

Case No: 76280  
Event No: 725320  
Dec. No: 519/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION  
of 26 November 2014  
on amendments to the Norwegian Special Tax System for Shipping  
(Norway)

THE EFTA SURVEILLANCE AUTHORITY (the “Authority”),

HAVING REGARD to:

The Agreement on the European Economic Area (the “EEA Agreement”), in particular to Article 61(3)(c) and Protocol 26 thereof,

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 thereof,

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

WHEREAS:

## I. FACTS

### 1. Procedure

- (1) By letter of 2 October 2014,<sup>1</sup> the Norwegian authorities notified the Authority of certain amendments to the Norwegian Special Tax System for Shipping (the “Special Tax System for Shipping” or the “Scheme”), pursuant to Article 1(3) of Part I of Protocol 3. By e-mail of 15 October 2014,<sup>2</sup> the Authority asked the Norwegian authorities to clarify some aspects of the amendments to the Scheme. The Norwegian authorities provided their answers to the Authority’s questions by e-mail on 4 November 2014.<sup>3</sup> By e-mail of 13 November 2014,<sup>4</sup> the Authority asked the Norwegian authorities to confirm the exact scope of the notification. The Norwegian authorities provided its reply to the Authority by e-mail of 14 November 2014.<sup>5</sup>

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<sup>1</sup> Event No 724266.

<sup>2</sup> Event No 725776.

<sup>3</sup> Event No 728277.

<sup>4</sup> Event No 729492.

<sup>5</sup> Event No 729718.

## 2. Description of the notified measure

### 2.1 The Special Tax System for Shipping

- (2) The Authority approved a Special Tax System for Shipping by Decision No 164/98/COL of 1 July 1998.<sup>6</sup> The current Scheme was approved by the Authority in its Decision No 755/08/COL of 3 December 2008.<sup>7</sup> The decision approved a corporate tax exemption for income derived from certain eligible activities under the Scheme. Eligible shipping companies under the Scheme are subject to a tonnage tax<sup>8</sup> instead of the normal corporate tax.
- (3) While the Special Tax System for Shipping is existing aid, any changes that may expand or increase state aid under the Scheme must be individually notified to the Authority.
- (4) Since 2008, the Norwegian authorities have notified amendments to the Scheme four times. Those amendments were approved by the Authority in the following decisions:
- Decision No 181/09/COL concerning the abolition of the time limit for investment in environmental funds and a possibility for companies within the Special Tax System for Shipping to extend guarantees for loans to shareholders outside the special tax system with direct or indirect interests in the company, or to persons closely related to such shareholders;
  - Decision No 292/10/COL concerning currency hedging instruments connected to qualifying shipping activities;
  - Decision No 407/10/COL concerning changes to the transitional rules from the 1998 Scheme to the 2008 Scheme; and
  - Decision No 322/14/COL concerning an extension of the Special Tax System for Shipping to include income from shipping companies' compensation for joint and several liability for employer obligations.
- (5) The current system for differentiated reduction of the standard tonnage tax within the Special Tax System for Shipping based on a set of environmental criteria was introduced by the Norwegian authorities in 2000.<sup>9</sup> None of the decisions adopted by the Authority

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<sup>6</sup> The 1998 Scheme offered eligible undertakings under the Scheme a postponed (deferred) taxation of profits derived from eligible shipping activities until either untaxed income was distributed to shareholders or the company exited the Special Tax System for Shipping.

<sup>7</sup> The Authority's Decision No 755/08/COL of 3.12.2008 contains a detailed description of the Special Tax System for Shipping. Reference is also made to the description of the Scheme in the Authority's Decision No 292/10/COL of 7.7.2010.

<sup>8</sup> Tonnage tax as defined in the Authority's Guidelines on Aid to maritime transport (the "Maritime Guidelines") means that the ship owner pays an amount of tax linked directly to the tonnage operated. The tonnage tax will be payable irrespective of the company's actual profits or losses. See Section 3.1(4) of the Maritime Guidelines (OJ C 103, 28.4.2005, p. 24 and EEA Supplement 2005 No 21, p. 18). The Maritime Guidelines correspond to the Commission Communication C(2004) 43 – Community guidelines on State aid to maritime transport (OJ C 13, 17.1.2004, p. 3). The Authority's Guidelines can be found at: <http://www.eftasurv.int/?1=1&showLinkId=15132&1=1>.

<sup>9</sup> The tonnage tax reduction based on environmental criteria was introduced in 2000 together with a 50% increase of the standard tonnage tax rates. The Norwegian authorities consider that the introduction of the tax reduction of maximum 25% together with a 50% increase of the tonnage tax rates was not expected to imply any advantage for the recipients. The Norwegian authorities therefore did not notify the amendments to the Authority at that time (Event No 706345).

have considered the introduction by the Norwegian authorities of a reduction of the standard tonnage tax based on environmental criteria, which is the scope of this Decision.

## 2.2 The notified measure

### 2.2.1 The reduction of the standard tonnage tax based on environmental criteria

- (6) The notification concerns a differentiated reduction of the standard tonnage tax within the Special Tax System for Shipping based on a set of pre-defined environmental criteria. Based on an environmental rating of a ship within the Scheme, the shipping company can obtain a reduction of the standard tonnage tax pursuant to the Norwegian Tax Act Section 8-16<sup>10</sup> and the Norwegian General Tax Regulation Section 8-16 Part B.<sup>11</sup>
- (7) The environmental rating of a ship is carried out as follows: pursuant to the Norwegian Regulation on Environmental Declaration,<sup>12</sup> shipping companies may submit a voluntary<sup>13</sup> environmental declaration<sup>14</sup> to the Norwegian Maritime Authority, by using the standard Form for Calculation of the Environmental Factor.<sup>15</sup> The Form for Calculation of the Environmental Factor is issued by the Maritime Authority and sets out the criteria used for determining the environmental rating of a ship.<sup>16</sup>
- (8) Based on the environmental declaration, the ship will receive an environmental rating on a scale from 1 to 10. Depending on the environmental rating of the ship, the standard tonnage tax may be reduced by up to 25%.
- (9) The differentiated reduction of the tonnage tax based on the environmental rating of the ship is calculated as follows:

Environmental rating	Tonnage tax reduction
Up to 1	2.5%
1 to 2	5.0%
2 to 3	7.5%
3 to 4	10.0%
4 to 5	12.5%
4 to 6	15.0%
6 to 7	17.5%

<sup>10</sup> The Norwegian Tax Act of 26.3.1999 No 14 (“*Lov av 26. mars 1999 nr. 14 om skatt av formue og inntekt*”).

<sup>11</sup> The Norwegian General Tax Regulation of 19.11.1999 No 1158 (“*Forskrift av 19. november nr. 1158 til utfylling og gjennomføring mv. av skatteloven av 26. mars 1999 nr. 14*”).

<sup>12</sup> The Regulation of 28.11.2000 No 1194 concerning environmental declaration in connection with environmental differentiation for ships and mobile offshore units (“*Forskrift av 28. November 2000 nr. 1194 om miljødeklarasjon i forbindelse med miljødifferensiering for skip og flyttbare innretninger*”) (the “Regulation on Environmental Declaration”).

<sup>13</sup> Ref. Section 1 of the Regulation on Environmental Declaration: “*This Regulation applies to a voluntary scheme for Norwegian ships and mobile offshore units, which have or will establish environmental declaration in connection with environmental differentiation*” (unofficial translation). (“*Denne forskriften gjelder en frivillig ordning for norske skip og flyttbare innretninger, som har eller skal etablere miljødeklarasjon i forbindelse med miljødifferensiering*”).

<sup>14</sup> Section 2 h) of the Regulation on Environmental Declaration defines “environmental declaration” as follows: “*A statement describing the ship’s specific environmental characteristics and operating conditions of environmental significance, and which shows the ship’s or the mobile offshore unit’s calculated environmental factor*” (unofficial translation). (“*En erklæring som beskriver skipets spesifikke miljømessige egenskaper og driftsforhold av miljømessig betydning, og som viser skipets eller den flyttbare innretningens beregnede miljøfaktor*”).

<sup>15</sup> “*Skjema for beregning av miljøfaktor*”.

<sup>16</sup> Ref. Section 5 of the current Regulation on Environmental Declaration; Section 4 of the Regulation on Environmental Declaration as to be amended.

7 to 8	20.0%
8 to 9	22.5%
9 to 10	25.0%

- (10) The tonnage tax reduction aims at providing an incentive for shipping companies under the Scheme to make use of more environmentally sound ships in terms of both technology and operation. The reduction of the tonnage tax aims at rewarding shipping companies for exceeding the mandatory requirements when it comes to environmental performance of their ships.

### 2.2.2 *The environmental criteria*

- (11) The environmental criteria used for determining the environmental rating of a ship is set out in the Form for Calculation of the Environmental Factor. The environmental criteria are grouped by pollution categories: air emissions, operational discharge from the ship into the sea and the prevention of accidental discharge into the sea. Each pollution category is further divided into pollutants that are given a certain score on the basis of technical and operational criteria for the ship.
- (12) In accordance with the notification received, the Norwegian authorities will adjust the criteria already in place by:
- a) updating the existing environmental criteria, amongst others to reflect new and more stringent IMO (International Maritime Organization) requirements for NO<sub>x</sub> and sulphur content in fuel have entered into force and to reflect technological developments within shipping;
  - b) adding CO<sub>2</sub> to the list of environmental criteria;
  - c) introducing new criteria relating to sewage (the use of sewage plant on board the ship) and garbage handling (delivery of sorted and compressed garbage in land); and,
  - d) introducing a new criterion for the shipping companies' implementation of an environmental accounting system for ships.
- (13) Amendments a) and b) to the Special Tax System for Shipping are mainly a result of amendments to MARPOL Annex VI on the prevention of air pollution from ships.<sup>17</sup> According to the Norwegian authorities, the Scheme does not reward the shipping companies for compliance with mandatory MARPOL requirements.
- (14) Amendment d), the introduction of an environmental accounting system, is a voluntary option for shipping companies which will be introduced by the Norwegian authorities and which does not follow from MARPOL. The environmental accounting system is expected to increase energy efficiency and lower the emissions of CO<sub>2</sub>, as well as the air pollutants SO<sub>x</sub> and NO<sub>x</sub>.
- (15) The proposed amendments to the environmental criteria will not alter the scale of the environmental rating of a ship as such or the minimum or maximum reduction of the tonnage tax (see paragraph (9) above). However, the assessment of the environmental criteria after the amendments have entered into force may cause some shipping companies

<sup>17</sup> International Convention for the Prevention of Pollution from Ships (MARPOL). MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. ([http://www.imo.org/About/Conventions/ListOfConventions/-Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/-Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) ).

to receive a higher or lower environmental rating compared to their previous ratings, and thus obtain a proportionately larger/less reduction of the tonnage tax.<sup>18</sup>

(16) In all other aspects, the existing Special Tax System for Shipping will remain unchanged.

### **2.3 National legal basis for the aid measure**

(17) The legal basis for the reduction of the tonnage tax based on environmental criteria is the Norwegian Tax Act Section 8-16 and the Norwegian General Tax Regulation Section 8-16 Part B. The environmental rating of the ship is based on the environmental criteria as fixed by the Form for Calculation of the Environmental Factor, which is issued by the Norwegian Maritime Authority pursuant to the Regulation on Environmental Declaration.

## **II. ASSESSMENT**

### **1. The presence of state aid**

(18) Article 61(1) EEA provides that “[s]ave 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) According to Article 61(1) EEA, as interpreted by the European courts, a measure will constitute state aid if it fulfils five cumulative conditions. First, the measure must be funded by the State or through state resources. Second, the measure must confer an advantage on the recipient. Third, such advantage must favour selected undertakings or economic activities. Fourth, the measure must be liable to affect trade between Contracting Parties and, fifth, it must be liable to distort or threaten to distort competition in the EEA. These conditions are assessed below.

(20) The Authority’s Maritime Guidelines cover any aid granted through state resources in favour of maritime transport. The fiscal treatment of shipping companies is regulated in Section 3 of the Guidelines.<sup>19</sup> It follows from Section 3.1(4) that “[t]hese tax relief measures which apply in a special way to shipping are considered to be state aid. Equally, the system of replacing the normal corporate tax system by a tonnage tax is a state aid”. In view of the importance of such activities to the economy of the Contracting Parties to the EEA Agreement, and in support of the objectives laid down in the Guidelines, these types of fiscal incentives are generally endorsed (ref. Section 3.1(5) of the Maritime Guidelines).

#### **1.1 Presence of state resources conferring an advantage on the recipient**

(21) Article 61(1) EEA requires that the measure be funded “by the State or through state resources”. It is established case-law that state intervention favours an undertaking if it

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<sup>18</sup> The Norwegian authorities assume that the proposed amendments most likely will not involve any increase of the yearly total amount of the tonnage tax reduction compared to the yearly total reduced amount prior to the amendments.

<sup>19</sup> See footnote 8 above.

provides the undertaking with an economic advantage that it would not have obtained under normal market conditions.<sup>20</sup> Case-law has also established that a measure by which the public authorities grant certain undertakings a tax exemption which, although not involving a transfer of state resources, places the persons to whom the tax exemption applies in a more favourable financial situation than other taxpayers constitutes state aid.<sup>21</sup>

- (22) It follows from the notified measure that the reduction of the tonnage tax based on environmental criteria and the environmental rating of the ship is an additional advantage for shipping companies within the Scheme. The application of the environmental criteria with the possible reduction of the ordinary tonnage tax with a maximum of 25%, therefore foregoes State resources. In 2012, the income to the Norwegian State was reduced by NOK 312.197 due to the total tonnage tax reduction based on environmental criteria, and in 2013, the total reduction based on environmental criteria was NOK 375.404.<sup>22</sup> The amendments to the current environmental criteria may lead to that shipping companies under the Scheme receive a higher tax reduction than before. Such lesser tax burden confers an advantage on the undertakings concerned.
- (23) The notified measure thus involves an advantage conferred on shipping companies which are financed by state resources within the meaning of Article 61(1) of the EEA Agreement.

## 1.2 Favouring certain undertakings or the production of certain goods

- (24) In addition to conferring an advantage through state resources, Article 61(1) EEA requires that the measure must be selective in favouring “*certain undertakings or the production of certain goods*” as opposed to being general in nature. When applying this criterion, it is necessary to determine whether the measure in question entails advantages accruing exclusively to certain undertakings or certain sectors of activity.<sup>23</sup>
- (25) The Special Tax System for Shipping and the notified measure for differentiated reduction in the tonnage tax is sector-specific in that it is limited to the maritime industry: it gives shipping companies advantages in the form of a tax exemption from the normal corporate tax and only a tonnage tax is due. The reduction of the standard tonnage tax based on the environmental rating of the ship is an additional advantage to shipping companies under the Scheme. The notified measure therefore only favours certain undertakings, namely shipping companies eligible under the Special Tax System for Shipping. Reference is also made to the Maritime Guidelines, Section 3.1(4), which states that “[...] *tax relief measures which apply in a special way to shipping are considered to be state aid*”.
- (26) Thus, the notified measure is selective within the meaning of Article 61(1) of the EEA Agreement.

<sup>20</sup> Judgment in *France v Commission*, C-301/87, EU:C:1990:67, paragraph 41; Judgment in *De Gezamenlijke Steenkolenmijnen in Limburg*, C-30/59, EU:C:1961:2, p. 19; Judgment in *France v Commission (Kimberly Clark)*, Case C-241/94, EU:C:1996:353, paragraph 34; Judgment in *Fleuren Compost BV*, T-109/01, EU:T:2004:4, paragraph 53.

<sup>21</sup> Joined Cases E-17/10 and E-6/11 *Principality of Liechtenstein and VTM Fundmanagement AG v EFTA Surveillance Authority*, [2012] EFTA Ct. Rep p. 114, paragraph 51; Joined Cases E-4/10, E-6/10 and E-7/10 *Principality of Liechtenstein, Reassur Aktiengesellschaft and Swisscom RE Aktiengesellschaft v EFTA Surveillance Authority*, [2011] EFTA Ct. Rep p.16, paragraph 70.

<sup>22</sup> Event Nos 724266 and 728277.

<sup>23</sup> Joined Cases E-4/10, E-6/10 and E-7/10 *Principality of Liechtenstein, Reassur Aktiengesellschaft and Swisscom RE Aktiengesellschaft v EFTA Surveillance Authority*, [2011] EFTA Ct. Rep p.16, paragraph 72.



### 1.3 Distortion of competition and affect on trade between Contracting Parties

- (27) Pursuant to Article 61(1) EEA, the aid measure must distort or threaten to distort competition and affect trade between Contracting Parties to the EEA Agreement.
- (28) However, under settled case-law, it is not necessary to demonstrate that an aid measure has an actual effect on trade and that competition is actually distorted. Rather, it is sufficient to establish that the aid measure is liable to affect trade and distort competition.<sup>24</sup> Further, it is established case-law that a measure distorts or threatens to distort competition in a way that affects trade between Contracting Parties, if it strengthens the position of aid recipients compared with other companies<sup>25</sup> and the recipients are active in a sector in which trade between Contracting Parties takes place.<sup>26</sup>
- (29) The maritime activities are carried out by the shipping companies both within the EEA and between the EEA and third countries and thus affects trade between the Contracting Parties to the EEA Agreement.
- (30) The tax exemption from the ordinary corporate tax strengthens the shipping companies' position towards their competitors in the EEA. Further, the reduction of the standard tonnage tax strengthens the position of the shipping companies under the Scheme which have obtained an environmental rating of their ships. The measure therefore distorts or threatens to distort competition between the Contracting Parties within the meaning of Article 61(1) of the EEA Agreement.
- (31) The measure thus distorts competition and affects trade between the Contracting Parties within the meaning of Article 61(1) of the EEA Agreement.

### 1.4 Conclusion

- (32) On those grounds, the Authority considers that the notified measure involves state aid within the meaning of Article 61(1) of the EEA Agreement.

## 2. Procedural requirements

- (33) By Decision No 755/08/COL of 3 December 2008, the Authority approved the Special Tax System for Shipping entailing an exemption from the normal corporate tax for eligible shipping companies under the Scheme.
- (34) Pursuant to Article 1(3) of Part I of Protocol 3, “[t]he 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”.
- (35) In general, when an amendment to a scheme is severable from the original scheme, the amendment does not transform the old scheme in its entirety into a new aid scheme, but is only an amendment to the scheme.<sup>27</sup>

<sup>24</sup> See for example Judgment in *Italy v Commission*, C-372/97, EU:C:2004:234, paragraph 44.

<sup>25</sup> Judgment in *Philip Morris Holland BV*, C-730/79, EU:C:1980:209, paragraph 11.

<sup>26</sup> Judgment in *France v Commission (SEB)*, C-102/87, EU:C:1988:391, paragraph 19; Judgment in *Italy v Commission*, C-310/99, EU:C:2002:143, paragraph 85; Judgment in *Altmark*, C-280/00, EU:C:2003:415, paragraph 77; Judgment in *Confederación Española de Transporte de Mercancías*, T-55/99, EU:T:2000:223, paragraph 86.

<sup>27</sup> Judgment in *Government of Gibraltar v Commission*, T-195/01 and T-207/01, EU:T:2002:111, paragraphs 109 and 111, where the Court stated that: “Under Article 1(c) of the regulation on State aid

- (36) The notified measure described in Part I, Section 2.2 above, entails a possible reduction of the standard tonnage tax under the Special Tax System for Shipping, provided that the conditions for the reduction are fulfilled. Thus, the reduction of the tonnage tax based on environmental criteria is a further aid element within the Scheme which the Norwegian authorities are under an obligation to notify.
- (37) Also, the notified measure may result in more aid being granted to shipping companies under the Scheme. As mentioned in paragraph (22) above, in 2012, the income to the Norwegian State was reduced by NOK 312.197 due to the total tonnage tax reduction based on environmental criteria and in 2013 the total reduction based on environmental criteria was NOK 375.404.
- (38) While introducing a new dimension to the Scheme, namely the additional aim of promoting environmental friendly ships, the notified measure also supports the overall aim of the Scheme, which is to ensure the competitiveness of the shipping industry in Norway. The notified measure does not, however, affect the original Scheme as such.
- (39) In sum, the notified measure does not alter the Authority's assessment of the Special Tax System for Shipping in Decision No 755/08/COL. It is the Authority's view that the notified measure is a clearly severable addition to the Special Tax System for Shipping.

### 3. Compatibility of the aid

- (40) Under Article 61(3)(c) EEA, aid to facilitate the development of certain economic activities may be considered compatible with the EEA Agreement, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, and thus provides as basis for an exemption from the general prohibition of State aid.
- (41) The appropriate legal basis for the compatibility assessment is Article 61(3)(c) EEA in conjunction with the Authority's Maritime Guidelines. The Maritime Guidelines cover any aid granted by Contracting States or through state resources in favour of maritime transport. This includes any financial advantage, conferred in any form whatsoever, funded by public authorities.<sup>28</sup> A reduction of the standard tonnage tax constitutes an additional advantage under the Scheme which thus should be assessed under the Maritime Guidelines.
- (42) It follows from Section 2.2(1) of the Maritime Guidelines that one of the aims of state aid schemes to maritime transport is that of "*improving a safe, efficient, secure and environment friendly maritime transport*".
- (43) The notified measure concerns aid which is intended to be an incentive for shipping companies under the Scheme to improve the environmental standards of their ships. To reach this goal, the shipping companies will most likely have to invest in their ships and/or renew their fleet. This type of aid can be categorised as investment aid, i.e. aid which is mainly intended for fleet renewal and environmental improvements of the ships. It follows from Section 5(3) of the Maritime Guidelines that:

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*procedure, 'alterations to existing aid' are to be regarded as new aid. According to that unequivocal provision, it is not 'altered existing aid' that must be regarded as new aid, but only the alteration as such that is liable to be classified as new aid. [...] Accordingly, it is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid scheme. There can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme"* (emphasis added).

<sup>28</sup> See the Maritime Guidelines (see footnote 8 above) in Section 2.1(1).



*“other investment aid [than subsidies for fleet renewal] may, however, be permitted, in line with the safe seas policy, in certain restricted circumstances to improve equipment on board vessels entered in an EEA State’s registers or to promote the use of safe and clean ships. Thus aid may be permitted which provides incentives to upgrade EEA-registered ships to standards which exceed the mandatory safety and environmental standards laid down in international conventions and anticipating agreed higher standards, thereby enhancing safety and environmental controls. Such aid must comply with the applicable EEA provisions on shipbuilding” [emphasis added].*

- (44) To be considered compatible with the EEA Agreement, the aid measure must give an incentive for the shipping company to upgrade the ship to meet the environmental criteria. The notified measure is a result of a voluntary environmental declaration submitted by the shipping company to the Norwegian Maritime Authority. Based on such voluntary compliance with the environmental criteria, the shipping companies receive a tax reduction due to higher environmental ratings of their ships. The shipping companies thus have an incentive to upgrade their ships to become more environmental friendly. Also within the system of a reduction of the standard tonnage tax based on environmental criteria there is an incentive to upgrade the ship, as depending on the environmental rating of the ship, the tonnage tax reduction varies from 2.5% to 25% (see paragraph (9) above).
- (45) Furthermore, the shipping company must continue to comply with the environmental criteria which were the basis for the environmental rating of the ship. It follows from the Regulation on Environmental Declaration that the environmental declaration of a ship is deemed to be invalid if the equipment that justified the declaration is significantly altered and this causes effect on the ship’s fulfilment of the environmental criteria.<sup>29</sup> Thus, the shipping company has an incentive to maintain compliance with the environmental criteria in order not to render the environmental declaration and the environmental rating of the ship invalid.
- (46) Consequently, the shipping company both has an incentive to upgrade its ship(s) to meet the environmental criteria and to maintain compliance with the environmental criteria. Further, the environmental criteria exceed mandatory environmental standards laid down in international conventions. A reduction of the standard tonnage tax based on the environmental rating of the ship will most likely improve and update the environmental profile of ships within the Special Tax System for Shipping.
- (47) The notified measure thus fulfils the requirements in Section 5.3 of the Maritime Guidelines (see paragraph (44) above).
- (48) According to Section 11(2) of the Maritime Guidelines, total aid in the form of relief of fiscal and social charges, crew relief, direct aid for investment and regional aid, should not exceed the total amount of taxes and social contributions collected from the shipping companies and seafarers (the ‘ceiling’ to the aid). The Norwegian authorities expect that the notified amendments most likely will not involve any increase of the total amount of the tonnage tax reduction compared to previous years.
- (49) As for the impact of the tonnage tax reduction based on environmental criteria, the table below provides an overview of the total amount of tonnage tax accrued to the Norwegian State and the total amount of environmental reduction for the income years 2011 – 2013:

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<sup>29</sup> The (current) Regulation on Environmental Declaration in Section 7.

Year	2011	2012	2013
Tonnage tax (MNOK) <sup>30</sup>	36	39	43
Environmental reduction (NOK)	215.033	312.197	375.404
Number of companies that obtained reduction <sup>31</sup>	29	32	34

- (50) The yearly total tax reduction has during the years 2011 to 2013 been relatively low, ranging from NOK 215.033 to NOK 375.404. This amounts to a yearly reduction of less than 1% in the total tonnage tax that otherwise would have been accrued to the Norwegian State. The Norwegian authorities assume that the impact of the new amendments to the environmental criteria<sup>32</sup> will most likely not involve any increase of the total amount of the tonnage tax reduction compared to previous years. However, some shipping companies within the Scheme might receive a higher environmental rating than before due to the amended environmental criteria and thus a higher tonnage tax reduction whereas other shipping companies may receive a lower environmental rating and thus a lower tonnage tax reduction.
- (51) Based on information received the Norwegian authorities, the Authority finds that the notified measure will not, or will only to a very limited extent, add to the total aid which already is granted under the Scheme and, as a consequence, will only have a limited effect on the ceiling.
- (52) It follows from the Maritime Guidelines that the tonnage tax rates in Norway must keep an equitable balance in line with the tonnage tax regimes in the EU Member States. Section 3.1(18) of the Maritime Guidelines states that:
- “[t]he notional profit rates provided for by EC States have been homogeneous up to now. However, since corporate tax rates may vary significantly across the EC, the tonnage taxes to be paid for the same tonnage might be very uneven in the different EC States. In order to keep the present equitable balance, the EC Commission stipulated that it will only approve schemes giving rise to a tax-load for the same tonnage fairly in line with the schemes already approved. Based on its experience, the Authority notes that instead of calculating virtual profits to which the ordinary corporate tax is applied, some States may decide to directly fix special tonnage tax rates. The Authority will likewise seek to keep an equitable balance in line with already approved systems”.*
- (53) Thus, it should be verified that the tax burden for a specific tonnage under the Special Tax Regime for Shipping is “fairly in line with” the tonnage tax applied to the similar tonnage under the tonnage tax regimes in the EU Member States and that the reduced tonnage tax based on environmental criteria does not alter this.

<sup>30</sup> These numbers do not include the environmental reduction, see next column.

<sup>31</sup> As for the income year 2013, in total 629 limited liability companies and 270 companies subject to partnership taxation were assessed by the Norwegian authorities within the Special Tax System for Shipping.

<sup>32</sup> The system with a reduction of the standard tonnage tax based on environmental criteria has been in force since 2000, see paragraph (5) above.

(54) The following table illustrates the Norwegian tonnage tax rate compared to the tonnage tax level in the EU Member States:<sup>33</sup>

Net ton		Tonnage tax per day in euro														Norway
		NL	D	DK	UK	ES	IRL	FIN	F	B	CY	SL	PL	LT	IT	
1	1 000	0,91	0,92	0,94	0,97	0,9	1,0	1,38	0,93	0,9	1,0	0,9	0,5	0,93	0,9	0
1 001	10 000	0,67	0,69	0,67	0,73	0,7	0,75	1,03	0,71	0,7	0,85	0,67	0,35	0,67	0,7	2,14
10 001	25 000	0,46	0,46	0,4	0,48	0,4	0,5	0,69	0,47	0,4	0,55	0,4	0,2	0,43	0,4	1,42
25 001	40 000	0,23	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,2	0,35	0,2	0,1	0,27	0,2	0,71
40 001	50 000	0,23	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,05	0,2	0,2	0,1	0,27	0,2	0,71
50 001		0,05	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,05	0,2	0,2	0,1	0,27	0,2	0,71

(55) Based on the table and in accordance with Chapter 3.1 of the Maritime Guidelines, the Authority considers that the tax burden for the tonnage applied under the Norwegian Special Tax Regime for Shipping, as fixed by the Norwegian State,<sup>34</sup> is fairly in line with (although somewhat higher) than the tax burden applied under tonnage tax regimes approved by European Commission in the EU Member States.

(56) The Authority finds that the reduction of the standard tonnage tax is based on a set of clear and concise environmental criteria and that the calculation is fixed based on a pre-defined percentage depending on the environmental rating of the ship. The reduction is therefore based on objective criteria and the actual tax burden imposed on shipping companies within the Scheme is transparent. Further, the Authority notes that the Special Tax System for Shipping does not include any other rebates/reductions to the standard tonnage tax.

(57) Based on the above, the Authority finds that the notified measure, as specified in Part I, Section 2.2 above, complies with Article 61(3)(c) of the EEA Agreement together with the Authority's Maritime Guidelines.

#### 4. Conclusion

(58) The Authority finds that the differentiated reduction of the standard tonnage tax within the Special Tax System for Shipping based on a set of pre-defined environmental criteria constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

(59) The Authority finds that the notified measure is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement together with the Authority's Maritime Guidelines.

(60) The Norwegian authorities are reminded about the obligation to provide annual reports on the implementation of the Scheme under Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of Decision No 195/04/COL.

<sup>33</sup> Except for the numbers for Norway, the table stems from the European Commission's decision of 25 July 2012, Case No SA. 33829 (2012/C, ex-2012/NN, ex-2011/CP) – Malta, (C(2012) 5072 final) (OJ C 289, 25.9.2012, p. 49–62). Reference is made to paragraph (66) of the European Commission's decision. The numbers for Norway are provided by the Norwegian authorities and are listed in EURO as per 3.11.2014.

<sup>34</sup> The yearly tonnage tax is fixed by the Norwegian State in the annual tax decision (“*skattevedtaket*”).

(61) The Norwegian authorities are also reminded that all plans to modify this Scheme must be notified and approved by the Authority before such modification is put into place.

HAS ADOPTED THIS DECISION:

*Article 1*

No objections are raised to the differentiated reduction of the standard tonnage tax within the Special Tax System for Shipping based on a set of pre-defined environmental criteria notified on 2 October 2014.

*Article 2*

The implementation of the measure is accordingly authorised.

*Article 3*

This Decision is addressed to the Kingdom of Norway.

*Article 4*

Only the English language version of this Decision is authentic.

Done at Brussels, 26 November 2014.

*For the EFTA Surveillance Authority,*

Oda Helen Sletnes  
*President*

Helga Jonsdóttir  
*College Member*