EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

of 1 July 1998

on tax-related measures in favour of the maritime transport sector (Norway)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area[1], in particular to Protocol 26 and to Articles 61 to 63 of the Agreement,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice[2], in particular to Article 24 and Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. Background

By telefax from the Mission of Norway to the European Union dated 10 December 1996 (Doc. No. 96-7734-A), transmitting a letter of the Royal Ministry of Foreign Affairs of 9 December 1996, the Norwegian authorities informed the EFTA Surveillance Authority of certain policy changes by the Norwegian Government with regard to the maritime industries.

A meeting took place in Brussels on 10 January 1997 between representatives of the Royal Ministry of Foreign Affairs and the EFTA Surveillance Authority.

By letter of 14 January 1997 (Doc. No. 97-236-D), the EFTA Surveillance Authority informed the Norwegian authorities that according to a preliminary examination by the Competition and State Aid Directorate of the Authority, the new policy changes with regard to the maritime transport sector appeared to involve elements of State aid

[1] Hereinafter referred to as the EEA Agreement.
[2] Hereinafter referred to as the Surveillance and Court Agreement.

within the meaning of Article 61(1) of the EEA Agreement. The Authority would therefore regard the information contained in the Norwegian authorities' letter of 9 December 1996 as a notification of State aid pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement. However, the Authority at the same time found the notification to be incomplete and requested the Norwegian authorities to furnish certain additional information.

Relevant proposals to and decisions by the Norwegian Parliament were received by courier mail from the Ministry of Trade and Industry on 17 January 1997 (Doc. No. 97-306-A). The Norwegian authorities otherwise responded to the above request by letter from the Mission of Norway to the European Union dated 19 February 1997 (Doc. No. 97-1091-A). Additional information was also received by letter from the Ministry of Finance of 3 October 1997 (Doc. No. 97-6345-A).

A meeting took place in Oslo on 25 November 1997 between representatives of the Authority and of the Ministry of Trade and Industry and Ministry of Finance. Furthermore, by telefaxes from the Ministry of Finance received on 17 December 1997 (Doc. No. 97-8101-A) and from the Ministry of Trade and Industry received on 3 February (Doc. No. 98-660-A) and 19 February 1998 (Doc. No. 98-1095-A), the Norwegian authorities responded in writing to certain questions raised by the Authority in the meeting on 25 November 1997.

At a meeting in Oslo on 12 June 1998, the Authority was provided with information on a proposal recently presented by the Norwegian Government to the Parliament, for making certain amendments of the refund schemes for employment and training of seafarers (St prp 51 1997-98: Kap. 1-3).

2. Description of the relevant schemes

During the 1995-96 parliamentary session a White Paper on the maritime industries was presented to the Norwegian Parliament ("*St. meld nr 28 (1995-96): Hvor fartøy flyte kan... De maritime næringer*"). During the debate, the Parliament passed several resolutions concerning the Norwegian maritime sector. The Government subsequently put forward proposals in connection with the budget proposition for 1997 in order to implement the parliamentary decisions.

The background to the reformulation of the Norwegian maritime policy consists *inter alia* in various aspects of recent international developments in this sector, including a continuously intensifying global competition, which has entailed an increased tendency to register vessels and relocate management activities in countries offering favourable tax regimes and the maximum degree of freedom in manning and operating requirements. The revised policy is aimed at preserving Norway's important maritime interests by enhancing the competitiveness of the shipping industry in Norway, and thus ensuring that Norway can maintain its position amongst the world's leading maritime countries.

The new measures include, firstly, a revision and extension of the tax-related refund schemes for employment and training of seafarers, the first of which was initially

introduced in 1993, and of which the Authority was on request informed, in general terms, by letter of the Royal Ministry of Foreign Affairs dated 30 June 1994 (Doc. No. 94-9994-A). Secondly, the measures involve a change in taxation of shipping companies from regular corporate tax to a system of taxing dividends, and at the same time the introduction of a so-called tonnage tax.

2.1 Refund schemes for employment and training of seafarers

In 1993, Norway introduced as a temporary measure a so-called refund scheme for employment of Norwegian seafarers ("*Refusjonsordningen for sysselsetting av norske sjøfolk*"), initially with the objective of safeguarding the competitive position of the coastal shipping trades. According to the scheme, owners of ships covered by the scheme receive grants from the State Treasury as a refund of income taxes and/or social security payments paid in respect of their seafarers. This arrangement does not affect the rights of the respective seafarers under the social security system.

The scheme applied initially only to ships in the ordinary Norwegian shipping register ("*Norsk ordinært skipsregister*", NOR) taking part in coastal transport. This fleet was considered to be faced with competition handicaps as it was already then open to international competition, including from countries offering subsidies to their fleets. The NOR-fleet was considered important to safeguard employment and training for Norwegian seafarers.

In the course of 1993, the system was reviewed, *inter alia* taking account of mounting difficulties of the coastal fleet and a declining market for the offshore supply-fleet. As a result the scheme was made wider in scope and its budget increased from NOK 40 million in 1993 to NOK 340 million in 1994. As from 1994, the scheme covered ships in the NOR register exposed to international competition[3], as well as ships in the Norwegian international shipping register *("Norsk Internationalt Skipsregister*", NIS)[4] with full Norwegian 'security manning'[5]. It was later decided that the scheme should also cover passenger ships in the NIS-register.

The scheme was extended for 1995 and 1996 with a budget appropriation of NOK 339 million for each year.

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[3] This excludes ships below 100 brt, ships leased by public authorities or receiving other public support and fishing vessels.

[4] According to Act No 48 of 12.06.1987 on the Norwegian international shipping register, Norwegian law applies to all ships registered in the NIS, unless otherwise expressly decided pursuant to law (§3). Ships registered in the NIS are not allowed to carry freight or passengers between Norwegian ports or to operate scheduled passenger routes between Norwegian and foreign ports (§4). The law lays down *inter alia* special provisions on wages and employment conditions, allowing for separate wage agreements for seafarers on board NIS ships, as well as provisions on working time, and other contractual rights and obligations of seafarers (§6 - §8). These provisions derogate from the general provisions of Norwegian law applicable to ships registered in the NOR register.

[5] According to Regulation No 175 of 17 March 1987 on manning of Norwegian ships ("*Forskrift om bemanning av norske skip*"), the Maritime Authority ("*Sjøfartsdirektoratet*") shall for each ship covered by the regulation determine the security manning (with designated positions, qualfications, etc.), which is necessary to secure the safety of the ship, taking account i.a. of the ship's technical specifications, its size, mode and routes of operation, etc.

A separate scheme for ships registered in the NIS register was introduced in the spring of 1996, following a decision by the Norwegian Parliament on a special budget allocation for this purpose of NOK 37,5 million for the second half of 1996. This special scheme is *inter alia* aimed at seafarers in apprenticeship and low-ranking officer positions, providing for higher amounts of rebates in respect of such seafarers than in the case of other seafarers, cf. information below.

The Norwegian Parliament discussed the refund schemes once more in the autumn of 1996, in the context of the fiscal budget for 1997. It was decided to extend both schemes for 1997. The budget appropriations for 1997 were fixed at NOK 339 million for the refund scheme for seafarers' employment, and at NOK 75 million for the special scheme for NIS-ships. It was also decided to amend the rules of the schemes, so that the amount of refund per seafarer was effectively to be a fixed percentage (20%) of gross wages. As the budget allocations were limited, these amounts had before been dependent on the number of seafarers who qualified each year, resulting in rebate rates in the order of 17 - 19%.

Both schemes have been extended for the year 1998, with a collective budget allocation of NOK 251 million intended to cover the first half of the year. In relation to the revised national budget for 1998, the budget appropriation for the schemes in that year was raised by NOK 164,2 million, i.e. to a total of NOK 415,2 million in the year 1998. As this implies a reduction in funding, it is foreseen that as from the second half of 1998, the grants will be lowered to 12% of wages. Certain other amendments of the rules of the schemes are also planned, as will be explained below.

The relevant rules of the schemes applicable in 1998 can be summarised as follows:

Refund scheme for seafarers' employment

On the basis of applications, owners of qualifying ships are paid grants amounting to 20% of gross wages (to be reduced to 12% as from second half of 1998) in respect of seafarers who are (i) liable for taxation in Norway, (ii) eligible for the seafarers' tax deduction and (iii) whose wages are reported to the National Pension Insurance for Seafarers.

The scheme covers ships in the NOR-register of at least 100 GT used for transportation (including cargo ships, passenger ships, tugs and ships used for transport in petroleum activity). The manning requirements of Norwegian law apply to ships in the NOR-register, which implies that for each ship the Maritime Authority ("*Sjøfartsdirektoratet*") determines a suitable 'security manning'[6]. However, as from the second half of 1998, the scheme will not cover passenger attendants on passenger ships and ferries in the NOR-register. From the same time, certain vessels transporting crude oil from the North Sea will also be excluded. A further amendment to be implemented as from the second half of 1998 is that additional grants are to be paid in respect of trainees on board ships in the NOR-register. The supplementary

[6] Cf. reference in foonote 4 above.

rates are the same as for training positions on ships in the NIS-register, i.e. the refund for cadets may in total reach 18% of wages, 24% for junior officers and 30% for apprentices.

For passenger ships in the NIS-register, which are also eligible under the scheme, special manning requirements are determined, the details of which are agreed between employees' and shipowners' organisations.

Other ships in the NIS-fleet can qualify, provided that all crew members belonging to the 'security manning' meet the three eligibility conditions for seafarers referred to above, in which case a refund is also granted in respect of other seafarers on the same ship who meet the same conditions.

It is a precondition for refund payments that wages and other terms of employment are covered by wage agreements with the seafarers' unions. If the shipowner is not a member of an employers' organisation, the approval of the relevant seafarers' union is nevertheless required.

It is also a condition that the ships be in operation.

Refunds are not to be granted in respect of ships whose operation qualifies for other official subsidies (except the special rules on corporate taxation considered below). This applies in particular to ferries which are considered to form part of the national road and transport system. Fishing vessels are also excluded from the scheme.

Special refund scheme for NIS-ships (*inter alia* for training of seafarers)

This scheme covers ships in the NIS-register whose crews are composed of at least 8 persons meeting the three conditions for seafarers referred to above, i.e. are (i) liable for taxation in Norway, (ii) eligible for the seafarers' tax deduction and (iii) whose wages are reported to the National Pension Insurance for Seafarers. The positions occupied by these persons shall, as a main rule, at least include captain, chief officer (mate), chief engineer, first engineer, two regular subordinate positions and two training positions. When a crew has fewer than 16 persons, it suffices that half of the crew meets the three conditions relevant for seafarers. The crew's composition shall then be comparable to the one required for bigger ships.

As in the case of the former scheme, the basic amount of the refund is 20% of the eligible seafarers' gross wages (to be reduced to 12% as from the second half of 1998). An additional refund of up to 50% (of the basic refund) may be paid for cadets (with training contracts for class 4 certificates), 100% for junior officers (with training contract for class 2 certificates), and 150% for apprentices. The refund for these positions may in other words reach 30%, 40% or 50% of gross wages, respectively (as from the second half of 1998, 18%, 24% and 30%, respectively).

The rules and conditions of this scheme are otherwise the same as those for the refund scheme for seafarers' employment, including the fact that wages and employment conditions must be agreed by seafarers' unions.

2.2 Special rules for taxation of shipping companies

By decisions in June and December 1996, the Norwegian Parliament decided to introduce a new tax system for shipping companies, which applies as from the income year 1996. These special provisions on taxation of shipping companies are found in Section 51A of the law on wealth and income tax ("*Lov om skatt av formue og inntekt*") No 8 of 18.08.1911.

The new system exempts shipping companies, whose sole activity is ownership or leasing of ships, from regular corporate tax (28%) on profits derived from shipping. The exemption does not apply to interest, profits from net share trading, or income from other sources. However, unlike what applies to share owners in general, owners of shipping companies qualifying for the special tax rules are liable for a 28% tax on dividends, i.e. the tax exemption applies only as long as the profits are retained in companies within the scheme.

In addition, the same shipping companies are required to pay a so-called tonnage tax for their ships, to be calculated at the following rates per day:

- No tax for the first 1.000 net tons, thereafter
- NOK 18 per 1.000 net tons from 1.001 to 10.000 net tons, thereafter
- NOK 12 per 1.000 net tons from 10.001 to 25.000 net tons, thereafter
- NOK 6 per 1.000 net tons above 25.000 net tons

The special tax system for shipping companies is an option for limited companies formed under Norwegian law. It is also available to partnerships and Norwegian controlled foreign companies based in low-tax countries (so-called "*NOKUS-selskaper*"), if owned by limited companies which qualify for the scheme. The companies may not have employees. Management and other services must be purchased. The scheme does not require that the vessels owned by the companies concerned be registered in Norway.

Long term leasing of vessels, which represents a financing arrangement, does not qualify for this scheme and is thus subject to ordinary taxation. The same applies to net financial income.

As a general rule, transition to the new tax system does not trigger capital gains taxation for the company or for the shareholders. Any losses carried forward under the general tax regime will be terminated. Other tax positions under the general tax regime (balance of gains and loss accounts under section 44 A-6 of the tax law) will also cease to accumulate, but such positions will be taken into account when establishing for the company a special account of retained taxed income, whose purpose is to ensure that all income that has been exempt from taxation on a current basis is taxed upon distribution to shareholders or exit of the company from the special tax system.

Relevant conditions relating to various limitations on the scope of the scheme will be further considered in section II.3.2.3 below.

The Norwegian support schemes have no explicit time limit but are reviewed each year in connection with the fiscal budget.

II. APPRECIATION

1. The presence of State aid

The special tax refund for seafarers is paid not to the seafarers concerned, but to shipping companies operating certain ships registered in the NOR and NIS shipping registers and employing seafarers who are liable for taxation in Norway. The refund, which reduces the cost of employing seafarers, is contingent on the seafarers being employed with shipping companies and is not paid if the individuals concerned take up other employment. The special refund for training positions relates to specialised on-board training and must be considered not only to benefit the respective trainees but also to reduce training costs of the employers concerned. The tax refund for the employment and training of seafarers therefore favours shipping companies qualifying under the scheme as compared to other Norwegian enterprises, which do not benefit from this arrangement.

The new company taxation for shipping - which exempts shipping companies, whose sole activity is ownership or leasing of ships, from regular corporate tax on profits derived from shipping - and the concomitant tonnage tax, calculated on the basis of the size of the ships concerned, involve a derogation from the general system of corporate income tax in Norway. Although profits are eventually taxed when paid out as dividends to shareholders, the system offers the interested parties considerable tax deferrals and exceptional freedom to determine the time of taxation. The Norwegian authorities have indicated certain difficulties in providing a reliable estimation of the effects of the new tax system on total tax revenue. On the basis of the information available to it, the Authority nevertheless considers it to be beyond doubt that the system will entail a net reduction of tax revenue and, although it cannot be asserted that all companies opting for the new regime will always be better off by doing so, the conclusion must nevertheless be drawn that the overall fiscal pressure in the Norwegian shipping sector will be reduced.

The refund for employment and training of seafarers and the special company taxation for shipping, both of which are financed by the State Treasury, therefore threaten to distort competition by favouring certain enterprises in the Norwegian maritime sector and, given the mobile nature of the sector and its active role in international trade, are also liable to affect trade between the Contracting Parties. The measures consequently constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

On the other hand, a national legislation, which enables shipping companies to subject non-EEA seafarers to wage- and employment conditions less favourable than those generally applicable to Norwegian or other EEA nationals, such as is the case with the

legislation on the NIS-register, does not fall within the scope of Article 61(1) of the EEA Agreement.[7]

2. Procedural requirements

According to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and Part II of the Authority's Procedural and Substantive Rules in the Field of State Aid, the EFTA States are obliged to notify to the EFTA Surveillance Authority any plans to grant or alter aid in sufficient time to allow the Authority to decide on the case, and not to put the proposed measures into effect until the Authority has taken a decision on the case.

By letter of the Royal Ministry of Foreign Affairs of 30 June 1994, the EFTA Surveillance Authority was informed of the existence of a support scheme for encouraging employment of domestic seafarers, in the form of reimbursement of seafarers' taxes to shipowners for ships exposed to competition from subsidised fleets. This scheme was introduced in 1993 as a temporary measure and was extended by parliamentary decision of 17 December 1993. It was therefore an existing State aid scheme at the time of entry into force of the EEA Agreement on 1 January 1994.

On the other hand, the several extensions and changes of the refund scheme for seafarers, which have subsequently been decided by the Norwegian authorities, represent amendments of an existing aid scheme, which are subject to prior notification, as outlined above. This applies *inter alia* to the introduction in the spring of 1996 of a separate scheme for NIS-ships (*inter alia* to promote on-board training of seafarers), which was made effective for employment in the second half of 1996, and for the restructuring of the scheme decided upon towards the end of 1996, which entered into force on 1 January 1997.

The special tax regime for maritime shipping, in lieu of regular income tax, represents new State aid, to which the above notification requirement applies. Proposals for reformulating the tax regimes for the shipping sector were presented to the Norwegian Parliament in the 1995-96 session in a White Paper on the Norwegian Maritime Industries ("*St meld nr 28. 1995-96*"). In June 1996, the Parliament decided on certain amendments to the relevant legislation ("*Besl. O. nr. 86, 87 and 88*") and in December 1996, further changes were decided upon ("*Besl. O. nr. 55, 56, 57 and 58*"). The changes of the rules on corporate income tax in general took effect as from the income year 1996, which affected the tax liabilities of the companies concerned in 1997.

In view of the above facts, it must be concluded that by first notifying the aid measures concerned by telefax of 10 December 1996 and with a more complete set of information by letters received on 17 January 1997 and 19 February 1997, the

[7] See judgement of the European Court of Justice of 17 March 1993 in joined cases C-72/91 and C-73/91, Firma Sloman Neptun Schiffahrts AG v. Seebetriebsrat Bodo Ziesemer der Sloman Neptun Schiffahrts AG.

notification was submitted late and the Norwegian authorities have thus failed to fully respect the above procedural obligations.

3. Application of the relevant State aid rules

The rules on aid to shipping companies adopted by the EC Commission in 1989[8], which were applicable within the European Community until replaced in July 1997 by the new guidelines referred to below, are not listed in Annex XV to the EEA Agreement as an act of which the EC Commission and the EFTA Surveillance Authority shall take due account. Nevertheless, the maritime transport sector is fully covered by the provisions on State aid in Chapter 2 of Part IV of the EEA Agreement.

As a part of an overall review of the European Community's maritime strategy, the EC Commission undertook a revision of its guidelines from 1989 on State aid to shipping companies. As a result the Commission adopted on 23 April 1997 new guidelines on this matter.[9] By Decision of 16 July 1997, the EFTA Surveillance Authority adopted corresponding rules as Chapter 24A of its Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines)[10].

The new guidelines review the current competitive conditions of the European shipping sector, acknowledging that by its nature international shipping is not bound to national locations. The registration of ships and the location of shipping management activities can easily be shifted to countries offering the most favourable environment for such activities. The guidelines point out that the European shipping sector faces stiff international competition, not only in international trades but also in most trades within the EEA, against operators from third countries, particularly those operating under so-called flags of convenience, where shipping companies enjoy freedom of safety requirements and manning conditions, and are thus free to employ seafarers from low-wage countries. They also recognise that relocation of shipping activities to non-EEA countries can offer attractive savings in terms of corporate and seafarers' taxation. The guidelines highlight the development in recent years of the EEA shipping sector, in particular the decreasing competitiveness of ships under EEA flags and the consequent trend by shipping companies in EEA countries to remove their vessels from national registers and operate under flags of convenience. The guidelines furthermore recall that in the absence of harmonisation at European level, EEA States have independently taken initiatives intended to preserve their maritime interests and slow down the trend to flag out, such as developing international registers or using different types of State aid measures or a combination of these.

According to the guidelines on aid to shipping, State aid can be justifiable if it can be shown to enhance the competitiveness of the fleets of the Contracting Parties and at the same time does not risk distorting competition and adversely affecting trading conditions between the Contracting Parties to an extent contrary to the common

[8] Commission guidelines for aid to shipping companies of 3.8.1989 (SEC(89) 921 final): 'Financial and fiscal measures concerning shipping operations with ships registered in the Community'
[9] Community guidelines on State aid to maritime transport, OJ No C 205, 5.7.97.
[10] The Authority's guidelines on aid to maritime transport are published in OJ No L 316, 20.11.97, and the EEA Supplement to the OJ No 48, 20.11.97.

interest. Furthermore, aid may generally be granted only in respect of ships entered in EEA States' registers. The policy should seek to safeguard EEA employment, both on board and on shore, preserve and develop maritime know-how in the EEA and improve safety. In addition, flag-neutral aid measures may be approved in certain exceptional cases where it is clearly demonstrated that common objectives of the Contracting Parties are served.

Besides the above general conditions, the guidelines set specific conditions for the different forms of aid, which will be considered below.

3.1 Refund schemes for employment and training of seafarers

The main aim of the refund schemes for employment and training of seafarers is to safeguard and increase employment of Norwegian and EEA seafarers, to secure recruitment and qualified training of seafarers, who are currently in short supply, and to improve the competitive position of companies employing such seafarers. At the same time, the schemes have a wider strategic objective of preserving and developing know-how in the maritime industries in general and improving safety.

In 1995, the employment scheme covered approx. 8000 - 8600 seafarers, which was an increase of 1000 - 1600 from the year before. In January 1998, the number of seafarers covered by the two schemes had reached 10100. The Norwegian authorities consider that the schemes have so far had positive effects on the shipping sector by stemming the earlier decline in Norwegian employment, when the alternative for the shipping companies for reducing their costs would have been to flag out ships and recruit seafarers from low-wage countries. The scheme is considered particularly important for the coastal regions of Norway to safeguard employment of seafarers, as well as for ensuring continued recruitment and training of seafarers, which is vital for the whole maritime sector.

The schemes are only open to ships registered in the regular Norwegian shipping register, NOR, and subject to certain manning requirements, to ships in the Norwegian international shipping register, NIS, both of which are registers operated by Norway under Norwegian jurisdiction. The refund is neither contingent on the nationality of seafarers nor on their country of residence, but is on the other hand only paid in respect of seafarers (i) liable for taxation in Norway, (ii) eligible for the seafarers' tax deduction and (iii) taking part in the Seafarers' Pension Scheme. These conditions ensure that the schemes, while being neutral with respect to the nationality of seafarers, are designed to bring down fiscal costs and social security contributions and thus to reduce the competitive handicap caused by the relatively high level of such duties in Norway.

The new guidelines on aid to maritime transport acknowledge that world norms often entail exemption from tax and social security contributions for seafarers. The guidelines therefore endorse aid to bring down employment related costs, up to a maximum reduction of liabilities to zero (cf. section 24a.3.2 of the guidelines)

The current refund for seafarers' employment corresponds to 20% of their gross income (reduced to 12% as from the second half of 1998). This figure needs to be compared with total liabilities for income tax and social security contributions in order to verify that the rebate does not involve an overcompensation of seafarers' duties.

The relevant rules on tax rates and allowances in the current system of personal income tax in Norway can be summarised as follows:

For the computation of ordinary taxable income there is a standard allowance of 20% of gross wages and salaries, subject to a maximum of NOK 32.600.

According to paragraph 17 of §44 of the Tax Law (No 8 of 18.08.1911), seafarers can claim a special tax allowance of up to 30% of taxable income aboard, subject to a limit of NOK 70.000.

A proportional tax of 28% is levied on net income above NOK 25.000 in tax class 1, and above NOK 50.000 in tax class 2 (the classification depends on family status).

A surtax of 9,6% is levied on gross wages between NOK 248.000 and NOK 272.000 in tax class 1 and between NOK 300.000 and NOK 305.000 in tax class 2, and a 13,7% surtax on gross wages above NOK 272.000 in tax class 1 and NOK 305.000 in tax class 2.

The average tax for a single person with an income of NOK 250.000 and no other deductions than the standard allowance referred to above is about 34% of gross income. For a seafarer with the same income, the effective tax rate would be about 26%.

According to the Norwegian authorities, estimated figures from 31 December 1993 showed that seafarers qualifying under the refund scheme (10.968 persons) paid in taxes approximately NOK 1.071 million, and that the average tax per seafarer (excluding social security tax) was NOK 71.370.

It is also relevant to take into account social security contributions. Compulsory national insurance ("*Folketrygden*") applies to all persons, including seafarers, residing or working in Norway. Seafarers who are not domiciled in Norway but employed on board ships registered in Norway are also obliged to take part in and contribute to the same social security system if they are Norwegian or other EEA-nationals or resident in one of the Nordic countries. Other foreign seafarers employed on board ships registered in the regular Norwegian shipping register (NOR) are also members of the Norwegian social security system, but are insured only against death and occupational accidents. Contributions in respect of these foreign seafarers are therefore lower and only made by the employer. It shall be noted that the tax refund system does not provide for grants in respect of the foreign seafarers last referred to. Non-EEA seafarers employed on board NIS-registered ships, who are not resident in Norway, are covered neither by the social security system nor by the refund schemes for employment of seafarers.

The financing of the social security system is fully integrated with the central government's tax system, where employees, including seafarers fully covered by the scheme, are obliged to contribute 7,8% (henceforth referred to as tax rate) of their gross income. The employers' social security tax rate varies between 0% and 14,1% of gross income, depending on the tax zone where the employee has his registered permanent residence. The lowest rates apply to a relatively small percentage of the Norwegian population residing in the northernmost and central counties. According to the Norwegian authorities, the average tax rate for seafarers is 11,5%.

As seafarers' retirement age is 60 years instead of the general rule in Norway of 67 years, there is a separate pension scheme for seafarers to which the employer contributes 3,3% of gross income. Seafarers in senior positions pay NOK 497 per month and other seafarers NOK 387 per month. These contributions are in addition to the general tax rates referred to above.

On the basis of the foregoing considerations, it can be safely concluded that the refund for seafarers' employment of 20% of gross income will not under any circumstances exceed the income tax and social security contributions paid in respect of the same seafarers.

The provisions in section 24A.7. of the State Aid Guidelines (on aid for training of seafarers) are relevant for assessing grants for the training of seafarers in apprenticeship and low-ranking officers. As is pointed out in the guidelines, many state-supported training schemes for seafarers are considered not to be State aid because they are of a general nature. On the other hand, schemes related to on-board training, where the benefits of State financial support accrue *inter alia* to shipowners, are likely to involve State aid. The scheme currently examined is of the latter kind. However, in the guidelines the Authority has expressed a favourable view to aid for training of seafarers, provided it meets certain general criteria, which will be considered below.

Shortage of well-trained seafarers, especially for the lower-ranking positions, and difficulties in recruiting young seafarers to junior posts are a growing concern to the shipping sector. This is, for instance, reflected in a rising average age of seafarers. The scheme is specifically aimed at addressing this problem. It can be used to promote training on board ships in the NIS-register, which, as has been stated above, is a register based in Norway, and under Norwegian jurisdiction. As from the second half of 1998, supplementary grants for promotion of training will also be available under the refund scheme for ships in the NOR-register. In addition to the general refund, which corresponds to 20% of the seafarer's gross wage (12% as from the second half of 1998), refunds in respect of cadets may reach a maximum of 30% of wages, for junior officers the limit is 40% and 50% for apprentices (as from the second half of 1998, the corresponding rates are 18%, 24% and 30%, respectively). The compensation to the shipowner is in other words scaled according to need. According to the Norwegian authorities, trainees qualifying under the schemes are supernumerary and not active members of the crew. It is noted that according to the Authority's guidelines on aid to shipping, the requirement that compensation to shipowners must not exceed the total amount of taxes and social security contributions collected from seafarers does not apply to aid for training. The reason is

that training involves costs for employers, both direct and indirect, in the form of limited work input by trainees. The Authority considers that the above compensation rates for training are not out of proportion to the objectives and likely costs involved, and will not lead to net subsidisation of seafarers' wages. They can therefore be accepted with reference to the provisions in section 24A.7. of the State Aid Guidelines.

3.2 Special rules for taxation of shipping companies

According to a report on taxation of shipping companies in different countries ("*Rederibeskatning i ulike land*") issued by ECON ("*Senter for økonomisk analyse*") in July 1993, many countries, including countries from where a major part of the world fleet is controlled (Germany, Netherlands, United Kingdom, Greece, USA, Canada, Hong Kong and, with certain limitations, Denmark), offer conditions which make it possible to organise shipping activities in ways which ensure that profits from shipping activities are not taxed as long as they are retained within the sector. The report concludes that shipping companies in international competition are predominantly operated in a practically tax-free environment.

The basic objective of the special tax treatment for shipping companies which has now been introduced in Norway, is to counter the above tax competition from other major maritime countries by creating conditions which will make it possible for shipping companies to maintain their operations from Norway, without, however, introducing a completely tax free environment for the sector.

The Authority's guidelines on aid to maritime transport acknowledge the challenge faced by the EEA shipping sector due to a generally mild fiscal climate in third countries. They also acknowledge that several EEA States have already responded by introducing diverse tax concessions in favour of shipping activities. This implies that in those EEA countries which have so far refrained from introducing significant tax breaks for the maritime sector, there is a strong incentive for shipping companies not only to flag out ships, but also to relocate corporate activities. The guidelines therefore foresee that aid in the form of a favourable fiscal treatment of shipping companies can be approved if it serves the general common objective of preserving the competitiveness of the EEA maritime sector in the global shipping market. In this context it is natural to take into account the importance of shipping and on-shore maritime activities to the economies of the Contracting Parties. The approval of such aid is, however, made subject to several conditions. In the present context, the relevant conditions can be summarised as follows:

- Given the recognised common objective of shipping aid, it should, as a main rule, require a link with a flag of an EEA State. However, flag-neutral measures may exceptionally be approved, provided that a clear economic link to the territory of the Contracting Parties to the EEA Agreement can be demonstrated

- Vessels operated by companies receiving aid must comply with the relevant international and EEA safety standards.

- Aid of this kind must be restricted to shipping companies, i.e. it must be ensured that there is no spill-over of this exceptional type of aid into other activities.

- The amount of aid should not exceed the total amount of taxes collected from shipping activities, i.e. a reduction to zero of corporate taxation is the maximum level of aid which may be permitted.

3.2.1 Economic link and contribution to common EEA objectives

The new Norwegian tax regime for shipping companies is flag-neutral. It is available as an option to shipping companies liable for taxation in Norway, provided the necessary conditions are fulfilled, but these conditions do not include the requirement that the ships concerned shall be registered in Norway or elsewhere within the EEA. It is therefore necessary to examine whether the measure is, nevertheless, likely to make a positive contribution to common objectives and economic development in the territory of the Contracting Parties to the EEA Agreement.

According to information presented in the Norwegian Government's White Paper on the maritime industry ("*St meld nr 28*"), the overall size of the Norwegian-owned fleet[11] was 13 million dwt in 1987, half of which were registered in Norway. In 1991 the Norwegian-owned fleet had increased substantially to 54,9 million dwt, 76 percent of which were under Norwegian flag (the NIS register was established in 1988). The total size of the fleet has since gradually decreased to 46,6 million dwt in 1996, mostly due to a reduction in the NIS-registered fleet. In 1996, approximately 70 percent of the Norwegian-owned fleet flew the Norwegian flag.

At the end of 1994, Norway's share of the world fleet, measured in terms of ownership and not country of registration, was 7,6 percent. Only Greece, Japan and the USA had bigger fleets, corresponding to 17,9, 12,9 and 7,9 percent of the world fleet, respectively. Other European countries ranking amongst the twelve biggest maritime nations are the UK, Germany and Italy, but their shares of the world fleet, of respectively 3,3, 2,5 and 1,8 percent, are, however, considerably smaller than that of Norway. At the same time, the share of the Norwegian fleet flying the national flag was relatively high, or 63,8 percent, as compared to 44,3 percent for Greece, 26,8 for the UK, 39,3 for Germany, and 73,6 for Italy.

The Norwegian maritime sector is also an important source of employment. At the end of 1994, 31.832 persons were employed on board Norwegian ships, half of which were Norwegians. In the second quarter of 1994, a total of 65.979 persons were employed in the Norwegian maritime branches.

As indicated above, Norway is the world's fourth biggest maritime country and ranks second among the EEA countries (after Greece). Despite considerable flagging out in

[11] The Norwegian merchant fleet engaged in foreign trade, or the foreign trade fleet ('utenriksflåten'), are ships over 100 gross tons carrying goods or passenger and taking part in traffic between Norway and other countries or between ports in third countries. All the NIS fleet is counted here. The foreign trade fleet also covers NOR-registered assistance and supply vessels linked to the North Sea petroleum activity. The term 'Norewegian-owned fleet' also covers Norwegian-owned vessels registered abroad.

recent years, Norway still has a relatively high proportion of its fleet under its own flag. To the extent that measures in support of the Norwegian-owned international fleet achieve their intended central objective (securing that the highest possible proportion of value-added and employment in the Norwegian maritime activities takes place in Norway), the result must also, given the EEA significance of the Norwegian fleet, be considered to contribute towards achieving the common objective of preserving the competitiveness of the EEA maritime sector in the global shipping market.

Furthermore, Norway has a particularly broad maritime environment which, in addition to shipping activities, encompasses shipbuilding, manufacture of ship and navigation equipment, maritime technological services of various kind, shipping insurance and finance and other ancillary services. The overall contribution of these sectors to employment and value added is of course considerably higher than that of the shipping sector alone. There are strong economic links between these diverse activities, and common to them all is that they are based on high competence and maritime expertise. The Norwegian authorities consider the shipping sector to be of strategic economic importance as a central component in the broad cluster of maritime related activities.

The tax scheme for shipping companies is in principle open only to companies established and registered in Norway. Companies registered abroad but which are managed (on board level) from Norway and are liable for taxation in Norway, cf. point b of §15 of the Norwegian tax law, are as a main rule not covered by the scheme. However, according to transitional provisions, such companies can for the income years 1996-1999 be granted this special tax treatment, provided they meet the same eligibility conditions as Norwegian companies. The rules also foresee that during this transitional period such foreign companies can, subject to certain conditions, establish themselves in Norway, without triggering taxation on transition to the special tax system for shipping companies. This arrangement should provide an incentive for the repatriation to Norway of shipping companies based in non-EEA countries.

With reference to the above considerations, it is concluded that despite the fact that the special tax regime for shipping companies is not restricted to companies owning or operating ships registered in Norway or other EEA countries, it is likely - other things being equal - to slow down or even reverse the trend of relocation of Norwegian shipping activities to non-EEA countries offering favourable tax regimes, and thereby retain or increase employment and value added in Norway and within the EEA. Given the significant size of the Norwegian-controlled shipping sector and its close economic ties with a variety of other maritime related activities, it is considered likely that securing extensive ship management activities in Norway will have the positive effect of enhancing the competitive position of the broad maritime environment in Norway and within the EEA.

In order to monitor further to what extent the preferential tax treatment of shipping companies contributes to economic activity and employment, which is a prerequisite for the Authority's acceptance of such aid, the Authority finds it appropriate to request Norway to provide annually reports demonstrating how this requirement is fulfilled.

3.2.2 Compliance with international and EEA safety standards

As expressed in the White Paper on the maritime industries ("*St meld nr 28 (1995-96)*") referred to above, maritime safety has traditionally been and continues to be a high priority matter for Norway. It is also stated in the White Paper that Norway, as a major maritime nation, has been in the forefront of countries seeking to promote world-wide maritime safety and taking initiatives, mainly under the auspices of the International Maritime Organization (IMO), for the development of international rules to this end.

International safety standards are reflected in the Norwegian maritime legislation, and in some respects the national provisions go beyond what is required by international standards. There is therefore no reason to doubt that ships registered in the NOR-register are required to comply in full with the relevant international safety standards. Furthermore, according to Article 3 of the law on the Norwegian International Register (NIS) No 48 of 12 June 1987, Norwegian legislation applies in full to any ship registered in that register, except where otherwise expressly provided. The deviations provided by the NIS-law from the general rules of Norwegian legislation relate mostly to wage agreements and employment conditions, working hours and certain provisions of the seafarers' law. The nature of these derogations is not such as to compromise the requirements of international safety standards.

Concerning EEA secondary legislation on maritime safety (cf. points 54 - 59b of Annex XIII to the EEA Agreement), the Authority has recorded that with two exceptions concerning amendments of a directive[12], Norway has notified full implementation of all EEA acts in this field.

As for Norwegian-controlled vessels registered outside Norway, Norwegian and European port state control arrangements are to identify any vessels of non-compliance visiting the respective ports. Otherwise, the Norwegian authorities have declared that they are not aware of any case of significant non-compliance by Norwegian companies in charge of vessels under non-EEA flags and benefiting from the tax regime at issue. They have also given the Authority assurance of their best endeavours with respect to securing that also vessels operated by Norwegian companies, but falling outside Norwegian jurisdiction, comply fully with the relevant international and EEA safety requirements.

Noting that the rules of the Norwegian tax regime for shipping companies contain no requirement concerning compliance with safety standards, the Authority finds it appropriate, in order to ensure that all vessels operated by companies receiving State aid comply fully with the relevant international and EEA safety standards, to request

[12] The first and second indents of point 55a of Annex XIII to the EEA Agreement (Commission Directives 96/39/EC and 97/34/EC amending Council Directive 93/75/EEC concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods). The Authority has taken the appropriate steps under Article 31 of Surveillance and Court Agreement by issuing on 16 December 1997 and 27 May 1998 letters of formal notice concerning Norway's apparent failure to adopt the national measures necessary to comply with these acts.

Norway to provide annually monitoring reports demonstrating how this requirement is complied with.

3.2.3 Avoidance of spill-over of aid to other sectors

The essence of the special shipping taxation (ST) scheme is that income from ownership, lease and operation of qualified vessels is exempt from regular company taxation, as long as it is retained within the companies concerned. However, untaxed income is to be taxed once it is distributed to shareholders. Companies coming under the scheme are to pay a nominal tonnage tax based on the tonnage of the relevant vessels.

In order to delineate and ring-fence the preferential tax treatment to the targeted activities and separate the relevant income and costs from those attributable to other economic activity, the new provisions in section 51A of the Norwegian tax law contain a number of elaborate conditions, the most relevant of which will be considered below. These include requirements regarding (i) organisation of the eligible companies; (ii) the types of assets which they on the one hand must own and on the other hand are allowed to own; and (iii) the activities in which they are allowed to engage.

3.2.3.1 Organisation

The scheme applies in principle only to limited companies formed under Norwegian law. However, such companies (ST-companies) may either directly own the mandatory assets (vessels), or they can be holding companies of other Norwegian or non-resident limited companies, controlled foreign companies or partnerships. There must in other words be a mother company formed as a limited company under Norwegian law, but such subsidiary companies as just mentioned, when liable for taxation in Norway, are also eligible for the ST-assessment, provided they meet the stipulated requirements regarding assets and activities. While subsidiary partnerships and foreign controlled companies cannot hold interests in other entities within the scheme, this restriction does not apply to limited companies. The scheme in other words acknowledges the fact that Norwegian controlled shipping concerns are frequently organised in multi-tier company structures. According to provisional clauses applicable in 1996-97, partnerships, personal enterprises, etc. can be reorganized into limited companies without triggering taxation for that reason.

According to indents b and c of §15(1) of the Norwegian tax law, the general rule is that liability to pay corporate income tax rests on companies resident in Norway (indent b) and foreign companies which carry on or take part in economic activity in Norway (indent c). However, §23(2) of the same law provides for a special derogation in respect of shipping, largely exempting persons resident abroad and foreign companies from taxes on wealth and income derived from ownership and operation of owned or leased ships in international trade, which they would otherwise be liable to pay according to indent c of §15(1). In other words, the tax liability in Norway of non-resident companies operating shipping activities in or out of Norway

is very limited. The restriction to limit eligibility for the scheme to Norwegian companies, which according to the Norwegian authorities is explained by the needs of the tax authorities to effectively monitor the arrangement, is therefore not likely to discriminate against non-resident foreign companies.

As for companies formed and registered in a foreign country whose place of effective management is in Norway, such companies, although registered abroad, are considered as 'resident' companies falling under indent b of §15(1) of the tax law and having tax liability in Norway. The exemption in §23(2) does not apply to these companies. The indications are that this category of "non-Norwegian" shipping companies are registered mostly outside the EEA. Furthermore, according to transitional rules, such foreign resident shipping companies are eligible for the special tax treatment for the income years 1996-99, if they otherwise qualify. According to the same provisions, such companies can in the income years 1997-99 be reorganized as Norwegian-registered companies without triggering taxation. In order to monitor the situation and prevent any possible discrimination against resident shipping companies from other EEA countries, the Authority finds it appropriate to request the Norwegian authorities to submit annual reports providing an overview of the tax treatment of shipping companies in Norway with a breakdown according to country of registration.

3.2.3.2 Assets

In order to be eligible for the scheme, a company must own directly a vessel qualifying under the scheme or it must own shares or interests in limited companies, partnerships or controlled foreign companies, which own such vessels. As mentioned, a multi-tier structure is allowed for limited companies, but ultimately, there has to be in the hands of the last entity direct ownership of a qualifying vessel.

There are also rules on the type of assets which an ST-company may own. They fall into the following three categories: (i) ships and vessels; (ii) financial assets; and (iii) shares and interests in subsidiary companies and partnerships.

The rules allow all regular ships in operation, except ships in domestic traffic smaller than 100 GT, ships operated in inland waterways or stationary activities and fishing vessels. They do allow movable installations to be used in petroleum activities, but this must be read in context of the limitations stipulated on the use of such installations, cf. the information in section 3.2.3.3 below on limitations concerning petroleum activity.

Financial assets may be held in the form of cash, claims and bank deposits, shares quoted on a stock exchange, and options carrying a right to buy or sell such assets. On the other hand, companies subject to the ST-treatment are not allowed to own non-quoted shares, participation rights in partnerships whose income is not subject to ST-assessment, or financial instruments carrying a right to buy or sell such assets.

The rules of the ST-system acknowledge the need of shipping companies to hold some liquid capital for the purpose of their current trade, but the relative flexibility which

they enjoy in this respect must be seen in context of the fact that net financial income of shipping companies, including interest and gains on shares, does not qualify for ST-treatment and is to be taxed according to the regular tax rules.[13]

As has been said above, a limited company within the ST-system is allowed to own vessels indirectly through subsidiary limited companies, controlled foreign companies and partnerships. Shares and interests in such companies are therefore among the assets which ST-companies are allowed to own. It shall be noted that it is not required for the subsidiary companies or partnerships to be organised under Norwegian law. An ST-company can in other words hold ownership rights in vessels through foreign entities.

3.2.3.3 Activities

An ST-company cannot carry on any other activity than leasing and operating vessels owned or leased by the company. This implies that the company can act as both lessee and lessor of vessels, but it is nevertheless a prerequisite that the company satisfies the requirement on mandatory assets (cf. first paragraph of section 3.2.3.2 above).

As a general rule it is optional for a company within the scheme to lease or operate the tonnage at its disposal. However, companies within the scheme are not authorised to earn income from activities specified in §1 of the Petroleum Tax Act (except for income from transportation of personnel or supplies by ships, or from the operation of tugs or supply vessels). This implies that movable installations to be used in petroleum activities may not be operated in such activities by companies within the scheme, except for certain transportation activities.

A further limitation on the activities of an ST-company is that such companies are not allowed to have any employees. All work input must be outsourced from sub-contractors falling outside the scheme.

Where management or other services are purchased from related entities which are subject to regular corporate taxation, there are obviously incentives to shift profits to the company qualifying for the preferential tax treatment. The incentive is even stronger where vessels and installations are leased to oil companies subject to a special tax regime for petroleum activities, with a marginal tax rate of 78%. In order to cope with this challenge, it is foreseen that the tax authorities will rely on the relevant provisions of the Norwegian tax law on transfer pricing (first paragraph of §54), which foresees the use of the arms-lengths' principle for pricing of transactions between related companies.

3.2.3.4 Other relevant conditions

[13] However, gains and losses on disposal of shares and ownership rights in subsidiary ST-companies and partnerships are treated as non-taxable financial income.

The special tax arrangement for shipping companies is also subject to a number of other conditions and limitations, e.g. concerning entry into and exit from the scheme, the actual tax assessment, monitoring, etc., some of which will only be briefly mentioned below.

When a company which has opted for the special tax arrangement no longer fulfils the necessary requirements or wishes to revert to regular corporate taxation, it will be subject to an exit settlement whereby it will be taxed for the untaxed increase in its value which has taken place during the period when it was subject to the special tax arrangement. Once a company has switched back to regular corporate taxation, the ST-scheme will not become an option again until 3 years have elapsed.

In order to ensure that all income which has been exempted from corporate taxation is taxed on distribution to owners or when a company ceases to qualify for the scheme, companies within the scheme (except for subsidiary companies) are required to keep an account of retained taxed income.

Assessment according to the Section 51 A rules will, in all cases, be conducted by the Central Office for Taxation of Large-sized Companies in the city of Moss.

A company within the scheme is not authorised to extend loans to non-ST shareholders with direct or indirect owner-interest in the company. Loans to persons closely related to such shareholders are also prohibited.

As interest payments have a tax value for an ST-company only to the extent that they offset (taxable) financial income, the scheme involves an incentive for such companies to be "overcapitalised" and for debt and interest payments to be shifted to related companies subject to ordinary taxation. To address this problem, a minimum amount of debt interest has been stipulated. Interest costs in companies within the scheme must at least equal the market rate of interest times a fictional debt equal to 30% of the company's total capital. If not, the difference will be treated as taxable financial income.

3.2.3.5 Conclusion

Operating a separate, preferential tax system for shipping companies presents a challenge on the monitoring functions of the tax authorities and, in principle, clearly involves the risk that tax benefits may spill over to activities which fall outside the scope of the Authority's guidelines on aid for maritime transport and do not qualify for such aid. However, with reference to the above considerations, the various strict and elaborate conditions and limitations which have apparently been formulated with great care in the Norwegian legislation, can be expected to sufficiently ring-fence these tax benefits round the targeted shipping activities and thus to prevent spill over to non-shipping activities.

3.2.4 Effects on overall level of taxation of shipping companies

The Norwegian authorities have indicated certain difficulties in providing reliable official statistics on taxation of shipping companies. In their submission to the EFTA Surveillance Authority, they have in this respect relied to a considerable extent on information from the Norwegian Shipowners' Association. According to that association, profits and tax payments in respect of ships in foreign trade and serving the continental shelf have been as follows since 1988:

	Profit before tax dispositions Million NOK	**Tax Million NOK**
1988	51.000	115
1989	10.100	143
1990	10.200	256
1991	7.000	88
1992	5.000	385
1993	1.200	610
1994	2.700	190
1995	7.400	600

Other information from the Norwegian authorities indicates that until the Norwegian tax reform in 1992, which aimed at abolishing special tax breaks and securing a neutral tax treatment, the shipping sector enjoyed flexible opportunities for deferral of tax payments. The above statistics seem to confirm this, as tax payments in relation to pre-tax profits were relatively low in the period 1988-91. Since then the fiscal pressure has however clearly increased.

Although it is in principle possible to estimate what shipping companies would have paid in corporate income tax if the new tax system had not been introduced, in practice, however, this is considered rather difficult. The reason is partly that the Norwegian authorities do not have reliable statistics on what the shipping companies falling within the new tax regime previously paid in taxes, and partly that it is uncertain to what extent depreciation allowances and previous losses would reduce taxable profits in the future. All the same, the Norwegian authorities consider it likely that without the new arrangement the tax liabilities of Norwegian shipping companies would have increased significantly as the magnitude of previous losses carried forward decreases.

As has been explained above, shipping companies are under the new tax regime liable for a tonnage tax, and their net financial profits are taxed according to the general rules of the tax system. In addition, dividends are taxed when paid out to the owners. The Norwegian authorities consider it uncertain how much shipping companies will pay in taxes under the new regime, but refer to estimates by the Norwegian Shipowners' Association according to which the overall annual tax revenue will be in the order of NOK 200-400 million. Of this, revenue from the tonnage tax alone is estimated to be NOK 60 - 90 million per year. Revenue from the dividend tax is estimated to be NOK 200 million. Dividend payments are, however, likely to be influenced by the new tax regime. It is also difficult to estimate other income.

In the period 1992-95, shipping companies paid between NOK 200 and 600 million per year in taxes. With an unchanged tax system and comparable level of activity, the tax liability of Norwegian shipping companies would have increased substantially in the following years, *inter alia* due to reduction of losses carried forward from previous years. However, the Norwegian authorities consider it to be highly unlikely that shipowners would have maintained their activity in Norway with this tax level. In their view, a realistic evaluation of the total effect of the new system on public revenue must take into account how shipowners, in the absence of the new tax rules, would have adapted themselves, given the relative ease with which they can relocate their activities to countries offering more favourable tax regimes.

On the basis of the information available to it, the EFTA Surveillance Authority concludes that the new tax regime will lead to a significant reduction in the overall fiscal pressure on the Norwegian shipping sector. However, it will not result in Norwegian shipping companies becoming tax free, and it does not provide for the possibility of a negative income tax for individual companies. It can therefore be concluded that the tax alleviation resulting from the special taxation arrangement for shipping companies will never surpass a reduction to zero, which is the maximum level of aid permitted under the guidelines on aid to maritime transport.

3.3 Conclusion

The refund schemes for employment and training of seafarers and the special tax arrangement for shipping companies all involve State aid within the meaning of Article 61(1) of the EEA Agreement.

Due to the fact that aid measures covered by this decision were notified only after being put into effect, they have, until the date of this decision, been unlawful on procedural grounds.

The refund schemes for employment and training of seafarers pursue objectives which are recognised in the rules on aid to maritime transport laid down in Chapter 24A of the State Aid Guidelines, namely to safeguard and increase employment of EEA seafarers, to secure recruitment and qualified training of seafarers, who are currently in short supply, and to improve the competitive position of companies employing such seafarers. At the same time, the scheme has a wider strategic objective of preserving and developing know-how in the maritime industries in general and to enhance safety.

The level of the refund for seafarers' employment is well below the amounts of income tax and social security contributions paid in respect of the same seafarers. The aid also meets other relevant conditions set out in Chapter 24A of the State Aid Guidelines. The higher refund rates in respect of seafarers in apprenticeship and training positions are considered not to be out of proportion to their objective and the likely training costs involved. They are also found to meet other relevant requirements of Chapter 24A of the State Aid Guidelines.

The objective of the special tax arrangement for shipping companies is in line with the recognised objectives of such aid according to Chapter 24A of the State Aid Guidelines, namely to enhance the competitiveness of the EEA-based shipping sector in the global market, in the face of competition from operators based in third countries offering a virtually tax-free environment and high degree of freedom with respect to manning and safety requirements. In spite of being flag-neutral, the scheme is found to meet the relevant conditions for such aid stipulated in Chapter 24A of the State Aid Guidelines, including those considered in sections 3.2.1 - 3.2.4 above.

For the reasons stated above the notified aid schemes are found to be compatible with the provisions of Chapter 24A of the State Aid Guidelines and thus to qualify for exemption from the general prohibition of State aid in Article 61(1) of the EEA Agreement on the basis of Article 61(3)(c), as aid which facilitates the development of the shipping sector without adversely affecting trading conditions to an extent contrary to the common interest.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the refund scheme for employment of seafarers, the special refund scheme for NIS-ships (for employment and training of seafarers) and the special tax regime for shipping companies, as notified by telefax from the Mission of Norway to the European Union dated 10 December 1996 (Doc. No. 96-7734-A), by letter from the Royal Ministry of Trade and Industry received on 17 January 1997 (Doc. No. 97-306-A), by letter from the Mission of Norway to the European Union dated 19 February 1997 (Doc. No. 97-1091-A), by letter from the Ministry of Finance of 3 October 1997 (Dec. No. 97-6345-A), by telefax from the Ministry of Finance of 17 December 1997 (Doc. No. 97-8101-A), by telefaxes from the Ministry of Trade and Industry of 3 February (Doc. No. 98-660-A) and 19 February 1998 (Doc. No. 98-1095-A) and by the Norwegian Government's proposal to Parliament (St prp 51 1997-98: Kap. 1-3), communicated to the Authority at a meeting in Oslo on 12 June 1998.

2. With reference to Chapter 32 of the Authority's Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), the Norwegian authorities shall submit annual reports on the operation of the schemes in a form comparable to the format set out for simplified annual reports in Annex IV of those Guidelines. The reports shall also contain other relevant information on the extent to which the objectives of the aid schemes are achieved, including in particular (i) statistics on changes in the size, composition and registration of the Norwegian-controlled fleet; (ii) development of the number of Norwegian, other EEA and non-EEA seafarers employed by recipients of the aid, as well as of their land-based employment; (iii) relevant statistics demonstrating on current basis what contribution the special tax treatment of shipping companies makes to economic activity and employment within the EEA; and (iv) relevant information demonstrating for the reporting period what measures the Norwegian authorities have taken to ensure that all vessels operated by companies benefiting from the special tax treatment of

shipping companies comply with the relevant international and EEA safety standards. Furthermore, the reports shall contain information on the number and aggregate size of shipping companies subject to the two alternative tax regimes, together with a breakdown for both tax regimes according to the country of registration of the companies concerned (Norway, other EEA countries and non-EEA countries).

Done at Brussels, 1 July 1998.

For the EFTA Surveillance Authority

Knut Almestad
President

Hannes Hafstein
College Member