

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 62/04/COL

of 31 March 2004

amending for the 45th time the procedural and substantive rules in the field of State aid by amending Chapter 24A: 'State aid to maritime transport' and Annex VIII and proposal for appropriate measures

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area ⁽¹⁾, 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 Justice ⁽²⁾, in particular to Article 24, Article 5(2)(b), Article 1 in Part I of Protocol 3 and Articles 18 and 19 in Part II of Protocol 3 thereof ⁽³⁾,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid ⁽⁴⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁵⁾,

WHEREAS, on 17 January 2004, the Commission of the European Communities (hereinafter the EC Commission) published a Communication on Community guidelines on State aid to maritime transport and a proposal of appropriate measures pursuant to Article 8(1) of the EC Treaty ⁽⁶⁾,

WHEREAS this Communication is also of relevance for the European Economic Area,

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the EC Commission, acts corresponding to those adopted by the EC Commission,

HAVING consulted the EC Commission,

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States in a multilateral meeting on 3 February 2004 on the subject,

HAS ADOPTED THIS DECISION:

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Protocol 3 to the Surveillance and Court Agreement as amended by the EFTA States on 10 December 2001. The amendments entered into force on 28 August 2003.

⁽⁴⁾ Hereinafter referred to as the State Aid Guidelines.

⁽⁵⁾ Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date, last amended by College Decision No 41/04/COL of 17.3.2004, not yet published.

1. Chapter 24A and Annex VIII of the State Aid Guidelines are amended by replacing the present Chapter 24A and Annex VIII with the text contained in the Annex to this Decision. Appropriate measures, contained in the Annex to this Decision, are proposed.

⁽⁶⁾ OJ C 13, 17.1.2004, p. 3.

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex. The EFTA States shall be requested to signify their agreement to the appropriate measures by 30 June 2004 at the latest.
3. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including the Annex.
4. The Decision, including the Annex, shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.
5. In case the EFTA States accept the proposal for appropriate measures, a summary notice shall be published in the EEA

Section of and in the EEA Supplement to the *Official Journal of the European Union*.

6. The Decision is authentic in the English language.

Done at Brussels, 31 March 2004.

For the EFTA Surveillance Authority

Hannes HAFSTEIN
President

Einar M. BULL
College Member

ANNEX

24A. AID TO MARITIME TRANSPORT ⁽¹⁾**24A.1. Introduction**

- (1) The maritime transport services are of vital importance to the European Economic Area. EEA maritime transport and its related activities remains one of the most important in the world. The White Paper of the EC Commission "European transport policy for 2010: time to decide" ⁽²⁾ stresses the vital importance of maritime transport services for the Community economy and shows 90 % of all trade between the Community and the rest of the world is transported by sea. Short sea shipping accounts for 69 % of the volume of goods transported between the EC Member States (this percentage is 41 % if domestic transport is included).
- (2) Since the 1970s the European fleet has been faced with competition from vessels registered in third countries which do not take much care to observe social and safety rules in force at international level.
- (3) The lack of competitiveness of European-flagged vessels was recognised at the end of the 1980s and, in the absence of harmonised European measures, several EEA States adopted different arrangements for aiding maritime transport. The strategies adopted and the budgets allocated to support measures differ from one EEA State to the other in reflection of the attitude of those States to public aid or the importance they attach to the maritime sector.
- (4) In addition, to encourage the re-registering of vessels, EEA States have relaxed rules concerning crews, notably through the creation of second registers.
- (5) Second registers comprise, firstly, "offshore registers" belonging to territories which have a greater or lesser autonomy in relation to the EEA State, and secondly, "international registers", attached directly to the State which created them.
- (6) In spite of the efforts made, a large part of the EEA fleet continues to be registered under the flags of third countries. This is because the registers of third countries which apply open registration 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.

24A.1.1. Aid to the shipping industry

- (1) In the light of the differences between the aid systems adopted by EC Member States faced with more intense competition from non-Community flagged vessels, in 1989 the EC Commission defined its first guidelines on this subject to ensure a certain convergence between the actions of the EC Member States. This method nevertheless proved to be ineffective and the decline of Community fleets continued. The guidelines were accordingly reviewed, leading to a 1997 communication defining new Guidelines on State aid to maritime transport ⁽³⁾.
- (2) The 1989 Guidelines were not incorporated when the EEA Agreement came into force. Nevertheless, the basic State aid provisions of the EEA Agreement applied in full to the maritime transport sector and the Authority considered the Commission's guidelines from 1989 on aid to shipping companies to be EEA relevant. The 1997 communication was incorporated as Chapter 24A into the Authority's State Aid Guidelines. The present Chapter 24A incorporates the EC Commission's 2004 Guidelines ⁽⁴⁾.
- (3) The major development in recent years concerning support measures from the EEA States for maritime transport is the widespread extension in Europe of flat rate tonnage taxation systems (tonnage tax). Tonnage tax entered into force very early in Greece and was progressively extended to the Netherlands (1996), to Norway (1996), to Germany (1999), to the United Kingdom (2000), to Denmark, to Spain and to Finland (2002) and to Ireland (2002). Belgium and France also decided to adopt it in 2002, while the Italian Government is envisaging this possibility.

⁽¹⁾ This chapter corresponds to the Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 13.

⁽²⁾ COM(2001) 370 final.

⁽³⁾ Community Guidelines on State aid to maritime transport (97/C 205/05), OJ C 205, 5.7.1997, p. 5.

⁽⁴⁾ See footnote 1 of this chapter.

24A.1.2. *Review of developments after adoption of the 1997 Guidelines*

- (1) In the introductory chapter of its 2004 Guidelines, the EC Commission describes the measures proposed by the EC Member States and approved by the EC Commission compared to the general objectives of the 1997 Guidelines. The EC Commission gathered the relevant information from statistical data and from replies to a questionnaire sent to the EC Member States in early 2002. The Authority had invited the EFTA States to respond to the same questionnaire and forwarded the replies to the EC Commission. From the replies of the EFTA States to the questionnaire and from its experience with notifications in the maritime transport sector, the Authority can confirm that general trends described by the EC Commission in its 2004 Communication are applicable also for the EEA as a whole.
- (a) *Competitiveness of the EEA fleet*
- (2) The EC Commission found that — following replies provided by the EC Member States in mid-2002 to the Commission's questionnaire and to the most recent statistical data ⁽⁵⁾ — EC Member States which have introduced aid measures, particularly in the form of tax relief, have obtained re-registration under the national flag of a significant volume of tonnage in all the registers taken together. Since the implementation of the special shipping tax regime in Norway ⁽⁶⁾, the national flagged merchant fleet has increased by 89 vessels or 6 % (1996-2001). During the period 1989-2001, the share of EC Member State registers in total world tonnage fell slightly. While world shipping increased, the Community-managed fleet registered under third-country flags grew faster than that of the fleet registered under the flags of the EC Member States. The number of Norwegian-owned vessels flying foreign flag has increased from 425 on 1 January 1996 to 702 on 1 January 2001.
- (b) *Employment trends*
- (3) As to the employment trends, the EC Commission noted a drop in the total number of seafarers on board Community vessels, but pointed out that this should be seen against the background of an increased productivity per vessel and the renewal of the Community fleet during 1997-2001 whose advanced technology resulted in the use of a smaller, but better trained workforce. The Commission observed that the trend whereby the Community-flagged fleet depends more and more on third-country seafarers is not reversed. This trend was pointed out by the Commission in 2001 in its Communication on the training and recruitment of seafarers ⁽⁷⁾. In Norway, the numbers of Norwegian and EEA seafarers on Norwegian owned vessels dropped by 3 % from 1999 to 2000, while employment of non-Norwegian seafarers increased.
- (c) *Contribution to economic activity as a whole*
- (4) Maritime industries are inextricably linked to maritime transport. This association is a strong argument in favour of positive measures whose aim is to maintain a fleet dependent on EEA shipping. Since maritime transport is one of the links in the chain of transport in general and in the chain of the maritime industries in particular, measures seeking to maintain the competitiveness of the European fleet also have repercussions on investments on land in maritime-related industries ⁽⁸⁾ and on the contribution of maritime transport to the economy of the EEA as a whole, and to jobs in general.
- (5) The significance of shipping and the whole maritime cluster varies considerably with the countries under consideration. In a study undertaken by the EC Commission, including the 15 EC States and Norway, the importance of the European maritime cluster and its direct economic impact was illustrated by the following figures: 1,55 million direct employees, a turnover of EUR 160 billion in 1997 (about 2 % of GDP in the Community) ⁽⁹⁾. Data on Norway (2 % of GDP generated by the maritime cluster ⁽¹⁰⁾, Denmark (3 % of the GDP generated by the maritime cluster), Greece (2,3 %) and the Netherlands (2 %) can be taken as examples.
- (6) In this context, therefore, it is not insignificant to note that the fleet managed by European operators based in the Community has stayed at a level of around 34 % of world tonnage, while the latter increased by 10 % during the period. Given the mobility of the maritime industry and the facilities offered by third countries, one may conclude that support measures for maritime transport may contribute to avoiding widespread displacement of allied industries.

⁽⁵⁾ ISL, Shipping Statistics 2001. Further details, in particular figures relevant to the Community fleet and employment of seafarers within the Community, can be taken from the introductory part of the Commission's communication, referred to in footnote 1 of this chapter.

⁽⁶⁾ Norway was the only EFTA State replying to the questionnaire.

⁽⁷⁾ Communication from the Commission on the training and recruitment of seafarers of 6 April 2001, COM(2001) 188 final.

⁽⁸⁾ These activities include port services, logistics, the construction, repair, maintenance, inspection and classification of vessels, ship management and brokerage, banking activities and international financial services, insurance, advice and professional services.

⁽⁹⁾ Study undertaken by the European Commission, DG Enterprise "Economic impact of maritime industries in Europe". http://europa.eu.int/comm/enterprise/maritime/maritime_industrial/economic_impact_study.htm

⁽¹⁰⁾ Figure taken from Norway Statistics.

- (7) Based on these findings, the EC Commission concluded that, where measures in line with the 1997 Guidelines have been adopted, the structural decline of the Community registers and the Community fleet has been halted and the objectives set by the Commission have been attained, at least in part. As the Authority sees from its investigations in the field of maritime transport, outflagging has not yet ceased while the measures adopted in line with the former Chapter 24A of the Authority's Guidelines have been perceived as a means to halt that tendency. Norway's percentage of the world fleet, based on gross tonnage and measured as tonnage registered in Norway, stayed at around 4 % between 1998-2000 ⁽¹¹⁾.
- (8) The share of open registers in world tonnage continued, however, to increase during the period, rising from 43 % in 1996 to 54 % in 2001, and there is no indication of any significant reversal of the trend whereby the fleet had, and is continuing to have, increasing recourse to seafarers from third countries. The campaign undertaken in recent years must be pursued but it must be better targeted. Measures to promote EEA seafarers must in particular be the subject of more active monitoring.
- (9) The results of the measures taken by the EFTA States and authorised by the Authority will have to be systematically analysed.
- (10) As a consequence, and even though as a matter of principle operating aid should be exceptional, temporary, and degressive, the Authority estimates that State aid to the EEA shipping industry is still justified and that the approach followed by the 1997 Guidelines was correct. The present Chapter 24A of the Guidelines is therefore based on the same basic approach.

24A.2. Scope and general objectives of the revised state aid guidelines

- (1) These Guidelines — replacing the former Chapter 24A ⁽¹²⁾ — aim at setting the parameters within which State aid to maritime transport will be approved, pursuant to the EEA State aid rules and procedures, by the Authority under Article 61(3)(c) and/or Article 59(2) of the EEA Agreement.
- (2) Aid schemes should not be conducted at the expense of other EEA States' economies and must be shown not to risk distortion of competition between the Contracting Parties to an extent contrary to the common interest. State aid must always be restricted to what is necessary to achieve its purpose and be granted in a transparent manner. The cumulative effect of all aid granted by State authorities (including national, regional and local levels) must always be taken into account.
- (3) These Guidelines are applicable to "maritime transport" activities as defined in Regulation (EEC) No 4055/86 ⁽¹³⁾, incorporated into the EEA Agreement as point 53 in Annex XIII to the EEA Agreement, and in Regulation (EEC) No 3577/92 ⁽¹⁴⁾, incorporated as point 53a in Annex XIII to the EEA Agreement ⁽¹⁵⁾, that is to say, to the "transport of goods and persons by sea". They also, in specific parts, relate to towage and dredging.

24A.2.1. Scope of revised State aid Guidelines

- (1) These Guidelines cover any aid granted by EFTA States or through State resources in favour of maritime transport. This includes any financial advantage, conferred in any form whatsoever, funded by public authorities (whether at national, regional, provincial, departmental or local level). For these purposes, "public authorities" may include public undertakings and State-controlled banks. Arrangements whereby the State guarantees loans or other funding by commercial banks may also fall within the definition of aid. The Guidelines draw no distinction between types of beneficiary in terms of their legal structure (whether companies, partnerships or individuals), nor between public or private ownership, and any reference to companies shall be taken to include all other types of legal entity.
- (2) These Guidelines do not cover aid to shipbuilding (within the meaning of Chapter 24B of the Authority's State Aid Guidelines or any subsequent instrument). Investments in infrastructure are not normally considered to involve State aid within the meaning of Article 61(1) of the EEA Agreement, if the State provides free and equal access to the infrastructure for the benefit of all operators concerned. However, the Authority may examine such investments if they could directly or indirectly benefit particular shipowners. Finally, the Authority has established the principle that no State aid is involved where public authorities contribute to a company on a basis that would be acceptable to a private investor operating under normal market-economy conditions.

⁽¹¹⁾ Figure taken from Norway Statistics.

⁽¹²⁾ Which was based on the EC Commission's Guidelines of 1997.

⁽¹³⁾ Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1).

⁽¹⁴⁾ Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

⁽¹⁵⁾ By Joint Committee Decision No 70/97 (OJ L 30, 5.2.1998, p. 42 and EEA Supplement No 5, 5.2.1998, p. 175), e.i.f. 1.8.1998.

24A.2.2. *General objectives of revised State aid Guidelines*

- (1) Increased transparency within the field of State aid is necessary so that not only national authorities in the broad sense but also companies and individuals are aware of their rights and obligations. These Guidelines are intended to contribute to this and to clarify what State aid schemes may be introduced in order to support the EEA maritime interest, with the aim of:
- improving a safe, efficient, secure and environment-friendly maritime transport,
 - encouraging the flagging or re-flagging to EEA States' registers,
 - contributing to the consolidation of the maritime cluster established in the EEA States while maintaining an overall competitive fleet on world markets,
 - maintaining and improving maritime know-how and protecting and promoting employment for European seafarers, and
 - contributing to the promotion of new services in the field of short sea shipping ⁽¹⁶⁾.
- (2) State aid may generally be granted only in respect of ships entered in EEA States' registers. In certain exceptional cases, however, aid may be granted in respect of ships entered in registers under point (3) of Annex VIII of these Guidelines, provided that:
- they comply with the international standards and EEA law, including those relating to security, safety, environmental performance and onboard working conditions,
 - they are operated from the EEA,
 - their shipowner is established in the EEA and the State concerned demonstrates that the register contributes directly to the objectives mentioned above.
- (3) Additionally, flag-neutral aid measures may be approved in certain exceptional cases where a benefit to the common objectives of the Contracting Parties is clearly demonstrated.

24A.3. **Fiscal and social measures to improve competitiveness**

24A.3.1. *Fiscal treatment of shipowning companies*

- (1) Many third countries have developed significant shipping registers, sometimes supported by an efficient international services infrastructure, attracting shipowners through a fiscal climate which is considerably milder than within EEA States. The low-tax environment has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation. It should be emphasised that there are no effective international rules at present to curb such tax competition and few administrative, legal or technical barriers to moving a ship's registration from an EEA State's register. In this context, the creation of conditions allowing fairer competition with flags of convenience seems the best way forward.
- (2) As a general rule, a tax system of an EEA/EFTA State is not covered by the EEA Agreement. In certain cases, however, such a system may have consequences that would bring it within the scope of application of Article 61(1) of the EEA Agreement ⁽¹⁷⁾. At this stage, there is no evidence of schemes distorting competition in trade between the Contracting Parties to an extent contrary to the common interest. In fact, there appears to be an increasing degree of convergence in EEA States' approaches to shipping aid. Flagging out between EEA States is a rare phenomenon. Fiscal competition is mainly an issue between EEA States on the one hand and third countries on the other, since the cost savings available to shipowners through third country registers are considerable in comparison to the options available within the EEA.

⁽¹⁶⁾ See in this respect EC Commission's White Paper on the European transport policy for 2010, COM(2001) 370 final.

⁽¹⁷⁾ EFTA Court Judgment in Case E-6/98 Government of Norway v. EFTA Surveillance Authority.

- (3) For this reason, many EEA States have taken special measures to improve the fiscal climate for shipowning companies, including, for instance, accelerated depreciation on investment in ships or the right to reserve profits made on the sale of ships for a number of years on a tax-free basis, provided that these profits are reinvested in ships.
- (4) These tax relief measures which apply in a special way to shipping are considered to be State aid. Equally, the system of replacing the normal corporate tax system by a tonnage tax is a State aid. "Tonnage tax" means that the shipowner pays an amount of tax linked directly to the tonnage operated. The tonnage tax will be payable irrespective of the company's actual profits or losses.
- (5) Such measures have been shown to safeguard high-quality employment in the onshore maritime sector, such as management directly related to shipping and also in associated activities (insurance, brokerage and finance). In view of the importance of such activities to the economy of the Contracting Parties and in support of the objectives stated earlier, these types of fiscal incentive can generally be endorsed. Further, safeguarding quality employment and stimulating a competitive shipping industry established in an EEA State through fiscal incentives, taken together with other initiatives on training and enhancement of safety, will facilitate the development of European shipping in the global market.
- (6) The Authority is aware that the income of shipowners today is often obtained from the operation of ships under different flags — for instance, when making use of chartered vessels under foreign flags or by making use of partner vessels within alliances. It is also recognised that the incentive for expatriation of management and ancillary activities would continue if the shipowner obtained a significant financial benefit from maintaining different establishments and accounting separately for EEA flag earnings and other earnings. This would be the case, for example, if the non-EEA flag earnings were liable either to the full rate of corporate taxation in an EEA State or to a low rate of tax overseas if overseas management could be demonstrated.
- (7) The objective of State aid within the context of maritime transport is to promote the competitiveness of the EEA fleets in the global shipping market. Consequently, tax relief schemes should, as a rule, require a link with an EEA flag. However, they may also, exceptionally, be approved where they apply to the entire fleet operated by a shipowner established within an EEA State's territory liable to corporate tax, provided that it is demonstrated that the strategic and commercial management of all ships concerned is actually carried out from within the territory and that this activity contributes substantially to economic activity and employment within the EEA. The evidence furnished by the EEA State concerned to demonstrate this economic link should include details of vessels owned and operated under EEA States' registers, EEA nationals employed on ships and in land-based activities, and investments in fixed assets. It must be stressed that the aid must be necessary to promote the repatriation of the strategic and commercial management of all ships concerned in the EEA and, in addition, that the beneficiaries of the schemes must be liable to corporate tax in the EEA. In addition, the Authority would request any available evidence to show that all vessels operated by companies benefiting from these measures comply with the relevant international and EEA safety standards, including those relating to onboard working conditions.
- (8) As was argued in the above paragraph, it should not be forgotten that, as a matter of principle, tax-relief schemes require a link with the flag of one of the EEA States. Before aid is exceptionally granted (or confirmed) to fleets which also comprise vessels flying other flags, EEA States should ensure that beneficiary companies commit themselves to increasing or at least maintaining under the flag of one of the EEA States the share of tonnage that they will be operating under such flags when these Guidelines become applicable. Whenever a company controls ship operating companies within the meaning of the Seventh Council Directive 83/349/EEC⁽¹⁸⁾ (Article 1), incorporated as point 4 of Annex XXII to the EEA Agreement, the above mentioned tonnage share requirement will have to apply to the parent company and subsidiary companies taken together on a consolidated basis. Should a company (or group) fail to respect that requirement, the relevant EEA State should not grant further tax relief with respect to additional non-EEA flagged vessels operated by that company, unless the EEA-flagged share of the global tonnage eligible for tax relief in that EEA State has not decreased on average during the reporting period referred to in the next paragraph. The EFTA State must inform the Authority of the application of the derogation. The EEA-tonnage share requirement set out in this paragraph does not apply to undertakings operating at least 60 % of their tonnage under a EEA flag.

⁽¹⁸⁾ OJ L 193, 18.7.1983, p. 1.

- (9) In all cases, where fiscal schemes have been approved on the above exceptional basis and in order to allow the EFTA State concerned to prepare, every three years, the report required under section 24A.12 (Final remarks, see below), recipients must provide the EFTA State concerned with proof that all the conditions for the derogation from the flag link have been fulfilled during the period. Furthermore, evidence must be provided that, in the case of the beneficiary fleet, the tonnage share requirement laid down in the previous paragraph has been observed and that each vessel of that fleet complies with the relevant international and EEA standards, including those relating to security, safety, environmental performance and onboard working conditions. Should recipients fail to provide such evidence, they will not be allowed to continue to benefit from the tax scheme.
- (10) It is also of interest to stipulate that whereas EEA-based shipping companies are the natural recipients of the above tax schemes, certain ship management companies established in the EEA may also qualify under the same provisions. Ship management companies are entities providing different kind of services to shipowners, such as technical survey, crew recruiting and training, crew management and vessel operation. In some cases ship managers are assigned both technical and crewing management of vessels. In this case they act as classic "shipowners" as far as transport operations are concerned. Moreover, as in the case of the shipping industry, this sector is experiencing strong and increasing competition at an international level. For these reasons, it seems appropriate to extend the possibility of tax relief to that category of ship managers.
- (11) Ship management companies may qualify for aid only in respect of vessels for which they have been assigned the entire crew and technical management. In particular, in order to be eligible, ship managers have to assume from the owner the full responsibility for the vessel's operation, as well as take over from the owner all the duties and responsibilities imposed by the ISM Code⁽¹⁹⁾. Should ship managers also provide other specialised services, even related to vessel operation, separate accounting for such activities, which do not qualify for the tax relief schemes, should be ensured. The requirement regarding EEA States' flag share described above also applies to ship management companies⁽²⁰⁾.
- (12) These Guidelines apply only to maritime transport. The Authority can accept that the towing at sea of other vessels, oil platforms, etc. falls under that definition.
- (13) The Authority has, however, become aware that in certain cases EEA States allow tugboats which are designed for work at sea to benefit from aid even though they are not active at sea, or rarely so. Thus it is useful to state in these Guidelines which line the Authority will take on this point.
- (14) "Towage" is covered by the scope of the Guidelines only if more than 50 % of the towage activity effectively carried out by a tug during a given year constitutes "maritime transport". Waiting time may be proportionally assimilated to that part of total activity effectively carried out by a tug which constitutes "maritime transport". It should be emphasised that towage activities which are carried out inter alia in ports, or which consist in assisting a self-propelled vessel to reach port do not constitute "maritime transport" for the purposes of these Guidelines. No derogation from the flag link is possible in the case of towage.
- (15) Similarly in case of dredging, the experience gained during recent years suggests that some points should be made.
- (16) "Dredging" activities are, in principle, not eligible for aid to maritime transport. However, fiscal arrangements for companies (such as tonnage tax) may be applied to those dredgers whose activity consists in "maritime transport" — that is, the transport at deep sea of extracted materials — for more than 50 % of their annual operational time and only in respect of such transport activities. Eligible dredgers are only those registered in an EEA State (no derogation from the flag link possible). In such cases, separate accounting for maritime transport activities is required⁽²¹⁾.
- (17) Finally, the method of assessing tonnage tax systems notified up to now to the EC Commission has consisted of the following steps: a virtual profit for shipowners has been calculated by applying a notional profit rate to their tonnage; national corporate tax has been applied to the amount so determined. The resulting amount is the "tonnage tax" to be paid.

⁽¹⁹⁾ "ISM Code", International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the International Maritime Organization (IMO) by resolution A.741(18).

⁽²⁰⁾ The Authority will examine the effects of these provisions on ship management after three years of implementation of these Guidelines.

⁽²¹⁾ The ships used by these operators also extract or dredge materials which they carry afterwards. Extraction or dredging as such do not qualify for State aid to maritime transport.

- (18) The notional profit rates provided for by EC States have been homogeneous up to now. However, since corporate tax rates may vary significantly across the EC, the tonnage taxes to be paid for the same tonnage might be very uneven in the different EC States. In order to keep the present equitable balance, the EC Commission stipulated that it will only approve schemes giving rise to a taxload for the same tonnage fairly in line with the schemes already approved. Based on its experience, the Authority notes that instead of calculating virtual profits to which the ordinary corporate tax rate is applied, some States may decide to directly fix special tonnage tax rates. The Authority will likewise seek to keep an equitable balance in line with already approved systems.
- (19) In all cases, the benefits of schemes must facilitate the development of the shipping sector and employment in support of the common interest of the Contracting Parties. Consequently, the fiscal advantages mentioned above must be restricted to shipping activities; hence, in cases where a shipowning company is also engaged in other commercial activities, transparent accounting will be required in order to prevent "spillover" into non-shipping activities. This approach would help EEA shipping to be competitive, with tax liabilities comparable to levels applying elsewhere in the world, but would preserve an EEA State's normal tax levels for other activities and personal remuneration of shareholders and directors.

24A.3.2. *Labour-related costs*

- (1) As was mentioned earlier, maritime transport is a sector experiencing fierce international competition. Support measures for the maritime sector should, therefore, aim primarily at reducing fiscal and other costs and burdens borne by EEA shipowners and EEA seafarers towards levels in line with world norms. They should directly stimulate the development of the sector and employment, rather than provide general financial assistance.
- (2) 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 a EEA State,
 - reduced rates of income tax for EEA seafarers on board ships registered in a EEA State.

For the purposes of this point, "EEA seafarers" is defined as:

- citizens of the EEA States, in the case of seafarers working on board vessels (including ro-ro ferries ⁽²²⁾) providing scheduled passenger services between ports of the EEA,
 - all seafarers liable to taxation and/or social security contributions in an EEA State, in all other cases.
- (3) The previous 1997 Guidelines allowed such reductions for all seafarers working on board vessels registered in an EEA State and subject to tax and or social security contributions in an EEA State. However, since then it has become clear that pressure by international competition on European shipowners is very strong in the case of international freight transport, while it is lighter in the case of intra-EEA scheduled passenger transport. Boosting the competitiveness of European shipping industry is therefore a prior objective of aid in the former case. Preventing EEA States from granting tax relief to all seafarers in this case would have very negative effects on the competitiveness of European shipowners, which could be encouraged to flag out. At the same time it has been noticed that employment of citizens of the EEA States is significant, in percentage terms and in numbers, in intra-EEA scheduled passenger transport. Protection of employment in the EEA is therefore a priority for aid in this case. For internal fiscal reasons some EEA States prefer not to apply reduced rates as mentioned above, but instead may reimburse shipowners — partially or wholly — for the costs arising from these levies. Such an approach may generally be considered equivalent to the reduced-rate system as described above, provided that there is a clear link to these levies, no element of overcompensation, and that the system is transparent and not open to abuse.
- (4) For the maritime part of towage and dredging activities (maritime transport of materials), aid in favour of the employment of EEA seafarers may be granted by analogy to the rules contained in this point, but only if the aid relates to EEA seafarers working on board seagoing, self-propelled tugs and dredgers, registered in an EEA State, carrying out maritime transport at sea for at least 50 % of their operational time ⁽²³⁾.

⁽²²⁾ See Article 2, point (a), of Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1), as incorporated as point 56 ca) in Annex XIII to the EEA Agreement, EEA Joint Committee Decision No 179/1999 (OJ L 74, 15.3.2001, p. 7 and EEA Supplement No 14, 15.3.2001, p. 22 (Norwegian) and p. 105 (Icelandic)), e.i.f. 1.8.2000.

⁽²³⁾ Thus dredging activities carried out i.a. mainly in ports will not qualify for aid in favour of employment of EEA seafarers.

- (5) Finally, it should be recalled that aid to employment is covered by the block exemption provided for by Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽²⁴⁾, incorporated as point 1(g) in Annex XV to the EEA Agreement ⁽²⁵⁾, which also applies to maritime transport.

24A.4. Crew relief

Aid for crew relief tends to reduce the costs of employing EEA seafarers, especially those on ships operating in distant waters. Aid, which is subject to the ceiling (as set out in Section 24A.11), may, therefore, be granted in the form of payment or reimbursement of the costs of repatriation of EEA seafarers working on board ships entered in EEA States' registers.

24A.5. Investment aid

- (1) Subsidies for fleet renewal are not common in other transport modes such as road haulage and aviation. Since they tend to distort competition, the Authority will be reluctant to approve such schemes, except where they form part of a structural reform leading to reductions in overall fleet capacity.
- (2) Investment must comply with Chapter 24B of these Guidelines, or any other EEA legislation or Guidelines that may replace it.
- (3) Within the framework of these Guidelines, other investment aid may, however, be permitted, in line with the safe seas policy, in certain restricted circumstances to improve equipment on board vessels entered in an EEA State's registers or to promote the use of safe and clean ships. Thus aid may be permitted which provides incentives to upgrade EEA-registered ships to standards which exceed the mandatory safety and environmental standards laid down in international conventions and anticipating agreed higher standards, thereby enhancing safety and environmental controls. Such aid must comply with the applicable EEA provisions on shipbuilding.
- (4) Since shipping is essentially very mobile, regional aid for maritime companies in disadvantaged regions, which often take the form of investment aid to companies investing in the regions, may only be permitted where it is clear that the benefits will accrue to the region over a reasonable time period. This would, for example, be the case of investment related to the construction of dedicated warehouses or to the purchase of fixed transshipment equipment. Investment aid for maritime companies in disadvantaged regions may then only be permitted where it also complies with the regional aid rules (see section 24A.6).

24A.6. Regional aid on the basis of Article 61(3)(a) and (c) of the EEA Agreement

In the context of regional aid schemes, the Authority will apply the general rules set out in its Guidelines or future amendments thereto.

24A.7. Training

- (1) It should be recalled, firstly, that aid to training is covered by the block exemption provided for by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽²⁶⁾, incorporated as point 1(d) in Annex XV of the EEA Agreement ⁽²⁷⁾, which also applies to maritime transport.
- (2) Moreover, many training schemes followed by seafarers and supported by the State are not considered to be State aid because they are of a general nature (whether vocational or academic). These are, therefore, not subject to notification and examination by the Authority.

⁽²⁴⁾ OJ L 337, 13.12.2002, p. 3.

⁽²⁵⁾ By EEA Joint Committee Decision No 83/2003 (OJ No L [to be published]), e.i.f. 21.6.2003.

⁽²⁶⁾ OJ L 10, 13.1.2001, p. 20.

⁽²⁷⁾ By EEA Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3.10.2002, p. 42), e.i.f. 1.2.2003.

- (3) If a scheme is to be regarded as including State aid, notification is, however, required. This may be the case if, for example, a particular scheme is specifically related to onboard training and the benefit of State financial support is received by the training organisation, the cadet, seafarer or shipowner. The Authority takes a favourable attitude towards aid, granted on a non-discriminatory basis, to training carried out on board ships registered in an EEA State. Exceptionally, training on board other vessels may be supported where justified by objective criteria, such as the lack of available places on vessels in an EEA State's register.
- (4) Where financial contributions are paid for onboard training, the trainee may not, in principle, be an active member of the crew but must be supernumerary. This provision is to ensure that net wage subsidies cannot be paid for seafarers occupied in normal crewing activities.
- (5) Similarly, to safeguard and develop maritime expertise in the EEA and the competitive edge of the EEA maritime industries, further extensive research and development efforts are necessary, with a focus on quality, productivity, safety and environmental protection. For such projects, State support may also be authorised within the limits set by the EEA Agreement ⁽²⁸⁾.
- (6) Aid aimed at enhancing and updating EEA officers' skills may be allowed during their whole career. The aid may consist of a contribution to the cost of the training and/or compensation for the wage paid to the officer during the training period. The schemes must, however, be designed in a way which prevents the aid for training from being directly or indirectly diverted into a subsidy to officers' wages.
- (7) Aid aimed at professional retraining of high seas fishermen willing to work as seafarers may be also allowed.

24A.8. Restructuring aid

Although the Authority's Guidelines on restructuring and rescuing firms in difficulty ⁽²⁹⁾ apply to transport only to the extent that the specific nature of the sector is taken into account, the Authority will apply those Guidelines or any other Guidelines or EEA legislation replacing them in considering restructuring aid for maritime companies.

24A.9. Public service obligations and contracts

- (1) In the field of maritime cabotage, public service obligations (PSOs) may be imposed or public service contracts (PSCs) may be concluded for the services indicated in Article 4 of Regulation (EEC) No 3577/92, incorporated as point 53(a) in Annex XIII to the EEA Agreement ⁽³⁰⁾. For those services, PSOs and PSCs as well as their compensation must fulfil the conditions of that provision and the rules of the EEA Agreement and procedures governing State aid, as interpreted by the EFTA Court, and the European Court of Justice for the corresponding EC Treaty provisions and procedures governing State aid in the Community.
- (2) The Authority accepts that if an international transport service is necessary to meet imperative public transport needs, PSOs may be imposed or PSCs may be concluded, provided that any compensation is subject to the abovementioned rules of the EEA Agreement and procedures.
- (3) The duration of public service contracts should be limited to a reasonable and not overlong period, normally in the order of six years, since contracts for significantly longer periods could entail the danger of creating a (private) monopoly.

⁽²⁸⁾ See Article 61 (3) (c) of the EEA Agreement and also Chapters 14 (Aid for research and development) and 15 (Aid for environmental protections) of the present Guidelines.

⁽²⁹⁾ See Chapter 16 of the present Guidelines.

⁽³⁰⁾ By Joint Committee Decision 70/97 (OJ L 30, 5.2.1998, p. 42 and EEA Supplement No 5, 5.2.1998, p. 175), e.i.f. 1.8.1998.

24A.10. Aid to Short Sea Shipping

- (1) There is no legal definition of "Short Sea Shipping". However, the communication from the EC Commission on the development of Short Sea Shipping in Europe of 29 June 1999 ⁽³¹⁾ has provided a working definition of Short Sea Shipping, to be understood as "the movement of cargo and passenger by sea between ports situated in geographical Europe or between those ports and ports situated in non-European countries having a coastline on the enclosed seas bordering Europe" ⁽³²⁾. In this Communication the EC Commission underscored the role of this transport mode to promote sustainable and safe mobility, to strengthen cohesion within the EEA and to improve transport efficiency as part of an intermodal approach. The Authority also recognises that the promotion of Short Sea Shipping must be carried out at all levels, whether at the level of the EEA, national or regional.
- (2) Since aid to Short Sea Shipping aims to improve the intermodal chain and to decongest roads in the EEA States, the definition of Short Sea Shipping such as provided by the EC Commission's 1999 communication should, for the purposes of these Guidelines, be restricted to transport between ports in the territory of the EEA States.
- (3) The Authority recognises that launching Short Sea Shipping services may be accompanied by substantial financial difficulties which the EEA States may wish to attenuate in order to ensure the promotion of such services.
- (4) When such is the case, the Authority will be able to approve aid of this kind, on condition that it is intended for shipowners within the meaning of Article 1 of Regulation (EEC) No 4055/86 ⁽³³⁾, incorporated as point 53 of Annex XIII to the EEA Agreement, in respect of ships flying the flag of one of the EEA States. Aid of this kind will have to be notified and to fulfil the following conditions:
 - the aid must not exceed three years in duration and its purpose must be to finance a shipping service connecting ports situated in the territory of the EEA States,
 - the service must be of such a kind as to permit transport (of cargo essentially) by road to be carried out wholly or partly by sea, without diverting maritime transport in a way which is contrary to the common interest,
 - the aid must be directed at implementing a detailed project with a pre-established environmental impact, concerning a new route or the upgrading of services on an existing one, associating several shipowners, if necessary, with no more than one project financed per line and with no renewal, extension or repetition of the project in question,
 - the purpose of the aid must be to cover, either up to 30 % of the operational costs of the service in question ⁽³⁴⁾, or to finance the purchase of trans-shipment equipment to supply the planned service, up to a level of 10 % in such investment,
 - the aid to implement a project must be granted on the basis of transparent criteria applied in a non-discriminatory way to shipowners established in the EEA. The aid should normally be granted for a project selected by the authorities of the EEA State through a tender procedure in compliance with applicable Community rules,
 - the service which is the subject of the project must be of a kind to be commercially viable after the period in which it is eligible for public funding,
 - such aid must not be cumulated with public service compensation (obligations or contracts).

⁽³¹⁾ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, "The development of Short Sea Shipping in Europe: a dynamic alternative in a sustainable transport chain — Second two-yearly report", COM(1999) 317 final.

⁽³²⁾ See above Communication, p. 2.

⁽³³⁾ See above footnote 13.

⁽³⁴⁾ In case of Community financing or eligibility under different aid schemes, the ceiling of 30 % applies to the combined total of aid/financial support. It should be noticed that the aid intensity is the same as that provided for modal shift actions within the Marco Polo Community initiative: cf. Article 5(2) of Regulation (EC) No 1382/2003 (OJ L 196, 2.8.2003, p. 1).

24A.11. Ceiling

- (1) As was explained above, certain EEA States support their maritime sectors through tax reduction whilst other EEA States prefer to make direct payments — for instance, by providing reimbursement of seafarers' income tax. In view of the differences between the fiscal systems of the EEA States, it is felt that the two alternatives should remain possible. Obviously, those two approaches may, in some instances, be combined. However, this risks causing a cumulation of aid to levels which are disproportionate to the objectives of the common interest of the Contracting Parties and could lead to a subsidy race between EEA States.
- (2) A reduction to zero of taxation and social charges for seafarers and a reduction of corporate taxation of shipping activities such as is described in 24A.3.1 (18) is the maximum level of aid which may be permitted. To avoid distortion of competition, other systems of aid may not provide any greater benefit than this. Moreover, although each aid scheme notified by an EFTA State will be examined on its own merits, it is considered that the total amount of aid granted under sections 24A.3 to 24A.6 should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers.

24A.12. Final remarks

- (1) The Authority will continue to monitor regularly and closely the market conditions for shipping. Should the latter change, and should consequently the need for State aid be reduced or overcome, the Authority will take the necessary measures in good time.
- (2) All new proposals for measures notified to the Authority must include a calendar indicating, for the next six years, the expected quantified effects for each objective of Section 24A.2.2. In particular, the expected macroeconomic return on the corresponding maritime cluster, together with an estimation of the number of jobs saved or created, is to be presented in such proposals.
- (3) For all the aid schemes — whether existing or new — falling within the scope of these Guidelines, EFTA States are to communicate to the Authority an assessment of their effects during their sixth year of implementation.
- (4) When aid has been approved and granted to a beneficiary, under the derogation from the flag link referred to in Section 24A.3.1, the relevant EFTA State must report to the Authority every three years starting from the date when the grant was granted. In its report, the EFTA State will quantify the effects produced and compare the results with the expected effects. The reporting requirements set out in these Guidelines will enter into force upon their adoption.
- (5) Furthermore, should it prove necessary, for example following a justified complaint, the EFTA State concerned must provide the Authority with evidence that the assistance granted to the respective beneficiary under an agreed scheme has been limited to the strict definition therein and has also produced the effects expected.

24A.13. Appropriate measures

- (1) These Guidelines will apply from the date of adoption. In accordance with Article 1(1) in Part I and Article 18 in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority proposes that EFTA States amend their existing aid schemes relating to State aid covered by these Guidelines so as to comply with them by 30 June 2005 at the latest. EFTA States are invited to confirm that they accept these proposals for appropriate measures in writing by 30 June 2004 at the latest.
- (2) Should an EFTA State fail to confirm its acceptance in writing by that date, the Authority will apply Article 19(2) in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice and, if necessary, initiate the proceedings referred to in that provision.
- (3) These Guidelines will be reviewed within seven years of their date of application.'

‘ANNEX VIII

Definition of EEA States’ registers for the purpose of the rules in Chapter 24A on aid to maritime transport

“EEA States’ registers” should be understood as meaning registers governed by the law of a an EC Member State or an EFTA State party to the EEA Agreement applying to their territories forming part of either the European Community or an EFTA State.

- (1) All the first registers of EEA States are EEA States’ registers.
 - (2) In addition, the following registers, located in EEA States and subject to their laws, are EEA States’ registers:
 - the Danish International Register of Shipping (DIS),
 - the German International Shipping Register (ISR),
 - the Italian International Shipping Register,
 - the Madeira International Ship Register (MAR),
 - the Canary Islands register,
 - the Norwegian International Shipping Register (NIS).
 - (3) Other registers are not considered to be EEA States’ registers even if they serve in practice as a first alternative for shipowners based in that EEA State. This is because they are located in and subject to the law of territories where the EC Treaty and hence the EEA Agreement does not, in whole or in substantial part, apply. Hence, the following registers are not EEA States’ registers:
 - the Kerguelen register (the EC Treaty does not apply to this territory),
 - the Dutch Antilles’ register (this territory is associated with the Community; and only Part IV of the EC Treaty applies to it; it is responsible for its own fiscal regime),
 - the registers of:
 - Isle of Man (only specific parts of the EC Treaty apply to the Isle — see Article 299(6)(c) of the EC Treaty; the Isle of Man parliament has sole right to legislate on fiscal matters),
 - Bermuda and Cayman (they are part of the territories associated to the Community, and only Part IV of the EC Treaty applies to them; they enjoy a fiscal autonomy).
 - (4) In the case of Gibraltar, the EC Treaty applies fully and the Gibraltar register is, for the purposes of these Guidelines, considered to be an EEA State’s register.
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