, will be published in the national state aid register.

(59) Therefore, the measure fulfils the transparency requirements

8 Conclusion

(60) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid with 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)(b), it has no objections to the implementation of the measure.

(61) 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,

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

Melpo-Menie Joséphidès
Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.