


EFTA SURVEILLANCE AUTHORITY

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Dec. No. 216/97/COL
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EFTA SURVEILLANCE AUTHORITY DECISION

OF 15 OCTOBER 1997

ON PROLONGATION AND AMENDMENT 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. FACTS

The notification

By telefax from the Mission of Norway to the European Union of 31 December 1996, registered by the Authority on 2 January 1997 (Doc. No. 97-14-A), the Norwegian authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and Article 11 of the Shipbuilding Directive, their proposal for

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, 16/96 of 4 March 1996 and 58/96 of 28 October 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.

prolongation and amendment of the existing aid schemes in support of the shipbuilding industry.

By letter of 17 February 1997 (Doc. No. 97-1017-D), the EFTA Surveillance Authority requested additional information concerning the notification, to which the Norwegian authorities responded by letter from the Royal Ministry of Trade and Industry dated 10 July 1997 (Doc. No. 97-4884-A). Matters related to the notification were discussed in a meeting on 10 July 1997 with officials of the Royal Ministry of Trade and Industry.

By letter of 14 August 1997 (Doc. No. 97-5452-D), the Authority requested certain additional information. A response to that request was received by telefax from the Mission of Norway to the European Union on 5 September 1997 (Doc. No. 97-5784-A). The notification was again discussed in a meeting in Brussels on 11 September 1997 with the Norwegian Secretary of State for Trade and Industry, and officials of the Royal Ministry of Trade and Industry.

By telefax of 1 October 1997 (Doc. No. 97-6230-A) from the Royal Ministry of Trade and Industry, further information was received on the prolongation in 1997 of the Grant scheme for shipbuilding, newbuildings and conversions.

Substance

The notification covers the prolongation of the three aid schemes applicable to the shipbuilding sector, i.e. Grants for shipbuilding, newbuildings and conversions, Export credit guarantee for ships and the Guarantee scheme for ship construction. The schemes were initially notified in 1995 and authorised by the EFTA Surveillance Authority Decision No. 94/95/COL of 27 September 1995. Their prolongation for the period 1 January to 30 September 1996 was approved by the Authority's Decision No. 67/96/COL of 19 June 1996. The proposal currently to be assessed is for the schemes to be prolonged so that they will apply to new binding contracts entered into as from 1 October 1996 until 31 December 1997⁴, on the condition that delivery takes place not later than three years after the date of signature of the contract.

The main aid scheme, "Grants for shipbuilding, newbuildings and conversions", is currently based on a regulation by the Royal Ministry of Trade and Industry of 6 February 1996 ("Føresegner for statleg støtte ved kontrahering av skip"). Aid levels remain unchanged, i.e. at 9% of contract value before aid for shipbuilding in general and at 4,5% for conversion and for the construction of vessels whose contract value is less than ECU 10 million. The budget allocation for the scheme is the same in 1997 as it was in 1996, NOK 800 million for each year.

The aid scheme will also otherwise remain unchanged during the above period, apart from the following two amendments:

⁴ In the light of uncertainties concerning entry into force of the *OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry*, the Norwegian Parliament initially decided to extend the Grant scheme for shipbuilding until 1 July 1997 and later decided that the scheme should apply until 31 December 1997.

1. The deadline for deliveries of ships supported under the scheme was 31 December 1998, but is to be changed to three years from the date when the contract has been entered into.
2. The building of ferries receiving government grants to operate ferry connections was previously excluded from state support, but according to the notification the building of such ferries is to be eligible for government grants as from 1 April 1996.

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 58/96 of 28 October 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 Decisions No 21/95 and 16/96, should continue to apply until Articles 1 to 9 of Council Regulation 3094/95⁵ became applicable in the European Community, but no longer than until 31 December 1997. This decision entered into force on 1 November 1996 and applies retroactively from 1 October 1996.

Pursuant to Article 4(2) and 4(3) of the Shipbuilding Directive the EFTA Surveillance Authority decided by Decision No. 199/96/COL of 6 November 1996, which applied from 1 October 1996, to set the common maximum ceiling for operating aid to shipbuilding at 9% for the period 1 October to 31 December 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. By Decision No. 5/97/COL of 29 January 1997, the EFTA Surveillance Authority again decided that the ceiling on operating aid to shipbuilding should remain at the same levels for the period 1 January to 31 December 1997.

It follows from the two preceding paragraphs that during the period 1 October 1996 to 31 December 1997 the aid discipline under the act in point 1b of Annex XV to the EEA Agreement remains the same as the rules which applied from 1 May 1995 to 30 September 1996.

⁵Within 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 currently provides that pending the entry into force of the OECD Agreement, the relevant provisions of Directive 90/684/EEC shall apply until the OECD Agreement enters into force and until 31 December 1997 at the latest. As the OECD Agreement has not yet entered into force, the implication is that Council Directive 90/684/EEC continues to apply.

As mentioned above, the Norwegian authorities have adopted the rule that in order to benefit from the aid ceiling currently applicable, vessels must be delivered within three years from the date of contract. The previous deadline for deliveries was end of 1998. The change in delivery deadlines is related to the OECD "Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry", and is in conformity with what was decided on this matter by the signatories of that agreement in their meeting on 17-18 October 1996. The new rule is also compatible with the relevant provisions in Article 4(3) of the Shipbuilding Directive.

The Norwegian Government has decided that the building of ferries receiving government grants to operate ferry connections will be eligible for grants under the Grant scheme for shipbuilding as from 1 April 1996. Such ferries were previously excluded from the scheme. It is firstly noted that by implementing this change as from 1 April 1996 and notifying it only on 31 December 1996, the Norwegian authorities have failed to respect the procedural requirement which follows from Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and Article 11 of the Shipbuilding Directive, that any amendment of existing State aid schemes is to be notified in advance to the EFTA Surveillance Authority before being put into effect.

According to the general rules of the aid scheme the ferries which now have been included in the scheme are metal-hulled and not less than 100 GT. Such vessels fall within the scope of the Shipbuilding Directive as defined in its Article 1 and can benefit from contract related production aid within the limits defined in Article 4. Public support for operating ferry connections is not aid covered by Article 3 of the Shipbuilding Directive (aid to shipowners for the building of ships), and is therefore not to be counted under the ceiling on operating aid.

The Authority notes the information given by the Norwegian authorities that the operating contracts for the ferry routes concerned are awarded after a tendering procedure. The Authority intends to review separately whether public support in Norway for the operation of ferry connections meets the requirements set out in section 24A.9. of the Authority's State Aid Guidelines⁶ (rules on aid to maritime transport).

Apart from the amendments considered above, the aid schemes have not been subject to any substantive changes. The aid level under the grant scheme remains at 9% of the contract value before aid for ships whose contract value is at least ECU 10 million, and 4,5% for ships of a lower contract value as well as for all conversions. It therefore suffices to refer to the assessment contained in the Authority's Decisions No. 94/95/COL of 27 September 1995 and 67/96/COL of 19 June 1996. With reference to the above considerations, it is concluded that the notified schemes on aid to the Norwegian shipbuilding industry continue to be compatible with the act referred to in point 1b of Annex XV to the EEA Agreement.

⁶ The term 'State Aid Guidelines' refers to the Procedural and Substantive Rules in the Field of State Aid, initially adopted by the EFTA Surveillance Authority on 19 January 1994 (OJ 1994, L31, EEA Supplement No 32, 3.9.1994), last amended on 16 July 1997 (not yet published).

The Shipbuilding Directive applies *inter alia* to metal-hulled fishing vessels of not less than 100 GT. The EEA Joint Committee decisions integrating the Directive in the EEA Agreement make no specific reference to fishing vessels. 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 and guidelines on aid to the fisheries sector.

The question of State aid for the construction of fishing vessels has long been the subject of exchange of views and information between the responsible services of the EC Commission, the EFTA States and the EFTA Surveillance Authority. In the opinion of the EFTA Surveillance Authority, it has until recently nevertheless not been sufficiently clear what the applicable rules precisely are in this area. However, as a result of recent decisions by the EC Commission, a clear rule has now been established to be followed within the European Community. Thus, according to a decision by the Commission in State aid case C 26/96 (EX N 948/95) (Spain), published in OJ No C 196, 26.6.97, the following principle shall apply: *"The Community principle as regards aid to fishing vessels belonging to the Community fleet is that the common fisheries policy rules apply and aid for fishing vessels cannot be authorized under the seventh Directive unless they are for export outside the Community. This rule is necessary to guarantee that shipowners, the recipients of aid under the fisheries policy, have the choice of shipyard within the territory of the Community and to ensure that there is no distortion of competition among the Community yards. There the principle exists that aid for fishing vessels can be granted only to the shipowner and not to the yard."* In the same decision the Commission concludes that this same principle shall apply in the context of the EEA Agreement.

The Norwegian Grant scheme for shipbuilding, newbuildings and conversions does not apply to deliveries of fishing vessels to the Norwegian fleet. On the other hand, the scheme applies in general to export deliveries of fishing vessels in accordance with the Shipbuilding Directive, as well as to other ships. The guidelines on the scheme state that there are special rules for fishing vessels within the EC, which may have consequences for Norwegian aid for the construction and conversion of fishing vessels, but the granting of aid for the construction of fishing vessels destined for the fleets of other EEA countries is not excluded. According to reports which the Authority has received under Article 12 of the Shipbuilding Directive, such aid has been granted.

In the EEA context, the legal situation concerning rules on State aid for construction of fishing vessels is more complicated and less clear-cut than is the case within the Community. This is due to the fact that the above specific rule in respect of fishing vessels is derived from Community legislation in the fisheries sector. That legislation is not an integral part of the EEA Agreement, but referred to in general terms in Protocol 9 of the Agreement and the Joint Declaration on the agreed interpretation of Article 4(1) and (2) of that Protocol. The surveillance powers of the EFTA Surveillance Authority in the field of State aid do not extend to Protocol 9 of the Agreement.

On the other hand the Shipbuilding Directive is fully integrated in the EEA Agreement and applies without reservation to metal-hulled fishing vessels of not less than 100 GT. The EEA Joint Committee Decision integrating the Shipbuilding Directive in the EEA

Agreement provides for no special rules in respect of fishing vessels. Nevertheless, as aid granted to shipyards for construction of fishing vessels falls within the scope of Article 61 of the EEA Agreement, and also taking account of Article 1 of the Agreement, it is the obligation of the Authority and it falls within its discretionary powers to take the necessary steps in respect of State aid in the EFTA States to achieve equal conditions of competition and homogeneous rules on State aid within the EEA. In the Authority's opinion this implies, in the present context, that the EFTA States must ultimately be required to respect the same principle as has now been established within the European Community, concerning aid to the shipbuilding industry for the construction of fishing vessels. Such a policy would represent a stricter interpretation of the aid discipline for the shipbuilding sector than the one applied so far and, accordingly, is not reflected in the Authority's State Aid Guidelines. In principle, compliance with the policy can be ensured either on the initiative of the EFTA Surveillance Authority, basing itself on Article 5 of the Surveillance and Court Agreement and applying the procedures laid down in Article 1 of Protocol 3 to that Agreement, or by the State concerned agreeing to amend the relevant national rules.

In view of the above circumstances, an exchange of views has taken place with the Norwegian authorities on the question of aid for construction of fishing vessels. The Authority notes that the Norwegian Government has undertaken to propose to Parliament to adjust the Grant scheme for shipbuilding, newbuildings and conversions, so as to ensure that it will as from 1 January 1998 also be compatible with the above rule concerning fishing vessels, i.e. that no aid can be granted to shipyards for the construction or conversion of fishing vessels, except in respect of vessels for delivery outside the EEA. In the meantime, the Authority will, should the need arise and when appropriate in individual cases, apply the procedure provided for in the second subparagraph of Article 4(5) of the Shipbuilding Directive, in order to prevent distortions of competition. In the Authority's opinion it would not be possible to impose the new policy on Norway more expediently through the formal procedures referred to above.

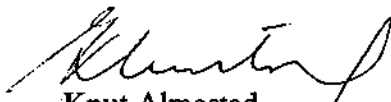
For the above reasons the EFTA Surveillance Authority has no reason to raise objections to the notified aid schemes.

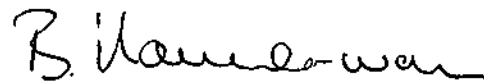
HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to:
 - the prolongation and amendment of the aid scheme on grants for shipbuilding, newbuildings and conversions, as notified by the Norwegian authorities' telefax of 31 December 1996 (Doc. No. 97-14-A), letter of 10 July 1997 (Doc. No. 97-4884-A), telefax of 5 September 1997 (Doc. No. 97-5784-A) and telefax of 1 October 1997 (Doc. No. 97-6230-A);
 - the continued application to the shipbuilding industry of the existing guarantee scheme by the Guarantee Institute for Export Credits (GIEK), as notified in the correspondence referred to above;
 - the prolongation of the guarantee scheme for ship construction, as notified in the correspondence referred to above.

Done at Brussels, 15 October 1997.

For the EFTA Surveillance Authority


Knut Almestad
President


Bernd Hammermann
College Member