

Brussels, 10 April 2018
Case No: 81767
Document No: 887608
Decision No: 043/18/COL

EFTA SURVEILLANCE
AUTHORITY

Ministry of Trade, Industry and Fisheries
P.O. Box 8090 Dep
0032 Oslo
Norway

Subject: Amendment to the tax and social security contributions refund scheme for employing seafarers 2016–2026 (NIS ferries in foreign trade)

1 Summary

- (1) The EFTA Surveillance Authority (“the Authority”) wishes to inform the Norwegian authorities that, having assessed the notified amendment to the tax and social security contributions refund scheme for employing seafarers 2016–2026 (“NIS ferries in foreign trade”) (“the notified measure”), it considers that it constitutes state aid and decides not to raise objections¹ to the notified measure, as it is compatible with the functioning of the EEA Agreement, pursuant to Article 61(3)(c) of the EEA Agreement.
- (2) The Authority has based its decision on the following considerations.

2 Procedure

- (3) The Norwegian authorities submitted the notification by letter dated 2 March 2018.

3 Description of the measure

3.1 Background

- (4) By [Decision No 085/16/COL](#),² the Authority approved a system of refunds of taxes and social security contributions paid for seafarers on ships registered in Norway 2016–2026 (“the tax refund scheme”). The tax refund scheme allows shipping companies registered in the Norwegian Ordinary Ship Register (“NOR”) or the Norwegian International Ship Register (“NIS”) to have taxes and social security contributions refunded for different categories of maritime transport activities. The Authority approved an amendment to the tax refund scheme by [Decision No 156/17/COL](#) (“NIS deep sea”).³
- (5) The general conditions of the tax refund scheme are described in Decision No 085/16/COL.
- (6) The notification at hand concerns the introduction of a new category under the tax refund scheme, namely passenger vessels registered in NIS performing regular passenger transport services between Norwegian and foreign ports (NIS ferries in foreign trade).⁴

⁽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⁾ OJ C 386, 20.10.2016, p. 13 and EEA Supplement No 58, 20.10.2016, p. 6.

⁽³⁾ OJ C 429, 14.12.2017, p. 27 and EEA Supplement No 81, 14.12.2017, p. 2.

⁽⁴⁾ See Decision No 085/16/COL, paragraph 30.

- (7) The Norwegian Government presented the notified measure in its Maritime Strategy on 29 May 2015,⁵ but held off with its implementation, pending the outcome of a case initiated by the Authority in field of the internal market – regarding “trade area limitations for passenger vessels registered in NIS”. The Authority closed that case by [Decision No 199/17/COL](#).
- (8) Under the current regulation, NIS ferries are not allowed to operate ferry routes between Norwegian and foreign ports, cf. Article 4 of the “NIS Act”⁶. The general objective for maintaining this trade area limitation in NIS is to secure EEA employment conditions for seafarers on NOR-registered vessels when operating in or in close connection to Norway.
- (9) Ships registered in NIS can recruit crew on globally competitive wages effectively allowing the ship owners to lower their employment costs by replacing EEA seafarers with crew from low-cost third countries. In the closure Decision No 199/17/COL, the Authority considered that the trade area limitation set out in the NIS Act, applicable to NIS-registered vessels with respect to scheduled passenger services, was a restriction justifiable under EEA law on the grounds of overriding reasons of public interest.
- (10) With the introduction of the notified measure, the Norwegian authorities intend to amend the Norwegian legislation so that ferries that operate between Norwegian and foreign ports offering overnight lodging and sailing a route longer than 300 nautical miles, can register in NIS. The notified measure offers shipping companies with such ferries registered in NIS a refund of income taxes and social security contributions paid for seafarers. The refund will be limited to NOK 208 000 per seafarer per year, which equals the refund limit for the categories offshore vessels in NOR and construction vessels in NIS. Furthermore, only seafarers that are part of the ship’s safe manning⁷ will qualify for a refund.
- (11) The notified measure makes NIS an alternative for undertakings that otherwise would have to choose between NOR and foreign registers, and hence might consider flagging their vessels in non-EEA registers.

3.2 Objective

- (12) The notified measure, applicable to ship owners employing seafarers from EEA countries on NIS vessels as explained above, aims at reducing the wage gap for seafarers from high-cost countries compared to seafarers from low-cost countries, thereby stimulating the employment of the former. The objective of the notified measure is thus to stimulate the development of the maritime cluster and maintaining EEA employment and EEA maritime know-how.

3.3 National legal basis

- (13) The national legal basis for the notified measure is Article 4 of the Act on subsidies for the employment of workers at sea⁸ and Article 14 of the Regulation on subsidies for the employment of workers at sea.⁹

⁽⁵⁾ [Maritime muligheter – blå vekst for grønn fremtid Regjeringens maritime strategi](#).

⁽⁶⁾ [LOV-1987-06-12-48](#).

⁽⁷⁾ “Safe manning” refers to the crew needed to ensure the safety of the ship and those on board as well as to prevent pollution of the maritime environment, see Decision No 085/16/COL at paragraph 17.

⁽⁸⁾ [LOV-2017-05-22-28](#).

⁽⁹⁾ [FOR-2016-02-26-204](#).

3.4 Aid instrument

- (14) The notified measure provides for direct grants in the form of reimbursement of taxes and social security contributions paid by the eligible undertakings.

3.5 Beneficiaries, budget and duration

- (15) The beneficiaries are shipping companies with certain passenger ships operating between Norwegian and foreign ports registered in NIS, see paragraph (10) above.
- (16) The notified measure is planned to enter into force on 1 July 2018. Shipping companies can apply under the notified measure by mid-September, and the first payments will take place in October 2018. For 2018 the expenses for the extended scheme is estimated to NOK 16.67 million. The annual budget appropriation for a full year is estimated to NOK 50 million.*
- (17) The notified measure does not have a bearing on the Authority's approved duration of the tax refund scheme, which remains valid until 28 February 2026.

4 Presence of state aid

- (18) 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”.

- (19) The qualification of a measure as aid within the meaning of this provision requires that the measure must (i) be granted by the state or through state resources; (ii) confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) be liable to distort competition and affect trade.
- (20) The Authority has concluded that the tax refund scheme constitutes a state aid scheme within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the current notification which alters this conclusion.
- (21) The measure entails a refund of income tax and social security contributions. The funds used for the refunds stem from 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 certain vessels registered in NIS engaged in foreign trade. Shipping activities are essentially carried out on a worldwide market. The shipping companies benefitting from the tax refund scheme carry out economic activities in competition with other shipping companies from third countries and from other EEA States. The support under the tax refund scheme strengthens the position of its beneficiaries. The support therefore is liable to distort competition and affect trade within the EEA. On this basis, the Authority concludes that the notified measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

* This paragraph was amended on 16 April 2018 to correct a clerical error.

5 Procedural requirements

- (22) 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.”
- (23) The Norwegian authorities have submitted a notification of the planned aid measure and have not let the notified measure enter into force prior to this approval. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid measure

- (24) The Authority has issued [Guidelines on aid to maritime transport](#) (“the AMT”)¹⁰ which describe how the Authority will assess the compatibility of aid under Article 61(3)(c) of the EEA Agreement to the maritime sector.
- (25) Maritime transport services are of vital importance to the EEA.¹¹ 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.¹²
- (26) State aid schemes that contribute to the consolidation of the maritime cluster established in the EEA States, that help maintain and improve maritime know-how and that protect and promote the employment of EEA seafarers may be introduced.¹³
- (27) The objective of the notified measure is to stimulate the development of the maritime cluster and maintain EEA employment. The Authority notes that passenger ship services between Norwegian and foreign ports are open for competition from foreign flagged vessels, and the companies are free to register ships in any foreign register that provide for the possibility to employ foreign seafarers on the basis of their national wage conditions.
- (28) The Norwegian authorities consider there to be a risk of a further decline in the employment of EEA seafarers. The Authority has no reason to doubt this assessment. In light of this, the notified measure is an appropriate measure and thus in line with the objectives of the AMT.
- (29) It is the view of the Authority that operating aid is justified in light of the fierce competition that the shipping industry is subject to from third countries.¹⁴
- (30) The Authority also notes that the aid is limited to reimbursements of tax and social security contributions paid to the authorities, and that the intensity is limited to NOK 208 000 per seafarer per year. The AMT section 11 paragraph (2) allows for a “reduction to zero of taxation and social charges for seafarers”. As an undertaking can only get reimbursements for tax and social security contributions already incurred it will never be in a position to

⁽¹⁰⁾ OJ C 103, 28.4.2005, p. 24 and EEA Supplement No 21, 28.4.2005, p. 18.

⁽¹¹⁾ AMT section 1 paragraph (1).

⁽¹²⁾ AMT section 1 paragraph (6).

⁽¹³⁾ AMT section 2.2 paragraph (1).

⁽¹⁴⁾ AMT section 1.2 paragraph (10).

benefit from a reduction lower than zero. The aid intensity is thus within the limits of the AMT.

- (31) In sum, the notified measure satisfies all the relevant requirements of the AMT.
- (32) 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.¹⁵
- (33) In light of the above, it is the Authority's view that the notified measure is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c).

7 Conclusion

- (34) On the basis of the foregoing assessment, the Authority considers that the amendment to the tax and social security contributions refund scheme for employing seafarers 2016–2026 (NIS ferries in foreign trade) constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised as to its compatibility with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), the Authority has no objections to the implementation of the measure.

For the EFTA Surveillance Authority, acting under [Delegation Decision No 068/17/COL](#),

Yours faithfully,

Bente Angell-Hansen
President

Carsten Zatschler
Director

Placeholder for digital signature. Please do not delete.

⁽¹⁵⁾ The information will be available on the following website: <https://data.brreg.no/rofs/>.