Case No: 68583
Event No: 561020
Dec.No: 325/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 14 July 2010
to initiate the formal investigation procedure with regard to the additional payments to Hurtigruten

(Norway)

The EFTA Surveillance Authority ("the Authority"),

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 59(2), 61 to 63 and Protocol 26,

HAVING REGARD to 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,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(3) of Part I and Articles 4(4) and 6 of Part II, and

HAVING REGARD to the Authority's State Aid Guidelines on application and interpretation of Articles 61 and 62 of the EEA Agreement, in particular the Chapter on aid for maritime transport and the Chapter on aid for rescuing and restructuring firms in difficulty[1], and Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport (maritime cabotage) within the Member States[2],

Whereas:

I. FACTS

1. Procedure

By letter dated 28 November 2008 (Event No 500143), the Norwegian authorities informed the Authority about the renegotiation of the agreement between the Norwegian authorities and Hurtigruten ASA on acquisition of transport services between Bergen and Kirkenes in Norway.

By letter dated 18 February 2009 (Event No 502277), the Authority requested additional information from the Norwegian authorities. By letter dated 3 April 2009 (Event No 514420), the Norwegian authorities replied to the information request.

[1] Available at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/
[2] OJ L 30 of 5.2.1998, incorporated as point 53a in Annex XIII to the EEA Agreement.

The Authority and the Norwegian authorities discussed the case in a meeting held in Oslo on 16 September 2009. The Norwegian authorities submitted additional information by letters dated 8 March 2010 (Event No 549465) and 1 July 2010 (Event No 562652).

2. Background

Hurtigruten ASA operates maritime transport services consisting of the combined transport of persons and goods along the Norwegian costal line from Bergen to Kirkenes, serving 34 ports of call on a daily basis throughout the year.

For the period 1 January 2002 until 31 December 2004 the two maritime companies, *Ofotens og Vesteraalens Dampskipsselskap ASA* and *Troms Fylkes Dampskipsselskap* ("the Hurtigruten companies") were entrusted with the provision of the service. A draft agreement with the Hurtigruten companies was notified to the Authority by the Norwegian authorities in July 2000 and an annual compensation of NOK 170 million for 2002-2004 was approved by the Authority on 19 December 2001.[3]

The operation of the service for the period 1 January 2005 to 31 December 2012 was the subject of a tender procedure initiated in June 2004. The Hurtigruten companies were the only bidders and signed a contract with the Norwegian authorities on 17 December 2004 ("the Hurtigruten Agreement"). The Hurtigruten companies merged in March 2006 to form the entity now operating the service, Hurtigruten ASA ("Hurtigruten").

Under the Hurtigruten Agreement, Hurtigruten provides for daily services at 34 predetermined ports of call throughout the year, based on a fixed schedule, capacity based on the requirement to operate the route with 11 predetermined vessels and maximum prices as regards the distance passenger routes. Hurtigruten is free to set its prices for roundtrips, cabins, catering and transport of cars and goods.

For the services covered by the Hurtigruten Agreement, the Norwegian authorities pay a total compensation of NOK 1 899.7 million for the eight years of duration of the agreement, expressed in 2005 prices:

For 2005	NOK 217.5 million
For 2006	NOK 247.5 million

[3] Decision 417/01/COL.

For 2007	NOK 247.5 million
For 2008	NOK 240.0 million
For 2009	NOK 236.8 million
For 2010	NOK 236.8 million
For 2011	NOK 236.8 million
For 2012	NOK 236.8 million

The payments are calculated according to a price index clause, taking into account the price of marine gas oil, salary costs in the marine sector and NIBOR.

In addition to the service covered by the Hurtigruten Agreement, Hurtigruten is a commercial operator and offers round trips, excursions, and catering on the route Bergen-Kirkenes. Moreover, in connection with this route, Hurtigruten also provides transport services in Geiranger fjord, outside the scope of the Hurtigruten Agreement. Furthermore, Hurtigruten operates a number of different cruises in different European states, Russia, Antarctica, Spitsbergen and Greenland. Hurtigruten is obliged to keep separate accounts for the services included in the Hurtigruten Agreement and other activities.

The Hurtigruten Agreement has not, as such, been subject to an assessment under state aid rules by the Authority since it was not notified.

On 30 June 2010 the Norwegian authorities initiated a tender procedure on the route between Bergen and Kirkenes for the period of eight years as of 1 January 2013 at the latest. The tender invites for bids for alternative frequencies. This decision does not deal with such future contract(s) with operator(s) chosen by this tender procedure.

3. Renegotiation of the Hurtigruten Agreement

Article 8 of the Hurtigruten Agreement contains a revision clause, whereby both parties may initiate a renegotiation procedure; in the Authority's translation:

"Official acts that entail considerable changes of cost as well as radical changes of prices of input factors that the parties could not reasonably foresee, are grounds for either of the contracting parties to demand a renegotiation about extraordinary adjustments of the state's remuneration, changes in the service delivered or other measures. In such negotiations, the other party shall be entitled to access all necessary documentation."[4]

The renegotiation of the Hurtigruten Agreement was concluded on 27 October 2008 and increased the public service compensation to Hurtigruten by way of three different measures:

1. by reimbursement of 90% of the so-called NOx tax for 2007 and 90% of the NOx contributions for January to June 2008 to the so-called NOx Fund by NOK 59 million in total. The reimbursement is intended to continue for the remaining duration of the Hurtigruten Agreement;

[4] In the Hurtigruten Agreement: *Offentlige pålegg som medfører betydelige kostnadsendringer samt radikale endringer av priser på innsatsfaktorer som partene ikke med rimelighet kunne forutse, gir hver av partene rett til a kreve forhandlinger om ekstraordinære reguleringer av statens godtgjørelse, endring av produksjonen eller andre tiltak. Motparten har i slike forhandlinger krav på all nødvendig dokumentasjon.*

2. by granting additional NOK 66 million "general compensation" for 2008, due to the weak financial situation of Hurtigruten resulting from a general increase in costs for the service provided. This would be provided annually until the Hurtigruten Agreement expires 31 December 2012 provided the financial situation of the company does not significantly improve, and;

3. by reducing the number of ships from 11 to 10 in the winter season (5 months) until the Hurtigruten Agreement expires without applying the deduction provisions of the Hurtigruten Agreement. This arrangement reduces the service provided by Hurtigruten and is intended to continue in the remaining duration of the Hurtigruten Agreement.

In accordance with the revised agreement and the subsequent budgetary allocation of the Norwegian Parliament, NOK 125 million was paid to Hurtigruten in December 2008 as an additional compensation for 2007 and 2008. According to the information at hand, the breakdown of the additional payments which already have taken place, following the renegotiation is as follows:

	NOx tax / NOx Fund reimbursement	General compensation
For 2007	NOK 53.4 million	
For 2008 1st half	NOK 5.4 million	
For 2008 2nd half	NOK 7.2 million	NOK 66 million
For 2009 1st half	NOK 5.9 million	
For 2009 2nd half and 2010 1st, 2nd and 3rd quarter	NOK 19 million	
Total payments	NOK 90.9 million	NOK 66 million

According to information available to the Authority, no "general compensation" has so far been paid out for 2009.

In addition, effective as from 16 November 2008 Hurtigruten was authorized to reduce the number of ships from 11 to 10 in the winter season without any deduction in the public service compensation. According to the information provided by the Norwegian authorities, this reduction corresponds to a further NOK 11.3 million in additional compensation in the winter season 2008 to 2009, calculated on the basis of the deduction in compensation the Hurtigruten would otherwise have to pay under a clause in the Hurtigruten Agreement for reduced service. This arrangement was also in force in the winter season 2009 to 2010 but calculations have not been provided for this period.

According to the Norwegian authorities, the revised agreement results in 26% increase of the contribution for the year 2008. However, the Authority notes that reimbursement for the contribution to the NOx Fund for second half of 2008 is not included in that figure.

4. Comments by the Norwegian authorities

The Norwegian authorities put forward the view that the increased compensation does not constitute state aid. They argue that on the basis of the renegotiation clause mentioned above, Hurtigruten was entitled to demand a renegotiation and the authorities acted as a rational market operator during the renegotiation process.

Alternatively, the Norwegian authorities are of the view that the measures are public service compensation under Article 59(2) of the EEA Agreement, and as such compatible with the EEA Agreement. The Norwegian authorities also maintain that the measures taken in October 2008 were emergency measures taken in the acute difficult economic situation of Hurtigruten in 2008, in order to ensure continuous service in the interim period until a new tendering procedure could be finalised.

The Norwegian authorities finally submit that Hurtigruten was a firm in difficulty within the meaning of the state aid Guidelines and they argue that the measures meet the requirements for restructuring aid under Art 61(3)(c) of the EEA Agreement and the Guidelines for aid for rescuing and restructuring firms in difficulty.

II. ASSESSMENT

1. The presence of 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 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."

The Authority will in the following give its preliminary assessment of whether the increased compensation for Hurtigruten represents state aid within the meaning of Article 61 of the EEA Agreement. The Authority will assess whether there are state resources involved, whether the compensation confers an economic advantage to Hurtigruten and whether the measures distort competition and have an effect on trade between the Contracting Parties.

1.1. State resources

The increased compensation to Hurtigruten by way of reimbursed NOx tax/NOx Fund contribution and the additional "general compensation" provided are financed trough budgetary allocations from the national budget[5] and thus involve state resources within the meaning of Article 61(1) EEA.

Furthermore, the reduction from 11 to 10 vessels during the winter season without a corresponding decrease in the compensation implies that the service is reduced but not the payment. Consequently, state resources within the meaning of Article 61(1) EEA are involved.

1.2. Economic advantage

The reimbursement of 90% of the general NOx tax and later the annual NOx Fund contribution, which transport companies emitting NOx should normally pay, gives Hurtigruten an advantage by relieving it of charges that would normally be borne from its budget. The measure appears moreover to be selective in that it only favours Hurtigruten.

[5] St.prp. nr. 24 (2008-2009), Innst. S. nr. 92 (2008-2009), Prop. 50 S (2009-2010), Innst. 74 S (2009-2010) and Prop. 125 S (2009-2010).

The same assessment applies to the "general compensation" which gave Hurtigruten a financial benefit the company would not have enjoyed in the normal course of its business.

Regarding the reduction in the number of vessels, Hurtigruten thereby reduced its operating costs by being allowed to provide a more limited service than originally foreseen under the Hurtigruten Agreement while the amount of compensation was not accordingly reduced. This reduction in the costs thus confers a selective economic advantage to Hurtigruten.

The Norwegian authorities have however, with reference to the above mentioned Article 8 of the Hurtigruten agreement, argued that the increased compensation was made within the scope of the original agreement and that it therefore does not constitute state aid. In that regard they claim to have followed the so-called *Altmark* criteria[6] since the agreement, including the mentioned Article 8 formed part of the public procurement procedure in 2004. Therefore, in the Norwegian authorities' view, the increase in the compensation negotiated in 2008 was also covered by that procurement procedure.

The Authority has taken note of the fact that the Hurtigruten agreement was awarded on the basis of a public procurement procedure. The revision clause formed part of that public tender procedure, i.e. it was not inserted subsequently. However, in the Authority's preliminary view, that does not necessarily mean that any exercise of that provision later in the contract period, may be assessed as covered by the original tender procedure. Whether the amendments to the contract should be considered as new measures or adjustments within the scope of the tendered contract should rather be assessed in the light of the wording of the contract and general procurement principles. It is in the Authority's view important whether the clause provided for a clear, transparent price adjustment based on objective criteria or whether it simply left subsequent adjustments to be addressed in new negotiations.

It follows from the mentioned Article 8 that both parties may initiate a renegotiation procedure in the event of new regulations or requirements from public authorities which lead to significant changes in costs as well as radical changes in the price of production factors, which were not foreseeable by the parties.

The Authority observes firstly that the clause does not give Hurtigruten a right to increased compensation but merely a right to initiate renegotiations in case of new and unforeseen public law requirements or significant increases in the costs of delivering the service.

Secondly, the clause does not specify in any greater detail what events may trigger renegotiations. It is also silent with regard to consequences for the contract remuneration should such events occur. On this basis, even though the contract was tendered out, it appears unlikely that the potential contractors would have been able to foresee what consequences the mentioned events could have had for the remuneration for the services. In the absence of clear, transparent provisions regarding adjustments of the compensation, the Authority finds it difficult to follow the argument that the increase in compensation in 2008 was as such covered by the public tender in 2004.

The Authority also finds support for its view in general public procurement principles according to which more substantial adjustments to the contract normally will require a

[6] Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraphs 88-93.

new tender procedure.[7] In this regard, the Authority notes that the revised contract increased the compensation with what appears to correspond to more than 30% for 2008.

Thirdly, the Authority recalls its Decision 660/07/COL, in which the Authority assessed a similar argument, that an increase in social security contributions to Hurtigruten was within the scope of the previous Hurtigruten contract and thereby covered by the Authority's Decision 417/01/COL.[8] In response to this argument the Authority stated:

The Authority would like to point out that annual compensation of NOK 170 million, expressed in 1999-prices, under the Hurtigruten Agreement had been approved by the Authority. In contrast, the Authority's decision did not deal with Section 10 of the Hurtigruten Agreement as such, and nothing in the Authority's decision suggested that any future amendments of the Hurtigruten Agreement based on this clause would, as argued by the Norwegian authorities, automatically be considered to be in compliance with the state aid provisions of the EEA Agreement.

Section 10 of the Agreement merely allows for the possibility of amending the contract due to unforeseen substantial changes of circumstances. It does not prescribe an automatic increase in the compensation to the Hurtigruten companies in the event of raised costs, but merely opens up the possibility for both parties to the Hurtigruten Agreement to request a re-negotiation procedure without prescribing the result of such re-negotiations. Furthermore, the provision does not explicitly mention augmentation of costs as a result of a tax increase as a reason for renegotiation, let alone as a fact that would require an automatic adjustment of the agreement by the exact amount flowing from the tax increase. A change in the tax situation of one contracting party is normally not a factor that the other party is obliged to bear. Hence, even if the original Hurtigruten Agreement in its entirety was notified to the Authority in 2000 and approved in 2001, the Authority could not reasonably have been expected to foresee all possible effects of the provision, and the Authority's silence about the provision in its 2001 Decision cannot be held to imply that all uses of the provision were hereinafter automatically acceptable from a state aid point of view.

It is the view of the Authority that the existence of the contractual provision needs to be distinguished from the separate question of whether the chosen re-adaptation complies with the EEA Agreement, and in particular with the state aid provisions.[…]

On this basis it is the preliminary view of the Authority that the increase in the compensation is not as such determined through a public procurement procedure within the meaning of the *Altmark* case referred to above.

As mentioned above under Section I.4, the Norwegian authorities have argued that they acted in a manner similar to a rational market operator during the renegotiation process. It is not clear to the Authority whether this is a separate submission or whether it merely refers to the way in which the authorities conducted the renegotiations and limited the compensation to what was strictly necessary. The Authority considers in any event that there is no scope for applying the private market investor principle to an EEA State's acquisition of a public service.

Against this background, the preliminary conclusion of the Authority is that the measures under assessment gave Hurtigruten an advantage beyond the Hurtigruten Agreement agreed in 2004.

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[7] Case C-454/06 *Pressetext Nachrichtenagentur GmbH*, [2008] ECR p. I-4401, par. 59-60 and 70.

[8] The increase in the remuneration was based on Article 10 of the 2001 Hurtigruten contract which in content was similar to the mentioned Article 8 of the present contract.

1.3. Distortion of competition and effect on trade between Contracting Parties

The market for domestic maritime services (maritime cabotage) was opened to EEA-wide competition in 1998. The compensation may have an effect on potential competition, including those from foreign operators. The compensation payment is thus liable to affect competition and trade.

Moreover, Hurtigruten is also engaged in the tourism sector, in particular through the offer of cruise/round trips along the Norwegian coast. On this market other operators offer cruise trips along the coastal like between Bergen and Kirkenes. The compensation granted can therefore also have an effect on this market.

1.4. Conclusion on the presence of state aid

On the basis of the information set out above, the Authority has reached the preliminary conclusion that the additional payments in favour of Hurtigruten under assessment constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

The Norwegian authorities did not notify the renegotiation of the Hurtigruten Agreement to the Authority. The Authority therefore concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

In the following, the Authority will assess the potential justification grounds put forward by the Norwegian authorities, i.e. that the measure can be justified as public service compensation under article 59(2) EEA, or, alternatively, as an emergency measure to ensure a continuous service until a new tender procedure could take place. Finally the Norwegian authorities have referred to the measure as a rescue and restructuring measure within the meaning of Article 61(3)(c) and the relevant Authority Guidelines.

It follows from Article 4 of the Maritime cabotage regulation and Section 9 of the Authority's Guidelines on Maritime transport that EFTA States may impose public service obligations or conclude public service contracts for certain maritime transport services provided that the compensation fulfils the rules of the EEA Agreement and the procedure governing state aid.

According to Article 59(2) EEA: "*undertakings entrusted with the operation of services of general economic interest… shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary of the interests of the Contracting Parties*".

It follows from this provision that the service in question must be a service of general economic interest and be clearly defined as such by the EFTA State. Moreover, the undertaking in question must be officially entrusted by the EFTA State with the provision of that service. The amount of compensation shall not exceed what is necessary to cover the costs incurred in discharging the public service obligations including a reasonable profit.

As the Authority has already pointed out, it did not assess the Hurtigruten Agreement currently in force in order to determine whether it fulfilled all the conditions required by

EEA law.[9] However, based on its approval of the preceding and mainly similar Hurtigruten contract in 2001, the Authority does not consider it necessary in the present opening decision to question either the definition of the service of general economic interest public service at issue or the fact that such a service was entrusted to Hurtigruten through the agreement in 2004.

However, the Authority must also verify that the increase in the public service compensation did not exceed the net extra costs of discharging the public service task entrusted to Hurtigruten.

In that regard the Authority notes that the increased compensation in 2008 was granted partly with reference to the introduction of the NOx tax and partly with reference to the weak financial situation of Hurtigruten.

As regards the NOx tax, the Norwegian authorities have in response to the Authority's questions submitted extensive material regarding the calculations of the increased costs stemming from the NOx tax and later the contributions to the NOx Fund.[10] To some extent, the authorities have also documented increased fuel costs for Hurtigruten.

However, on the basis of this documentation the Authority has doubts as to whether the mentioned NOx compensation solely corresponds to increased costs in discharging the public service obligations. In that regard the Authority has taken note of that Hurtigruten's activities, also for the 11 vessels providing the public service, are not only confined to providing the public service but also to commercial services such as roundtrips, excursions and cruises. As only the costs associated with the public service can be taken into consideration the Authority has doubts as to whether as much as 90% of the increased costs stemming from the NOx tax regime can be attributable to the provision of the public service in question.

Moreover, as far as the "general compensation" for 2008 is concerned, the Norwegian authorities granted the aid with a reference to the weak financial position of Hurtigruten resulting from a general increase in costs for the service provided. The Authority has so far not seen a detailed breakdown of the general compensation in terms of increased costs for specific elements included in the public service obligation. Moreover, as mentioned above, the Authority recalls that Hurtigruten also carries out commercial activities outside the scope of the public service in question. The Authority has so far not received documentation clearly explaining how the general increase in costs and the compensation thereto was solely linked to the provision of the public service. To the contrary, the PricewaterhouseCoopers report 14 October 2008 and the BDO Noraudit report 23 March 2009[11], to which the Norwegian authorities refer, seem to indicate the opposite. They count for NOK 64.8 million in increased bunker fuel price in the first three quarters of 2008 compared with first three quarters of 2007[12], fuel prices decreasing again in fourth quarter 2008. As pointed out in the BDO Noraudit report, page 14, it is questionable that

[9] Judgment of the Court of First Instance of 27 February 1997, Case T-106/96 *FFSA and others* v. *Commission*, [1997] ECR II-229 and Judgment of the EFTA Court of 3 March 1999, Case E-4/97 *Norwegian Bankers' Association* v. *EFTA Surveillance Authority*, [1999] EFTA Court Report p. 1 ("Husbanken case").

[10] See EFTA Surveillance Authority decision No 501/08/COL.

[11] These reports were submitted by the Norwegian authorities with letter dated 3 April 2009 (Event No 514420).

[12] Page 18 in the BDO Noraudit report. The figure NOK 64.8 million corresponds to 98% of the increase in bunker fuel price, for vessels used on the route Bergen – Kirkenes, for the first three quarters of 2008 compared with first three quarters of 2007. The calculated increase in bunker fuel price on the route is reduced by 2% which corresponds to the fuel costs related to the transport in Geiranger fjord which falls outside the Hurtigruten Agreement.

the calculations of increased fuel prices in 2008 were based on marine gas oil (MGO) prices although Hurtigruten in fact uses fuel of different quality category, IF40, which is much less expensive. BDO Noraudit concludes on page 15 in its report, that the amount of the "general compensation" corresponding to NOK 66 million is not directly linked to the price development of bunker fuel in first half of 2008. The Authority notes that BDO Noraudit points out in its concluding remarks on page 23 in the report that the fact that Hurtigruten does not keep sufficiently separate accounts between the operations following from the public service obligation and other services provided by means of the same vessels, makes the analyse of the public service compensation difficult.

Finally, the Authority has doubts how the reduction in the service in terms of number of ships during winter time may correspond to increased costs in discharging the public service obligation. The Norwegian authorities have hitherto not linked this increase in compensation to any specific extra costs that would have to be compensated.

As regards the justification ground based on an emergency acquisition of a service in order to ensure a continuous service until a new tender procedure could be arranged, the Authority would in principle not exclude that such circumstances in a given case could justify acquisition of a public service without the normally applicable strong requirements for verification of compensation limited to the net extra costs. While keeping certain transport infrastructure open may be of vital importance for a state[13] the amount of aid would, in such a case, be limited to the extent necessary by a new public tender being arranged as soon as practically possible. However, in the case at hand, a new tender was only announced in June 2010 for the acquisition of transport services as from 1 January 2013. Indeed, this entails that Hurtigruten may provide the service for the exact same time period as foreseen in the 2004 Hurtigruten Agreement. In other words, as the emergency acquisition was not followed up with the initiation of a new tender process immediately after, the Authority doubts that such arguments could justify any overcompensation to Hurtigruten. The Authority is not aware of any particular circumstance that may explain why it was impossible to initiate a new public tender procedure before 20 months had lapsed since the finalisation of the renegotiation procedure.

Finally, the Norwegian authorities have argued that the aid is compatible as restructuring aid under Art 61(3)(c) and the Authority's Guidelines on rescuing and restructuring aid. In 2010, the Norwegian authorities submitted a memorandum explaining why Hurtigruten was a firm in difficulties and describing various restructuring measures in favour of the company. However, they neither notified the potential rescue aid nor followed up with a proper restructuring plan. For these reasons, the Authority has doubts whether the measures under assessment can be considered as restructuring aid within the meaning of the guidelines and invites the Norwegian authorities to provide any documentation deemed necessary for such an assessment.

4. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority preliminary concludes that the additional payments to the Hurtigruten companies (reimbursement of the NOx tax/NOx Fund contribution, a general compensation payment of NOK 66 million in 2008 as well as the release in winter of one of the 11 ships allocated to the route) constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

The Authority has doubts that these measures comply with Article 59(2) or Article 61(3) of the EEA Agreement, in conjunction with the requirements laid down in the Authority's

State Aid Guidelines on Maritime Transport and/or Guidelines on rescuing and restructuring firms in difficulty. The Authority, therefore, doubts that the above measures are compatible with the functioning of the EEA Agreement.

Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit their comments within one month of the date of receipt of this Decision.

In light of the foregoing considerations, within one month of receipt of this decision, the Authority request the Norwegian authorities to provide all documents, information and data needed for assessment of the compatibility of the revised Hurtigruten Agreement.

The Authority requests the Norwegian authorities to forward a copy of this decision to the potential aid recipient of the aid immediately.

The Authority must remind the Norwegian authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principal of EEA law.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the additional payments to Hurtigruten (reimbursement of the NOx tax/NOx Fund contribution, a general compensation payment of NOK 66 million in 2008 as well as the release in winter of one of the 11 ships allocated to the route) implemented by the Norwegian authorities.

Article 2

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 3

The Norwegian authorities are requested to provide within one month from notification of this decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Decision made in Brussels, on 14 July 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Sverrir Haukur Gunnlaugsson
College Member