

Case No: 61026
Event No: 398584
Decision No: 412/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 19 December 2006
on the alterations to the tax refund schemes for seafarers aboard vessels in the
Norwegian Ordinary Shipping Register (NOR)
(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹,

Having regard to the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Authority's Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 24A on aid to maritime transport thereof,

Having regard to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 to the Surveillance and Court Agreement⁵,

Having regard to the Authority's Decision No 280/06/COL⁶,

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 03.09.1994, p.1 and EEA Supplements No 32, p.1. The Guidelines were last amended on 13 December 2006. Hereinafter referred to as the State Aid Guidelines.

⁵ OJ L 139, 25.5.2006, p. 37.

⁶ Decision 280/06/COL of 4 October 2006 on the alterations to the tax refund schemes to ship-owners for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS). Not yet published in the Official Journal of the European Union. The full text of the decision can be found on the Authority's webpage, <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

Whereas:

I. FACTS

1 Procedure

By letter dated 25 October 2006 from the Norwegian Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Trade and Industry of the same date (Event No 395384), the Norwegian authorities notified an alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR), pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

By letter dated 12 December 2006, the Norwegian authorities submitted an amendment and provided additional information to the notification (Event No 402928).

2 Description of the notified alteration to the existing aid scheme

2.1.1 Title of the aid scheme

The current notification amends the scope of application of the scheme entitled “*Tax refund scheme for seafarers employed aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS)*” as authorised by the Authority’s Decision No 280/06/COL.

2.1.2 Objective of the aid scheme and the notified alterations

According to the Norwegian authorities, the main aim of the tax refund scheme for employment and training of seafarers is to safeguard and increase employment of Norwegian and EEA seafarers, to secure recruitment and qualified training of seafarers and to improve the competitive position of companies employing such seafarers. At the same time, the scheme has a wider strategic objective of preserving and developing know-how in the maritime industries in general and improving safety.

For ships registered in the Norwegian Ordinary Shipping Register (NOR), the Norwegian authorities have proposed two alterations to the approved tax refund scheme for seafarers which should apply retroactively with effect from 1 July 2006:

- Firstly, to allow for the reimbursement for the seafarers’ collected income tax and social security contributions as well as social security contributions paid by the employer for seafarers aboard cargo ships, well boats, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Register (NOR). The currently existing tax refund scheme for vessels registered in the Norwegian Ordinary Shipping Register (NOR) only applies to ferries engaged in foreign trade and offshore vessels and shuttle tankers. (Widening the scope of the scheme.)
- Secondly, for passenger ships in international trade and registered in the Norwegian Ordinary shipping Register, the Norwegian authorities propose to allow reimbursement only to cover the safety crew aboard according to the vessel alarm instructions⁷. (Tightening the criteria for the scheme.)

⁷ FOR 2004-10-11 nr 1341 Forskrift om redningsredskaper på passasjerskip.

The Norwegian authorities expect that the first alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) will affect approximately 1 550 seafarers.

As far as the second alteration is concerned, the Norwegian authorities have stated that, retroactively from 1 July 2006, the net wage scheme for passenger ships in international trade and registered in the Norwegian Ordinary Shipping Register (NOR) will only cover the safety crew aboard according to the vessel alarm instructions. Thus, while the existing scheme covers the whole crew aboard the vessel (both the maritime crew and the passenger crew), the amended scheme will cover approximately 80 to 90 percent of the crew in passenger ships in international trade.

2.1.3 National legal basis for the aid measure

The legal basis for the amended scheme is the fiscal budget according to Decision 76 by the Norwegian Parliament of 6 December 2005, c.f. *Budsjett-innst.S.nr. 8 (2005-2006)* and *St.prp.nr. 1 Tillegg nr. 1 2005-2006*.

The decision is implemented by Regulation of 21 December 2005, number 1720 (*Forskrift om forvaltning av tilskudd til sysselsetting av sjøfolk*) as amended on 27 September 2006. The Norwegian authorities have indicated that the implementing guidelines will have to be amended according to the proposed alterations to the scheme.

2.1.4 Eligibility

The scheme is only open to ships registered in the Norwegian Ordinary Shipping Register (NOR) of at least 100 GT used for maritime transportation. The notified alteration to the approved scheme extends its coverage to cargo ships, well boats, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Register⁸. Refunds are, however, not to be granted in respect of ships whose operation qualifies them for other public subsidies. This applies, in particular, to ferries which are considered to form part of the national road and transport system. Fishing vessels are also excluded from the system. In the case of multipurpose vessels, the applicant must prove to the Norwegian Maritime Directorate that it is carrying out maritime transport activities for at least 50 percent of the time in order to receive a refund under the scheme.

In line with the conditions approved by the Authority in Decision No 280/06/COL, ship-owners of qualifying ships will receive grants in respect of seafarers who are:

- (a) tax resident in Norway or another EEA state or citizen of a country comprised by the EEA Agreement, and
- (b) who are tax liable to Norway for income earned aboard, and
- (c) who are eligible for seafarers tax deduction according to 6-61 of the Tax Act, and
- (d) whose wages are reported to the National Pension Insurance for Seafarers or documented separately.

⁸ "Nettolønnsordningen omfatter lasteskip, brønnbåter, passasjerskip, slepebåter og skip petroleumsvirksomhet når disse er registrert i NOR og oppfyller de øvrige vilkår."

2.1.5 Budget and duration

The tax refund scheme is subject to the annual budgetary decision of the Norwegian Parliament. The budget appropriation for the fiscal year 2006 amounts to 1 210 000 000 NOK (approximately EUR 152 million)⁹. The proposed alterations to the scheme will require an additional appropriation of 45 000 000 NOK (approximately EUR 5.65 million) for the period July to October 2006¹⁰. The Authority therefore presumes that the alterations would lead to an increase of the yearly budget for the scheme of approximately NOK 135 million (approximately EUR 17 million).

The scheme will be re-notified to the Authority in ten years, i.e. before 31 December 2015.

II. APPRECIATION

1 The presence of state aid

The Authority already assessed the tax refund scheme for seafarers employed aboard vessels registered in the Norwegian Ordinary Shipping Register which covered ferries engaged in foreign trade and offshore vessels and shuttle tankers in its Decision No 280/06/COL. In this Decision, the Authority considered that the scheme constituted state aid which was compatible on the basis of the provisions of Chapter 24A of the State Aid Guidelines, the Maritime Guidelines.

The Norwegian authorities have notified two amendments to the tax refund scheme. The first one implies a widening in the scope of application of the scheme to cover cargo ships, well boards, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Registry. The second amendment notified implies a tightening of the application of the scheme for passenger ships in international trade which will no longer cover the whole crew (i.e. the maritime crew and the passenger crew) but only safety crew.

In the following, the Authority will assess the scheme as proposed amended.

State aid within the meaning of Article 61(1) EEA Agreement

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

⁹ Exchange rate NOK/EUR 7.9615 for 2006 as published on the Authority’s website.

¹⁰ According to the information provided by the Norwegian authorities, NOK 45 million corresponds to the additional budgetary allocation of the two alterations of the scheme together for 2006 (the last two months of 2006 will be refunded under the 2007 budget). Regarding the expansion of the scheme to cover other vessels registered in the Norwegian Ordinary Shipping Registry beyond those originally covered, i.e. ferries engaged in foreign trade and offshore vessels and shuttle tankers, the seafarers concerned already benefited from the so-called partial refund scheme. If the partial refund scheme would have been applied after 1 July 2006, it would have cost the State NOK 15 million for the period from July to October 2006. The State will spend additional NOK 55 million due to the notified expansion. Regarding the tightening of the scheme to be applicable only to safety crew aboard the vessel, the original budgetary allocation corresponded to NOK 100 million but the State will only spend NOK 90 million.

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.”

1.1 Presence of state resources

The aid measure must be granted by the State or through state resources. As the refund of the income tax and the social security contributions will be financed by budgetary allocations, this criterion is fulfilled.

1.2 Favouring certain undertakings or the production of certain goods

The support under the amended scheme grants an advantage to the ship-owners (which are to be regarded as undertakings since they carry out economic activities) of the different vessels covered by the new scheme. The refund of the employers' social security contributions compensates the ship-owners for charges which are normally borne from their budgets. The refund of the employees' taxes and their parts of the social security contributions is a direct grant corresponding to the income tax and social security contributions levied on the ship-owner's employees. The support also constitutes a selective measure as it is only addressed to the maritime sector and ship-owners of certain vessels within this sector.

1.3 Distortion of competition and effect on trade between Contracting Parties

The ship-owners benefiting from the scheme carry out an economic activity in competition with ship-owners/companies from other countries of the EEA and the support strengthens their position. The support therefore distorts or threatens to distort competition and affects trade between the Contracting Parties.

1.4 Conclusion

Based on the above findings, the Authority comes to the conclusion that the scheme as proposed amended constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. The extension of the coverage of the scheme to new ships does not amend the nature of state aid of the original scheme. Neither does the tightening of the scheme regarding tax refund only with respect to safety crew aboard passenger ships in international trade, since the ship-owners will still receive aid for these seafarers.

2 Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, *“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”*.

The proposed alterations to the schemes will take retroactive effect as of 1 July 2006. By submitting the notification of the alterations to an existing scheme, by letter from the Norwegian Ministry of Government Administration and Reform of 25 October 2006 (Event No 395384), and by explicitly stating that no payment would be effectuated until the new alterations to the scheme would have been authorised by the Authority, the Norwegian authorities have complied with the above notification requirement and the standstill obligation.

3 Compatibility of the aid

Article 61(3)(c) of the EEA Agreement provides that aid may be considered as compatible with the functioning of the EEA Agreement if its purpose is to facilitate the development of certain economic activities, where such aid does not adversely effect trading conditions between the Contracting Parties to an extent contrary to the common interest.

The Authority has issued guidelines for the application of Article 61(3)(c) of the EEA Agreement with regard to state aid to maritime transport, the so-called Maritime Guidelines, Chapter 24A of the State Aid Guidelines. Aid in favour of the maritime sector must, in particular, be examined in the light of these provisions.

In the following the Authority will assess whether the alterations to the tax refund scheme are of a nature as to amend the compatibility assessment carried out by the Authority in its Decision No 280/06/COL regarding the original scheme. In other words, it will be assessed whether the extension of the material coverage of the scheme to other type of vessels registered in the Norwegian Ordinary Shipping Registry and/or the tightening of the seafarers eligible to only cover safety crew aboard passenger ships in international trade will have the effect of changing the compatibility of the scheme with the Maritime Guidelines.

Compliance with the objectives of the maritime guidelines

The Maritime Guidelines sets out that aid schemes can be introduced to support the EEA maritime interest in the pursuit of general objectives such as:

- improving safe, efficient, secure and environment friendly maritime transport,
- encouraging the flagging or reflagging to EEA States' registers,
- contributing to the consolidation of the maritime cluster established in the EEA States while maintaining an overall competitive fleet on world markets,
- maintaining and improving maritime know-how and protecting and promoting employment for European seafarers, and
- contributing to the promotion of new services in the field of short sea shipping.

The Norwegian authorities have emphasised that there are no effective international rules at present to curb tax competition to counterbalance flagging towards other countries outside the EEA. On the other hand, there are only few administrative legal or technical barriers to moving a ship's registration from a Norwegian (or EEA) register. In this context the creation of conditions allowing fairer competition with flags of convenience (and other EEA States) seems to be the best way forward in the opinion of the Norwegian authorities. The proposed alterations to the seafarers refund scheme is intended to contribute to support the Norwegian maritime interest, with the aim of improving safe, efficient, secure and environment friendly maritime transport, encouraging the flagging or re-flagging to the Norwegian Ship Register (NOR), contributing to the consolidation of the Norwegian maritime cluster while maintaining an overall competitive fleet on world markets and maintaining and improving maritime know-how and protecting and promoting employment for EEA seafarers.

The maritime community employs roughly 75 000 people in Norway and is estimated to provide 6-9 percent of the GDP in the business sector. About 200 Norwegian shipping companies, with approximately 1700 ships in foreign trade, make up the core of a

complete maritime cluster, ranging from ocean transport to ship's equipment, short-sea shipping and maritime offshore oil-related activities. This inter-connection between the operative owners and the rest of the maritime cluster is of vital importance to both parties. Without the Norwegian controlled fleet there is no "home market" for the rest of the maritime cluster, on which to try out new products and get international exposure and acknowledgement. Seafarers represent a vital resource of knowledge in the maritime cluster. Norwegian shipping companies employ some 62 000 people of more than 60 different nationalities aboard ships and rigs. In addition almost 11 000 are employed onshore. The number of Norwegian seafarers on board Norwegian registered vessels has increased since 1995 and now totals almost 18 000.

An expressed objective for the Norwegian authorities is to preserve its position as a leading maritime nation. This objective is based, among other things, on the vital importance of this industry to many coastal communities. This is one of the reasons why the net wage scheme is now extended to cover ships engaged in short-sea shipping trade. The Norwegian authorities would like to ensure that maritime competence is maintained and in principle approximately 1 550 seafarers will be affected by this expansion.

The Authority considers that the Norwegian authorities have provided sufficient justification regarding the compliance of the proposed alterations to the tax refund schemes for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) with the general objectives of the Maritime Guidelines.

Application to maritime transport activities

The provisions of Chapter 24A of the State Aid Guidelines are applicable to "maritime transport" activities. The definition of maritime transport activities for the purpose of these guidelines corresponds to the one given in Regulation (EEC) No 4055/86¹¹, incorporated into the EEA Agreement as point 53 in Annex XIII to the EEA Agreement and in Regulation (EEC) No 3577/92¹², incorporated as point 53a in Annex XIII to the EEA Agreement¹³. Thus, maritime transport refers to the "transport of goods and persons by sea".

Therefore, under the amended tax refund scheme for seafarers as notified by the Norwegian authorities, state aid can only be granted in respect of maritime transport activities. The amendment of the scheme covers cargo ships, well boats, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Register (NOR). As long as these vessels carry out maritime transport activities within the meaning of the Maritime Guidelines, they are eligible for aid under the amended tax refund scheme.

Rules applicable to towage and other multipurpose vessels

¹¹ Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to services to maritime transport between Member States and between Member States and third countries (OJ L378 of 31.12.1986, page 1).

¹² Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L364 of 12.12.1992, page 7).

¹³ Point inserted by Decision No 70/97 (OJ No L 30, 5.2.1998, p. 42 and EEA Supplement No 5, 5.2.1998, p. 175), e.i.f. 1.8.1998.

The notified amendments to the tax refund scheme imply that towage tugs and other multipurpose vessels can be eligible for state aid provided that more than 50 percent of their activities constitute so-called maritime transport activities. Ship-owners of this kind of vessel can obtain refund regarding the seafarers aboard these vessels only in respect of such maritime transport activities.

In the guidelines, only the activities of towing and dredging are particularly mentioned with regard to the application of the guidelines to mixed activities. Towing and dredging vessels can still be eligible for state aid provided that more than 50 percent of their activities constitute so-called maritime transport activities. For reasons of consistency, the Authority will apply the same principle by analogy to other vessels with mixed activities under the scheme.

The Norwegian authorities have notified aid to towing vessels and vessels involved in petroleum related activities, as long as the activities consists of more than 50 percent maritime transport.

In the view of the Authority, the notified alterations to the scheme to cover multipurpose vessels with more than 50 percent of their activities in maritime transport activities comply with the principles of the Maritime Guidelines.

Aid granted in the form of reduced labour-related costs

The Maritime Guidelines provide that aid in the form of the alleviation of the burden of labour-related costs in respect of EEA seafarers should be allowed, provided that those seafarers are employed on board ships registered in an EEA State. The Maritime Guidelines allow such aid up to a maximum ceiling of 100% relief from contributions. Such measures should seek to safeguard EEA employment, both on board and onshore, preserve and develop maritime know-how in the EEA and improve safety. With regard to labour costs, section 24A.3.2(2) of the Guidelines provides that the following action on employment costs should be allowed for EEA shipping:

- reduced rates of contributions for the social protection of EEA seafarers employed on board ships registered in an EEA State,
- reduced rates of income tax for EEA seafarers on board ships registered in an EEA State.

For the purposes of the above, “EEA seafarers” is defined as:

- citizens of the EEA States in the case of seafarers working on board vessels (including ro-ro ferries), providing scheduled passenger services between ports of the EEA:
- all seafarers liable to taxation and/or social security contributions in an EEA State, in all other cases.

The tax refund scheme concerns the reimbursement for the seafarers’ collected income tax and social security contributions paid by the employers.

In the notification of the two alterations to the tax refund scheme for seafarers, the Norwegian authorities have clearly outlined that ship-owners of qualifying ships will receive grants in respect of seafarers who are, tax residents in Norway or another EEA State or citizen of a country comprised by the EEA Agreement, and who are tax liable to

Norway for income earned aboard, and who are eligible for seafarers tax deduction according to Section 6-61 of the Tax Act, and whose wages are reported to the National Pension Insurance for Seafarers or documented separately.

Regarding the proposed tightening of the scheme to cover only the safety crew aboard of passenger ships in international trade and registered in the Norwegian Ordinary Shipping Register, this amendment seems to have been done on the basis of an objective delimitation, which are the provisions of the vessel alarm instruction. The amendment does not differentiate between EEA seafarers and therefore does not imply a discrimination.

Thus, the Authority considers that the alterations to the tax refund scheme for seafarers employed aboard vessels in the Norwegian Ordinary Shipping Registry are in line with the guidelines as far as the reimbursement of employment costs and the eligible seafarers are concerned.

Ceiling

Section 24.A.3.2 of the Maritime Guidelines allows for the reduction of contributions for the social protection of EEA seafarers and a reduced rate of income tax. According to section 24A.11 of the Maritime Guidelines, a reduction might be granted up to a ceiling of 100%, i.e. the reduction can go down to a zero rate of taxation and social charges. According to the notification, it is ensured that these refund payments will never exceed the amount of income tax and social security contributions paid.

Cumulation

In accordance with Section 24A.11 of the Maritime Guidelines, the Norwegian authorities have stated under point 8 of the notification form that the aid cannot be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs.

4 Conclusion

On the basis of the foregoing assessment, the Authority considers that the notified amended Norwegian tax refund scheme for seafarers is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement.

In this regard, the Authority does not raise any objections to the extension of the rules to also cover a refund for income tax and social security contributions paid by the employer regarding seafarers aboard cargo ships, well boats, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Register (NOR).

The Authority does not raise any objections to the tightening of the rules applicable to passenger ships in international trade and registered in the Norwegian Ordinary Shipping Register (NOR) to only cover safety crew aboard according to the vessel alarm instruction. The Norwegian authorities have proposed to retroactively apply this refund from 1 July 2006, subject to authorisation by the Authority.

The Norwegian authorities are reminded of the obligation resulting from Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme. The

Norwegian authorities are required to present to the Authority as soon as possible all legislative and administrative texts implementing the above alterations to the aid schemes, where this has not already been done.

Following the requirements of Section 24A.12 of the Maritime Guidelines, the Norwegian authorities are reminded that for all aid schemes falling within the scope of the Maritime Guidelines, EFTA States are to communicate to the Authority an assessment of their effects during their sixth year of implementation.

The Norwegian authorities are also reminded that any plans to modify this scheme must be notified to the Authority. The Authority draws the Norwegian authorities attention to the fact that the Maritime Transport Guidelines, under which the above measures have been approved, will be reviewed in 2011. In case the rules of the Maritime Guidelines change, this may have an effect on all existing aid schemes falling under the Guidelines, including the alterations to the scheme authorised by this decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Registers (NOR) to extend the reimbursement for the collected seafarers' income tax and social security contributions paid by the employer to cover also cargo ships, well boats, passenger ships, towage tugs and vessels active in petroleum-related activities registered in the Norwegian Ordinary Shipping Register.

The EFTA Surveillance Authority has also decided not to raise objections to the notified alteration to cover only the safety crew aboard passenger ships in international trade according to the vessel alarm instruction.

The amended scheme is compatible with Article 61(3)(c) of the EEA Agreement.

The duration of the scheme has been notified until 1 January 2016.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 19 December 2006

For the EFTA Surveillance Authority,

Bjørn T. Grydeland
President

Kristján Andri Stefánsson
College Member