



EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 19 JUNE 1996

ON PROLONGATION OF EXISTING STATE AID TO THE SHIPBUILDING INDUSTRY

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, 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)²,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice³, in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACIS

The notification

By telefax of 8 February 1996 (Doc. no. 96-731-A) from the Mission of Norway to the EU, the Norwegian authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and Article 11 of the

¹ Hereinafter referred to as the EEA Agreement.

² These Council Directives, as adapted for the purpose of the EEA Agreement by decisions of the EEA Joint Committee No 21/95 of 5 April 1995 and No 16/96 of 4 March 1996, will hereinafter be referred to as the Shipbuilding Directive, or for short as the Directive.

³ Hereinafter referred to as the Surveillance and Court Agreement.

Shipbuilding Directive, their proposal for prolongation of the existing aid schemes in support of the shipbuilding industry.

By letter of 29 March 1996 the EFTA Surveillance Authority requested additional information concerning the notification, to which the Norwegian authorities responded by telefax from the Mission of Norway to the EU of 30 April 1996 (Doc. no. 96-2308-A).

The notification covers the prolongation of the three aid schemes applicable to the shipbuilding sector, which were notified in 1995 and authorised by the EFTA Surveillance Authority Decision No. 94/95/COL of 27 September 1995, i.e. Grants for shipbuilding, newbuildings and conversions; Export credit guarantee for ships and the Guarantee scheme for ship construction. The schemes are proposed to be prolonged so that they will apply to new binding contracts entered into as from 1 January 1996 until the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry enters into force, and until 30 September 1996 at the latest, on the condition that delivery takes place not later than 31 December 1998.

The notification states that the aid schemes to be applied by the Norwegian authorities in 1996 will be the same as those in force in 1995, including the aid levels of 9% and 4.5%, the only significant change being that the ships have to be delivered before the end of 1998, instead of 3 years after the contract date.

Grants for shipbuilding, newbuildings and conversions

Aid under this scheme will be based on directions by the Royal Ministry of Industry and Energy of 6 February 1996 ("Føresegner for statleg støtte ved kontrahering av skip"), which replace the Ministry's earlier directions dated 28 December 1994.

A comparison of the new directions with the previous ones reveals mostly only minor refinements of the text which do not involve changes of a substantive nature, which might have implications for the assessment of the scheme under the State aid rules of the EEA Agreement.

However, attention should be paid to two alterations. Firstly, the formula used for calculating the amount of the grant under the scheme has been changed. Secondly, changes have been made of the provisions in section 3.3 of the directions on aid for export deliveries of fishing vessels to other EEA countries.

In the scheme, which applied in 1995, the formula for calculating the grant was as follows:

$$\text{Grant} = \frac{\text{contract value (100 + aid level)}}{100} \times \frac{\text{aid level}}{100}$$

The formula which, as a main rule, is to be applied in 1996 is as follows:

$$\text{Grant} = \frac{\text{contract value} \times \text{aid level}}{100 - \text{aid level}}$$

For building costs billed directly to the buyer ("owner supply"), the grant is to be calculated as follows:

$$\text{Grant} = \frac{\text{contract price ("owner supply")} \times \text{aid level}}{100}$$

In both cases 'contract value' means the price (after aid) to be paid by the buyer, according to the contract. The term 'aid level' means the aid expressed as a percentage of the contract value before aid.

As concerns export deliveries of fishing vessels within the EEA, the relevant provisions in section 3.3 of the Ministry's directions of 6 February 1996 deviate from the corresponding provisions in 1995. Whereas the rules in force in 1995 provided that export deliveries of fishing vessels to other EEA countries could normally not benefit from aid, but that the responsible ministry could make an exception, provided that the aid did not infringe the EEA Agreement, the proposed new rules only draw attention to that there are special rules for fishing vessels within the EEA, which can have consequences for Norwegian aid for the construction and conversion of fishing vessels.

Following request from the Authority, the Norwegian authorities have explained the above change of the provisions in section 3.3 of the Ministry's directions by referring to that the earlier directions were prepared at the end of 1994, when the Shipbuilding Directive was expected to become a part of the EEA Agreement as from 1 January 1995 and at a time when it was rather unclear what would become the applicable rules on subsidies for fishing vessels exported from Norway to other countries within the EEA. The Ministry had therefore formulated the directions cautiously and decided that subsidies for this purpose would be granted only as an exception, provided that the aid did not infringe the EEA Agreement. This would allow the Ministry to handle most of the potential outcomes of the ongoing discussions concerning aid to fishing vessels.

The Norwegian authorities also inform that during 1995 the Ministry of Industry and Energy had received a number of applications concerning export deliveries of fishing vessels to other EEA countries, and that the Ministry had had no objections to any of these applications and subsidies had subsequently been granted. It is also stated that these contracts have been reported to the EFTA Surveillance Authority, in accordance with Article 12 of the Shipbuilding Directive, and that the Authority has not indicated any objections to export

contracts from Norway to other EEA countries since 1 May 1995. Based on the experience that no objections have been made and that the Ministry has accepted all applications, the Norwegian authorities see no reason to retain the earlier arrangement, according to which the granting of aid for export deliveries of fishing vessels within the EEA required a specific application to and the granting of an exception by the Ministry of Industry and Energy. Finally, the Norwegian authorities refer to a provision in the directions to the effect that should the EFTA Surveillance Authority or the Ministry of Industry and Energy have any objections to aid awards to contracts for the building of fishing vessels, or any other vessels for that matter, the grant may be withdrawn if it infringes the EEA Agreement.

Export credit guarantees for ships and the Guarantee scheme for ship construction

The export credit guarantees to shipbuilding offered by the Guarantee Institute for Export Credits (GIEK) and the guarantees for ship construction loans administered by the Ministry of Foreign Affairs are to remain unchanged.

II. APPRECIATION

By the EEA Joint Committee Decision No 16/96 of 4 March 1996 it was decided that the provisions of the Shipbuilding Directive (90/684/EEC), as adapted for the purpose of the EEA Agreement by the EEA Joint Committee Decision No 21/95, shall continue to apply until Articles 1 to 9 of Council Regulation 3094/95⁴ became applicable in the European Community, but no longer than until 1 October 1996. This decision entered into force on 1 April 1996 and applies retroactively from 1 January 1996.

Pursuant to Article 4(2) and 4(3) of the Shipbuilding Directive the EFTA Surveillance Authority decided by Decision No. 26/96/COL of 27 March 1996, which entered into force on 1 April 1996, to set the common maximum ceiling for operating aid to shipbuilding at 9% as from 1 January 1996. The maximum level of aid permissible for the construction of small ships of a contract value of less than ECU 10 million as well as for all ship conversions covered by the Directive was at the same time fixed at 4.5% for the same period.

⁴Within the European Community, Council Directive 90/684/EEC on aid to shipbuilding was due to expire on 31 December 1995. By Council Regulation (EC) No 3094/95 of 22.12.95, the aid discipline which follows from the *OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry* has been implemented in Community legislation. Article 10 of this regulation provides that should the OECD Agreement not enter into force on 1 January 1996, the relevant provisions of the Directive 90/684/EEC shall apply until the OECD Agreement enters into force and until 1 October 1996 at the latest. As the OECD Agreement has not yet entered into force, the implication is that the Council Directive 90/684/EEC has been prolonged.

It follows from the two preceding paragraphs that the aid discipline applicable to the shipbuilding sector under the EEA Agreement as from 1 January 1996 until Articles 1 to 9 of Council Regulation 3094/95 become applicable in the European Community, but no longer than until 1 October 1996, is the same as the rules which applied from 1 May to 31 December 1995.

As explained above the directions by the Ministry of Industry and Energy to be applied to shipbuilding aid in 1996 contain a certain change of the formula for calculating the grant under the scheme, as compared to the corresponding directions applicable in 1995. However, an examination of the two formulas reveals only a minor difference. Whereas the formula used in 1995 results in an aid level marginally below the admissible ceiling, as fixed by the EFTA Surveillance Authority, the formula to be applied in 1996 results in an aid level which coincide with the maximum ceiling fixed by the Authority. The new formula is therefore also compatible with the Shipbuilding Directive.

Otherwise - with the exception of aid for export deliveries of fishing vessels within the EEA, which will be considered below - the aid schemes have not been subject to any substantive changes. The aid level under the grant scheme will be 9% of the contract value before aid for ships whose contract value is at least ECU 10 million and 4,5% for smaller ships with a contract value below ECU 10 million as well as for all conversions. It therefore suffices to refer to the assessment contained in the Authority's decision No. 94/95/COL of 27 September 1995. It is also noted that according to the notification the Norwegian authorities have undertaken to respect the requirement imposed by the OECD Agreement, referred to in a footnote no. 4 above, that no aid may be given for deliveries after 31 December 1998.

As concerns aid for fishing vessels the Shipbuilding Directive applies i.a. to fishing vessels of not less than 100 GRT. However, within the European Community, while aid for the construction of fishing vessels for third countries is ruled in full by the Shipbuilding Directive, aid for the construction of fishing vessels for the Community fleet also comes under the relevant Community legislation on the structural policy in the fisheries sector (i.a. Council Regulation (EC) No. 3699/93). According to the Commission's interpretation concerning the coexistence of these different structural policies, "the availability of aid at all and the intensity of such aid is ruled by the Fisheries Regulation, while all other competition provisions of the Shipbuilding Directive apply for such vessels beyond 100 GT"⁵. Furthermore, the responsible Commission services apparently consider that the relevant acts should be interpreted to mean that no aid at all can be given to shipyards for building fishing vessels destined for the Community fleet.

⁵Commission's letter to the EC Member States of 19.3.1992.

Insofar as the EEA Agreement contains State aid rules, other than those based on Articles 61 to 63 of the Agreement, which may be relevant for the assessment of aid for construction of fishing vessels, these would be derived from Protocol 9 of the EEA Agreement, in particular Article 4(1) of that Protocol and the Joint Declaration on the agreed interpretation of Article 4(1) and (2) of Protocol 9. However, according to the wording of the above Joint Declaration, the legal context in which the State aid provisions of Protocol 9 are set, and since no provision of the EEA Agreement nor of the Surveillance and Court Agreement provide otherwise, aid which falls to be considered under the provisions of Protocol 9 of the EEA Agreement is to be assessed by the Contracting Parties in the context of Articles 92 and 93 of the EEC Treaty and in relation to the relevant provisions of the 'acquis communautaire' concerning the fishery policy. It is therefore for Norway and other Contracting Parties to the EEA Agreement to consider whether the rules of the relevant aid schemes relating to deliveries of fishing vessels to the fleets of States parties to the EEA Agreement are compatible with the State aid provisions derived from Protocol 9 of the Agreement.

For the above reasons the EFTA Surveillance Authority has no reason to raise objections to the notified aid schemes.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to:
 - the prolongation of the aid scheme on grants for shipbuilding, newbuildings and conversions, as notified by the Norwegian authorities' telefaxes of 8 February 1996 (Doc. no. 96-731-A) and 30 April 1996 (Doc. no. 96-2308-A);
 - the continued application to the shipbuilding industry of the existing guarantee scheme by the Guarantee Institute for Export Credits (GIEK), as notified by the telefaxes referred to above;
 - the prolongation of the guarantee scheme for ship construction, as notified by the telefaxes referred to above.

Done at Brussels, 19 June 1996.

For the EFTA Surveillance Authority

Knut Almestad
President

Björn Friðfinnsson
College Member