EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 41/04/COL

of 17 March 2004

amending for the fortyfourth time the procedural and substantive rules in the field of state aid by
introducing a new chapter 24b: framework on state aid to shipbuilding

(2006/C 221/05)

(Text with EEA relevance)

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) and Article 1 in Part I 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 30 December 2003, the Commission of the European Communities (hereinafter the EC Commission) published a new framework on state aid to shipbuilding (6),

WHEREAS this framework 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. The State Aid Guidelines are amended by adding a new Chapter 24B: ‘Framework on State Aid to Shipbuilding’. The new Chapter 24B can be found in Annex I to this Decision.

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including Annex I.

(1) Hereinafter referred to as the EEA Agreement.
(2) Hereinafter referred to as the Surveillance and Court Agreement.
(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 40/04/COL of 17.3.2004, not yet published.
3. The EC 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 Annex I.

4. The Decision, including Annex I, shall be published in the EEA Section of and in the EEA Supplement to the Official Journal of the European Union.

5. The Decision is authentic in the English language.

Done at Brussels, 17 March 2004

For the EFTA Surveillance Authority

Hannes Hafstein  Einar M. Bull
President  College Member
ANNEX I

24B. STATE AID TO SHIPBUILDING

24B.1. Introduction

(1) State aid to shipbuilding has been subject to a series of specific EEA regimes. Compared to industrial sectors that have not been subject to specific rules, the regimes applicable to the shipbuilding sector have contained a mixture of both stricter and more lenient provisions. This Framework provides for new rules for the assessment of State aid to shipbuilding following the expiry of Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding (1) on 31 December 2003, as incorporated into the EEA Agreement by EEA Joint Committee Decision No 12/1999 of 29 January 1999 (2).

(2) The objectives of this Framework are, to the largest extent possible, to remove the differences between the rules applicable to the shipbuilding industry and to other industrial sectors and, thereby, to simplify and make more transparent the EFTA Surveillance Authority's (hereinafter referred to as 'the Authority') policy in this area, by extending general horizontal provisions to the shipbuilding sector.

(3) Nevertheless, the Authority recognises that certain specific factors affecting the shipbuilding sector should be reflected in the Authority's policy of State aid control. These factors include:

(a) over-capacity, depressed prices and trade distortions in the world shipbuilding market;

(b) the nature of ships as very large, capital goods, which raises the potential of State-supported credit facilities to distort competition;

(c) the existence of agreements within the Organisation for Economic Cooperation and Development (OECD) in the shipbuilding sector, namely the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits with its Sector Understanding on Export Credits for Ships, which applies within the Community pursuant to Council Decision 2001/76/EC of 22 December 2000 replacing the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits (3).

(4) The Authority acknowledges that work is being undertaken within the OECD framework to replace the 1994 Agreement on respecting normal competitive conditions in the shipbuilding and repair industry (4), which has not entered into force. This Framework is in no way intended to prejudice the outcome of that work and may be reviewed in the light of an agreement within the OECD.

(5) In the light of these special characteristics, the objectives of this Framework, in addition to simplifying the applicable rules, are to:

(a) encourage greater efficiency and competitiveness of EEA yards, in particular through the promotion of innovation;

(b) facilitate the reduction of economically non-viable capacity where necessary;

(c) respect applicable international obligations in the field of export credits and development aid.

(6) In order to achieve these objectives, this Framework provides for specific measures in relation to aid for innovation, closure aid, export credits and development aid and regional aid.

(7) Certain features make shipbuilding unique and distinguish it from other industries such as short production series, the size, value and complexity of the units produced as well as the fact that prototypes are generally used commercially. As a consequence, shipbuilding is the only sector eligible for innovation aid. Investment aid for innovation was introduced by Regulation (EC) No 1540/98 and was intended to be authorised only in duly justified cases, as an incentive to technological risk-taking. However, the implementation of this provision was not satisfactory. It is considered that the unique characteristics of the shipbuilding industry justify maintaining a sector-specific innovation aid. Therefore, this Framework aims at improving support to innovation, by taking into account notably the difficulties of application of the previous provision.

(1) This Chapter corresponds to Community Framework on State Aid to Shipbuilding (OJ C 317, 30.12.2003, p. 11).
(3) OJ No L 35, 10.2.2000 and EEA Supplement No 7, cf. point 1b of Annex XV to the EEA Agreement.
The Authority may only consider aid to shipbuilding, ship repair and ship conversion to be compatible with the common market if it complies with the provisions of this Framework.

This Framework is without prejudice to the temporary measures established by Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding (1), as incorporated into the EEA Agreement by EEA Joint Committee Decision No 170/2002 of 16 December 2002 (2).

24B.2. Definitions

(10) For the purposes of this Framework, the following definitions shall apply:

(a) ‘shipbuilding’ means the building, in the EEA, of self-propelled seagoing commercial vessels;

(b) ‘ship repair’ means the repair or reconditioning in the EEA of self-propelled seagoing commercial vessels;

(c) ‘ship conversion’ means the conversion, in the EEA, of self-propelled seagoing commercial vessels of not less than 1000 gt, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;

(d) ‘self-propelled seagoing commercial vessels’ means:

(i) vessels of not less than 100 gt used for the transportation of passengers and/or goods,

(ii) vessels of not less than 100 gt for the performance of a specialised service (for example, dredgers and ice breakers),

(iii) tugs of not less than 365 kW,

(iv) fishing vessels of not less than 100 gt, with regards to export credits and development aid if in compliance with the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits and with its Sector Understanding on Export Credits for Ships, or with any agreement amending or replacing either of them.

(v) unfinished shells of the vessels referred to in points (i) to (iv) that are afloat and mobile.

For the purposes of the above, ‘self-propelled seagoing vessel’ shall mean a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas. Military vessels (i.e. vessels which according to their basic structural characteristics and capability are specifically intended to be used exclusively for military purposes, such as warships and other vessels for offensive or defensive action) and modifications made or features added to other vessels exclusively for military purposes shall be excluded, provided that any measures or practices applied in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding inconsistent with State aid rules;

(e) ‘related entity’ means any natural or legal person who:

(i) owns or controls an undertaking engaged in shipbuilding, ship repair or ship conversion, or

(ii) is owned or controlled, directly or indirectly, whether through stock ownership or otherwise, by an undertaking engaged in shipbuilding, ship repair or ship conversion.

Control shall be presumed to arise once a person or undertaking engaged in shipbuilding, ship repair or ship conversion owns or controls an interest of more than 25 % in the other or vice versa.

(f) ‘aid’ means aid within the meaning of Article 61 (1) of the EEA Agreement, including measures such as credit facilities, guarantees and tax concessions.

24B.3. Applicable provisions

24B.3.1. Scope

(11) Aid to shipbuilding shall include aid to any shipyard, related entity, shipowner and third party which is granted, whether directly or indirectly, for building, repair or conversion of ships.

(2) OJ L 38, 13.2.2002 and the EEA Supplement No 9. cf. point 1ca of Annex XV to the EEA Agreement.

(12) The general principle is that aid to shipbuilding may be granted in accordance with Article 61 of the EEA Agreement and Article 1 in Part I of Protocol 3 to the Surveillance and Court Agreement and all legislation and measures adopted on those bases, including the following provisions:

(a) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as incorporated into Part II of Protocol 3 to the Surveillance and Court Agreement; 


(f) the Authority's Guidelines on Aid for rescuing and restructuring firms in difficulty; 

(g) the Authority's Guidelines on Aid for environmental protection; and 

(h) Framework on Aid for research and development.


(13) The general principle outlined in Section 24B.3.2 is subject to the following exceptions, which are justified by the specific factors presented in Section 24B.1.

24B.3.3.1. Aid to research, development and innovation

(14) Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings on research and development projects may be considered compatible with the functioning of the EEA Agreement if it is in compliance with the rules laid down in the EEA Framework for State aid for research and development, or any successor arrangement.

(15) Aid granted for innovation in existing shipbuilding, ship repair or ship conversion yards may be deemed compatible with the functioning of the EEA Agreement up to a maximum aid intensity of 20 % gross, provided that:

(a) it relates to the industrial application of innovative products and processes, i.e. technologically new or substantially improved products and processes compared to the state of the art existing in this industry in the EEA, which carry a risk of technological or industrial failure; 

(b) the aid is limited to supporting expenditure on investments, design, engineering and testing activities directly and exclusively related to the innovative part of the project. Exceptionally, additional production costs that are strictly necessary to validate the technological innovation can be eligible to the extent they are limited to the minimum necessary amount.

---

(4) OJ L 266, 3.10.2002 and EEA Supplement No 49, cf. point 1d of Annex XV to the EEA Agreement.
(6) OJ L 266, 3.10.2002 and EEA Supplement No 49, cf. point 1e of Annex XV to the EEA Agreement.
(8) OJ L 266, 3.10.2002 and EEA Supplement No 49, cf. point 1f of Annex XV to the EEA Agreement.
(10) OJ L 38, 13.2.2002 and the EEA Supplement No 9, cf. point 1ca of Annex XV to the EEA Agreement.
24B.3.3.2. **Closure aid**

(16) Aid to defray the normal costs resulting from the total or partial closure of shipbuilding, ship repair or ship conversion yards may be considered compatible with the functioning of the EEA Agreement provided that the resulting capacity reduction is of a genuine and irreversible nature.

(17) The costs eligible for the aid referred to in paragraph 16 are:

(a) payments to workers made redundant or retired before legal retirement age;

(b) the costs of counselling services to workers made or to be made redundant or retired before legal retirement age, including payments made by shipyards to facilitate the creation of small enterprises which are independent of the shipyards in question and whose activities are not principally shipbuilding;

(c) payments to workers for vocational retraining;

(d) expenditure incurred for the redevelopment of the yard(s), its buildings, installations and infrastructure for use other than shipbuilding.

(18) In addition, in the case of undertakings which totally cease shipbuilding, ship repair and ship conversion, the following measures may also be deemed compatible with the functioning of the EEA Agreement:

(a) aid of an amount not exceeding the higher of the following two values, as determined by an independent consultant's report: the residual book value of the installations, or the discounted operational profits obtainable over a projected three-year period, less any advantages the aided undertaking derives from the closure of the installations;

(b) aid such as loans or loan guarantees for working capital needed to enable the undertaking to complete unfinished works provided that this is kept to the minimum necessary and a significant proportion of the work has already been done.

(19) Undertakings receiving partial closure aid must not have benefited from rescue or restructuring aid in the past 10 years. Where less than 10 years have elapsed since the rescue or restructuring aid was granted, the Authority will allow partial closure aid only in exceptional and unforeseeable circumstances for which the company is not responsible.

(20) The amount and intensity of aid must be justified by the extent of the closures involved, account being taken of the structural problems of the region concerned and, in the case of conversion to other industrial activities, of the EEA legislation and rules applicable to those new activities.

(21) In order to establish the irreversible nature of aided closures, the EFTA State concerned shall ensure that the closed shipbuilding facilities remain closed for a period of not less than 10 years.

24B.3.3.3. **Employment aid**

(22) Aid granted for the creation of employment as well as for the recruitment of disadvantaged and disabled workers or to cover the additional costs of employing disadvantaged and disabled workers in shipbuilding, ship repair or ship conversion undertakings may be considered compatible with the functioning of the EEA Agreement if it is in compliance with the substantive rules laid down in 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 (1), as incorporated into the EEA Agreement by EEA Joint Committee Decision No 83/2003 of 20 June 2003 (2).

24B.3.3.4. **Export credits**

(23) Aid to shipbuilding in the form of State-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the functioning of the EEA Agreement if it complies with the terms of the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits and with its Sector Understanding on Export Credits for Ships or any successive terms laid down in such an arrangement or replacing the Arrangement.

(2) OJ L 257, 9.10.2003 and EEA Supplement No 51, cf. point 1g of Annex XV to the EEA Agreement.
24B.3.3.5. Development aid

(24) Aid related to shipbuilding and ship conversion granted as development assistance to a developing country may be deemed compatible with the functioning of the EEA Agreement if it complies with the terms laid down for that purpose by the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits and its Sector Understanding on Export Credits or any successive terms laid down in such an arrangement or replacing the Arrangement.

(25) The Authority will verify the particular development content of the proposed aid, that the aid is necessary and that it falls within the scope of the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits and its Sector Understanding on Export Credits or Ships or any successive terms laid down in such an arrangement or replacing the Arrangement. The offer of development assistance must be open to bids from different yards. To the extent that EEA public procurement rules are applicable, bidding procedures have to comply with them.

24B.3.3.6. Regional aid

(26) Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the functioning of the EEA Agreement only if it fulfils the following conditions:

(a) the aid must be granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations;
(b) in regions referred to in Article 61 (3)(a) of the EEA Agreement and complying with the map approved by the Authority for each EFTA State for the grant of regional aid, the intensity of the aid must not exceed 22.5 %;
(c) in regions referred to in Article 61 (3)(c) of the EEA Agreement and complying with the map approved by the Authority for each EFTA State for the grant of regional aid, the intensity of the aid must not exceed 12.5 % or the applicable regional aid ceiling, whichever is the lower;
(d) the aid must be limited to support eligible expenditure as defined in the applicable State Aid Guidelines on regional aid.

24B.4. Notification obligation

(27) All plans to grant new aid to shipbuilding, ship repair or ship conversion, either in the form of a scheme or as individual aid not covered by a scheme, shall be notified to the Authority except if they fulfil the conditions set forth in one of the State aid block exemptions (1), exempting certain categories of State aid from the requirement of prior notification.

24B.5. Monitoring

(28) EFTA States shall submit to the Authority annual reports on all existing aid schemes pursuant to the rules set forth in Part II of Protocol 3 to the Surveillance and Court Agreement and in its implementing provisions.

24B.6. Overlapping aid from different sources

(29) The aid ceilings stipulated in this Framework are applicable irrespective of whether the aid in question is financed wholly or in part from State resources or from resources accruing from EEA cooperation. Aid authorised under this Framework may not be combined with other forms of State aid within the meaning of Article 61(1) of the EEA Agreement or with other forms of financing obtained through the participation of EFTA States in Community programmes, the cumulation of which produces an aid intensity higher than that laid down in these guidelines.

(30) In the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.

24B.7. Application of this framework

(31) This Framework will be applicable from 1 January 2004 until 31 December 2006 at the latest. It may be reviewed by the Authority during this period.

(1) See above in paragraphs 12 (b), (c), (d) and 22.