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# *EFTA SURVEILLANCE AUTHORITY*

Doc. No: 99-750-I  
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Dec. No: 30/99/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 10 February 1999

on the closure of a case concerning State aid  
for the conversion of the Icelandic trawler Snorri Sturluson RE-219  
(Iceland and 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 of the Agreement,

Having regard to the Act referred to in point 1b of Annex XV to the EEA Agreement on aid to shipbuilding (Council Directive No 90/684/EEC as amended by Council Directive No 93/115/EC and Council Directive No 94/73/EC)<sup>2</sup>,

Having regard to the Act referred to in point 1c of Annex XV to the EEA Agreement (Council Regulation (EC) No 3094/95 on aid to shipbuilding, as amended by Council Regulation (EC) No 1904/96<sup>3</sup> and Council Regulation (EC) No 2600/97<sup>4</sup>),

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>5</sup>, in particular to Article 24 and Article 1 of Protocol 3 thereof,

WHEREAS:

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

<sup>2</sup> These Council Directives, as adapted for the purpose of the EEA Agreement by decisions of the EEA Joint Committee No 21/95, 16/96, 58/96 and 19/98, will hereinafter be referred to as the Shipbuilding Directive, or for short as the Directive. The Shipbuilding Directive expired on 1 January 1999. It has been replaced by Council Regulation No 1540/98. By EEA Joint Committee Decision No 12/99, that Regulation was incorporated in the EEA Agreement, as a new point 1b of Annex XV. That Decision, which entered into force on 30 January 1999, applies from 1 January 1999. However, at the time when the Authority received notification of the current case, the Shipbuilding Directive was applicable.

<sup>3</sup> Council Regulations (EC) No 3094/95 and 1904/96 were incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 85/97 of 12 November 1997.

<sup>4</sup> This Regulation was included in the EEA Agreement by EEA Joint Committee Decision No 19/98 of 6 March 1998.

<sup>5</sup> Hereinafter referred to as the Surveillance and Court Agreement.

## I. FACTS

By letter of 3 November 1995 (Doc. No. 95-6344-A), the Icelandic Ministry of Finance requested the EFTA Surveillance Authority to initiate the procedure laid down in the second sub-paragraph of Article 4(5) of the Act referred to in point 1b of Annex XV to the EEA Agreement (Council Directive No 90/684/EEC, with subsequent amendments, on aid to shipbuilding), in respect of aid to be provided in favour of a contract for the conversion of the Icelandic trawler Snorri Sturluson RE-219.

At the time of the above request, the available evidence on the bidding process for the above contract suggested that shipyards from Iceland, Norway, Poland and Spain were competing for the contract, and that a contract was about to be concluded between the owner of the vessel, the Icelandic fishing company Grandi hf., and a Spanish shipyard, P. Freire SA. By letter of 8 November 1995 (Doc. No. 95-6437-D), the Authority communicated the relevant information on the case to the European Commission and requested it to open the above procedure, with respect to planned aid by the Spanish Government.

By letters of 9 November 1995 (Doc. No. 95-6471-D and 95-6478-D), the Authority requested the Norwegian and Icelandic authorities to submit notifications of any aid which they envisaged to award in favour of the contract, should it be won by their respective national shipyards. A notification was received from Iceland on 24 November 1995 (Doc. No. 95-6801-A) and from Norway on 4 December 1995 (Doc. No. 95-6939-A). By letters of 7 December 1995 (Doc. No. 95-7023-A) and 23 February 1996 (Doc. No. 96-1346-A), Iceland submitted further details relating to the tender and contract specifications.

In December 1995 and January 1996, informal consultations took place with DG IV of the European Commission. By telefax of 13 March 1996 (Doc. No. 96-1387-A), the Authority was informed that, in view of the relevance of the Community legislation on fisheries, the case concerning aid from the Spanish authorities had been transferred from DG IV to DG XIV of the Commission. Accordingly, consultations with DG XIV ensued, *inter alia* at a meeting on 29 March 1996. The Authority was later informed informally that the matter had been referred back to DG IV.

On 11 July 1996, the European Commission decided to initiate the State aid investigation procedure laid down in Article 93(2) of the EC Treaty with respect to aid which the Spanish Government planned to grant to the Shipyard P. Freire SA in favour of the contract at issue (communication published in OJ No C 291 on 4.10.96). In the decision, the Commission considered the two coexisting sets of rules in this field (i.e. shipbuilding directive and legislation on aid to fisheries), and set forth the tentative interpretation that aid for the construction of fishing vessels belonging to the Community fleet could be granted solely to the shipowners and not to the shipyards. In other words, aid to shipyards for the construction of Community fishing vessels was prohibited. The Commission also expressed the opinion that the same principle should apply in the context of the EEA Agreement, i.e. that aid should be granted only to shipowners and not to shipyards.

By letters of 18 September 1996 (Doc. No. 96-5056-D and 96-5057-D), the Authority informed the Icelandic and Norwegian authorities of the Commission's decision. By letter of 4 November 1996 (Doc. No. 96-6228-D), the Authority availed itself of the opportunity to submit comments in these proceedings.

On 15 April 1997, the Commission took a final decision in the above case (published in OJ No C 196 on 26.6.97). The substantive conclusion was the same as in the earlier decision. However, as the aid in question was being granted under an existing aid scheme approved by the Commission, in compliance with the Council directive on aid to shipbuilding, the aid granted for the contract was considered to be legal. On the other hand the existing aid scheme was considered not to be in line with the principles concerning aid for fishing vessels. For this reason Spain had agreed to adapt accordingly its aid scheme, implying that as from the year 1997 only fishing vessels for export outside the EEA are eligible for aid under the Spanish aid scheme for the shipbuilding sector. In view of these facts, the Commission decided to close the case. The Commission also requested the EFTA Surveillance Authority to take the necessary steps to ensure that the EFTA States follow the same principles, i.e. that fishing vessels for the fleet of any EEA country be excluded from the award of aid under aid schemes for the shipbuilding industry.

## II. APPRECIATION

Article 4 of the Shipbuilding Directive deals with contract-related production aid. Paragraph 5 of that Article, as adapted by EEA Joint Committee Decision No 21/95, reads as follows:

"The combined effect of aid under the various aid schemes applied shall in no case exceed the ceiling fixed according to paragraph 2; the grant of aid in individual cases shall not necessitate prior notification to, or authorization from, the Competent surveillance authority as defined in Article 62 of the EEA Agreement.

However, where there is competition between yards in different States within the territory covered by the EEA Agreement, the competent surveillance authorities as defined in Article 62 of the EEA Agreement shall require prior notification of the relevant aid proposals at the request of any State. In such cases, the competent surveillance authority shall adopt its decision, after consulting the other surveillance authority, within 30 days of notification; such proposals may not be implemented before the competent surveillance authority has given its authorization. By its decision the competent surveillance authority shall ensure that the planned aid does not affect trading conditions within the territory covered by the EEA Agreement to an extent contrary to the common interest."<sup>6</sup>

The above procedure is designed to address the situation when, in the case of a particular contract, there is competition between shipyards in different EEA States, the objective being to seek to minimise distortions of competition caused by different levels of aid in the various EEA States and ensure that yards receiving little or no production aid are not unfairly disadvantaged. According to the Commission's established interpretation of this provision, it will only permit the lowest aid level unless a higher level (within the ceiling) is necessary to ensure that the contract remains within the Community (EEA).

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<sup>6</sup> A corresponding provision is found in Article 3(3) of Council Regulation No 1540/98.

As the above factual summary reveals, the Authority, having received a request from the Icelandic authorities in November 1995, initiated without delay the procedure laid down in the second sub-paragraph of Article 4(5) of the shipbuilding directive, by requesting the Icelandic and Norwegian authorities to submit notification of their aid plans and by requesting the European Commission to do the same with regard to Spain. However, it soon emerged that a binding contract had been entered into between the Icelandic owner of the vessel concerned and the Spanish shipyard P. Freire SA, and that the choice of shipyard to perform the project would be unaffected by any ruling of the competent surveillance authorities concerning the question of State aid. In the course of the notification procedure, the Authority received a copy of this contract on 28 February 1996. It therefore became clear that any aid plans by the Icelandic and Norwegian authorities would not be realised, and that accordingly, it would not be relevant for the EFTA Surveillance Authority to take any decision in the matter.

For the sake of completeness, it could be added that as a part of its re-evaluation of the Norwegian aid schemes for the shipbuilding sector, the Authority - taking account of the fact that the Commission in the above case concerning Spain had clarified its position - found it appropriate to examine in particular the question of State aid to shipyards for the construction of fishing vessels. In the course of the procedure leading up to the Authority's decision in that case, in October 1997, the Norwegian Government undertook to propose to Parliament an adjustment of the Grant scheme for shipbuilding, so as to ensure that it would respect the rule that no aid be granted to shipyards for the construction or conversion of fishing vessels, except in respect of vessels for delivery outside the EEA. This adjustment was affected as from the year 1998. At the same time, Iceland did not operate any scheme of contract-related aid to shipbuilding, and no action by the Authority was therefore called for in that respect.

In view of the above facts and considerations, the case can be closed without further action by the Authority.

**HAS ADOPTED THIS DECISION:**

The case initiated by the letter from the Icelandic Ministry of Finance of 3 November 1995 (Doc. No. 95-6344-A), concerning State aid for the conversion of the Icelandic trawler Snorri Sturluson RE-219 is closed without further action.

Done at Brussels, 10 February 1999

For the EFTA Surveillance Authority

Knut Almestad  
President

Bernd Hammermann  
College Member