EFTA SURVEILLANCE AUTHORITY DECISION

No 94/16/COL

of 11 May 2016

to require Norway not to adopt the measure notified on the basis of Article 4(2) of the Act referred to at point 56g of Annex XIII to the EEA Agreement (Council Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over) regarding vessels using refrigerated seawater tanks to fulfil stability requirements [2016/1891]

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 56g in Chapter V of Annex XIII to the EEA Agreement (Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over [1], as amended ('the Act')) as adapted to the EEA Agreement by Protocol 1 thereto, and in particular to Article 4(4)(b) of the Act,

The measures provided for in this Decision are in accordance with the opinion of the EFTA Transport Committee,

Acting in accordance with the examination procedure,

Having regard to Decision 103/13/COL of the EFTA Surveillance Authority ('the Authority') of 13 March 2013 empowering the College Member with special responsibility for transport to take certain decisions (Doc. No 578349),

Whereas:

On 21 April 2015, a notification of exemption was submitted by the Norwegian Maritime Authority invoking Article 4(2) of the Act with respect to fishing vessels using refrigerated seawater tanks as ballast (Doc. No 754705).

On 16 September 2015, the Authority informed Norway that it considered that the notification submitted was not supported by sufficient evidence (Doc. No 773295) and invited Norway to either withdraw its notification or to submit additional supporting documents to the existing notification. By email dated 25 September 2015, Norway informed the Authority that additional documentation would be forwarded (Doc. No 774042).

On 23 November 2015, the Authority received the additional information submitted by the Norwegian Maritime Authority (Doc. No 781516). Thus, it is only from this date that the Authority considers the notification to be duly submitted and, furthermore, it is from this date that the period of six months established by Article 4(4)(b) of the Act starts running.

According to the Norwegian notification, Norway intends to amend its national legislation to adopt the following exemption:

> 'In Regulations of 13 June 2000 No 660 concerning the construction, operation, equipment and surveys of fishing vessels 15 m in overall length (LOA) and over, § 3-2 (4), the following wording will be added after the wording "permanently arranged":
>
> Vessels using refrigerated seawater (RSW) for storing and cooling the catch can use these tanks to fulfil the stability requirements. These vessels shall be arranged with a system monitoring the exact amount of water in every RSW tank. If the water level is below the minimum requirement according to the approved stability calculations, an alarm signal, both visual and audible, shall be activated in the wheelhouse.'

Regulation 2 (Stability criteria), Paragraph 3 of Chapter III of Annex I of the Act stipulates that in vessels with a length of less than 45 m ballast shall be permanent, and where permanent, it shall be solid and fixed securely in the vessel. Liquid ballast may only be accepted by an administration of the EEA States, if it is stored in completely filled tanks which are not connected to any pumping system of the vessel. According to the Norwegian description of the exemption, that is not the case.

[1] OJ L 34, 9.2.1998, p. 1.

Article 4(2) of the Act states that EEA States shall apply the provisions of Regulation 3, Paragraph 3 of Chapter I of the Annex to the Torremolinos Protocol for adopting measures containing exemptions, subject to the procedure laid down in paragraph 4 of the same Article. Pursuant to Paragraph 3 of Regulation 3, vessels that may be exempted shall engage in fishing near the coast, whilst the Norwegian notification indicates that this is not the case ('a large part of the fishing fleet is involved in pelagic operations at great distances from the harbours').

Furthermore, as foreseen also by Regulation 3, Paragraph 3 of Chapter I of the Annex to the Torremolinos Protocol, read in conjunction with Article 4(4) of the Act, Norway shall provide evidence related to the unreasonable and impracticable application of the requirements of the Torremolinos Protocol in view of the distance of the vessel's operating area from its base port in its own country, the type of vessel, the weather conditions and the absence of general navigational hazards.

Even if Norway has put forward several arguments to justify the exemption such as 'heavier and less fuel-efficient vessels, increased rolling motion, reduced radius of action, reduced loading capacity and shipowners building larger vessels than needed' and has also alleged that there has been a lack of incidents in vessels using RSW tanks, these arguments are considered mainly as operational and do not seem to fulfil the requirements for exemptions granted in accordance with Regulation 3, Paragraph 3 of Chapter I of the Annex to the Torremolinos Protocol.

In framework of the Authority's cooperation with the European Maritime Safety Agency ('EMSA') established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ([1]), the Authority requested assistance in respect of this notification.

EMSA's assessment dated 8 October 2015 (Doc. No 776081), concludes that from a technical point of view, the Act is very specific in terms of ballast being permanent and that when it comes to exemptions, the administrations of the EEA States may only accept liquid ballast, stored in completely filled tanks which are not connected to any pumping system of the vessel. This is not the case of the notified measure. Moreover, EMSA outlines that Regulation 3, Paragraph 3 of Chapter I of the Annex to the Torremolinos Protocol applies to vessels sailing near the coast, whereas Norway intends to invoke the exemption for vessels engaged in 'pelagic fishing operations at great distances from the harbours'.

After the missing information was received from Norway on 23 November 2015, EMSA was contacted again in December 2015 to update its advice. The latest advice from EMSA based on the additional information submitted by Norway fully confirms the operational nature of the notified measures and, hence, EMSA confirms that its assessment provided in October 2015 remains valid.

The Authority considers that the measure put forward by Norway does not fulfil the material requirements for exemption as required by the Act since (i) the pumping system suggested by Norway is not eligible for exemption according to the text of the Act; (ii) the vessels to which the potential exemption could be applicable to do not engage in fishing near the coast; and (iii) Norway has not provided evidence as to why the application of the Act is unreasonable and impracticable. Thus, the Authority is of the opinion that the notified exemption is not justified.

Consequently, the Authority requires that Norway does not adopt the proposed measures,

HAS ADOPTED THIS DECISION:

1. The proposed measure regarding vessels using refrigerated seawater tanks to fulfil stability requirements notified by Norway on 23 November 2015, pursuant to Article 4(2) of the Act referred to at point 56g in Chapter V of Annex XIII to the EEA Agreement (Directive 97/70/EC) is not justified.

2. Norway shall not adopt the measure regarding vessels using refrigerated seawater tanks to fulfil stability requirements notified on 23 November 2015.

([1]) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

3. This Decision is addressed to Norway.

Done at Brussels, 11 May 2016.

For the EFTA Surveillance Authority

Helga JÓNSDÓTTIR	Carsten ZATSCHLER
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