

Event.No: 277514
Case.No: 55363
Dec.No: 131/04/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 16 JUNE 2004

ON A PROLONGATION OF AN EXISTING AID SCHEME FOR THE
SHIPBUILDING INDUSTRY

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 and Article 1 in Part 1 of Protocol 3 thereof,

HAVING REGARD TO the EEA Joint Committee Decision No 170/2002 of 6 December 2002³ incorporating into Annex XV to the EEA Agreement Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding⁴,

HAVING REGARD TO Council Regulation (EC) No 502/2004 amending Regulation (EC) No 1177/2002⁵ concerning a temporary mechanism to shipbuilding as incorporated into Annex XV to the EEA Agreement by EEA Joint Committee Decision No 80/2004 of 8 June 2004⁶,

HAVING REGARD TO the Authority's Guidelines⁷ on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

I. FACTS

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ Published in OJ L 38, 13.02.2003, p.34, and the EEA Supplement No 9, 13.02.2003, p.23.

⁴ Published in OJ L 172, 02.07.2002, p.1.

⁵ Published in OJ L 81, 19.03.2004, p.6.

⁶ Not yet published.

⁷ Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in OJ L 231, 03.09.1994. The Guidelines were last amended on 23 April 2004 (Dec.No: 90/04/COL).

1. Notification

By telefax dated 2 April 2004 from the Ministry of Trade and Industry, the Norwegian authorities notified a prolongation of an existing temporary aid scheme for the shipbuilding industry (Event No: 277521). The letter from the Ministry of Trade and Industry dated 2 April 2004 was also forwarded by letter from the Mission of Norway to the European Union dated 14 April 2004, received and registered by the EFTA Surveillance Authority on 15 April 2004.

The existing scheme was approved by the Authority on 8 October 2003⁸. The existing scheme is based on Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding, as incorporated into Annex XV to the EEA Agreement by Decision No 170/2002 of the EEA Joint Committee dated 6 December 2002. The prolongation is based on Council Regulation (EC) No 502/2004 amending Regulation (EC) No 1177/2002 concerning a temporary mechanism to shipbuilding as incorporated into Annex XV to the EEA Agreement by EEA Joint Committee Decision No 80/2004 of 8 June 2004. Council Regulation (EC) No 502/2004 contains a provision prolonging the application of the scheme until 31 March 2005, and implies no substantive changes to the scheme.

By letter dated 13 April 2004 (Event No: 277576), the Authority acknowledged the receipt of the notification. The Authority *i.a.* reminded the Norwegian authorities of the standstill obligation and asked the Norwegian authorities to ensure that the scheme will not be implemented before the Authority has taken a decision.

2. Description of the aid

The notification relates to a prolongation of the existing temporary direct aid scheme: “*Contract-related operating aid to shipbuilding*” (hereinafter “the scheme”). Contracts for the building of container ships, product and chemical tankers and LNG carriers are, according to the rules of the scheme, eligible for direct aid of 6% of contract value before aid. The available budget is NOK 300 m (approx. EUR 37 million) for the whole period. The duration of the scheme is prolonged until 31 March 2005 and the estimated numbers of recipients are between 5 and 10.

The legal basis for the existing scheme is Act relating to State aid (“Lov om offentlig støtte av 27. november 1992”) and Regulation amending Regulation on State Aid to Shipbuilding (“Forskrift om endring av forskrift 19. mars 1999 nr. 246 om gjennomføring av EØS-avtalens bestemmelser om offentlig støtte til skipsbyggingsindustrien”). The Norwegian authorities have laid down detailed rules for the application of the scheme in separate Guidelines (“Regelverk for forvaltning av statleg støtte ved bygging av skip), (hereinafter “the Guidelines for the scheme”).

Aid under the scheme will only be granted subject to the following conditions:

⁸ Decision No: 179/03/COL, published in OJ C 308 18.12.2003 and the EEA Supplement No 63, 18.12.2003.

- Eligible ship types

Aid may be granted for the construction of container ships, product and chemical tankers as well as LNG carriers (point 4 of the Guidelines for the scheme). The definitions of the eligible ship types are, according to the Norwegian authorities, in accordance with the TDM.

- Korean competition

Aid may only be granted under the scheme if a Korean yard has offered a lower price for the same contract. In this respect, the competitive disadvantage suffered by the shipyard must be explained and demonstrated in a concrete form. The Guidelines for the scheme (point 4) requires that applicants must provide either one of two proofs:

- a copy of an offer from a Korean yard offering a lower price for the ship in question or
- a statement from the consignor or from an independent shipbroker that, for the ship in question, a lower price has been offered from a Korean yard.

- Time frame for eligibility

Under the scheme, final contracts signed from 15 March 2003 until the expiry of the TDM on 31 March 2005 are eligible for aid, with the exception of final contracts signed before the Community gives notice in the Official Journal of the European Union that it has initiated dispute settlement proceedings against Korea by requesting consultations in accordance with the World Trade Organisation's Understanding on the Rules and Procedures for the Settlement of Disputes and final contracts signed one month or more after the Commission gives notice in the Official Journal of the European Union that these dispute settlement proceedings have been resolved, or suspended on the grounds that the Community considers that the Agreed Minutes have been effectively implemented.

- LNG Ships

Final contracts for the construction of LNGs will only be eligible for aid if they are signed after the Commission gives notice in the Official Journal that it confirms, on the basis of investigations covering 2002, that Community industry has suffered material injury and serious prejudice in this market segment caused by unfair Korean practice.

Aid may only be granted in respect of ships delivered within three years of the date of the signing of the final contract (point 6 of the Guidelines for the scheme).

The Guidelines for the scheme (point 4) states that the value of work done abroad and equipment delivered as part of such work shall not be calculated as part of the contract value before aid.

II. APPRECIATION

1. Notification requirement and standstill clause

Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement states: “*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.*” Aid provided without notification or aid that is notified late, *i.e.* notified after being “*put into effect*”, is considered unlawful aid. The Norwegian authorities have notified a prolongation of an existing scheme and made its entry into force conditional upon approval by the Authority. Therefore, the Norwegian authorities have fulfilled their obligation according to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2. The existence of State aid

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 notes that the scheme concerns the granting of aid to the shipbuilding sector and, in particular, to undertakings involved in the construction of specific ship-types. Accordingly, the Authority considers that the scheme falls within the scope of Article 61(1) EEA. It follows that the Authority must assess whether the scheme can be considered to be compatible with the EEA Agreement.

3. Compatibility of the aid.

In substance the prolonged scheme is not amended and the Authority makes reference to its decision dated 8 October 2003. The Authority has regard to the TDM, under which direct aid in support of contracts for the building of container ships, product and chemical tankers as well as LNG ships are to be considered compatible with the EEA Agreement, subject to certain conditions. It remains to be assessed whether the scheme meets the requirements of Articles 2 and 4 of the TDM.

In respect of Article 2(1) TDM, the Authority notes that:

- the scheme is limited to direct aid in support of contracts for the building of container ships, product and chemical tankers, and LNG ships (point 4 of the Guidelines for the scheme);
- the definitions of Article 1 of the TDM are applicable (point 4 of the Guidelines for the scheme).

The Authority notes that the Guidelines for the scheme (points 4 and 8) require that applicants must provide either one of two proofs:

- A copy of an offer from a Korean yard offering a lower price for the ship in question or
- A statement from the consignor or a statement from an independent shipbroker that, for the ship in question, a lower price has been offered from a Korean yard.

Accordingly, the Authority considers that the requirements of Article 2(1) TDM are met. In respect of Article 2(2) TDM, the Authority notes that, under the scheme direct aid in support of contracts for the building of LNG carriers may only be authorised for final contracts signed after the Commission gives notice in the Official Journal of the European Union that it confirms, on the basis of investigations covering the period of 2002, that the Community industry has suffered material injury and serious prejudice in this market segment caused by unfair Korean practices (point 4 of the Guidelines for the scheme). Accordingly, the Authority considers that the requirement of Article 2(2) TDM is met.

In respect of Article 2(3) TDM, the Authority notes that the maximum aid intensity under the scheme is 6% of contract value before aid (point 7 of the Guidelines for the scheme). Accordingly, the Authority considers that the requirement of Article 2(3) TDM is met.

In respect of Article 2(4) TDM, the Authority notes that aid may only be granted in respect of ships delivered within three years of the date of the signing of the final contract (point 6 of the Guidelines for the scheme). Accordingly, the Authority considers that the requirements of Article 2(4) are met.

In respect of Article 4 TDM, the Authority notes that, under the scheme as prolonged,

- final contracts signed from 15 March 2003 until the expiry of the TDM on 31 March 2005 are eligible for aid (point 6 of the Guidelines for the scheme);
- if the European Commission gives notice in the Official Journal of the European Union that the dispute settlement proceedings initiated against Korea under the World Trade Organisation's Understanding on the Rules and procedures for the settlement of Disputes have been resolved or suspended on the grounds the European Community considers that the agreed minutes related to world shipbuilding have been effectively implemented, final contracts signed one month or more after that date will not be eligible for aid.

Accordingly, the Authority considers that the requirements of Article 4 are met.

The Guidelines for the scheme (point 4) has a provision requesting that the value of work done abroad and equipment delivered as part of such work shall not be calculated as part of the contract value before aid. The Norwegian authorities have stated that the scheme is meant to support shipbuilding contracts at yards located in Norway, but that there are no requirements with respect to the country of origin of the material or input being used. This does not exclude grant of aid for non-Norwegian components, so long as these are delivered in Norway. Thus, non-Norwegian components could also benefit from this higher aid level. The Authority can therefore accept this clause.

4. Conclusion

For the reasons given above, the Authority considers the prolongation of the existing scheme to be state aid compatible with the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The Authority has decided not to raise objections to the notified prolonged temporary direct aid scheme: “*Contract-related operating aid to shipbuilding*”.
2. With reference to Chapter 32 and Annex IV of the Authority’s State Aid Guidelines, the Norwegian authorities shall submit information on the contracts benefiting from the scheme, including such documentation submitted to demonstrate the existence of competition from Korean yards offering a lower price.
3. This decision is authentic in the English language.

Done at Brussels, 16 June 2004,

For the EFTA Surveillance Authority

Hannes Hafstein
President

Einar. M. Bull
College Member