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Decision No 011/21/COL

Ministry of Trade, Industry and Fisheries  
PO Box 8090 Dep  
0032 Oslo  
Norway

**Subject: Renewal of the amendment to the tax refund scheme for employing seafarers**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified renewal of the temporary amendments to the tax refund scheme for employing seafarers (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections to it,<sup>1</sup> as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the measure on 12 February 2021.<sup>2</sup>

## 3 Description of the measure

### 3.1 Description of the existing scheme with earlier amendments

#### 3.1.1 *The tax refund scheme for employing seafarers 2016–2026*

- (3) By [Decision No 085/16/COL](#),<sup>3</sup> ESA approved a scheme of refunds of taxes and social security contributions paid for seafarers on ships registered in Norway (“the tax refund scheme”). The tax refund scheme allows shipping companies registered in the Norwegian Ordinary Ship Register (“NOR”) or the Norwegian International Ship Register (“NIS”) to have taxes and social security contributions refunded for different categories of maritime transport activities. Undertakings must have a shipping company number in the pension insurance scheme for seafarers in order to receive refunds.
- (4) By [Decision No 156/17/COL](#),<sup>4</sup> ESA approved an amendment to the tax refund scheme that applied to vessels performing deep sea activities (“NIS deep sea”). By [Decision No 043/18/COL](#),<sup>5</sup> ESA approved an additional amendment, introducing a new category under the tax refund scheme, namely passenger

<sup>1</sup> Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>2</sup> Document Nos 1179923, 1179925 and 1179927.

<sup>3</sup> OJ C 386, 20.10.2016, p. 13, and EEA Supplement No 58, 20.10.2016, p. 6.

<sup>4</sup> OJ C 429, 14.12.2017, p. 27, and EEA Supplement No 81, 14.12.2017, p. 2.

<sup>5</sup> OJ C 264, 26.7.2018, p. 14, and EEA Supplement No 48, 26.7.2018, p. 1.

vessels registered in NIS, performing regular passenger transport services between Norwegian and foreign ports (“NIS ferries in foreign trade”). The Norwegian authorities have explained that the latter amendment has not been implemented to date.

- (5) The general conditions of the tax refund scheme are described in [Decision No 085/16/COL](#) and, as previously amended, in [Decision No 156/17/COL](#) and [Decision No 043/18/COL](#).

### 3.1.2 Temporary amendments to the tax refund scheme of July 2020

- (6) The tax refund scheme comprises eight specific categories, covering ships in the NOR and NIS registers, performing various trades and subject to different refund levels. Three of the categories have had a ceiling, limiting the refunds. Accordingly, undertakings falling within these three categories would not receive a full refund of income taxes and social security contributions paid for the seafarers. The three categories are:
- (i) The offshore shipping category (NOR), which includes offshore petroleum vessels transporting goods or providing services in connection with petroleum activity.<sup>6</sup>
  - (ii) The general category (NIS), which includes all vessels engaged in transport of goods and passengers, unless the vessels are covered by the NIS construction vessels category or the vessels engage in scheduled transport of passengers between Norwegian and foreign ports.<sup>7</sup>
  - (iii) The construction vessels category (NIS), which includes ships that carry out construction work, submarine operations and plumbing or maintenance of facilities.<sup>8</sup>
- (7) The refunds were limited to NOK 36 000 per seafarer, per term, for categories (i) and (iii), and limited to 26%, per term, of paid taxes and social security contribution per seafarer, for category (ii).
- (8) On 8 July 2020, the Norwegian authorities notified their intention to temporarily remove the “ceilings” for the three abovementioned categories during the fourth term in 2020; that is, covering activity in July and August. These temporary amendments were in response to the outbreak of COVID-19 and its consequences for Norwegian shipping and the employment of Norwegian and EEA seafarers. By [Decision No 088/20/COL](#),<sup>9</sup> ESA approved the temporary amendments to the tax refund scheme.

## 3.2 The notified renewal of the temporary amendments

- (9) The notified measure is a renewal of the temporary amendments to the scheme. The Norwegian authorities intend to reintroduce the removal of the ceilings for the three categories, described in paragraph (6) above, for the first three terms of 2021; that is, covering the period from 1 January to 30 June 2021.

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<sup>6</sup> Article 9 of [FOR-2016-02-26-204](#) forskrift om tilskudd til sysselsetting av arbeidstakere til sjøs (“the Seafarers Regulation”).

<sup>7</sup> Article 13 of the Seafarers Regulation.

<sup>8</sup> Article 15 of the Seafarers Regulation.

<sup>9</sup> OJ C 365, 29.10.2020, p. 4, and EEA Supplement No 68, 29.10.2020, p. 2.

### 3.3 Objective

- (10) The amendments will primarily strengthen the competitiveness of Norwegian ships engaged in maritime offshore activity, as covered under categories (i) and (iii) for “NOR petroleum vessels” and “NIS construction vessels”, which is an area with strong international competition. Category (ii), “NIS general”, primarily consists of cargo ships in international trade, for instance European short-sea shipping, but also some cruise ships and offshore supply ships.
- (11) The objective of the temporary amendments is to reduce the costs for shipping companies employing EEA seafarers on NOR and NIS registered vessels, which in turn makes it more likely that companies can carry on with maritime activity, rather than laying up vessels. The measure is a response to the outbreak of COVID-19 and its consequences for Norwegian shipping and employment of EEA seafarers. The outbreak of COVID-19 has had a negative impact on Norwegian shipping, both operationally and financially, and has led to a reduction in demand for, amongst other, offshore shipping services and passenger transport.

### 3.4 National legal basis and granting authority

- (12) The national legal basis for the tax refund scheme is the Act on subsidies for the employment of workers at sea and the Regulation on subsidies for the employment of workers at sea (“the Seafarers Regulation”).<sup>10</sup> The measure will be implemented through temporary amendments to the Seafarers Regulation (not yet adopted).<sup>11</sup>
- (13) The aid granting authority is the Norwegian Maritime Authority (*Sjøfartsdirektoratet*).

### 3.5 Budget and duration

- (14) The increase in budget is estimated at NOK 230 million. This is divided as follows between the three categories: (i) the offshore shipping category (NOR) – approximately NOK 110 million, (ii) the general category (NIS) – approximately NOK 75 million, and (iii) the construction vessel category (NIS) – approximately NOK 45 million.
- (15) The temporary amendments will only apply for the first, second and third term of 2021, covering the period from 1 January until 30 June 2021. The companies must apply for grants covering the first term by 25 March, for the second term by 25 May, and by 25 July for the third term. The grants covering the first term, with an application deadline in March, will not be paid out until April 2021.

## 4 Presence of state aid

- (16) 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.”

<sup>10</sup> Respectively [LOV-2017-05-22-28](#) *lov om tilskudd til sysselsetting av arbeidstakere til sjøs* and [FOR-2016-02-26-204](#) *forskrift om tilskudd til sysselsetting av arbeidstakere til sjøs*.

<sup>11</sup> Document No 1143240.

- (17) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (18) ESA has already concluded that the tax refund scheme and its previous amendments constitute state aid within the meaning of Article 61(1) of the EEA Agreement, see the Decisions referred to in paragraphs (3) to (5) above.<sup>12</sup> There is nothing in the current notification which alters this conclusion and the assessment is the same for the measure at issue in the present decision.
- (19) On this basis, ESA concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Procedural requirements

- (20) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“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.”
- (21) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## 6 Compatibility of the aid measure

- (22) ESA can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (23) ESA has issued [Guidelines on aid to maritime transport](#) (“the AMT Guidelines”), which describe how ESA will assess the compatibility of aid under Article 61(3)(c) of the EEA Agreement to the maritime sector.<sup>13</sup>
- (24) Maritime transport services are of vital importance to the EEA.<sup>14</sup> The EEA maritime transport sector faces fierce international competition from vessels registered in third countries. 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 referred to as “flags of convenience” – have continued and are still continuing to enjoy a significant competitive edge over the registers of EEA States.<sup>15</sup>
- (25) State aid schemes that contribute to the consolidation of the maritime cluster established in the EEA States, that help maintain and improve maritime know-

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<sup>12</sup> OJ C 386, 20.10.2016, p. 13, and EEA Supplement No 58, 20.10.2016, p. 6.

<sup>13</sup> OJ C 103, 28.4.2005, p. 24, and EEA Supplement No 21, 28.4.2005, p. 18.

<sup>14</sup> AMT Guidelines, Section 1, paragraph (1).

<sup>15</sup> AMT Guidelines, Section 1, paragraph (6).

how, and that protect and promote the employment of EEA seafarers, may be introduced.<sup>16</sup>

- (26) ESA concluded in [Decision No 085/16/COL](#) that the tax refund scheme is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c). The notified renewal of the temporary amendments does not alter those conclusions.
- (27) As noted above, the objective of the renewal is to reduce the costs for shipping companies employing Norwegian and EEA seafarers on Norwegian vessels, which in turn makes it more likely that companies can carry on with maritime activity, rather than laying up vessels.
- (28) The notified renewal of the temporary amendments is a response to the outbreak of COVID-19 and its consequences for Norwegian shipping and employment of EEA seafarers. The outbreak of COVID-19 has had a negative impact on Norwegian shipping, both operationally and financially, and has led to a reduction in demand for, amongst other, offshore shipping services and passenger transport. As the COVID-19 pandemic continues, with its negative impact on the shipping sector, a renewal of the temporary amendments is justified.
- (29) ESA considers that the notified amendments, i.e. the temporary removal of the ceilings on tax refunds for beneficiaries falling within in the offshore shipping category (NOR register), the general category (NIS register) and the construction vessels category (NIS register), are appropriate and proportionate with regard their objective, as well as the objectives of the AMT Guidelines. Furthermore, the renewal complies with the requirements on maximum aid intensities (ceiling) set out in Section 11 of the AMT Guidelines.<sup>17</sup>
- (30) In light of the above, ESA concludes that the notified measure satisfies the relevant requirements of the AMT Guidelines and that the positive effects of the measure, in compensating for the negative impact of the COVID-19 outbreak, outweighs the possible negative effects on competition and trade between the Contracting Parties.

## 7 Conclusion

- (31) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), ESA has no objections to the implementation of the measure.
- (32) The Norwegian authorities have confirmed that the notification does not contain confidential information.

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<sup>16</sup> AMT Guidelines, Section 2.2, paragraph (1).

<sup>17</sup> AMT Guidelines, Section 11, paragraph (2).

For the EFTA Surveillance Authority, acting under [Delegation Decision No 068/17/COL](#),

Yours faithfully,

Bente Angell-Hansen  
President  
Responsible College Member

Carsten Zatschler  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Bente Angell-Hansen,  
Carsten Zatschler.*