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EFTA SURVEILLANCE AUTHORITY DECISION
OF 29 OCTOBER 2003
ON THE REFUND SCHEME FOR OFFSHORE VESSELS AND SHUTTLE
TANKERS REGISTERED IN THE ORDINARY NORWEGIAN SHIPPING
REGISTER
(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 thereof and Article 1 in Part I of Protocol 3³ thereof,

HAVING REGARD TO the Authority's Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 24 A thereof,

WHEREAS:

I. FACTS

1. Procedure

By letter of 8 July 2003 from the Norwegian Mission to the European Union, forwarding a letter from the Ministry of Trade and Industry dated 4 July 2003, both

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ As amended by the EFTA States on 10 December 2001. The amendments entered into force on 28 August 2003.

⁴ Procedural and Substantive Rules in the Field of State Aid - Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 3.9.1994 No. 32, last amended by Authority's Decision No 264/02/COL of 18 December 2002, not yet published, hereinafter referred to as the 'Authority's State Aid Guidelines'.

received and registered by the Authority on 11 July 2003 (Doc. No 03-4664-A), the Norwegian authorities notified, pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement⁵, a proposal to establish a special refund scheme for income tax and social security contributions as regards offshore vessels and shuttle tankers registered in the Ordinary Norwegian Shipping register.

By letter dated 7 August 2003 (03-5312-D) the EFTA Surveillance Authority requested additional information and informed Norway that it had not respected its obligations under Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, because the scheme entered into force on 1 July 2003 before the notification.

By letter dated 10 September 2003 of the Norwegian Mission to the European Union, forwarding a letter of the Ministry of Trade and Industry dated 8 September 2003, received and registered by the Authority on 11 September 2003 (03-6190-A), the Norwegian authorities submitted the requested information.

2. Description of the refund scheme for offshore vessels and shuttle tankers

The notified measure concerns a special income tax and social security contribution scheme for offshore vessels and shuttles tankers registered in the Ordinary Norwegian Shipping register (“*Norsk ordinært skipsregister*”, hereinafter NOR register). The scheme (“*Tilskudd til offshorefartøyer i NOR*”) will reimburse ship owners for income tax and social security contributions paid in respect of their seafarers.

2.1 The scope of the new refund scheme

Offshore vessels are defined as vessels in the maritime transport sector providing service to the exploration, development and operation of oil and gas fields at sea. These cover, for example, vessels transporting equipment to drilling rigs or installations being built, or under production. Vessels providing exploration, development and production of non-petroleum related resources are not covered by the support scheme.

Shuttle tankers (buoy-loaders) are tankers carrying oil from offshore oil fields to terminals.

The scheme applies to offshore vessels and shuttle tankers in all year traffic on a scheduled regular basis. The vessels and tankers must have a considerable capacity for petroleum activity.

2.2 The objective of the refund scheme

According to the Norwegian authorities, Norwegian shuttle tankers and offshore vessels are exposed to an increasing competition from low cost countries in Asia and Eastern Europe, but increasingly also from other EEA countries enjoying more generous tax and refund schemes.

⁵ The notification took place under the former Protocol 3 to the Surveillance and Court Agreement, prior to the amendments incorporating new procedural rules in the field of State aid.

As pointed out by the Norwegian authorities, shipping companies, including offshore and shuttle tanker companies and their employees, form the nucleus of the maritime cluster in Norway. The Norwegian authorities, therefore, consider it important to maintain the employment opportunities on board in order to obtain the relevant maritime competence and experience. The offshore and tanker companies employ 3500 persons of the maritime cluster, which in total employs circa 80 000 persons in Norway. In addition, shipping companies generate considerable activity and employment onshore for many local suppliers of goods and services.

The Norwegian Government argues that the introduction of a special refund scheme for offshore vessels and shuttle tankers will ensure that Norwegian companies are given the same external conditions as its competitors in other Nordic countries. The Norwegian authorities see the danger that, without an expanded refund scheme, operators of offshore vessels and shuttle tankers might be gradually taken over by foreign competitors who profit from lower fiscal cost levels. The option of cost reduction by using low cost foreign crews through registration in the Norwegian International Shipping Register (hereinafter NIS register, which contains special provisions on wages and employment conditions⁶) is not available for offshore vessels and shuttle tankers operating between Norwegian ports, since these activities are precluded from NIS registration.

The Norwegian authorities fear that the continuation of this situation without State support will lead to increased flagging out of vessels, the replacement of crews and potentially to (at least partial) shift of onshore operations abroad in order to be able to compete on equal terms. The refund system intends to:

- prevent flagging out of offshore vessels and shuttle tanker services,
- secure employment on board of offshore vessels and shuttle tankers and indirectly in onshore activities,
- maintain maritime knowledge, experience and skills.

2.3 Relation of the new special refund scheme to the existing refund scheme for seafarers

For the two types of vessels, the notified scheme will replace the existing refund scheme for seafarers, as authorised by the EFTA Surveillance Authority by Decision No 164/98/COL of 1 July 1998⁷. That refund scheme (*“Regelverk for forvaltning av tilskudd til sysselsetting av sjøfolk”*) provided for support measures for the employment and training of seafarers.⁸

According to the authorised refund scheme for *employment and training*, owners of qualifying ships are paid grants as a refund for the income tax 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. Additional refunds will be granted to seamen with training contracts. The scheme covers ships of at least 100 GT used for transportation, including cargo ships, passenger ships, tugs and ships used for petroleum transport, irrespective of whether

⁶ See footnote 4 in the Authority’s Decision No 164/98/COL of 1 July 1998.

⁷ EFTA Surveillance Authority Decision No 164/98/COL.

⁸ The Authority’s Decision also dealt with the special tonnage tax scheme for shipping companies, however, this scheme is not affected by the present notification.

they are engaged in domestic or international trade and irrespective of their registration in either the NOR register or the NIS register. The grants originally amounted to 20% of gross wages and were subsequently reduced to 12% (9.3% for ships which undertook transport with regard to petroleum activities).

In addition there is a special refund scheme for NIS registered ships, which was authorised by the Authority in its decision of 1 July 1998.

On 10 July 2002, the Authority authorised a special refund scheme for ferries registered in the NOR register and engaged in foreign trade, which before that date, were excluded from support.⁹ Shuttle tankers have so far not been granted support under the existing schemes¹⁰.

The notified new refund scheme will replace the existing support scheme for employment and training of seafarers as regards shuttle tankers and offshore vessels registered in NOR. The existing refund scheme for NOR registered ships will, however, continue for other vessels and for those offshore vessels, which do not qualify for support under the new refund scheme, because they do not fulfil the criteria (e.g. regarding the petroleum activity). Shuttle tankers qualify for maritime transport aid only under the new refund scheme.

The existing support scheme for NIS registered ships equally continues to apply, and offshore vessels registered in NIS will continue to receive support under that scheme. Since NIS registered ships are precluded from the new special refund scheme for NOR registered offshore vessels and shuttle tankers¹¹, no cumulative support will be granted.

2.4 Legal basis for the aid measure

The decision on a new support scheme for offshore vessels and shuttle tankers was made in the context of the revised State Budget for 2003. A new position 72 (“*Tilskudd til offshorefartøyer i NOR*”) was introduced in the budgetary chapter 909 (“*Tilskudd til sysselsetting av sjøfolk*”). The scheme is based on annual budgetary allocations by Parliament¹² and will be operated according to the regulation applicable to the existing refund scheme (“*Regelverk for forvaltning av tilskudd til sysselsetting av sjøfolk*”) of which it will be a part.

In addition the Maritime Directorate will issue special guidelines and application forms for the new refund scheme. Additional requirements are outlined in a letter from the Ministry of Trade and Industry to the Maritime Directorate (so-called “*tildelingsbrev*”).

⁹ EFTA Surveillance Authority’s Decision No 117/02/COL, OJ C 293 of 28.11.2002, EEA Supplement OJ No 59 of 28.11.2002.

¹⁰ See also EFTA Surveillance Authority Decision No 164/98/COL, point 2.1.

¹¹ It is also precluded that an offshore vessels is registered both in NOR and NIS, since the two registers are mutually exclusive.

¹² Decision made by Parliament 20 June 2003 (St.prp.no.1 2002-2003), cf. St.prp.nr 65 (2002-2003), cf. St.prp.nr. 75 (2002-2003), cf St.meld.nr.2 (2002-2003), cf. Innst.S. nr.260 (2002-2003).

2.5 Recipients

The recipients are the shipping companies (approximately 70) which operate in total 177 vessels employing circa 3500 persons for which income tax and social security contributions can be refunded.

2.6 Operation of the refund scheme

The Norwegian Maritime Directorate will administer the special refund scheme according to above mentioned regulation and guidelines (see 2.4).

In order to receive support, the applicant must carry out maritime transport *related to petroleum activities*. In order to establish the latter, the applicant has to show that his principal client is an oil company and that the assignment relates to specific installations at sea. Only ships above 100 gross tons capacity qualify for support and the ships must be used for maritime transport (Section 7 of the Norwegian regulation). The applicant must demonstrate that he fulfils these conditions. With regard to the criterion of maritime transport, the Norwegian authorities specified to the Authority that certain activities would not qualify, because they would not be regarded as transport. This concerns for example drilling vessels. Neither would accommodations vessels or vessels which are permanently anchored for storage purposes qualify for support. For multipurpose vessels, the applicant must prove to the Maritime Directorate that he is carrying out maritime transport, in order to receive a refund.

According to the relevant rules, shipping companies are entitled to receive refunds with respect to seafarers who are liable for taxation in Norway, who are eligible for the seafarers' tax deduction and whose wages are reported to the pension scheme for seafarers ("*Pensjonstrygden for sjømenn*"). The rules further stipulate which categories of seafarers and which categories of ships may benefit from the refund scheme.

The refund scheme covers all income tax and social security contributions paid by seafarers. Social security contributions levied on employers are also covered by the refund scheme. Contributions to the pension scheme for seafarers are not refunded¹³. The income tax and social security contributions for an employee are deducted from his gross salary and paid by the employer, together with the employer's part of the social security contributions, to the tax authorities every second month. Amounts are reported on 8 March and paid by 15 March for the period January/February by the employer to the tax authorities and correspondingly in the following months.

The refunds are paid to the shipping companies, not to the individual seafarer. The companies eligible under the scheme, have to submit to the Norwegian Maritime Directorate an application for the refund covering the respective two-month period, including a copy of the report on payment to the pension scheme for seafarers. Application forms shall be forwarded to the Maritime Directorate by the same date as the bi-monthly tax and social security payments are due. Refunding will normally be made at the latest 1-2 months upon receipt, after processing of the applications by the Maritime Directorate.

¹³ The legislative framework for the relevant tax provisions was explained in more detail in the Authority's decision of 1 July 1998, see above.

2.7 Aid intensity, eligible costs, overlap with other schemes

The system reimburses the aforementioned taxes and social security contributions paid by the employer in full. The Norwegian authorities have confirmed that these refund payments will never exceed the amount of income tax and social security contributions paid. They have further confirmed that the companies do not profit from other schemes, in particular regional aid, so that there will be no cumulation of aid.

2.8 Budget and duration

The budgeted amount for 2003 is 150 million NOK (112 million for offshore vessels and 38 million for shuttle tankers).

The scheme has come into effect as from 1 July 2003. For the months July and August 2003, applications for refund were to be submitted to the Maritime Directorate by 15 September 2002. Payments will not take place before the Authority has issued a final decision on the notified proposed support measures.

Not being limited in time, the refund scheme is subject to the annual budget appropriation by the Norwegian Parliament.

II. APPRECIATION

1. Procedural requirements

According to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, 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.

The Norwegian Government notified the Authority of the new refund scheme on 4 July 2003, this is some days after the scheme has entered into force. The Authority regrets that the Norwegian Government implemented the aid scheme without having awaited the Authority's assessment of the scheme in question. However, the Authority was satisfied that no payment occurred before a final decision was taken.

2. The presence of State aid

State aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

This means that the following criteria must be fulfilled:

2.1 Favouring certain undertakings or the production of certain goods

Firstly, the measure must confer on the shipping companies a financial advantage or relieve them of charges that are normally borne from their budgets. The special refund of the employees' income tax and social security contributions is paid, not to the seafarers, but to the shipping companies and thus gives these companies a financial benefit. Furthermore, and as regards the employers' social security contributions, the refund relieves the ship owners of costs they would normally have to bear, which also constitutes an advantage.

Secondly, the measure must be selective in that it favours "*certain undertakings or the production of certain goods*". The refund scheme is selective in nature as it is addressed only to the maritime sector, and in particular to offshore vessels and shuttle tankers being registered in the NOR register.

2.2 Presence of State resources

The measure must be granted by the State or through State resources. The refund leads to a cost for the Norwegian State.

2.3 Distortion of competition and effect on trade between Contracting Parties

The measure must distort competition and affect trade between the Contracting Parties. The shipping companies benefiting from the scheme carry out an economic activity and face competition with other companies operating offshore vessels services and shuttle tanker services from other countries of the EEA.

It follows from the above that the notified refund scheme is to be considered as State aid within the meaning of Article 61(1) of the EEA Agreement.

3. Compatibility of the aid

Article 61 (3) (c) of the EEA Agreement provides that aid may be considered compatible with the functioning of the EEA Agreement, if its purpose is to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions between the Contracting Parties to an extent contrary to the common interest.

The Authority has issued guidelines for the application of Article 61 (3) (c) of the EEA Agreement with regard to State aid to maritime transport. The Norwegian authorities have confirmed that the support will stay within the Guidelines relating to maritime transport and that only such shipping companies who can prove that they carry out maritime transport will qualify for support.

Chapter 24A of the Authority's State Aid Guidelines on State aid to maritime transport ('Maritime Guidelines') provides that aid in the form of the alleviation of the burden of labour-related costs in respect of EEA seafarers should be allowed, provided those seafarers are employed on board ships registered in an EEA State. The Maritime Guidelines allow such aid up to a maximum of 100% relief from contributions. Such measures should seek to safeguard EEA employment, both on

board and onshore, preserve and develop maritime know-how in the EEA and improve safety.

Point 24A.3.2 of the Maritime Guidelines deals with the compatibility with the functioning of the EEA Agreement of State aid measures relating to labour costs. The Guidelines state that support measures for the maritime sector should aim primarily at reducing fiscal and other costs and burdens borne by EEA countries' shipowners and EEA seafarers (i.e. those liable to taxation and/or social security contributions in an EEA State). In line with these objectives, point 24 A3.2 (5) of the Guidelines provides that the following action on employment costs should be allowed for EFTA States' shipping:

- Reduced rates of contributions for the social protection of EEA seafarers employed on board ships registered in an EEA State;
- reduced rates of income tax for EEA seafarers on board ships registered in an EEA State.

Pursuant to point 24 A.3.2. (6) of the Maritime Guidelines, for this kind of aid, a maximum reduction of liabilities to zero may be permitted. Point 24 A.3.2. (7) clarifies that EEA States may decide not to apply reduced rates as mentioned above but instead may reimburse shipowners for the costs resulting from these levies, if certain conditions are fulfilled (see below).

Firstly, the Authority notes that the new refund scheme covers tax and social security contributions paid with respect to seafarers employed on offshore vessels and shuttle tankers registered in Norway (NOR) and liable to taxation in Norway. No nationality requirements exist for the crews on offshore vessels and shuttle tankers qualifying for refund under the scheme. Thus, the scheme is applicable to EEA seafarers employed on board ships registered in an EEA State, as required by the guidelines. The conditions under which refunds may be granted, while being neutral with respect to the nationality of the seafarer, are designed to bring down fiscal costs and social security contributions and thus to reduce the competitive handicap caused by the level of such duties in Norway. The Authority notes in particular that similar schemes are in place in other EEA States.¹⁴

Secondly, the refund scheme in question consists of a *reimbursement* granted to shipping companies rather than of an alleviation of social security contributions and income taxes through reduced rates at the direct benefit of seafarers. Under such circumstances, the Guidelines (point 24 A.3.2 (7)) require the Authority to ascertain that there is

- a clear link to these levies,
- no element of overcompensation and
- that the system is transparent and not open to abuse.

The refund is granted for the income tax and social security contributions by the seafarer and the social security contribution by the employer. The Authority concludes that there is a clear link between these levies and the refund, which is also

¹⁴ E.g. State aid N 542/2001 – Sweden, “*Fiscal Measures for Maritime Transport*”.

expressed in the application modalities. The refund application shall be forwarded to the Maritime Directorate by the same date as the bi-monthly tax and social security payments are due, and covers exactly the amount paid by the employer for the two preceding months.

According to point 24A.10 (2) of the Guidelines, a reduction to zero of taxation and social charges for seafarers is the maximum level of aid which may be permitted. The notified scheme provides for a full refund of seafarers' income tax and employers' and employees social security contribution, to offshore vessels and shuttle tankers engaged in maritime transport in relation to petroleum activities. The Norwegian authorities have confirmed that the reimbursement will not exceed the total amount of income tax and social security contributions paid by the shipowner and the seafarer. The Authority can therefore conclude that the refund of such contributions does not entail any element of over-compensation. The measure is transparent and clearly linked to the levies, since it provides for the reimbursement of specific contributions paid.

Thirdly, there is no risk of cumulation of support from various sources. The Authority takes note of the statement of the Norwegian authorities that companies benefiting from the new refund scheme will not receive additional state support. As regards the tonnage tax system which is used by few of the shipping companies operating shuttle tankers and offshore vessels, reference is made to the Authority's Decision No 143/03/COL of 16 July 2003 regarding the amendments to the existing Norwegian special tax regime for shipping companies. The Authority has found that no cumulative effect of the aid ceiling for existing refund schemes and the aid ceiling for the special tax regime will occur. Given the fact that the new refund scheme for offshore vessels and shuttle tankers likewise does not exceed the income tax and social security contribution actually paid, this finding is still valid.

4. Conclusion

The refund scheme contains aid within the meaning of Article 61 (1) of the EEA Agreement.

The refund scheme pursues objectives which are recognized in the rules on aid to maritime transport laid down in the Authority's Maritime Guidelines, namely to safeguard EEA employment, to prevent the flagging out of vessels and provide Norwegian companies operating offshore vessels and shuttle tankers providing services in the petroleum sector with a financial framework which is harmonized with conditions in other EEA States. The aid also meets other relevant conditions and requirements set out in Maritime Guidelines. In particular, the special refund scheme does not provide for more aid than is allowed under these Guidelines.

For the reasons stated above the Authority concludes that the notified aid scheme does not adversely affect trading conditions between the Contracting Parties contrary to the common interest. Consequently, the notified special refund scheme is found to be compatible with Article 61(3)(c) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the refund scheme, as applied by the Norwegian Government from July 2003 for offshore vessels and shuttle tankers registered in the ordinary Norwegian shipping register.
2. The Norwegian authorities are requested to submit simplified annual reports regarding the implementation of the aid in accordance with Chapter 32 of the Authority's Procedural and Substantive Rules in the Field of State Aid.
3. This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 29 October 2003

For the EFTA Surveillance Authority

Einar Bull
President

Hannes Hafstein
College Member