

EFTA SURVEILLANCE AUTHORITY DECISION

of 1 December 2016

not to raise objections to an aid scheme for a reduced rate of taxation on electricity directly provided to vessels

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

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

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 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) By letter of 18 October 2016, the Norwegian authorities notified an aid scheme for a reduced rate of taxation on electricity directly provided to vessels, pursuant to Article 1(3) of Part I of Protocol 3.¹

2 Introduction

- (2) The objective of the scheme is to reduce the negative health and environmental impact of maritime transport. The measure thus contributes to environmental protection. The intention of the new scheme is to apply a reduced rate of taxation on electricity directly provided to vessels, other than private pleasure crafts. The scheme covers electricity

¹ Documents No 823012 to 823015.

provided (i) for the use of vessels while lying at berth in a port (“shore-side electricity”) and (ii) for charging batteries as power of propulsion to electrified vessels in general.

- (3) In 2016, the standard rate of electricity tax is NOK 0.16/kWh. The reduced rate of taxation under the scheme will be NOK 0.0048/kWh (equivalent to EUR 0.54 MWh). The reduced tax rate on electricity to vessels is meant to give an economic incentive to increase the use of this energy source, in order to reduce emission of CO₂ in general and in particular reduce air pollution in port cities or areas, as well as narrow fjords. The use of electricity from the grid is considered a less polluting and carbon-intensive alternative to the generation of electricity on board vessels, by use of combustion engines.

3 The aid measure

3.1 Form of the aid

- (4) The aid under the scheme will be provided in the form of a reduced tax rate, charged at supply.
- (5) The aid cannot be cumulated with aid received from other local, regional, national or European Union (“EU”) schemes, covering the same eligible costs.

3.2 Beneficiaries and criteria for eligibility

- (6) The reduced rate will apply to electricity provided to all vessels other than private pleasure crafts. Eligible for aid under the scheme are therefore all owners or operators of vessels while lying at berth in a port and electrified ships, other than private pleasure crafts, independent of their flag, in both EEA waters as well as inland waterways.

4 National legal basis

- (7) The national legal basis for the scheme is the Parliament’s yearly decision on electricity tax and the Act on Excise Duties of 19 May 1933 No 11. For the year 2016, the reduced rate on electric power supplied to vessels (other than private pleasure crafts) follows from the Parliament’s decision, roman numeral XI, section 2(2)(d).
- (8) Further implementing provisions for the tax are set out in the regulation on excise duties. Legislation concerning the general tax payment is regulated in the Act on Tax Payment of 17 June 2005 No 67.

5 Administration of the scheme by the Norwegian Ministry of Finance

- (9) The Norwegian Ministry of Finance is the formal granting authority. However, the scheme will be administered by the tax authorities. For the electricity tax, the competent authority is the Directorate of Taxes; an agency subordinated to the Ministry.

6 Budget and duration

- (10) The reduced tax rate applied under the scheme is estimated to reduce state revenues by approximately NOK 2 million annually. This amount is expected to increase gradually. The increase is, however, expected to be limited since use of shore-side electricity requires considerable investments in both port facilities and electric systems aboard ships.
- (11) The Norwegian authorities have notified the measure for a duration of 10 years, starting from 1 January 2017.

7 Transparency

- (12) The Norwegian authorities will comply with the transparency requirements in the Authority's Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG")² by publishing the full text of the aid scheme and other necessary disclosures in the national registry for state aid. Individual aid awards exceeding the threshold of EUR 500 000 EUR granted will be published in the same registry.

8 Comments by the Norwegian authorities

- (13) The Norwegian authorities consider the measure to entail state aid, as defined in Article 61(1) of the EEA Agreement, because it favours owners and/or operators of ships using electricity, and owners and/or operators of ports providing electricity to vessels.
- (14) The Norwegian authorities submit that the scheme is compatible with the functioning of the EEA Agreement under Article 61(3)(c) in accordance with the EEAG.
- (15) The Norwegian authorities submit that the measure contributes to an objective of common interest. The aim of the measure is to reduce the negative health and environmental impact of maritime transport. The measure thus contributes to environmental protection.
- (16) In this regard, the Norwegian authorities note that from June 2011 on, EEA States have an unconditional obligation to meet air quality standards for relevant pollutants like particulate matter. This requires Norway to find solutions to problems such as ship emissions at berth in ports.³
- (17) The Norwegian authorities submit that there is a need for state intervention, because the continued application of a full tax rate would reduce the competitiveness of electricity, relative to the burning of bunker fuels on board. Use of bunker fuels benefits from tax advantages whilst electricity supplied to vessels is levied at the standard rate of electricity tax. According to the Norwegian authorities, this is not logical from an environmental perspective, i.e., that the more environmentally-friendly source of energy has a tax disadvantage compared to the less environmentally-friendly source of energy.
- (18) The Norwegian authorities submit that the measure is the appropriate instrument to address the environmental objective. Emissions of SO₂, NO_x and particles from the burning of bunker fuel by vessels at berth and vessels sailing in port areas, approaches and narrow fjords contribute substantially to the violation of air quality standards. In addition, substituting oil with electricity reduces CO₂ emissions, since power plants are included in the EU Emissions Trading System, while bunker fuel is not included. Furthermore, in the view of the Norwegian authorities, there are no less distortive policy instruments that would contribute to the same positive environmental objective concerned.⁴

² Section 3.2.7 of the Authority's Guidelines on State aid for environmental protection and energy 2014-2020, adopted by Decision No 301/14/COL (OJ L 131, 28.5.2015, p. 1 and EEA Supplement No 30, 28.5.2015, p. 1).

³ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, referred to at point 14c of Annex XX to the EEA Agreement, see Joint Committee Decision No 121/2011 (OJ L 341, 22.12.2011, p. 86 and EEA Supplement No 70, 22.12.2011, p. 22).

⁴ The Norwegian authorities also refer to Commission Recommendation of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports No 2006/339/EC, referred to at point 43 of Annex XX to the EEA Agreement, see Joint Committee Decision No 35/2008 (OJ L 182, 10.7.2008, p. 34 and EEA Supplement No 42, 10.7.2008, p. 22). Point 4 of the Recommendation reads: "*Member States should consider offering economic incentives to operators to use shore-side electricity provided to ships, taking advantage of the possibilities set out in Community legislation.*" and Communication from the

- (19) The Norwegian authorities submit that the reduced tax rate will have an incentive effect by reducing the price of electricity to vessels compared to fuel oils. The advantage will accrue to ship operators or the port operators or be shared between these.
- (20) The Norwegian authorities submit that the measure respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question. The beneficiaries, ship and port operators, will receive shore-side electricity taxed at the minimum level provided for in Directive 2003/96/EC (“Directive 2003/96/EC”).⁵
- (21) The Norwegian authorities submit that the measure is not expected to cause significant distortion to the proper functioning of the internal market or to competition. Even if the measure will provide shipping operators with an advantage in the sense that they will be able to purchase electricity at lower tax, compared to companies operating in other sectors, the measure is not expected to alter significantly the competitive situation.⁶
- (22) Available evidence indicate that even a full tax exemption would in most cases not reduce costs of battery propulsion or shore-side electricity below the costs of oil-based propulsion or on-board generation. It would therefore not represent a significant competitive benefit for vessels using shore-side electricity compared to those using on-board generation. The Norwegian authorities further submit that the measure is unlikely to significantly distort competition between ports by inducing vessels to change their itinerary according to the availability of this option, since the use of shore-side electricity is, at least in the short term, unlikely to become more profitable than on-board generation, in spite of the tax reduction.⁷
- (23) The legislation will be neutral with respect to competition between ship owners or operators, since it is available to all ships (except private pleasure crafts) at berth in Norwegian ports, independent of their flag.
- (24) Finally, the Norwegian authorities note that similar schemes in the EU are implemented under the General Block Exemption Regulation (“GBER”).⁸ The EFTA States, however, are unable to use the corresponding GBER provisions as they cross-refer to certain

Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Strategic goals and recommendations for the EU’s maritime transport policy until 2018. In line with chapter 4.1 the main priorities towards the long-term objective of ‘zero-waste, zero-emission’ maritime transport, should, among others, be to “*Promote alternative fuel solutions in ports, such as the use of shore-side electricity. The Commission will propose a time-limit tax exemption for shore-side electricity in the forthcoming review of the Energy Taxation Directive as a first step and elaborate a comprehensive incentive and regulatory framework.*”

⁵ Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

⁶ The Norwegian authorities have explained that today there is only one fully electrified car- and passenger ferry in Norway on the link “Lavik-Oppedal”. The ferry uses a fully electrical propulsion system, with batteries both onshore at the terminals and aboard the ferry. The next fully electrified car- and passenger ferry is commissioned for operating in 2018. In addition, only few ferries have been modified or commissioned with plug-in hybrid propulsion systems.

⁷ In this regard, the Norwegian authorities note that ports wishing to provide shore-side electricity, may apply to a program managed by Enova, which awards aid to promote the construction of the infrastructure necessary to provide shore-side electricity. This program was approved by the Authority by a decision of 16 December 2015, available at: <http://www.eftasurv.int/media/esa-docs/physical/336-15-COL.pdf>.

⁸ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, referred to at point 1j of Annex XV to the EEA Agreement, see Joint Committee Decision No. 152/2014 (OJ L 342, 27.11.2014, p. 63 and EEA Supplement No 71, 27.11.2014, p. 61).

procedural requirements in Directive 2003/96/EC that are unavailable to the EFTA States, as Directive 2003/96/EC has not been incorporated into the EEA Agreement.

II. ASSESSMENT

1 The presence of state aid

(25) 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.”

(26) 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.

1.1 Presence of state resources

(27) The aid measure must be granted by the State or through state resources.

(28) The standard rate of electricity tax is NOK 0.16/kWh in 2016. The reduced tax rate applied to beneficiaries under the scheme will be NOK 0.0048/kWh (equivalent to EUR 0.54 per MWh).

(29) The application of the proposed reduced tax rate for electricity directly provided to vessels will therefore result in Norwegian authorities foregoing tax revenues that they would otherwise be able to collect. The Authority therefore concludes that the measure involves state resources.

1.2 Favouring certain undertakings or the production of certain goods

(30) Firstly, the aid measure must confer on its beneficiaries advantages that relieve them of charges that are normally borne from their budgets. Secondly, the aid measure must be selective in that it favours *“certain undertakings or the production of certain goods”*.

1.2.1 Conferring an advantage on undertakings

(31) The direct beneficiaries of the scheme are the owners or operators of vessels (other than private pleasure crafts) which will be charged the reduced tax rate on electricity instead of the standard rate of electricity tax. The notified scheme will therefore confer an economic advantage on these undertakings.

(32) The notified scheme also has a number of potential indirect beneficiaries.

(33) The owners or operators of the ports or the provider of the service may indirectly benefit from the measure as it will stimulate the demand for the service compared to a reference situation in which no such aid would be granted. Any advantage is, however, of limited nature, since there are currently only a small number of vessels that have been equipped for the use of shore-side electricity.

(34) Moreover, the measure can also stimulate the demand for vessels powered by electricity as well as the sale of the relevant recharging equipment. It follows that the measure may

therefore also indirectly favour manufacturers, importers and dealers of these ships and equipment.

- (35) Overall, the Authority considers these potential indirect advantages to be an incidental and unavoidable consequence of the aid measure, which is aimed at reducing emission of CO₂ in general and in particular reduce air pollution in port cities or areas, as well as narrow fjords.

1.2.2 Selectivity

- (36) In assessing whether the reduced tax rate constitutes state aid, the Authority must consider whether the effects of the measure are selective insofar as it favours certain undertakings or the production of certain goods.
- (37) The reduced tax rate benefits only certain undertakings and certain sectors, see paragraphs (31) to (34) above. Furthermore, the Authority must assess whether the measure is justified by the nature and logic of the reference system of taxation. The Authority considers that in the present case, the system of reference is the standard electricity tax. The reduced tax rate derogates from the reference system, and the derogation is only provided to certain undertakings, although it could in theory also apply to other sectors, in order to achieve its environmental objective.
- (38) The Norwegian authorities have not provided any information as to why the derogation would be justified by the nature and logic of the reference system.
- (39) Based on the above, the Authority concludes that the proposed measure confers a selective advantage on the owners or operators of the vessels, which will be charged the reduced tax rate of electricity (direct beneficiaries).

1.3 Distortion of competition and effect on trade between Contracting Parties

- (40) In order to constitute state aid, the aid measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (41) The mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is sufficient in order to conclude that the measure is liable to distort competition between undertakings established in other EEA States.⁹ In order to categorise a public measure as state aid, it is not necessary that the aid has a real effect on trade between the Contracting Parties and that competition is actually distorted. It suffices that the aid is liable to affect such trade and distort competition.¹⁰
- (42) Furthermore, an effect on trade can be presumed when the aid strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade. When aid granted by one of the EEA States strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as affected by the aid.
- (43) The proposed measure favours the owners or operators of the vessels which will be charged the reduced tax rate on electricity (direct beneficiaries) by relieving them of the higher electricity tax rate which usually applies. The notified measure further favours the

⁹ Case E-6/98 *Norway v ESA* [1998] EFTA Ct. Rep. 76, paragraph 59; judgment in *Philip Morris v Commission*, C-730/79, EU:C:1980:209, paragraph 11.

¹⁰ Judgment in *Eventech*, C-518/13, EU:C:2015:9, paragraph 65.

owners or operators of the ports or the providers of the service, which compete with other port facilities in the EEA, by increasing demand for their services.

- (44) These groups of undertakings are active in a sector which is liberalised and open to EEA-wide competition. As a result, their competitive position is improved in comparison to competing undertakings, which do not benefit from the measure.
- (45) The Authority therefore concludes that the reduced rate of electricity tax is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

1.4 Conclusion on the presence of state aid

- (46) Based on the above, the Authority concludes that the reduced tax rate on electricity directly provided to vessels constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

- (47) 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.”*
- (48) By submitting a notification of the reduced tax rate on electricity directly provided to vessels, the Norwegian authorities complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

3.1 Preliminary remarks

- (49) Similar aid schemes in the EU have been implemented under the GBER. Pursuant to Article 44 of the GBER, aid in the form of reductions in environmental taxes under Directive 2003/96/EC, fulfilling the conditions therein, are exempted from the notification obligation provided that the other conditions set out in the GBER are fulfilled.
- (50) In addition to the general conditions set out in Chapter I of the GBER, Article 44 requires that the beneficiaries of the tax reduction be selected on the basis of transparent and objective criteria and pay at least the minimum level of taxation set by Directive 2003/96/EC. Aid schemes in the form of tax reductions shall be based on a reduction of the applicable environmental tax rate or on the payment of a fixed compensation amount. A combination of these mechanisms may also be used.
- (51) However, the exemption provided for in the GBER is not directly applicable to the notified measure as an authorisation procedure in Article 19 of Directive 2003/96/EC, required for certain exemptions or reductions in the level of taxation, is not available to the EFTA States.
- (52) Indeed, Directive 2003/96/EC has not been incorporated into the EEA Agreement, nor are environmental taxes harmonised at EEA level. Still, when EU legislative provisions or policy instruments form reference points for the compatibility of environmental aid in the EU, the Authority will in general apply the same points of reference when assessing the compatibility of environmental aid with the functioning of the EEA Agreement, see the EEAG point (5).

3.2 Compatibility framework

- (53) In light of this, the Authority has assessed the compatibility of the measure with the functioning of the EEA Agreement using the conditions applicable under the EEAG, and with reference to the conditions for similar schemes under the GBER.

3.2.1 Conditions under the GBER

- (54) The aid measure entails a reduced rate of taxation on electricity provided to vessels other than private pleasure crafts.¹¹ No additional conditions will be applied for the eligibility of the reduced tax rate under the scheme. The criteria for eligibility under the scheme are thus objective and transparent. Furthermore, the Norwegian authorities have confirmed that the beneficiaries under the scheme will pay a rate above the minimum level of taxation set by Directive 2003/96/EC,¹² as required by Article 44 of the GBER.
- (55) The requirements under the GBER are generally strict as they are intended to allow for aid to be granted without prior notification to the competent authority. Accordingly, the conditions under the GBER are generally more detailed and far-reaching than the conditions under guidelines applicable to similar measures or the sector in question.
- (56) Consequently, the Authority acknowledges that the design of the measure in line with the conditions under the GBER, already provides an indication of compatibility under the relevant state aid guidelines.
- (57) These considerations form part of the Authority's assessment of the compatibility of the notified measure with the functioning of the EEA Agreement, using the EEAG.

3.2.2 EEAG

- (58) In line with its considerations set out above, the Authority has assessed the compatibility of the reduced rate of taxation directly provided to vessels under Article 61(3)(c) of the EEA Agreement on the basis of the EEAG, Section 3.7.1, "*Aid in the form of reductions in or exemptions from environmental taxes*".
- (59) The EEAG correspond to the European Commission Guidelines on State aid for environmental protection and energy 2014-2020.¹³
- (60) When environmental taxes are harmonised within the EU, a simplified approach can be applied to assess the necessity and proportionality of the aid. In the context of Directive 2003/96/EC, the European Commission can apply a simplified approach for tax reductions respecting the Union minimum tax level.
- (61) In the case at hand, the reduced tax rate is above the minimum rate of taxation for electricity as laid down in Directive 2003/96/EC. The Authority will therefore assess the measure in line with the European Commission's simplified approach.
- (62) The aim of the measure is to reduce the negative health and environmental impact of maritime transport. It thus contributes to environmental protection, which is recognised as an objective of common interest within the EEA.¹⁴

¹¹ By excluding private pleasure crafts the group of beneficiaries corresponds to the definition provided for in Article 14(1)(c) of Directive 2003/96/EC.

¹² Which is EUR 0.50 per MWh.

¹³ OJ C 200, 28.6.2014, p. 1.

¹⁴ For instance, the EEAG recognise as their aim the increase in the level of environmental protection compared to the level that would be achieved in the absence of the aid. Furthermore, they make reference to

- (63) The Authority recognises that reductions in or exemptions from environmental taxes can, at least indirectly, contribute to a higher level of environmental protection. However, the overall objective of the environmental tax to discourage environmentally harmful behaviour should not be undermined, see the EEAG points (162) and (163).
- (64) Aid in the form of reduction in environmental taxes should be necessary and based on objective, transparent and non-discriminatory criteria. Furthermore, the undertakings concerned should make a contribution towards increasing environmental protection, see the EEAG point (163).
- (65) The reduced tax rate on electricity to vessels is meant to give an economic incentive to increase the use of this energy source in order to reduce emission of CO₂ in general and in particular reduce air pollution in port cities or areas as well as narrow fjords. The use of electricity is a less polluting, than the carbon-intensive alternative to generate electricity on board vessels, by use of combustion engines.
- (66) Furthermore, Commission Recommendation of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community Ports (“the Commission Recommendation”)¹⁵ encourages Member States to consider offering economic incentives to operators to use shore-side electricity provided to ships. The measure is also in line with the Commission Communication on Strategic goals and recommendations for the EU’s maritime transport policy until 2018.¹⁶
- (67) The Authority considers tax reductions do not undermine the general objective pursued by the environmental tax and contribute at least indirectly to an increase level of environmental protection, if the State demonstrates that (i) the reductions are well targeted to undertakings being mostly affected by the higher tax and (ii) that a higher tax rate is generally applicable than would be the case without the exemption, see the EEAG point (165).
- (68) The standard rate of electricity tax in Norway, in 2016, is NOK 0.16/kWh. The reduced rate of taxation under the scheme is NOK 0.0048/kWh (equivalent to EUR 0.54 MWh). The Norwegian authorities have explained that shore-side electric power has only recently become usable for maritime purposes, and that electricity supply for vessels is more expensive than most other supplies of electricity. Furthermore, the electricity supply to vessels normally requires additional investments which makes the use of electricity in this sector more costly than existing energy sources. The Authority therefore considers that the reduced tax rate is well targeted to undertakings which are affected by the standard rate of taxation to a greater extent than other undertakings subject to the tax.

the Europe 2020 strategy, which sets “*targets and objectives for sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy*”.

¹⁵ Commission Recommendation of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports No. 2006/339/EC, referred to at point 43 of Annex XX to the EEA Agreement, see Joint Committee Decision No 35/2008 (OJ L 182, 10.7.2008, p. 34 and EEA Supplement No 42, 10.7.2008, p. 22). Point 4 of the Recommendation reads: “*Member States should consider offering economic incentives to operators to sue shore-side electricity provided to ships, talking advantage of the possibilities set out in Community legislation.*”

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Strategic goals and recommendations for the EU’s maritime transport policy until 2018. In line with chapter 4.1 the main priorities towards the long-term objective of ‘zero-waste, zero-emission’ maritime transport, should, among others, be to “*Promote alternative fuel solutions in ports, such as the use of shore-side electricity. The Commission will propose a time-limit tax exemption for shore-side electricity in the forthcoming review of the Energy Taxation Directive as a first step and elaborate a comprehensive incentive and regulatory framework.*”

- (69) Moreover, if the Norwegian authorities were to reduce the tax rate to a generally lower level to make it feasible for vessels to use electricity, such a reduction would overall result in a lower level of environmental protection and would thus undermine the objective of the tax. The Authority recognises in the EEAG that granting more favourable tax treatments to some undertakings can contribute to environmental protection by facilitating a higher general level of environmental taxes. This logic applies to the measure at hand.
- (70) The Authority will consider aid in the form of tax reductions necessary and proportionate provided that the choice of beneficiaries is based on objective and transparent criteria, and the aid is granted in principle in the same way for all competitors in the same sector, if they are in a similar factual situation. As noted in paragraph (54) above, the criteria for eligibility under the scheme are objective and transparent.
- (71) In addition, the beneficiaries under the scheme will pay a tax rate above the minimum tax level set by Directive 2003/96/EC. This ensures that the measure will not have a disproportionate adverse impact on the objective pursued by the environmental tax, and limits the potential negative effects on trade and competition. Accordingly, the Authority considers that the measure is necessary and proportionate.¹⁷
- (72) The measure will contribute to the identified objective of common interest by reducing emission and particles from burning of bunker fuel. Moreover, aid in the form of a reduction in environmental taxes is recognised in the EEAG as an appropriate form of aid to pursue environmental objectives given that other conditions set out in the EEAG are fulfilled. Furthermore, as stated above, EEA States are encouraged to consider offering economic incentives to operators to use shore-side electricity provided to ships.
- (73) Tax reductions are less distortive than other types of aid instruments, such as direct grants, and the Norwegian authorities have shown that no other less distortive policy instruments could contribute to the same objective. The Authority therefore considers that the aid measure is an appropriate instrument to address the policy objective concerned.
- (74) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid. The tax reduction will have an incentive effect by reducing the price of electricity to vessels compared to fuel oils. This will improve profitability of electric propulsion, port facilities and on-board systems for shore-side electricity supply. Thereby, it will induce owners to invest in the transition to the more environmentally friendly use of electricity instead of the burning of bunker fuels.
- (75) In principle, the Authority will assume that a measure has an incentive effect if the aid meets the conditions of Section 3.2.4.1 of the EEAG. Point (46) of the EEAG sets out a general requirement on the use of application forms to demonstrate that aid has incentive effect. The Authority notes that the measure at hand does not require beneficiaries to submit an application form.
- (76) The Authority takes the view, however, that the use of application forms is not always required in the context of tax advantages in order to be able to assume the existence of an incentive effect. This is supported by Article 6 of the GBER, which sets out how the

¹⁷ This approach is in line with the decision making practice of the European Commission. In the context of Directive 2003/96/EC, the European Commission applies a simplified approach for tax reductions respecting the Union minimum tax level, see points (172) to (175) of the European Commission Guidelines on State aid for environmental protection and energy 2014-2020.

incentive effect should be assessed under the GBER. Measures in the form of tax advantages are dealt with specifically by way of an exemption in paragraph 4 of Article 6, under which tax advantages are deemed to have an incentive effect if certain conditions are fulfilled. In particular, the measure needs to establish an objective right to the tax reduction without any further exercise of discretion by the EEA State. The measure at hand fulfils these conditions.

- (77) Furthermore, paragraph 5(e) of Article 6 of the GBER, deals specifically with aid in the form of reductions in environmental taxes under Directive 2003/96/EC. If other conditions of the GBER are fulfilled, such measures are not required to have or shall be deemed to have an incentive effect.
- (78) On this basis, the Authority considers that it is not necessary to further demonstrate the incentive effect of the measure at hand.
- (79) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (80) The notified scheme is based on neutral and objective criteria. All ships (except private pleasure crafts) at berth in Norwegian ports are eligible under the scheme, independently of their flag. The advantage afforded to the beneficiaries is not expected to alter significantly the competitive situation since supply to vessels is more expensive than most other supplies of electricity. Furthermore, it appears that even a full tax exemption in most cases would not reduce costs of battery propulsion or shore-side electricity below the cost of oil-based propulsion or on-board-generation.¹⁸ Use of bunker fuel benefits from tax advantages which contribute to the reduced competitiveness of electricity relative to the burning of bunker fuels on board. The Authority therefore considers that the aid scheme does not entail undue distortions of competition and trade, and that the limited negative effects resulting from the adoption of the scheme are outweighed by the positive effects of the measure in terms of its contribution to the objective of common interest.
- (81) The Norwegian authorities have notified the scheme for a duration of 10 years, in line with the EEAG point (164).
- (82) The Norwegian authorities will comply with the transparency requirements set out in the EEAG by publishing the full text of the aid scheme and other necessary disclosures in the national registry for state aid. Individual aid awards exceeding the threshold of EUR 500 000 will be published in the same registry.

3.3 Conclusion on the compatibility of the aid scheme

- (83) The Authority finds that the scheme fulfils the compatibility conditions under the EEAG. Accordingly, the Authority concludes that the notified aid scheme is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

¹⁸ European Commission, DG Environment, Service Contract on Ship Emissions: Assignment, Abatement and Market-based Instruments. Task 2a – Shore-Side Electricity, Final Report, August 2005, available at: http://ec.europa.eu/environment/air/pdf/task2_shoreside.pdf

4 Reporting obligations

- (84) The Norwegian authorities are reminded of their obligation resulting from Article 21 of Part II of Protocol 3, in conjunction with Articles 5 and 6 of Decision No 195/04/COL, to provide annual reports on the implementation of the scheme.

5 Conclusion

- (85) The Authority considers that the scheme for reduced rate of taxation on electricity directly provided to vessels, other than private pleasure crafts, constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. However, the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).
- (86) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

Not to raise objections to the scheme for a reduced rate of taxation on electricity directly provided to vessels, other than private pleasure crafts, 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

Only the English language version of this decision is authentic.

Done in Brussels, on 1 December 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 01/12/2016