

## EFTA SURVEILLANCE AUTHORITY DECISION

of 14 September 2017

on an amendment to the tax and social security contributions refund scheme for employing seafarers 2016-2026 (NIS deep sea)

(Norway)

The EFTA Surveillance Authority (“the Authority”),

Having regard to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

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,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

### I. FACTS

#### 1 Procedure

- (1) By letter of 9 August 2017, the Norwegian authorities notified the Authority of an amendment to the tax and social security contributions refund scheme for employing seafarers 2016-2026, pursuant to Article 1(3) of Part I of Protocol 3.

#### 2 The notified measure

##### 2.1 The tax refund scheme for employing seafarers

- (2) By Decision No 085/16/COL<sup>1</sup> the Authority approved a system of refunds of taxes and social security contributions paid for seafarers on ships registered in Norway (the “tax refund scheme”). The tax refund scheme allows shipping companies registered in the

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<sup>1</sup> OJ C 386, 20.10.2016, p. 13.

Norwegian Ordinary Register (“NOR”) or the Norwegian International Ship Register (“NIS”) to have taxes and social security contributions refunded.

- (3) The Norwegian authorities have now notified an amendment to the tax refund scheme.

## **2.2 The notified amendment**

- (4) The general conditions of the tax refund scheme are described in Decision No 085/16/COL.
- (5) The notification at hand concerns an amendment to the scheme for employing seafarers on vessels registered in NIS in deep sea activity (“NIS deep sea”). These vessels are currently covered by the general category of ships registered in NIS, where a 26 % refund of income taxes and social security contributions is offered. The amendment will offer full refund of the seafarers’ paid income tax and social security contributions.
- (6) According to the Norwegian authorities, experience with the scheme has shown that the general NIS category (26 %) only to a very limited extent contributes to the employment of Norwegian or EEA seafarers on NIS vessels, as the aid is insufficient to equalise the wage differences in high-cost countries compared to low-cost countries.
- (7) The objective of the amendment is thus to stimulate shipping companies to employ Norwegian and EEA seafarers on NIS vessels and making the NIS register a more attractive option for Norwegian and EEA shipping companies with vessels flagged in third countries.
- (8) As mentioned above, the amendment will apply to vessels performing “deep sea activities”. Deep sea activities represent the opposite of short sea activities. The term “deep sea activities” applies to trade between continents or long-distance maritime transport, carrying large quantities of cargo. The amendment will apply to NIS vessels above 10 000 gross tons engaged in the transport of oil, chemicals, gas and roll-on-roll-off cargo. Vessels between 3 000 and 10 000 gross tonnes are performing both short sea and deep sea activities. In order to exclude vessels engaged in short sea shipping, the scheme will not cover vessels between 3 000 and 10 000 gross tonnes when performing transport between European ports.

## **3 National legal basis**

- (9) The national legal basis for the refund scheme for seafarers is the employment regulation on subsidies for the employment of workers at sea<sup>2</sup> (the “Employment Regulation”). Furthermore, the Norwegian Parliament decides on the scope of the aid scheme in its annual decisions on the state budget.

## **4 Aid instrument**

- (10) The aid instrument are direct grants in the form of reimbursement of taxes and social security contributions paid. The taxes and social security contributions may be refunded separately.

## **5 Beneficiaries and budget**

- (11) The beneficiaries are shipping companies with ships registered in NIS. The general NIS category currently covers 81 vessels and 520 seafarers. The Norwegian authorities estimate that 90 % of these vessels could be covered by the amendment.

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<sup>2</sup> FOR-2016-02-26-204 om tilskudd til sysselsetting av arbeidstakere til sjøs.

- (12) For 2017 the expenses for the amended scheme is estimated to be NOK 27 million covering payments for two terms. The annual budget appropriation is estimated to an increase of NOK 80 million.

## II. ASSESSMENT

### 1 The presence of state aid

(13) 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.”*

- (14) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.
- (15) The Authority has concluded that the tax refund scheme for employing seafarers 2016-2026 constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.<sup>3</sup> There is nothing in the current notification that would alter this conclusion.
- (16) The measure entails a refund of income tax and social security contributions out of the state budget. It is therefore granted through state resources. These refunds compensate eligible shipping companies for charges which are normally borne from their budgets. The refunds therefore confer an advantage on the companies. The measure is selective as it is only directed towards the maritime sector and shipping companies with vessels registered in NIS engaged in deep sea activities. Shipping activities are essentially carried out on a worldwide market. The shipping companies benefitting from the scheme carry out economic activities in competition with other shipping companies from third countries and from other EEA States. The support under the scheme strengthens the position of its beneficiaries. The support therefore is liable to have an impact on trade and to distort competition. On this basis, the Authority concludes that the notified measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

### 2 Procedural requirements

- (17) Pursuant to Article 1(3) of Part I of 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.”*
- (18) The scheme entered into force on 1 July 2017. Shipping companies can apply for the new scheme as of mid-September, and the first payments may take place in October 2017, after the Authority has approved the amendment. By submitting a notification of the amendment and assuring that no aid will be granted without the Authority’s approval, the Norwegian authorities have complied with the obligations under Article 1(3) of Part I of Protocol 3.

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<sup>3</sup> Lastly with Decision No 085/16/COL (OJ C 386, 20.10.2016, p.13).

### 3 Compatibility of the aid

- (19) The Authority has issued Guidelines on aid to maritime transport (the “AMT”) which describe how the Authority will assess the compatibility of aid under Article 61(3)(c) of the EEA Agreement to the maritime sector.
- (20) Maritime transport services are of vital importance to the EEA.<sup>4</sup> The EEA maritime transport sector faces fierce international competition from vessels registered in third countries. A large part of the EEA fleet continues to be registered under flags of third countries. This is because the registers of third countries which apply open register policies – some of which are called “flags of convenience” – have continued and are still continuing to enjoy a significant competitive edge over the registers of EEA States.<sup>5</sup>
- (21) It follows from the AMT, section 2.2, paragraph (1), that one of the aims of state aid schemes for maritime transport is that of “*encouraging the flagging or re-flagging to EEA States’ registers*”.
- (22) The objective of the amendment is to stimulate shipping companies to employ Norwegian and EEA seafarers on NIS vessels and to make the NIS register overall more attractive for Norwegian and EEA shipping companies with vessels registered in third countries. According to a report by the trade area committee<sup>6</sup>, the current aid intensity is too low to contribute to the employment of Norwegian or EEA seafarers on NIS vessels. The committee recommended in its report a full reimbursement of tax and social security contributions in order to stimulate the employment of Norwegian and EEA seafarers.<sup>7</sup> The Authority has no reason to doubt the findings of the committee. In light of this, the Authority considers that an increase to full reimbursement is an appropriate measure and thus in line with the objectives of the AMT.
- (23) The notified measure is an operating aid scheme. Although operating aid, as a matter of principle, should be exceptional, temporary and degressive, the shipping industry is continuously subject to fierce competition from vessels registered in third countries. In light of the above, it is the view of the Authority that operating aid to the shipping industry is still justified.<sup>8</sup>
- (24) The notified amendment concerns vessels already eligible for the tax refund scheme, but with a higher aid intensity. The amendment will offer a full refund of the seafarers’ paid income tax and social security contributions. This is in line with the AMT section 11 paragraph (2), which states that a “*reduction to zero of taxation and social charges for seafarers*” is the maximum of aid permitted. As outlined above, the current aid intensity is too low to contribute to the employment of EEA seafarers on NIS vessels, as the aid does not offset the wage difference in high-cost countries compared to low-cost countries.
- (25) The Authority therefore considers the amendment to be in line with the AMT.

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<sup>4</sup> AMT, section 1(1).

<sup>5</sup> AMT, section 1(6).

<sup>6</sup> The trade area committee is a committee appointed by the Norwegian government with a mandate to examine which measures could be taken to secure a large and competitive fleet under Norwegian flag.

<sup>7</sup> The report can be found at the following webpage:

<https://www.regjeringen.no/contentassets/892abb556e31456ba9826e8cfb0c25fa/fartsomradeuvalgets-tilleggsutredning---endeleg-versjon.pdf>

<sup>8</sup> AMT, section 1.2(10).

#### 4 Transparency

- (26) The AMT requires aid to be granted in a transparent manner.<sup>9</sup> Additionally, according to the general transparency requirement, only aid granted in a transparent manner can be approved on the basis of Article 61(3)(c) of the EEA Agreement. The Norwegian authorities have committed to publish information about the aid granted in accordance with the general transparency requirement. The Norwegian authorities will publish the full text of the aid scheme and make the necessary disclosures on a central website.<sup>10</sup>

#### 5 Conclusion

- (27) On the basis of the foregoing assessment, the Authority considers that the notified measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.

Has adopted this decision:

##### *Article 1*

Not to raise objections to the tax and social security contributions refund scheme for employing seafarers (NIS deep sea) on the grounds that it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c).

##### *Article 2*

The implementation of the measure is authorised accordingly.

##### *Article 3*

This Decision is addressed to the Kingdom of Norway.

##### *Article 4*

Only the English language version of this decision is authentic.

Done in Brussels, on 14 September 2017

*For the EFTA Surveillance Authority*

Sven Erik Svedman  
President

Carsten Zatschler  
Director

*This document has been electronically signed by Sven Erik Svedman, Carsten Zatschler.*

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<sup>9</sup> AMT, section 2(2).

<sup>10</sup> The information will be available on the following website: <https://data.brreg.no/rofs/>