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EFTA SURVEILLANCE AUTHORITY DECISION  
OF 8 OCTOBER 2003  
ON A NEW GRANT SCHEME FOR THE SHIPBUILDING INDUSTRY  
(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 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>2</sup>, 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 2002<sup>3</sup> incorporating into Annex XV to the EEA Agreement Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding<sup>4</sup>,

HAVING REGARD TO the Authority's Guidelines<sup>5</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

## I. FACTS

### 1. Notification

By telefax dated 28 February 2003 from the Ministry of Trade and Industry, the Norwegian authorities notified a new temporary grant scheme for the shipbuilding

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

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement.

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

<sup>4</sup> Published in OJ L 172, 02.07.2002, p.1.

<sup>5</sup> 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 18 December 2002 (not yet published).

industry (Doc. No: 03-1220 A). The letter from the Ministry of Trade and Industry dated 28 February 2003 was also forwarded by letter from the Mission of Norway to the European Union dated 6 March 2003, received and registered by the EFTA Surveillance Authority on 10 March 2003 (Doc. No: 03-1425 A). The scheme is based on Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding<sup>6</sup>, as incorporated into Annex XV to the EEA Agreement by Decision No 170/2002 of the EEA Joint Committee dated 6 December 2002<sup>7</sup>.

By letter dated 5 March 2003 (Doc. No: 03-2951 D), 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 new grant scheme will not be implemented before the Authority has taken a decision.

By telefax dated 18 March 2003 (Doc. No: 03-1655 A), the Ministry of Trade and Industry sent a letter dated 18 March 2003 confirming that no aid will be granted under the notified scheme until the Authority has approved it and that the stated date of entry into force (15 March 2003) was conditional on a prior positive decision from the Authority. The letter dated 18 March 2003 was also forwarded to the Authority by letter from the Mission of Norway to the European Union dated 21 March 2003, received and registered on 24 March 2003 (Doc. No: 03-1787 A).

By letter dated 1 April 2003 (Doc. No: 03-1532 A), the Authority requested clarification on, firstly, the required documentation of competition from a Korean yard and, secondly, on how the cumulation rules will be put into practice.

By telefax dated 5 May 2003 (Doc. No: 03-2821 A), the Ministry of Trade and Industry sent a letter dated 5 May 2003 confirming that the Guidelines for the scheme (“Regelverk for statleg støtte ved bygging av skip”) had been amended concerning the documentation of competition from a Korean yard and that contracts aided under the scheme are excluded from receiving aid from other schemes. The letter dated 5 May 2003 was also forwarded to the Authority by letter from the Mission of Norway to the European Union dated 7 May 2003, received and registered by the Authority on 8 May 2003 (Doc. No: 03-2913 A).

By letter dated 5 June 2003 (Doc. No: 03-3425 D), the Authority expressed concerns regarding whether the deduction in the contract value of work done abroad might infringe principles of free movement of goods and services laid down in Articles 11 and 36 of the EEA Agreement by discriminating between sub-contractors.

On 27 June 2003, representatives of the Ministry of Trade and Industry and the Authority met in Oslo to *i.a.* discuss the notification.

By telefax dated 7 July 2003 (Doc No: 03-4465 A), the Ministry of Trade and Industry sent a letter dated 7 July 2003 explaining why the Ministry considers that the proposed scheme does not contain any discriminatory elements. The letter dated 7 July 2003 was also forwarded to the Authority by letter from the Mission of Norway

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<sup>6</sup> See footnote 4.

<sup>7</sup> See footnote 3.

to the European Union dated 8 July 2003, received and registered by the Authority on 11 July 2003 (Doc No: 03-4665 A).

By letter dated 30 September 2003 (Doc. No: 03-6675 D), the Authority requested an extension for taking a decision on the notified grant scheme until 8 October 2003.

## 2. Description of the aid

The notification relates to a new temporary direct aid scheme: “*Contract-related operating aid to shipbuilding*” (hereinafter “the scheme”). The purpose of the aid is to offset the adverse effects caused by the unfair competitive practices of the Republic of Korea (hereinafter “Korea”). 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 (some EUR 37 m). The duration of the scheme is from 15 March 2003 until 31 March 2004, and the estimated number of recipients is between 5 and 10.

The legal basis for the 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”) implementing Council Regulation No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding, as adopted by the EEA Joint Committee decision No 170/2002 (hereinafter TDM). 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:

- 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 2004 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 the new aid 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.**

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 LNGs 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 LNGs (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).

By letter dated 1 April 2003 (Doc. No: 03-1532 A), the Authority requested clarification on the required documentation of competition from a Korean yard. By letter dated 5 May 2003 the Norwegian authorities confirmed that the Guidelines had been amended so that the condition “*competition for the contract from a Korean shipyard offering a lower price*” is explained and demonstrated in a concrete form. The Authority notes that the Guidelines for the scheme (points 4 and 8) 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 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,

- final contracts signed from 15 March 2003 until the expiry of the TDM on 31 March 2004 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 notified new 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 new 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, 8 October 2003,

For the EFTA Surveillance Authority

Einar M. Bull  
President

Bernd Hammermann  
College Member