

Case No: 78783
Document No: 795224
Decision No: 085/16/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 27 April 2016
raising no objections to the tax refund scheme for employing seafarers 2016-2026
(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

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) The Norwegian authorities notified the tax refund for employing seafarers 2016-2026, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 26 February 2016.¹

2 The aid measure

- (2) The notified aid measure is a system of refunds of taxes and social security contributions paid for seafarers on ships registered in Norway (“tax refund scheme”).

¹ Documents No 795029-795033.

3 Background

3.1 Objective of the notified measure

- (3) The maritime transport sector is subject to fierce international competition. Several non-EEA States have developed open shipping registers often supported by efficient services attracting ship owners with an attractive fiscal climate. This has resulted in a number of ship owners flagging out their vessels to ship registers outside the EEA. This in turn has caused many ship owners to use crews of non-EEA state nationals. Seafarers from Norway and other EEA States generally require higher wages than seafarers from third countries. The low cost commercial alternative is therefore to employ seafarers from third countries, in particular from the Far East. There are few technical or legal barriers to flagging out vessels from EEA ship registers to third countries. Several European states have therefore introduced aid schemes for ship owners and vessels registered in their national registers.
- (4) In Norway, the maritime industry employs 110 000 people and generates NOK 175 billion annually.² This represents 10% of the value creation in the Norwegian business sector. There are more than 200 Norwegian shipping companies, with 1 800 ships in foreign trade. The Norwegian shipping companies employ close to 50 000 people and provide almost 60% of the value creation in the maritime industry. The Norwegian maritime cluster ranges from ocean transport to ship equipment, shipbuilding, shipbroking, financing, insurance, R&D, classification and maritime offshore oil-related services.
- (5) The objective of the tax refund scheme is to safeguard and promote the employment of Norwegian and EEA seafarers on Norwegian vessels, to secure recruitment and qualified training of seafarers and to improve the competitive position of companies employing such seafarers. The scheme seeks to preserve and develop know-how in the maritime industries in general and in particular to promote safe, efficient, secure and environmentally friendly maritime transport.

3.2 Former schemes

- (6) The Norwegian authorities introduced, as a temporary measure, an initial tax refund scheme for seafarers in 1993. It was made permanent in 1994. The Authority has taken a number of decisions concerning earlier incarnations of the notified scheme.³ The Authority last conducted a full review in 2006.⁴ The Authority's approval of the existing aid scheme expires on 30 June 2016.⁵

3.3 The notified scheme

- (7) On 29 May 2015, the Norwegian Government presented its Maritime Strategy,⁶ within which it proposed to strengthen and simplify the tax refund measures for seafarers. On 17 September 2015, the Government initiated a public consultation for a new proposal on tax refunds for seafarers. This process resulted in the adoption of the Regulation on subsidies for the employment of workers at sea (the "Employment Regulation").⁷

² Figures from 2013.

³ See the Authority's Decision No 164/98/COL as amended by Decisions No 117/02/COL and 187/03/COL.

⁴ See the Authority's Decision No 280/06/COL (OJ C 143 28.6.2007 p. 5) as amended by Decisions No 412/06/COL (OJ C 111 17.5.2007 p. 20), 356/08/COL (OJ L 295 12.11.2009 p. 14) and 455/08/COL (OJ C 263 16.10.2008 p. 2).

⁵ See the Authority's Decision No 444/15/COL (OJ C 52.11.02.2016 p. 17).

⁶ *Maritime Opportunities – Blue Growth for a Green Future*. Available at: https://www.regjeringen.no/contentassets/05c0e04689cf4fc895398bf8814ab04c/summary_maritime-opportunities_the-governments-maritime-strategy.pdf.

⁷ FOR-2016-02-26-204 Forskrift om tilskudd til sysselsetting av arbeidstakere til sjøs.

4 The NOR and NIS registers

- (8) Norway has since 1987 maintained two ship registers, the Norwegian Ordinary Ship Register (“NOR”) and the Norwegian International Ship Register (“NIS”). The main difference between the two registers is the possibility for ships in NIS to employ non-EEA nationals on their domestic wage conditions. This entails that NIS registered ships generally have lower operational costs. On the other hand, the vessels in NIS have limited access to perform trade in Norway. This is referred to as “trade area limitations”.
- (9) Norwegian and EEA ship owners are granted the same rights of registration.
- (10) International transport between Norwegian and foreign ports as well as transport between Norwegian ports is open for competition from foreign flagged vessels. In each category of the tax refund scheme, the ship owners will have the possibility of flagging out their vessels. Indeed, a large part of the vessels controlled by Norwegian companies is currently not flagged in NOR or NIS. The Norwegian authorities have not laid down any limitations on operations in Norway of vessels registered in foreign registers.

5 Trade area limitations for ships registered in NIS

- (11) The NIS trade area limitations were put in place to prevent the registration in NIS by ships registered in NOR. The trade area limitations essentially represent a political compromise between the Norwegian authorities and the trade organisations representing the interests of ship owners and seafarers respectively.
- (12) The trade area limitations entail that certain ships registered in NIS are not permitted to carry cargo or passengers between Norwegian ports or to engage in regular scheduled passenger transport between Norwegian and foreign ports.⁸ By Decision No 33/16/COL, the Authority came to the preliminary conclusion that trade area limitations applicable to passenger ships are contrary to Article 36 of the EEA Agreement and Regulation No 4055/86.⁹ The Authority notes that the Norwegian authorities have not notified any aid to passenger ships registered in NIS.

6 Criteria for eligibility

6.1 Introduction

- (13) The Norwegian authorities have notified a scheme under which different categories of maritime transport activities are eligible for grants. The scheme sets out a number of general eligibility conditions. These are explained in section I.6.2 below.
- (14) Additionally, the scheme is organised in a total of seven categories that differ according to activity and ship category. In order to receive aid under the scheme, the relevant ship has to belong to one of the seven categories. There are five categories of ships registered in NOR: (i) a general category, (ii) offshore shipping, (iii) ferries in foreign trade, (iv) ferries operating the coastal route Bergen-Kirkenes, and (v) sailing vessels. For ships registered in NIS, there are two categories of ships: (i) a general category, and (ii) offshore construction vessels. The categories are explained below.

⁸ Oil and gas installations on the Norwegian continental shelf are considered as Norwegian ports.

⁹ Council Regulation (EEC) No 4055/86 of 22.12.1986 *applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries*. Incorporated into point 53 of Annex XIII to the EEA Agreement.

6.2 General conditions

- (15) Under the scheme grants can be awarded to shipping companies with ships registered in the NOR or NIS register. The undertaking must have a shipping company number in the pension insurance scheme for seamen in order to receive grants.
- (16) Only ships weighing more than 100 gross tonnes (gt) are eligible.
- (17) The undertaking must make regular salary payments to the complete “safe manning” of operating ships. The “safe manning” refers to the crew needed to ensure the safety of the ship and those on board as well as to prevent pollution of the maritime environment. The Norwegian Maritime Authority (“NMA”)¹⁰ determines what constitutes a “safe manning” for each individual ship.
- (18) Only ships with a crew of seafarers entitled to a refund is eligible for refunds. All EEA seafarers working aboard the registered ships qualify for refunds.¹¹ They must be employed a minimum of 130 working days per year. In addition, the relevant NOR registered ships of any ship owner must on average have a minimum of two training positions per ship for which reimbursements are applied for. A similar rule applies to NIS registered ships.¹²
- (19) The following vessels are not covered by the scheme: fishing vessels, ships exclusively performing public functions,¹³ ships that are government owned or leased, ships receiving government subsidies,¹⁴ ships performing drilling or exploitation activities.

6.3 The five NOR categories

6.3.1 General category

- (20) The general category for ships registered in NOR covers all vessels engaged in transport of goods and passengers (meeting the general conditions listed above) that are not covered by other NOR categories of ships.
- (21) The category covers the following types of cargo ships: bulk, general cargo, container, and tankers. Well boats are also covered. Well boats are cargo vessels that transport live fish in tanks. They typically transport fish from offshore fish farms to onshore processing facilities. Well boats are not equipped to catch fish.
- (22) Tugboats and dredgers are covered, as long as more than 50% of their activity constitute “maritime transport” in accordance with section 3.2(4)¹⁵ of the Authority’s guidelines on aid to maritime transport (the “AMT”).¹⁶ The shipping company must document the vessel’s transport operations. Reimbursements are only offered for the period within which the vessel has documented that it carried out maritime transport.

¹⁰ In Norwegian: *Sjøfartsdirektoratet*.

¹¹ See Article 6 of the Employment Regulation.

¹² See Article 5 of the Employment Regulation.

¹³ The Norwegian authorities explain that this exclusion has been included in order to avoid that the notified scheme becomes an instrument channeling money between different public entities. The public entity responsible for the relevant public function should carry its cost.

¹⁴ The Norwegian authorities explain that this exclusion has been included in order to avoid overcompensation. The exclusion does not apply for sailing vessels falling under the fifth NOR register category of ships. The Norwegian authorities have furthermore clarified that this exclusion does not mean that ships that receive public service compensation for operating the coastal route Bergen-Kirkenes are not eligible for reimbursements under the scheme.

¹⁵ In conjunction with section 3.1 paragraphs 12-16.

¹⁶ OJ C 103 28.4.2005 p. 24.

- (23) Under the general category a full refund of income taxes and social security contributions is offered.
- (24) The latest data submitted by the Norwegian authorities show that about 90 companies received grants for 180 vessels with a total of 2 339 seafarers under this category of the scheme in 2014. Total payments amounted to NOK 326 million.

6.3.2 Offshore shipping

- (25) The offshore shipping category applies to offshore petroleum vessels transporting goods or providing services in connection with petroleum activity.
- (26) This category covers: supply ships, anchor handling, seismic vessels, construction vessels and multipurpose vessels.
- (27) The category does not cover vessels used for drilling or exploitation of natural resources. It furthermore does not cover accommodation vessels or vessels permanently anchored at sea for storage purposes.
- (28) For the offshore shipping category, a refund of income taxes and social security contributions is offered up to a ceiling of NOK 208 000 per seafarer per year. The Norwegian authorities have explained that the ceiling exists for fiscal reasons and that it is strictly a result of budgetary priority setting.
- (29) In 2014, there were that were about 30 companies that received grants for 190 vessels with a total of 6 610 seafarers under this category of the scheme. Total payments amounted to NOK 987 million.

6.3.3 Ferries in foreign trade

- (30) This category applies to vessels carrying out scheduled passenger transport services between Norwegian and foreign ports.
- (31) Under this category a full refund of income taxes and social security contributions is offered.
- (32) In 2014, this category of the scheme applied only to one company, Color Line AS. It received grants for 6 vessels with a total of 1450 seafarers. Total payments amounted to NOK 234 million. According to the Norwegian authorities, four companies operate ferry services between Norwegian and foreign ports. Three of these companies operate under Danish and Swedish flags and benefit from Danish and Swedish net wage schemes.

6.3.4 Ferries operating the coastal route Bergen-Kirkenes

- (33) This category applies to vessels operating year round scheduled goods and passenger transport on the coastal route Bergen-Kirkenes.
- (34) At present, this category covers one undertaking, Hurtigruten ASA (“Hurtigruten”). Hurtigruten has concluded a public service contract with the Norwegian authorities to provide the maritime transport service from 1 January 2012 until 31 December 2019 (the “Hurtigruten Agreement”). In December 2015, the Authority opened a formal state aid

investigation to examine *i.a.* whether Hurtigruten is overcompensated for the provision of the service under that agreement.¹⁷

- (35) In 2014, Hurtigruten received a total of NOK 118 million under the then applicable scheme. At the time, the aid per seafarer was capped at a ceiling (the same cap as for the NOR and NIS offshore shipping categories). For the notified scheme, the Norwegian authorities have removed the ceiling. Thus, for the notified measure, a full refund is offered for the income taxes and social security contributions related to the seafarers that form part of the “safe manning”¹⁸ of the vessels. This change entails that Hurtigruten will be eligible for more aid under the notified scheme than under its predecessor scheme.
- (36) The increase of the aid flowing from the notified measure was foreseen by the parties in the public service contract. This is why the Hurtigruten Agreement includes a specific reference to a potential increase of the aid awarded under the specific scheme in section 7(2), second sentence.
- (37) Section 7 of the Hurtigruten Agreement reads in its entirety:

“§7 Renegotiations

1. *In the event of amendments to acts, regulations or statutory orders which the parties could not have reasonably foreseen on signing the contract and which entail material extra costs or savings for the contract for the public procurement of the service, each of the parties may demand negotiations concerning extraordinary adjustment of the remuneration from the contracting authority, a change to production or other measures. In such cases, the counterparty is entitled to all necessary documentation. Accounting separation shall form the basis of any renegotiation of the contract; see § 4-4. It is considered to be of material significance for the party when this constitutes more than 5% of the annual agreed remuneration for the year in question. When calculating significance in relation to the threshold, an aggregated calculation shall be performed of all above-mentioned factors.*
2. *If the applicable agreement with the state concerning the Business Sector’s NOx Fund, as applied on the tender date of 8 November 2010, is amended during the contract term, the remuneration to the supplier shall be corrected for the effect of this on the public procurement. The same applies to amendments implemented in relation to the net wage scheme as applicable on the tender date. Similarly the remuneration to the supplier shall be corrected for the effect of any introduction of CO₂ duties, whether on fuel or relating to emissions. Changes linked to the matters mentioned here and which entail a reduction in the supplier’s costs shall correspondingly entail a reduction in the state’s remuneration. Entitlement to necessary documentation and a requirement for accounting separation apply correspondingly; see item 1. Changes in the state’s remuneration in this paragraph apply when the effect for the individual party comprises more than 5% of the annually agreed remuneration for the year in question. When calculating significance in relation to the threshold, an aggregated calculation shall be performed for all above-mentioned factors. In the event of exceeding the threshold referred to, the entire effect is compensated for.”*

¹⁷ “The Hurtigruten Decision”. Decision No 490/15/COL of 9.12.2015 opening the formal investigation procedure on the Coastal Agreement for Hurtigruten Maritime Services 2012-2019 (not yet published in the OJ, available on the Authority’s website: <http://www.efasurv.int/media/esa-docs/physical/490-15-COL.pdf>).

¹⁸ See paragraph (17).

- (38) The Norwegian authorities have clarified that this specific wording of section 7 was not included in the tendered agreement. The two last sentences of the first paragraph and the entire second paragraph were added after negotiations with Hurtigruten. The purpose was to clarify the terms for addressing changes such as the one brought forward by the notified measure.
- (39) The Norwegian authorities do not consider the amendment to be of substantial significance, as, in their view, the second paragraph is a clarification of the wording “amendments to acts, regulations or statutory orders” in the first paragraph of section 7.
- (40) The Norwegian authorities have presented calculations showing that the proposed increase of the aid under the notified measure would at present lead to a 2.8% increase. The increase will therefore not trigger a renegotiation under section 7 of the Hurtigruten Agreement. The Norwegian authorities have confirmed that they will continue to take the increased aid into account in the following years for the duration of the contract period.

6.3.5 *Sailing vessels*

- (41) This category covers sailing vessels weighing more than 498 gt. engaged in education. The Norwegian authorities have set the limit at 498 gt. since their market investigations have shown that there is a greater risk that the vessels above this limit will flag out. This is a new category under the scheme.
- (42) In addition to the reimbursements under the notified scheme, the vessels will receive support from the Norwegian Ministry of Culture. The Norwegian authorities have explained that those funds are granted for cultural heritage preservation and that the funds cover the cost of preserving the ships. The Norwegian authorities therefore are of the view that the support from the Ministry of Culture does not cover the same eligible costs as the notified measure at hand.
- (43) Under this category a full refund is offered for the income taxes and social security contributions related to the seafarers that form part of the “safe manning”¹⁹ of the sailing vessel.

6.4 **The two NIS categories**

6.4.1 *General category*

- (44) The general category for ships registered in NIS covers all vessels engaged in transport of goods and passengers (meeting the general conditions listed in section I.6.2 of this decision), unless the vessels are covered by the NIS offshore shipping category described below, or the vessels engage in scheduled transport of passengers between Norwegian and foreign ports.²⁰
- (45) The trade area limitations as described in paragraphs (11) and (12) above apply for this category.

¹⁹ See paragraph (17).

²⁰ As set out above in paragraph (10), the Norwegian authorities have not notified aid to NIS-registered ferries in foreign trade. Nevertheless, the provision setting out the conditions under which these vessels are eligible for aid is included in the Employment Regulation. However, unlike the rest of the regulation, it has not entered into force. This entails that the vessels that fall into that category are not eligible for aid under Article 14 (it has not entered into force), and that they are also not eligible for aid under the general NIS category set out in Article 13 of the Employment Regulation (Article 13(1) clarifies that vessels covered by Article 14 are excluded from Article 13).

- (46) A 26% refund of income taxes and social security contributions is offered.
- (47) In 2014, there were about 10 companies that received grants for 25 vessels with a total of 550 seafarers under this category of the scheme. Total payments amounted to NOK 30 million.

6.4.2 Offshore shipping

- (48) The offshore shipping category for vessels in the NIS register applies to construction vessels. Ships engaged in sub-sea operations, pipe laying and maintenance of offshore installations are also covered. This is a new category under the scheme.
- (49) Supply vessels and stand-by vessels are not covered.
- (50) No trade area limitations apply for this category.
- (51) Under this category a refund of income taxes and social security contributions is offered up to a ceiling of NOK 208 000 per seafarer per year.

7 National legal basis

- (52) The national legal basis for the refund scheme for seafarers is the Employment Regulation. Furthermore, the Norwegian Parliament decides on the scope of the aid scheme in its annual decisions on the state budget.

8 Aid instrument

- (53) The aid instrument is direct grants in the form of reimbursement of taxes and social security contributions paid. The taxes and social security contributions may be refunded separately.

9 Administration of the scheme by the Norwegian Maritime Authority (“NMA”)

- (54) The scheme is administered by the NMA. Each term, which consists of two months, the beneficiaries submit digital applications for aid through the same system that is used to manage tax returns. The NMA can therefore crosscheck the claims with the relevant documentation related to income tax. To claim refund, the shipping company submits one application per vessel. The beneficiary has to provide information about the number of seafarers employed, as well as taxes and social security contributions paid. The total amount of aid is capped by the total amount of taxes and social security contributions paid. This is automatically checked through the processes at the NMA.
- (55) Only undertakings registered in the pension insurance scheme for seamen are eligible for reimbursements under the scheme. The pension scheme automatically shares information about the seamen with the NMA. The shipping company’s application for aid is crosschecked with the information the NMA receives from the pension insurance scheme.
- (56) Additionally, the NMA regularly carries out *ad hoc* individual controls of aid applications to ensure that the relevant conditions of the tax refund scheme is met.
- (57) The Norwegian authorities have confirmed that under the rules of the scheme, the recipients cannot receive aid from other sources to cover the same eligible costs.

10 Beneficiaries, budget and duration

- (58) The beneficiaries are owners of eligible ships registered in NOR or NIS. Some 120 shipping companies are benefitting from the current aid scheme. The Norwegian authorities aim to incentivise these companies to have their ships remain in the Norwegian registers, as well as attracting new ship owners. The estimated number of seafarers covered is 12 500.
- (59) The estimated budget is NOK 1 892 million for the 10 months the scheme will be in force in 2016, i.e., from March to December.
- (60) The duration of the scheme is 10 years. The Norwegian authorities have let the scheme take effect from 1 March 2016. In mid-May 2016 the recipients can submit their first application for aid (tax refunds for March and April 2016). The payment of the tax refunds will take place at the earliest by mid-July 2016. The Norwegian authorities have confirmed that no payments will be made until the Authority has approved the scheme.

11 Transparency

- (61) The Norwegian authorities have committed to publish information about the aid granted in accordance with the general transparency requirement.

II. ASSESSMENT

1 The presence of state aid

- (62) According to Article 61(1) of the EEA Agreement, a measure constitutes state aid if the following cumulative conditions are fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on undertakings; (iii) is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (63) The Authority has in a number of decisions²¹ concluded that the preceding schemes constitute state aid within the meaning of Article 61 of the EEA Agreement. There is nothing in the current notification to alter that conclusion.
- (64) The measure entails a refund of income tax and social security contributions. It is therefore granted through state resources. These refunds compensate ship owners for charges which are normally borne from their budget. They therefore confer an advantage on the ship owners. The measure is selective as it is only directed towards the maritime sector and ship owners of certain vessels within this sector. Shipping activities are essentially carried out on a worldwide market. The ship owners benefitting from the scheme carry out economic activities in competition with other ship owners from third countries and from other EEA States. The support under the scheme strengthens the position of its beneficiaries. The support therefore is liable to have an impact on trade and to distort competition. On this basis, the Authority concludes that the notified measure constitutes state aid within the meaning of Article 61 of the EEA Agreement.

2 Procedural requirements

- (65) 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”*.
- (66) The Employment Regulation, which provides the national legal basis for the scheme, entered into force on 1 March 2016. However, according to Article 20(1) of that regulation no grants can be made unless the scheme is approved by the Authority.
- (67) By submitting the notification on 26 February 2016 and assuring that no aid will be granted without the Authority’s approval, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

3.1 Legal framework and objective of aid

- (68) The Authority has issued Guidelines on aid to maritime transport (the “AMT”) wherein it describes how it will assess the compatibility of such aid under Article 61(3)(c) of the EEA Agreement.
- (69) Maritime transport services are of vital importance to the EEA.²² The EEA maritime transport sector faces fierce international competition from vessels registered in third

²¹ Lastly with Decision No 444/15/COL (OJ C 52 11.2.2016 p. 16). See section I.2 of that decision for further references.

countries which do not take much care to observe social and safety rules in force at international level.²³ A large part of the EEA fleet continues to be registered under flags of third countries. This is because the registers of third countries which apply open register policies – some of which are called “flags of convenience” – have continued and are still continuing to enjoy a significant competitive edge over the registers of EEA States.²⁴

- (70) The notified measure is an operating aid scheme. Although operating aid as a matter of principle should be exceptional, temporary and degressive, in light of the above, it is the view of the Authority that operating aid to the shipping industry is still justified.²⁵
- (71) Furthermore, the Authority stresses that support for the maritime sector should primarily aim at reducing fiscal and other costs faced by EEA ship owners and EEA seafarers towards levels in line with world norms.²⁶ Aid should directly stimulate the development of the sector and employment, rather than provide general financial assistance.²⁷ It is on this basis that the Authority in the AMT stresses that aid to cover reduced social security contributions and income tax for seafarers on board of EEA registered vessels should be held to be compatible with the EEA Agreement.²⁸
- (72) The Norwegian authorities have provided information indicating that there is a real danger that the vessels covered by the scheme would flag out in the absence of the notified measure. The Norwegian authorities also aim at encouraging shipping companies to re-register vessels to the NIS and NOR registers following the changes made to the scheme.

3.2 Eligible vessels

- (73) The AMT applies only to “maritime transport”. Maritime transport is defined as “the transport of goods and persons by the sea”.²⁹ Apart from the towage and dredging vessels (discussed in the following), the vessels covered by the NOR and NIS general categories described in sections I.6.3.1 and I.6.4.1 of this decision clearly fall within this definition. This is also the case for the ferries and sailing boats covered by the categories described in sections I.6.3.3 (ferries in foreign trade), I.6.3.4 (ferries operating the coastal route Bergen-Kirkenes) and I.6.3.5 (sailing vessels) of this decision. The Authority therefore is satisfied that the scheme is compatible with the AMT in this regard.
- (74) In specific parts the AMT also apply to towage and dredging.³⁰ As noted in paragraph (22), the Norwegian authorities have confirmed that the 50% rule³¹ for towage and dredging will apply. The Authority is therefore satisfied that the scheme is compatible with the AMT in this regard.
- (75) The NOR and NIS offshore shipping categories described in sections I.6.3.2 and I.6.4.2 of this decision warrant closer scrutiny. The Norwegian authorities have explained that they consider the offshore petroleum vessels providing services in connection with petroleum activity to be covered by the AMT. This, they argue, is in line with the logic of including towage and dredging vessels within the scope of the guidelines. Indeed, the offshore

²² AMT section 1(1).

²³ AMT section 1(2).

²⁴ AMT section 1(6).

²⁵ AMT section 1.2(10).

²⁶ AMT section 3.2(1).

²⁷ AMT section 3.2(1).

²⁸ AMT sections 3.2(2) and 3.2(3).

²⁹ AMT section 2(3).

³⁰ AMT section 2(3).

³¹ AMT section 3.2(4).

petroleum vessels, supply ships, anchor handling ships, seismic vessels, construction vessels and multipurpose vessels employ qualified seafarers and transport equipment used for various offshore construction purposes. The European Commission has, in a number of cases, applied its Maritime Guidelines by analogy to activities that do not constitute classic maritime transport, provided that the activities require similarly qualified staff and are similarly exposed to international competition.³² The Commission has found compatible with its guidelines the granting of aid to offshore vessels when these vessels operate under the same competitive and technical conditions as vessels involved in the transport of goods and passengers at sea. The Commission has raised no objections to aid to ships involved in exploration and providing other services related to activities at sea such as vessels servicing offshore installations (such as liaison ships, stand-by and supply vessels), cable laying vessels, pipeline layers and research vessels.³³ Furthermore, the Commission has approved crane vessels and vessels providing rescue at sea and maritime assistance on the high seas as eligible vessels under the guidelines.³⁴

- (76) The Authority is satisfied that this logic applies to the vessels covered by the NOR and NIS offshore shipping categories. These vessels employ staff with similar qualifications as those vessels engaged in classic maritime transport and they are similarly subject to international competition. On this basis, the Authority finds that the AMT should be applied by analogy to these types of vessels.

3.3 Hurtigruten

- (77) As set out above in paragraphs (34) and (35) of this decision, the Authority has opened a formal investigation into potential overcompensation of Hurtigruten, and with the proposed scheme, the Norwegian authorities have increased the aid to the company compared to the level of aid granted under the previous scheme.
- (78) The notified measure provides increased refunds of taxes and social security contributions paid for seafarers working for Hurtigruten. Cost of employment is part of the basis for the public service compensation that Hurtigruten receives under the contract that is now being investigated by the Authority in its formal investigation.³⁵ When the Authority has doubts about whether Hurtigruten is overcompensated under the contract under investigation, the question is whether the Authority, without doubts, can approve an increase of an operating aid that goes to cover the same category of costs that Hurtigruten is compensated for under the contract under investigation.
- (79) The Norwegian authorities argue that the notified measure must be assessed separately from the potential overcompensation currently being assessed by the Authority in its formal investigation. The notified measure has another objective than the public service compensation. The objective of the notified measure is to counteract the competitive disadvantages of Norwegian registered vessels in general. The competitive situation indicates that an increase of aid is necessary. Without an increase there is a genuine risk that Hurtigruten would flag out. Hurtigruten is not by any means required to be registered in NOR or NIS. In the view of the Norwegian authorities the changes to the notified

³² See Decision of 21.12.2015 in case SA.33828 (Greece) - Tonnage tax scheme and other tax relieves provided in Law No 27 of 19 April 1975 as amended, paragraph 111 with further references. See also Decision of 13.4.2015 in case SA.38085 (Italy) Prolongation of the tonnage tax scheme, paragraph 54.

³³ Decision of 1.4.2015 in case SA.37912 (Croatia) Introduction of a tonnage tax scheme in favour of international maritime transport, paragraph 84.

³⁴ Decision of 21.12.2015 in case SA.33828 (Greece) - Tonnage tax scheme and other tax relieves provided in Law No 27 of 19 April 1975 as amended, paragraph 111.

³⁵ See paragraph 51 table 2 of the Hurtigruten Decision.

measure should, without doubt, be held to be compatible with the functioning of the state aid rules if the notified measure complies with the requirements laid down by the Authority in the AMT.

- (80) The Authority understands that the notified measure has another objective than the public service compensation under scrutiny in its ongoing formal investigation. Furthermore, the possibility of extra savings for Hurtigruten was indeed foreseen in Section 7 of the Hurtigruten Agreement. Although that provision is not identical with the provision included in the tender document, the Authority accepts the argument of the Norwegian authorities that the provision in the finally concluded Hurtigruten Agreement represent clarifications in line with the spirit of the wording of the provision of section 7 that was made available to the market in the tender. Indeed, this follows from a natural reading of the wording of the provision.
- (81) Thus, the increase of aid to Hurtigruten under the notified scheme falls within the remit of the Hurtigruten Agreement since such savings do not trigger a renegotiation as described in paragraph (40) above. This entails that the Authority has no doubts about the compatibility with the functioning of the EEA Agreement of the increased aid to Hurtigruten under the notified measure.
- (82) The potential overcompensation of Hurtigruten under the Hurtigruten Agreement for the period 2012-2019 is a different issue and will be dealt with in the course of the Authority's pending formal investigation procedure.

3.4 Aid intensities, cumulation, duration, and transparency

- (83) By limiting the maximum reimbursements under the scheme to the taxes paid, it is the view of the Authority that the Norwegian authorities have complied with the requirements on maximum aid intensities (ceiling) of section 11 of the AMT. The Authority is satisfied that the aid to sailing vessels from the Ministry of Culture (as described in paragraph (42)) covers other eligible costs and are therefore not cumulated with the aid granted through the notified scheme.
- (84) The Norwegian authorities have provided a six year calendar, showing the expected quantified effects of the scheme, in accordance with section 12(2) of the AMT.
- (85) The Norwegian authorities have notified the scheme with a duration of 10 years. In line with current Commission practice in this particular domain, the Authority finds the duration justified.³⁶
- (86) The AMT requires aid to be granted in a transparent manner.³⁷ Additionally, according to the general transparency requirement, only aid granted in a transparent manner can be approved on the basis of Article 61(3)(c) of the EEA Agreement. The Norwegian authorities have committed to publish information about the aid granted in accordance with the general transparency requirement by publishing the full text of the aid scheme and making the necessary disclosures on a central website.

³⁶ Decision of 1.4.2015 in case SA.37912 (Croatia) Introduction of a tonnage tax scheme in favour of international maritime transport, paragraph 19, Decision of 13.4.2015 in case SA.38085 (Italy) Prolongation of the tonnage tax scheme, paragraph 13.

³⁷ AMT section 2(2).

4 Conclusion

- (87) On the basis of the foregoing assessment, the Authority considers that the notified measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.
- (88) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The tax refund scheme for employing seafarers 2016-2026 constitutes state aid which is compatible with Article 61(3)(c) of the EEA Agreement.

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to Norway.

Article 4

Only the English language version of this decision is authentic.

Done in Brussels, on 27 April 2016.

For the EFTA Surveillance Authority

Sven Erik Svedman
President

Frank Buechel
College Member

This document has been electronically signed by Sven Erik Svedman, Frank Buechel on 27/04/2016