

Case No: 64967
Event No: 483412
Dec. No: 455/08/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 9 July 2008

on the alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) consisting of introducing a ceiling for maximum refund per seafarer per year

(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹

Having regard to the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement⁴,

Having regard to the Authority's Guidelines⁵ on the application and interpretation of Articles 61 and 62 EEA, and in particular the Chapter on aid to maritime transport,

Having regard to Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 to the Surveillance and Court Agreement⁶,

Having regard to Decisions No 280/06/COL⁷, No 412/06/COL⁸ and No 356/08/COL⁹,

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter referred to as Protocol 3.

⁵ Guidelines on the application and interpretation of Articles 61 and 62 EEA and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 03.09.1994, p.1 and EEA Supplement No 32, p.1. The Guidelines were last amended on 19 December 2007. Hereinafter referred to as the State Aid Guidelines.

⁶ OJ L 139, 25.05.2006, p. 37.

⁷ Decision No 280/06/COL of 4 October 2006 on the alterations to the tax refund schemes to ship-owners for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS). Published in OJ C 143, 28.06.2007, p. 5. The full text of the decision can be found on the Authority's webpage: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

⁸ Decision No 412/06/COL of 19 December 2006 on the alterations to the tax refund schemes for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR). Published in OJ C 111, 17.05.2007,

Whereas:

I. FACTS

1 Procedure

By letter of 25 June 2008, the Norwegian authorities notified, pursuant to Article 1(3) of Part I of Protocol 3, an alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) (Event No 483344).

2 Description of the proposed measures

2.1 Title of the aid scheme

The current notification amends the scope of application of the scheme entitled “*Tax refund scheme for seafarers employed aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS)*”¹⁰ as originally authorised by the Authority in Decision No 280/06/COL and amended by Decisions No 412/06/COL and No 356/08/COL.

2.2 Notified alteration to the aid scheme

The Norwegian authorities have notified an amendment to the tax refund scheme for seafarers which consists in introducing a ceiling for maximum refund per seafarer per year. For 2008, this ceiling has been set at NOK 198 000 (EUR 24 884). The Norwegian authorities have indicated that the ceiling for 2009 and subsequent years will be subject to a decision by the Parliament.

This amendment will result in a reduction in aid intensity and in the overall budget of the scheme. The proposed amendment will represent a reduction of that budget by approximately NOK 43 million (EUR 5.4 million). Following implementation of the proposed amendment, the budget of the tax refund scheme for 2008 will be NOK 1 777 million (EUR 223.3 million).

The Norwegian authorities have indicated that this alteration will enter into force on 1 July 2008 and will cover all seafarers aboard all vessels covered by the tax refund scheme. Nevertheless, the Norwegian authorities have explicitly committed not to put the proposed amendment into effect until the Authority has approved it.

The Norwegian authorities have confirmed that earlier commitments provided for the purposes of the approved tax refund scheme will still be valid in their entirety.

2.3 National legal basis for the aid measure

The legal basis for the amended scheme is the fiscal budget *Budsjett-innst.S.nr. 8 (2006-2007)* and budgetary Decision No 197 taken by the Norwegian Parliament on 12 December 2006, *Budsjett-innst. S. nr. 13 (2006-2007)*, *jf St.prp.nr. 1 (2006-2007) Bevilgninger på statsbudsjettet 2007*.

p. 20. The full text of the decision can be found on the Authority’s webpage: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

⁹ Decision No 356/08/COL of 11 June 2008 on the tax refund scheme for seafarers aboard passenger vessels in the Norwegian Ordinary Shipping Register (NOR). Not yet published. The full text of the decision can be found on the Authority’s webpage: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>

¹⁰ Hereinafter referred to as the tax refund scheme for seafarers.

The notified amendment to the scheme has been proposed on the basis of Budgetary Decision No 616, taken by the Norwegian Parliament on 20 June 2008, *Innst. S. nr. 270 (2007-2008)*, *jf. St.prp.nr. 59 (2007-2008)*, *Tilleggsbevilgninger og omprioriteringer i statsbudsjettet 2008, Vedtaksnr. 616*.

II. ASSESSMENT

1 The presence of state aid within the meaning of Article 61(1) EEA

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.”

In Decision No 280/06/COL, the Authority assessed the tax refund scheme for seafarers as notified at the time. In that Decision, the Authority considered that the scheme constituted state aid which was compatible with the functioning of the EEA Agreement on the basis of the provisions of the State Aid Guidelines on Aid to Maritime Transport.¹¹ The Authority assessed subsequent amendments to the scheme in Decisions No 412/06/COL and 356/08/COL and concluded that the scheme as amended constituted compatible state aid, again on the basis of the Maritime Guidelines.

The current notification simply introduces a limit in the amount of aid which can be granted per seafarer. It does not contain any other amendments to the scheme. Therefore, the Authority considers that this amendment does not alter the assessment made in its previous decisions as regards the classification of the scheme as state aid.

2 Procedural requirements

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”*.

By submitting the present notification on the alteration to the tax refund scheme for seafarers by letter dated 25 June 2008 (Event No 483344), the Norwegian authorities have complied with the notification requirement. The Norwegian authorities have explicitly committed not to put the proposed amendment into effect until the Authority has approved it.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility assessment

Section 3.2 of the Maritime Guidelines foresees the possibility of implementing support measures aimed primarily at reducing fiscal and other costs and burdens borne by EEA shipowners in relation to labour costs. According to the Guidelines, these measures should stimulate the development of the sector and employment rather than providing general

¹¹ Hereinafter referred to as the Maritime Guidelines.

financial assistance. In keeping with these objectives, the following action on employment costs should be allowed for EEA shipping:

- reduced rates of contributions for the social protection of EEA seafarers employed on board ships registered in an EEA State,
- reduced rates of income tax for seafarers on board ships registered in an EEA State.

The Maritime Guidelines acknowledge that an EEA State may prefer for internal fiscal reasons not to apply reduced rates but instead to reimburse shipowners – partially or wholly – for the costs arising from these levies. Such an approach is generally considered equivalent to the reduced-rate system provided that there is a clear link to the levies, there is no element of overcompensation, and the system is transparent and not open to abuse.

According to section 11 of the Maritime Guidelines, a reduction might be granted up to a ceiling of 100%, *i.e.* a reduction to zero of taxation and social charges. According to the original notification of the scheme, refund payments could never exceed the amount of income tax and social security contributions actually paid.

In Decision No 280/06/COL, originally approving the tax refund scheme for seafarers, the Authority considered that the proposed refund system was in line with the Maritime Guidelines, and in particular sections 3.2 and 11 thereof.

The current notification proposes to limit the amount of aid that can be granted per seafarer by imposing a maximum ceiling of refund. The ceiling for 2008 has been set at NOK 198 000. Each year, the Parliament will determine in a decision the level of the ceiling for that year.

The notified amendment thus constitutes a tightening of the criteria for granting aid. The refund can not only not go beyond a reduction to zero of taxation and social charges but additionally there will be a maximum limit per seafarer per year.

The Authority considers that this amendment is in line with the provisions of the Maritime Guidelines mentioned above.

4 Conclusion

On the basis of the foregoing assessment, the Authority considers that the notified alteration to the tax refund scheme for seafarers, introducing a ceiling for maximum refund per seafarer per year, is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) EEA read together with the Maritime Guidelines. Accordingly, the Authority does not raise any objections to the notified amendment.

The Norwegian authorities are reminded of the obligation resulting from Article 21 of Part II of Protocol 3 read in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme. The Norwegian authorities are required to present to the Authority as soon as possible all legislative and administrative texts implementing the above alterations to the aid schemes, where this has not already been done.

In line with Section 12 of the Maritime Guidelines, the Norwegian authorities are reminded that, for all aid schemes falling within the scope of the Maritime Guidelines,

EFTA States are to communicate to the Authority an assessment of their effects during their sixth year of implementation.

The Norwegian authorities are also reminded that any plans to modify this scheme must be notified to the Authority.

The tax refund scheme for seafarers as approved by Decisions No 280/06/COL and No 412/06/COL was notified until 1 January 2016. The current notification indicates that the tax refund scheme is in principle not fixed for a specific time period but if still in operation it will be re-notified in ten years. The Norwegian authorities have not justified why the notified amendment should outlive the scheme as originally notified and therefore the Authority concludes that it is appropriate that the latest alteration to the scheme expire on that same date.¹²

The Authority draws the Norwegian authorities attention to the fact that the Maritime Guidelines, under which the tax refund scheme has been approved, will be reviewed in 2011. In case the rules of the Maritime Guidelines change, this may have an effect on all existing aid schemes falling under the Guidelines, including the alteration to the scheme authorised by this decision.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) consisting of introducing a ceiling for maximum refund per seafarer per year.

Article 2

The implementation of the measure is accordingly authorised.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 9 July 2008
For the EFTA Surveillance Authority,

Per Sanderud
President

Kristján Andri Stefánsson
College Member

¹² The Authority came to the same conclusion in Decision No 356/08/COL approving an earlier amendment to the scheme.