

EFTA SURVEILLANCE AUTHORITY DECISION
of 11 November 2016
on a six month prolongation of the special tax system for shipping
(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) The Norwegian authorities notified a six month prolongation of the special tax system for shipping (“tonnage tax”), pursuant to Article 1(3) of Part I of Protocol 3 by letter of 20 October 2016 (“notified scheme”).¹

2 The notified scheme

- (2) The notified scheme entails a lower tonnage tax for maritime transport. The tax is based on ship weight, resulting in a greatly reduced rate from the standard current 25% corporate tax rate.
- (3) The Norwegian authorities have notified a six month prolongation of an existing aid scheme (“current scheme”). The current scheme was initially approved from 1 January 2007 until 31 December 2016 by the Authority’s Decision No 755/08/COL, which was subsequently amended by the Authority’s Decisions No 181/09/COL, 292/10/COL,

¹ Documents No 823226-823230.

407/10/COL, 322/14/COL and 519/14/COL. The notified scheme is identical to the current scheme and, apart from the commitment on transparency (see paragraph (14) below), contains no alterations. Therefore, reference is made to those decisions for a description of the existing aid scheme.

- (4) The Authority is currently considering a pre-notified 10 year prolongation of the scheme (“new scheme”). The current six month extension has been notified to allow the current scheme to continue until the Authority can finalise its assessment of the new scheme.

3 National legal basis

- (5) The national legal basis for the scheme is the Parliamentary resolution on income and net wealth taxes, the Tax Act² sections 8-10 to 8-20 and the Regulation to the Tax Act³ sections 8-11, 8-13, 8-15, 8-16 and 8-20.

4 Duration and budget

- (6) The duration of the notified extension is six months from 1 January 2017 to 30 June 2017. The budget is NOK 100 million.

II. ASSESSMENT

1 The presence of state aid

- (7) 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.”

- (8) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.
- (9) The Authority has already concluded that the current scheme constitutes state aid.⁴ There is nothing in the current notification to alter that conclusion. The application of the lower tonnage tax rather than the standard corporate tax leads to a loss of state revenues, estimated to NOK 100 million for the notified six month time period. The measure applies only to the maritime sector and is therefore selective. The tonnage tax strengthens the ship owners’ position towards their competitors within the EEA. Hence, the scheme is liable to affect trade between the Contracting Parties and to distort competition. The notified scheme therefore constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

² LOV-1999-03-26-14.

³ FOR-1999-11-19-1158.

⁴ See in particular Decision No 755/08/COL.

2 Procedural requirements

- (10) Pursuant to Article 1(3) of Part I of Protocol 3: “*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. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.
- (11) By submitting a notification before the entry into force of the aid scheme, the Norwegian authorities complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (12) With its decisions referred to in part I.2 of this decision, the Authority concluded that the current scheme was compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c) and the state aid guidelines on aid to maritime transport.⁵ The notified six month prolongation of the special tax for shipping does not alter those conclusions.
- (13) The Authority notes that an interruption in the applicability of the special tax system for shipping may lead ship owners to register their vessels in other, non-EEA ship registers. Given the importance for the EEA, as well as for the Norwegian authorities, of having the special tax system for shipping in place without interruptions, the extension represents a proportionate measure, given that it is limited in time to six months, to allow the Norwegian scheme to continue, until the Authority has finalised its assessment of the new scheme.
- (14) The Norwegian authorities have committed to publishing information about the aid granted in accordance with the general transparency requirement. They will publish the full text of the aid scheme and make the necessary disclosures on a central website.

4 Conclusion

- (15) On the basis of the foregoing assessment, the Authority considers that the six month prolongation of the special tax system for shipping constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

Not to raise objections to the six month prolongation of the special tax system for shipping on the grounds that it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

⁵ OJ C 103 28.4.2005 p. 24.

Only the English language version of this decision is authentic.

Done in Brussels, on 11 November 2016

For the EFTA Surveillance Authority

Sven Erik Svedman
President

Helga Jónsdóttir
College Member

Frank J. Büchel
College Member

This document has been electronically signed by Sven Erik Svedman, Frank J. Buechel, Helga Jonsdottir on 11/11/2016