

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 356/08/COL

of 11 June 2008

on the tax refund scheme for seafarers aboard passenger vessels in the Norwegian Ordinary Shipping Register (NOR) (Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,Having regard to Decisions No 280/06/COL ⁽⁶⁾ and No 412/06/COL ⁽⁷⁾,Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

Whereas:

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 thereof,

I. FACTS

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

1. Procedure

By letter of 23 February 2007 (Event No 411169), the Norwegian authorities notified, pursuant to Article 1(3) of Part I of Protocol 3 of the Surveillance and Court Agreement, an amendment to the tax refund scheme for seafarers aboard passenger vessels in the Norwegian Ordinary Shipping Register (NOR).

Having regard to the Authority's Guidelines ⁽⁴⁾ on the application and interpretation of Articles 61 and 62 EEA, and in particular the Chapter on aid to maritime transport,

By letter dated 7 March 2007 (Event No 412343), the Authority requested additional information. The Norwegian authorities replied to the information request by letter dated 22 April 2008 (Event No 474517).

Having regard to Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁵⁾,

⁽⁶⁾ EFTA Surveillance Authority Decision No 280/06/COL of 4 October 2006 on the alterations to the tax refund schemes to shipowners for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS), published in OJ C 143, 28.6.2007, p. 5, and EEA Supplement No 30, 28.6.2007, p. 6. The full text of the decision can be found on the Authority's webpage: <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/stateaidregistry/>

⁽¹⁾ Hereinafter referred to as 'the Authority'

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽³⁾ Hereinafter referred to as 'the Surveillance and Court Agreement'.

⁽⁴⁾ Guidelines on the application and interpretation of Articles 61 and 62 EEA and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1. The Guidelines were last amended on 19 December 2007. Hereinafter referred to as 'the State Aid Guidelines'.

⁽⁵⁾ OJ L 139, 25.5.2006, p. 37.

⁽⁷⁾ EFTA Surveillance Authority Decision No 412/06/COL of 19 December 2006 on the alterations to the tax refund schemes for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR), published in OJ C 111, 17.5.2007, p. 20, and EEA Supplement No 23, 17.5.2007, p. 2. The full text of the decision can be found on the Authority's webpage: <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/stateaidregistry/>

2. Description of the proposed measures

2.1. Title of the aid scheme

The current notification amends the scope of application of the scheme entitled 'Tax refund scheme for seafarers employed aboard vessels in the Norwegian Ordinary Shipping Register (NOR) and the Norwegian International Shipping Register (NIS)' ⁽⁸⁾ as originally authorised by the Authority in Decision No 280/06/COL and amended by Decision No 412/06/COL ⁽⁹⁾.

2.2. Objective of the aid scheme

According to the Norwegian authorities, the main aims of the tax refund scheme for seafarers are to safeguard and increase employment of Norwegian and EEA seafarers, to secure recruitment and qualified training of seafarers and to improve the competitive position of companies employing such seafarers. At the same time, the scheme has a wider strategic objective of preserving and developing know-how and improving safety in the maritime industries in general.

The tax refund scheme for seafarers involves the income tax and social security contributions due by the employer on behalf of the seafarer being reimbursed (a so-called 'net wage' scheme). The Norwegian authorities propose to extend the scheme to passenger ships covering the distance Bergen-Kirkenes exposed to competition and registered in the Norwegian Ordinary Shipping Register (NOR).

The Norwegian authorities have calculated that the alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Register (NOR) will affect approximately 750 seafarers.

2.3. National legal basis for the aid measure

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

The budgetary Decision No 197 is implemented by Regulation of 21 December 2005, number 1720 (*Forskrift om forvaltning av tilskudd til sysselsetting av sjøfolk*), which will be amended accordingly. The Norwegian authorities have indicated that the implementing guidelines for the scheme will be amended in line with the proposed alterations to the scheme.

⁽⁸⁾ Hereinafter referred to as 'the tax refund scheme for seafarers'.

⁽⁹⁾ See notes 6 and 7.

2.4. Eligibility

The tax refund scheme for seafarers applies to the safety crew on board ships registered in the Norwegian Ordinary Shipping Register (NOR) of at least 100 GT which are used for maritime transportation. The notified alteration to the approved scheme extends its coverage to the safety crew on board passenger ships covering the distance Bergen-Kirkenes. The Norwegian authorities have stated that this, in effect, means the so-called 'Hurtigrute ships'.

The Norwegian authorities have not notified any other amendments to the tax refund scheme as approved by the Authority in Decisions No 280/06/COL and No 412/06/COL. Therefore, ship-owners of qualifying ships will receive grants in respect of seafarers who are:

- (a) tax resident in Norway or another EEA State or citizens of an EEA State;
- (b) tax liable to Norway for income earned aboard; and
- (c) eligible for the seafarers tax deduction according to section 6-61 of the Tax Act; and
- (d) whose wages are reported to the National Pension Insurance for Seafarers Scheme or documented separately.

2.5. Budget and duration

The amendment to the tax refund scheme was notified as taking effect from 1 July 2007 ⁽¹⁰⁾. The tax refund scheme is subject to the annual budgetary decision of the Norwegian Parliament. The scheme is therefore limited to the fiscal year. Its continuation is conditional on the next fiscal year's budget appropriation. The Norwegian authorities have indicated that the scheme is in principle not fixed for a specific time period but if still in operation it will be re-notified in ten years.

The budget appropriation for the fiscal year 2007 corresponding to the notified amendment amounts to NOK 30 million (approximately EUR 3,6 million) ⁽¹¹⁾. The annual effect of the scheme for 2007 is estimated at NOK 90 million (approximately EUR 10,94 million).

⁽¹⁰⁾ Companies eligible under the scheme have to submit an application every second month for the preceding two months period. Reimbursement will normally be made within two months.

⁽¹¹⁾ Exchange rate NOK/EUR is 8,2224 for 2007, as published on the Authority's website.

3. Comments by the Norwegian authorities, including amendments to the notification

In their letter dated 22 April 2008, the Norwegian authorities stated their view that the commercial contract with the company Hurtigruten ASA regarding the purchase of transport capacity on the distance Bergen-Kirkenes does not include any element of State aid. The Norwegian authorities are therefore of the opinion that aid granted under the tax refund scheme for seafarers does not cumulate with aid received from other local, regional, national or Community schemes to cover the same costs and there is no overcompensation.

II. ASSESSMENT

1. The presence of State aid

Article 61(1) EEA reads as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

In Decision No 280/06/COL, the Authority assessed the tax refund scheme for seafarers, which, at the time, covered ferries engaged in foreign trade, offshore vessels and shuttle tankers. In that Decision, the Authority considered that the scheme constituted State aid which was compatible with the functioning of the EEA Agreement on the basis of the provisions of the Authority's State Aid Guidelines on Aid to Maritime Transport⁽¹²⁾. The Authority also assessed two amendments to the notified scheme in Decision No 412/06/COL and concluded that the scheme as amended constituted compatible State aid, again on the basis of the Maritime Guidelines.

In the following, the Authority will assess whether the amendment proposed in the current notification alters the previous conclusion that the scheme constitutes State aid within the meaning of Article 61(1) EEA.

1.1. Presence of state resources

The aid measure must be granted by the State or through state resources. As the refund of the income tax and the social security contributions will still be financed by budgetary allocations, this criterion is fulfilled.

1.2. Favouring certain undertakings or the production of certain goods

The refund of the tax and social security contributions compensates the ship owners for charges which are normally

borne from their budget and therefore constitutes an advantage to those able to benefit from the scheme. The support also constitutes a selective measure as it is only addressed to the maritime sector and ship owners of certain vessels within this sector. The notified amendment does not alter this situation; indeed, it simply extends the application of the tax refund scheme to one more type of vessel, and currently only affects one extra company, Hurtigruten ASA.

1.3. Distortion of competition and effect on trade between Contracting Parties

The ship owners benefiting from the scheme, including the company to which the scheme is extended as a result of the current notification, carry out an economic activity in competition with ship owners/companies from other countries of the EEA and the support under the scheme strengthens their position on the market. The support therefore distorts or threatens to distort competition and affects trade between the Contracting Parties.

1.4. Conclusion

Based on the above findings, the Authority concludes that the tax refund scheme for seafarers, and in particular the notified amendment thereto, constitutes State aid within the meaning of Article 61(1) EEA.

2. Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, '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'.

The Norwegian authorities notified the extension of the tax refund scheme for seafarers as applicable from 1 July 2007. Nonetheless, the Norwegian authorities stated that no payments would be made until the Authority had taken a decision on the case. It would appear that no payments have been made. Therefore, the Authority considers that the Norwegian authorities have complied with the above notification requirement and the standstill obligation.

3. Compatibility of the aid

Article 61(3)(c) EEA provides that aid may be considered to be compatible with the functioning of the EEA Agreement if its purpose is to facilitate the development of certain economic activities, provided such aid does not adversely affect trading conditions between the Contracting Parties to an extent contrary to the common interest. Aid in favour of the maritime sector must be examined in particular in the light of the Maritime Guidelines.

⁽¹²⁾ Hereinafter referred to as 'the Maritime Guidelines'.

In the following the Authority will assess whether the notified extension of the tax refund scheme for seafarers to cover the safety crew on board passenger ships covering the distance Bergen-Kirkenes is such as to amend the compatibility assessment carried out by the Authority in Decisions No 280/06/COL and No 412/06/COL.

3.1. Application to maritime transport activities

The provisions of the Maritime Guidelines are applicable to 'maritime transport' activities. The definition of maritime transport activities for the purposes of these guidelines corresponds to the one given 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⁾. Thus, maritime transport refers to the 'transport of goods and persons by sea'.

The amendment of the scheme extends it to the safety crew on board passenger ships covering the distance Bergen-Kirkenes registered in the Norwegian Ordinary Shipping Register (NOR) and exposed to competition. As long as these vessels carry out maritime transport activities within the meaning of the Maritime Guidelines, they are eligible for aid under the amended tax refund scheme.

3.2. Compliance with the objectives of the maritime guidelines

The Maritime Guidelines set out that aid schemes can be introduced to support the EEA maritime interest in the pursuit of general objectives such as:

- improving safe, efficient, secure and environmentally friendly maritime transport,
- encouraging the flagging or reflagging 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

⁽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⁾ Point inserted by EEA Joint Committee Decision No 70/97 (OJ L 30, 5.2.1998, p. 42 and EEA Supplement No 5, 5.2.1998, p. 175), with entry into force 1.8.1998.

- contributing to the promotion of new services in the field of short sea shipping.

As noted in the previous Decisions relating to the tax refund scheme for seafarers, an expressed objective for the Norwegian authorities is to preserve its position as a leading maritime nation. This objective is based, among other things, on the vital importance of this industry to many coastal communities.

In this context the creation of conditions allowing fairer competition with flags of convenience (and other EEA States) seems to be the best way forward in the opinion of the Norwegian authorities. The tax refund scheme for seafarers seeks to promote the Norwegian maritime interest, with the aim of improving safe, efficient, secure and environmentally friendly maritime transport, encouraging the flagging or reflagging to the Norwegian Ship Register (NOR), contributing to the consolidation of the Norwegian maritime cluster while maintaining an overall competitive fleet on world markets and maintaining and improving maritime know-how and protecting and promoting employment for EEA seafarers. The Norwegian authorities state that the extension of the net wage scheme to the ships covering the distance Bergen-Kirkenes furthers these objectives. Approximately 750 seafarers will be affected by this expansion.

The Authority considers that the Norwegian authorities have provided sufficient justification regarding the compliance of the proposed alteration to the tax refund scheme for seafarers with the general objectives of the Maritime Guidelines.

3.3. Aid granted in the form of reduced labour-related costs

The Maritime Guidelines provide that aid in the form of the alleviation of the burden of labour-related costs in respect of EEA seafarers should be allowed, provided that those seafarers are employed on board ships registered in an EEA State. The Maritime Guidelines allow such aid up to a maximum ceiling of 100 % relief from contributions. Such measures should seek to safeguard EEA employment, both on board and onshore, preserve and develop maritime know-how in the EEA and improve safety. With regard to labour costs, section 3.2(2) of the Guidelines provides that the following action on employment costs should be allowed for EEA shipping:

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

For the purposes of the above, 'EEA seafarers' are defined as:

- citizens of the EEA States in the case of seafarers working on board vessels (including ro-ro ferries) 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.

The tax refund scheme for seafarers concerns the reimbursement of income tax and social security contributions paid by an employer on behalf of seafarers. Under the scheme as approved by Decisions No 280/06/COL and No 412/06/COL, ship owners of qualifying ships will receive grants in respect of seafarers who are tax resident in Norway or another EEA State or citizens of an EEA State, tax liable to Norway for income earned aboard, and eligible for the seafarers tax deduction according to section 6-61 of the Tax Act, and whose wages are reported to the National Pension Insurance for Seafarers Scheme or documented separately. No amendment has been notified in this sense. Thus, the Authority considers that the seafarers covered by the amendment will fall within the categories provided for in the Guidelines.

3.4. *Ceiling*

Section 3.2 of the Maritime Guidelines allows for the reduction of contributions for the social protection of EEA seafarers and a reduced rate of income tax. According to section 11 of the Maritime Guidelines, a reduction might be granted up to a ceiling of 100 %, i.e. a reduction to zero of taxation and social charges. According to the original notification of the scheme, refund payments can never exceed the amount of income tax and social security contributions actually paid. Since no amendments have been notified in this respect, the Authority considers that the tax and social security contributions to be reimbursed as a result of the notified amendment will continue to be in line with the Maritime Guidelines.

3.5. *Cumulating aid*

In accordance with Section 11 of the Maritime Guidelines, a reduction to zero of taxation and social charges is the maximum level of aid which may be permitted. Other systems of aid may not provide any greater benefit than this. The Norwegian authorities have stated that aid under the tax refund scheme for seafarers cannot be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs.

3.6. *Conclusion*

On the basis of the foregoing assessment, the Authority considers that the notified alteration to the tax refund scheme for seafarers, extending the reimbursement of seafarers income tax and social security contributions paid by the employer to safety crew on board passenger ships covering the distance

Bergen-Kirkenes exposed to competition and registered in the Norwegian Ordinary Shipping Register, is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) EEA read together with the Maritime Guidelines. Accordingly, the Authority does not raise any objections to the notified amendment.

The Norwegian authorities are reminded of the obligation resulting from Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Article 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme. The Norwegian authorities are required to present to the Authority as soon as possible all legislative and administrative texts implementing the above alterations to the aid schemes, where this has not already been done.

Following the requirements of Section 12 of the Maritime Guidelines, the Norwegian authorities are reminded that for all aid schemes falling within the scope of the Maritime Guidelines, EFTA States are to communicate to the Authority an assessment of their effects during their sixth year of implementation.

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

The tax refund scheme for seafarers as approved by Decisions No 280/06/COL and No 412/06/COL was notified until 1 January 2016. The current notification indicates that the tax refund scheme is in principle not fixed for a specific time period but if still in operation it will be re-notified in ten years. The Norwegian authorities have not justified why the notified amendment should outlive the scheme as originally notified and therefore the Authority concludes that it is appropriate that the latest alteration to the scheme expires on that same date. The Authority draws the Norwegian authorities' attention to the fact that the Maritime Guidelines, under which the tax refund scheme has been approved, will be reviewed in 2011. In case the rules of the Maritime Guidelines change, this may have an effect on all existing aid schemes falling under the Guidelines, including the alteration to the scheme authorised by this decision,

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified alteration to the tax refund scheme for seafarers aboard vessels in the Norwegian Ordinary Shipping Registers (NOR), extending the reimbursement of seafarers' income tax and social security contributions paid by the employer to safety crew on board passenger ships covering the distance Bergen-Kirkenes exposed to competition and registered in the Norwegian Ordinary Shipping Register.

The amended scheme is compatible with Article 61(3)(c) EEA.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English text is authentic.

Done at Brussels, 11 June 2008.

For the EFTA Surveillance Authority

Kurt JAEGER
College Member

Kristján A. STEFÁNSSON
College Member
