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# *EFTA SURVEILLANCE AUTHORITY*

Doc. No. 01-2669-I  
Dec. No. 110/01/COL  
Ref. No. SAM 030.00.009

## EFTA SURVEILLANCE AUTHORITY DECISION

of 11 April 2001

ON INDIVIDUAL REGIONAL INVESTMENT AID TO THE SHIPYARD *HAMMERFEST  
MARITIME SERVICE AS*

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area<sup>1</sup>, in particular to Articles 61 to 63 of the Agreement,

HAVING REGARD TO the Act referred to in point 1b of Annex XV to the EEA Agreement on aid to shipbuilding (Council Regulation (EC) No. 1540/98)<sup>2</sup>,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid<sup>4</sup>, and in particular Chapter 25 thereof,

WHEREAS:

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<sup>1</sup> Hereinafter referred to as the EEA Agreement.

<sup>2</sup> Hereinafter referred to as the Shipbuilding Regulation.

<sup>3</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>4</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 78/00/COL of 12 April 2000, published in OJ L 274, 26.10.2000, hereinafter referred to as the "Authority's State Aid Guidelines".

## I. FACTS

### 1. *The notification*

By letter dated 28 November 2000 from the Mission of Norway to the European Union, received and registered by the Authority on 29 November 2000 (Doc. No. 00-8694-A), the Norwegian Government notified the Authority, pursuant to Article 10 (2) (b) of the Shipbuilding Regulation, of plans by the Norwegian authorities to award regional investment aid to the shipyard *Hammerfest Slipphall AS*. By letter dated 22 December 2000 (Doc. No. 00-9395-D), the Authority acknowledged receipt of the notification.

By letter dated 26 January 2001 (Doc. No: 01- 712-D), the EFTA Surveillance Authority requested additional information on the aid proposal, to which the Norwegian authorities responded by letter of 27 February 2001 from the Norwegian State's Industrial and Regional Development Fund (SND), received and registered by the Authority on 2 March 2001 (Doc. No: 01-1701 A). In their reply letter, the Norwegian authorities also informed the Authority that in addition to measures initially notified, the aid beneficiary had been granted an SND Risk loan. Further information was submitted by fax dated 1 March 2001, registered by the Authority on the same day (Doc. No. 01-1891-A). By letter of 26 March 2001 (Doc. No. 01-2282-D), the Authority acknowledged receipt of the notification and requested further information, in particular with respect to SND loans. The Norwegian authorities provided the required information by fax of 3 April 2001, received and registered by the Authority on the same day (Doc. No. 01-2577-A).

### 2. *Contents of the proposed aid*

#### Introduction

The Norwegian authorities have notified the Authority of the Norwegian State's Industrial and Regional Development Fund's (SND) decision to give a grant amounting to NOK 2 million (approx. € 244 000) to the shipyard *Hammerfest Slipphall AS* for the construction of a steel hall over two existing slipways. Additional financing will be provided by SND in the form of loans of NOK 11.2 million (approx. € 1 370 000). The total budget for the project is NOK 16.5 million (approx. € 2 million).

#### Aid Beneficiary: *Hammerfest Maritime Service AS*

*Hammerfest Maritime Service AS* is an engineering company with the repair and maintenance of ships exceeding 100 GRT as its core business. It is located in the county of Finnmark. It has approx. 40 employees and its turnover in 1999 amounted to NOK 22.7 million (approx. € 2.8 million).

The investment project will be carried out on the premises of *Hammerfest Maritime Service AS*. However, for the purpose of the construction and the operation of the slip hall, a new company, *Hammerfest Slipphall AS*, will be established, where

*Hammerfest Maritime Service AS* subscribes to 66% of the capital. This newly established company will be the receiver of the financing provided by SND. *Hammerfest Maritime Service AS* will be a tenant to the slip hall and as such, benefit from the State support measures, even if the direct recipient is *Hammerfest Slipphall AS*.

*Project Description and Aid Measures*

As stated above, the planned project consists of an investment in the construction of a slip hall covering two existing slipways. The purpose of the planned investment is to increase the capacity of *Hammerfest Maritime Service AS*' ship repair and maintenance activities. According to the Norwegian authorities, a covered slip will lead to greater efficiency and productivity compared to outdoor activities. With the climatic conditions on the coast of Finnmark, outdoor work on boats during wintertime is almost impossible. The slip hall will make the operation of the yard's work independent of climatic conditions, and will enable the company to offer all kinds of services on a year-round basis.

The total estimated investment costs amount to NOK 16.5 million (approx. € 2 million).

The breakdown of the costs, as well as their planned financing, are as follows:

| <b>Investment costs</b>          |                       | <b>Financing</b>          |                   |
|----------------------------------|-----------------------|---------------------------|-------------------|
| <b>Investment</b>                | <b>Costs (in NOK)</b> | <b>Means of financing</b> | <b>NOK</b>        |
| Joint costs                      | 200.000               | SND Grant                 | 2.000.000         |
| Building                         | 12.900.000            | SND Low Risk Loan         | 8.000.000         |
| Water, heating, sanitation       | 500.000               | SND Risk Loan             | 3.200.000         |
| Electric power                   | 1.300.000             | Share Capital             | 3.300.000         |
| Telecommunication and automation | 150.000               |                           |                   |
| General costs                    | 450.000               |                           |                   |
| Specific costs                   | 250.000               |                           |                   |
| Reserve/security margin          | 750.000               |                           |                   |
| <b>TOTAL</b>                     | <b>16.500.000</b>     | <b>TOTAL</b>              | <b>16.500.000</b> |

The grant provided by SND is awarded under the "Regional Development Grant" Scheme. The scheme, which was originally approved by the Authority in 1998 (State aid No. SAM 030.98.008, Decision of 16 December 1998, Dec. No. 375/98/COL), was amended in the course of 2000, with the objective to extend the scope of application and to provide support for regional investment and R&D activities in accordance with the Shipbuilding Regulation. These amendments were approved by the Authority by Decision of 5 July 2000 (State aid No. SAM 030.00.006; Dec. No. 131/00/COL).

The low risk loan, as well as the risk loan provided by SND under existing schemes, have never been formally approved by the Authority.

The share capital, as indicated in the above table, is provided by *Hammerfest Slipphall AS*, the company established to organise the construction of the slip hall. The shares of this company are held at 66% by the aid beneficiary, *Hammerfest Maritime Service AS*, and at 34% by *Hammerfest Næringsinvest AS*, a regional investment company. *Hammerfest Næringsinvest AS* was established in 1998, with share capital held by SpareBank 1 Nord-Norge (a private savings bank), *Hammerfest Elektrisitetsverk DA* (the ownership of which is held by three municipalities) and SIVA (a State-owned industrial development corporation engaged in real estate, business development and financing). According to the statutes of *Hammerfest Næringsinvest AS*, the company has as its objective to invest in SMEs in the Hammerfest region and to obtain yields on the capital thus invested. The Norwegian authorities have submitted information which confirms that the owners of *Hammerfest Næringsinvest AS* expect a return on their capital of approx. 15%.

## II. APPRECIATION

### 1. *The presence of State aid and notification formalities*

The notified SND grant is being funded by State resources and will favour certain undertakings in the meaning of Article 61(1) of the EEA Agreement. The beneficiary of the grant is actually or potentially in competition with similar undertakings in Norway and other EEA States. As the proposed aid distorts or threatens to distort competition and to affect trade within the EEA, the proposed SND grant of NOK 2 million (approx. € 244 000) constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

The SND risk loan as well as the SND low risk loan, are provided by SND and thus through State resources. The question whether and to what extent the planned SND risk loan of NOK 3.2 million (approx. € 390 000) as well as the SND low risk loan of NOK 8 million (approx. € 980 000) constitute a financial advantage to the aid beneficiary, will in the present case be assessed in light of the terms of the loan and the available information on the risks involved.

According to the information submitted by the Norwegian authorities, the SND low risk loan is secured by a first priority mortgage in all property and production equipment of *Hammerfest Maritime Service AS* and *Hammerfest Slipphall AS*. The loan has a grace period of one year after which the loan shall be repaid in equal bi-annual instalments over a period of 20 years. The offer from SND entails that the interest rate may be either fixed or floating. In both alternatives, the minimum nominal interest rate is 8.8% p.a. Furthermore, the Norwegian authorities have stated that SND has assessed the risks of default regarding this loan as being null.

Given that the interest rate for the low risk loan of min. 8.8 % is above the reference rate of interest applicable for Norway as from 1 January 2001 (6.82%), and further

given that the risks involved in this kind of loan have been assessed to be null, the Authority concludes that the low risk loan does not contain any aid element.

According to the information submitted by the Norwegian authorities, the SND risk loan will be secured by a mortgage in all property and production equipment of *Hammerfest Maritime Service AS* and *Hammerfest Slipphall AS*, after the first priority mortgage to the amount of NOK 8 million (low risk loan) and after an existing mortgage debt to Den norske Bank to the amount of approx. NOK 2.175 million have been honoured. The loan conditions provide for a grace period of two years after which the loan shall be repaid in bi-annual instalments of NOK 80 000 over a period of 20 years. The interest rate has been set at 9.9%.

The risk loan thus carries an interest rate, which, in view of the reference rate of interest of 6.82% applicable for Norway from 1 January 2001, can be considered to involve a risk premium of 3.08%. According to the Norwegian authorities the risk loan is assessed as having a 23% risk of default. Taking account of the annual risk premium of 3.08% over the term of the loan (20+2 years), the Authority has estimated the aid element in the loan to be negative, meaning that the risk loan does not contain any element of aid.

The part of the capital which will be contributed by *Hammerfest Næringsinvest AS* can be considered to be free of aid. On the basis of the information submitted by the Norwegian authorities the Authority has not found reason to question that this financial contribution would be in line with the market economy investor principle since the investment in *Hammerfest Slipphall AS* is required to generate an adequate rate of return for the shareholders.

By submitting a notification for the planned grant, the Norwegian authorities have complied with the specific notification requirement for aid to shipyards set out in Article 10 (b)(2) of the Shipbuilding Regulation. Furthermore, the Norwegian authorities have refrained from paying out the grant as well as the two SND loans, pending the outcome of the examination. The Authority can therefore conclude that the Norwegian Government has respected the standstill provision in Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

## **2. *Application of the relevant State aid rules***

The aid beneficiary is a company engaged in the repair and maintenance of ships exceeding 100 GRT (NACE 35.111), an activity which is covered by the Shipbuilding Regulation (cf. Article 1 of the Shipbuilding Regulation). As the aid has the character of regional investment aid, it must be assessed under Article 7 of the Shipbuilding Regulation. Finally, the aid must also be assessed under the rules contained in Chapter 25 of the Authority's State Aid Guidelines on national regional aid.

Article 7 of the Shipbuilding Regulation, as incorporated into the EEA Agreement, stipulates: “*Aid granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations, may be deemed compatible with the functioning of the EEA Agreement provided that:*

- in regions meeting the criteria for the option contained in Article 61 (3)(c) and complying with the map approved by the competent surveillance authority as defined in Article 62 of the EEA Agreement for each EC Member State or EFTA State for the grant of regional aid, the intensity of the aid does not exceed 12.5% or the applicable regional aid ceiling, whichever is lower”.

#### Objective of the aid

Based on the information submitted by the Norwegian Government, the Authority can conclude that the aid project in question can be regarded as an investment in upgrading and modernising of the existing yard with the objective of improving the productivity of existing installations. The condition regarding the objective of the aid as set out in Article 7 of the Shipbuilding Regulation is thus considered to be fulfilled.

#### Geographical conditions

*Hammerfest Maritime Service AS* is located in the municipality of Hammerfest, in the county of Finnmark According to the map of assisted areas in Norway, which was authorised by the EFTA Surveillance Authority Decision No. 327/COL of 16 December 1999, the whole county of Finnmark belongs to an Article 61 (3)(c)-region (Target Zone A). *Hammerfest Maritime Service AS* is therefore eligible for regional investment aid, and the geographical conditions in Article 7 of the Shipbuilding Regulation are thus fulfilled.

#### Eligible expenditure

Chapter 25.4(6) of the Authority’s Guidelines states that: “*Initial investment means an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation).*” Furthermore, Chapter 25.4(8) of the Guidelines states that: “*Aid for initial investment is calculated as a percentage of the investment's value. This value is established on the basis of a uniform set of items of expenditure (standard base) corresponding to the following elements of the investment: land, buildings and plant/machinery.*”

The Authority considers that the investment in the new hall falls within the category of initial investment. With reference to the table above, specifying the various types of the project costs, the Authority considers that they all relate to costs in “*buildings and plant/machinery*” and that the aid is thus limited to support eligible expenditure in accordance with Article 7 of the Shipbuilding Regulation and the Guidelines on national regional aid. The eligible investment costs are therefore NOK 16.5 million.

#### Aid intensity

*Hammerfest Maritime Service AS* is located in the municipality of Hammerfest, in the county of Finnmark (Target Zone A). Since the aid ceiling applicable in Target Zone

A is above the ceiling set in Article 7, the lower ceiling of 12.5% applies in the present case.

To contribute to the financing of the eligible investment costs, SND offered an investment grant of NOK 2 million, which corresponds to an aid intensity of 12,1 % of the eligible investment costs. The other means of financing are considered to be free of aid. Consequently, the aid level is within the relevant maximum aid ceiling for regional investment aid.

### ***Conclusions***

For the above reasons the conditions set out in Article 7 of the Shipbuilding Regulation and Chapter 25 of the Authority's State Aid Guidelines are considered to be fulfilled.

With reference to the above considerations, it is concluded that the proposed aid to *Hammerfest Maritime Service AS* may be considered compatible with the functioning of the EEA Agreement.

### **HAS ADOPTED THIS DECISION:**

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed regional investment aid to the shipyard *Hammerfest Maritime Service AS*, as notified by the Norwegian authorities by letter of 28 November 2000, registered by the Authority on 29 November 2000 (Doc. No. 00-8694-A) and supplemented by letter of 27 February 2001, registered by the Authority on 2 March 2001 (Doc. No: 01-1701-A), a fax dated 1 March 2001, registered by the Authority on the same day (Doc. No. 01-1891-A) and a fax dated 3 April 2001, received and registered by the Authority on the same day (Doc. No. 01-2577-A).
2. The Norwegian Government is reminded of its obligation to submit to the EFTA Surveillance Authority the relevant reports referred to in Article 11 of the Shipbuilding Regulation.

Done at Brussels, 11 April 2001.

For the EFTA Surveillance Authority

Knut Almestad  
President

Bernd Hammermann  
College Member