A. INTRODUCTION

In 2004, the Commission adopted its latest Community Guidelines on State aid to maritime transport¹ (hereafter “Maritime Guidelines”). These guidelines notably specify that they will be reviewed within seven years of their date of application.

The purpose of the present consultation is to invite Member States, other institutions and stakeholders to provide information on industry developments, feedback on the application of the Maritime Guidelines and their effects, as well as any comments and proposals regarding the State aid to maritime transport.

The present consultation gives the Member States, other Institutions and stakeholders the opportunity to express their views on the various issues at stake. The Commission will carefully analyse the outcome of the consultation before deciding to what extent changes to the current rules are necessary and, if appropriate, come forward with a proposal for revised Maritime Guidelines. At this stage, the Commission has not taken position concerning a possible modification of the existing guidelines.

B. GENERAL REMARKS REGARDING THE CONSULTATION

Member States and other interested parties are invited to respond to the questionnaire. Replies can be submitted in all official languages. Given the possible delays in translating comments submitted in certain languages, translations of the replies in English, French or German would enable the Commission to process them more speedily.

Certain questions are intended specifically for public authorities or certain stakeholders and respondents are, thus, not required to address every question. If you are not concerned by a particular question, please reply "not applicable". If not stated otherwise in the questionnaire, the questions are directed to both, public authorities and stakeholders.

Any comments and information submitted beyond the scope of the questionnaire will be welcome, in particular other documents, reports, studies, data sources, etc which may be relevant.

¹ OL C 13 of 17.01.2004. p.3
The deadline for replies is 14 May 2012. The replies should be sent to the European Commission, DG COMP, Unit F-2, B-1049 Brussels, preferably via e-mail to Stateaidgreffe@ec.europa.eu indicating the consultation reference "HT2744 - Review of the Guidelines on State aid to maritime transport".
QUESTIONNAIRE

NOTE: The following questionnaire follows the structure of the Community Guidelines on State aid to maritime transport. You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit the questions in this questionnaire.

A. ABOUT YOU

Please describe the main activities of your company/organisation/association. Please provide your contact details below.

**Name**

European Transport Workers’ Federation (ETF)

The European Transport Workers’ Federation (ETF) is a pan-European trade union organisation which embraces transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries. The ETF represents more than 2.5 million transport workers from 231 transport unions and 41 European countries, in the following sectors: railways, road transport and logistics, maritime transport, inland waterways, civil aviation, ports & docks, tourism and fisheries.

**Organisation represented**

ID Transparency Register: **92545571128-74**

Galerie AGORA, Rue du Marché aux Herbes 105, Boîte 11 B - 1000 Bruxelles

e.chagas@etf-europe.org

**Location (Country)**

p.alfonso@etf-europe.org

For the sake of transparency, the Commission intends to make accessible the replies to this questionnaire on its website. In the absence of reply to the following questions, the Commission will assume that the response contains no confidential elements and can be divulged in its entirety.

For rules on data protection on the EUROPA website, please see: [http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata](http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata)

A.1. Do you object to the disclosure of your identity? NO

access to European Parliament, Council and Commission documents¹ apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on our website. NO

**B. General Questions**

**B.1. Assessment of the market/regulatory developments**

The ETF provides replies only to questions that are relevant to its activities and its capacities to reply.

**B.1.1 Based on your knowledge and information at your disposal, what are the main developments in the maritime industry since 2004 with respect to**

(a) world’s seaborne trade\(^2\), the number of containers transported\(^3\), the overall tonnage of the world fleet\(^4\); what were the effects of the global crisis and are there already signs of recovery? If possible, please provide the same data per country, per company and for the years since 1989.

(b) market position of the EU maritime industry (EU controlled and EU flagged ships)? How would you describe the current competitive situation of the various EU companies in the maritime sector in comparison with non-EU companies and the rest of the world\(^5\)? Where available, please provide the relevant data on, for instance, leading players, market shares, market share evolution in relevant markets, etc.

The ETF would like to highlight that it is difficult to assess the market position of EU maritime industry. This is a consequence concerning the availability of data. Currently, Eurostat does not keep any data on vessels flying EU flags, nor on EU registered shipping companies etc. This makes comparison in general quite difficult and data is generally published by shipowner associations. However they also have recourse to international service providers and there is no transparency regarding the data collection.

The ETF would like to restate its analysis made regarding the tonnage tax system and its effects on employment providing examples from EU Member States.

As we have seen, one of the main aims of the state aid guidelines was maintaining and improving maritime know-how and protecting and promoting employment for European seafarers. However, the review of the different tonnage tax systems in the EU shows that, in practice, there are not many measures that have been put in practice to achieve these aims. There are some crewing requirements, for example Greek tonnage tax requires the officers to be Greek nationals. The Dutch tonnage tax system requires

\(^2\) Measured in tonnes and tonne-kilometres.

\(^3\) Measured in 20 Foot Equivalent Unit (TEUs).

\(^4\) Measured in Deadweight tonnage or gross tonnage.

\(^5\) Measured by different indicators, such as: number of EU controlled and EU registered fleets, fleet capacity (existing ships and newbuilts), container shipping and other types of shipping activities, nationality of best performing companies, etc.
masters to be Dutch citizens but this practice is no longer applied. As in some other tonnage tax systems, German shipowners under the scheme are required to employ a certain number of German or EU domiciled seafarers.

However, it is possible to register a ship in Germany, but fly a foreign flag. This defeats the objective of employing a certain number of German seafarers despite benefitting from the state aid guidelines. As a result, a significant number of German shipping companies do not participate in the training system, and many appear to have no interests in recruiting their crews on the German labour market. The ability to access a favourable tonnage tax system while using FOCs and negligible employment of EU seafarers should be avoided under the revised SAG.

As far as the UK tonnage tax system is concerned, it is unique in its direct training links. Once companies have opted for the tonnage tax system, they are expected to remain with it for 10 years. The tonnage tax is tied to a formal commitment by shipping companies to boost the number of training places. Companies must train one officer for every 15 they already employ. To be eligible to count against the training commitment, a trainee must be resident in the UK and either a UK national or a national of another EEA State.

However, there is no link between companies in the UK tonnage tax and ratings training. As a result, the UK scheme has not created a single training place or job for UK ratings and the number of UK officers and ratings employed on Tonnage Tax vessels has significantly declined over the lifetime of the scheme. Companies applying for the tonnage tax regime must submit officer-training plans to the Department for Transport or make a payment in lieu of training (PILOT), estimated to be around £650 per month. and the exact amount contributed in PILOT funds during each year of the Tonnage Tax (introduced in the year 2000) is not known.

In 2005, the UK House of Commons Transport Committee reported that: —Tonnage tax was introduced in 2000 to try and achieve both these aims: to boost the UK fleet and to increase the training of seafarers. It has considerably increased the UK registered merchant fleet and the training commitment in the tonnage tax has led to an increase in the number of cadets. The committee welcomed this success. But tonnage tax has not created the number of jobs for UK seafarers that had been expected, and there are fears that too few officers are moving from training to employment to meet the future needs of shipping and its cluster. (HCTH 2005:3)

The committee recommended that the Government considered refining the scheme so that participation in the tonnage tax regime is linked to providing employment and training to higher certificate level (i.e. higher than cadet level). It should be emphasised that there are no nationality restrictions on shipowners using the UK tonnage tax scheme. As a result many of the seafarer posts on tonnage tax ships are occupied by non-UK nationals. The proportion of UK nationals among officers on UK tonnage tax ships has fallen from 79.7% in 2000 to 38.1% in 2009. Over the same period the proportion of UK nationals among ratings on UK tonnage tax ships has fallen from 48.6% to 22.1%.

In summary, the tonnage tax has been operating in Europe in different forms since the mid-1990s. Greece was the first country to introduce a tonnage tax in the mid-1990s followed by the Netherlands and Norway, Germany in 1999, the UK in 2000, and Denmark, Spain, Ireland, Belgium, Italy, Finland and France in 2002. The introduction of tonnage tax has led to an increase in the number of vessels registered under European flags and a decline in the average age of the Community flagged fleet. However, the extent to which it has managed to address the decline in the number of EU seafarers varies significantly from Member State to Member State.
(Further information can be found in the ETF project of 2010 called “Enhancing recruitment and training in the Shipping industry in Europe” carried out under the Social Dialogue Budget line 01)

The ETF draws the attention on the fact that the broad guidelines have been designed by the Commission in such a way as to enable significant national discretion as to precisely how their provisions would be applied. In fact, they are just requirements and do not impose any specific obligations on Member States. As a result, the implementation of guidelines had different impacts according to the modalities chosen by each Member State on how to implement them in its national context.

However, and regardless of a few exceptional successful experiences, the ETF is still highly critical of the way the SAG is framed. We would therefore urge the Commission to make it clear and unambiguous that the overriding objective remains securing the employment of EU Seafarers, i.e. those resident in a Member State, on the same priority level as the objectives to secure the competitiveness of the industry. The ETF recalls that the tax alleviation was designed to reduce the competitive cost between EU seafarers and cheaper sources of labour supply from outside of the EU. In ETF’s view, it is a good example of how progressive policies can provide both support to employment and competitiveness. However, many examples could testify where such measures have failed and state aids resulted in a dangerous and unfair competition between those shipowners who kept their registers in the EU and those, who, like in the German case, could receive fiscal incentives while re-flagging most of their fleet to Flags of Convenience (FOCs). If the Commission reassessment fails again to address this problem, the downward spiral in substandard shipping would not be stopped and the decline of the EU maritime skills will continue.

First of all the ETF would like to remark that the Commission should receive from the Member States every three years a report concerning the application of the tonnage tax and the granting of state aid to shipping companies. The ETF highlights that outcomes of these reports could be presented publicly in a comparative way so as to provide a current overview.

At this stage no substantive regulatory changes have been noted apart from the impending arrival of the MLC 2006 (and 2009/13/EC) and the STCW’10. However, none of these changes are likely to boost employment of EU/EEA nationals although in the very long term they could seek to address the erosion of employment conditions by setting a decency threshold below no employer can go. This may eventually help secure employment for EU/EEA nationals but only if the MLC is the trigger for continuous improvement of seafarers’ living and working conditions (including wages).
Finally it seems that the "flag share" requirements in the latest version of the SAG has caused the ship-owners problems, mainly because they did not fully contribute to the objectives of the SAG ie. growing the share of EU flag vessels and EU seafarers on European ships.

(e) main technological, regulatory, etc. developments since the introduction of the Guidelines which have impacted on labour conditions and more specifically, on labour costs. What are the likely developments in the future?

There was the introduction of the MLC 2006 – unfortunately this regulation did not yet had a chance to make an impact. If the C185 Seafarer ID would be ratified, it could be an instrument that could equally assist for statistical and monitoring purposes. Furthermore the Fair Treatment Guidelines if implemented by all EU Member States, then all of these regulatory tools could improve the attractiveness of a career offshore or onshore but unfortunately EU Member States have been slow to ratify the MLC 2006, most have ignored C185 and the UK government has even suggested that seafarers themselves would have to meet the cost of bringing their ID documents in line with ILO Convention 185. Neither do most EU governments strictly apply and control the Fair Treatment Guidelines.

In Germany, shipowners were able to employ on a ship flying the national flag, a significant amount of non-EU seafarers and on foc ships the entire crew of third country nationality. Seafarers of third country nationality are often employed not only for reasons of low labour costs but also for reasons of their conduct (never oppose to orders, not unionized, no obligation for the shipowner to retain workforce in case of transfer of the ship, do not demand leave pay, are not organised through works councils). This explains further why German shipowners invest in training centres abroad, not only for ratings but also for engineers and ship officers. Many of the German shipowners that recruit with preference from the Philippines for ex. do not invest in German training centres.

(f) flagging of vessels: proportion (and its change over time) of a Member State's controlled/ owned fleet registered under its flag, under other Member States' flag and under non-EU flag; extent of switching over time between Member States' flags and between EU flags and non-EU flags (and possible reasons for such switching). In particular, are you aware of sources containing statistics related to the flagging history of the EU fleet (e.g. movements of vessels among EU registers, or between EU and non-EU registers)? What are in your view the driving forces behind the evolution of EU flags over time (in terms of number of vessels and/or tonnage). Please distinguish between factors related to measures falling under the scope of the current guidelines or other State Aid measures and exogenous factors (e.g. related to technological developments, demand for maritime transport services, non-EU countries' policies, etc);

The following paragraphs are given to demonstrate the ETF concerns.

As far as the UK is concerned, the ETF is not aware the proportion of UK beneficially owned vessels, registered outside of the EU, has remained static over the past decade since the introduction of the UK Tonnage Tax system. The growth of UK registered shipping is almost entirely down to other EU/EEA shipowners establishing business in the UK (utilizing freedom of movement). Now that is welcome from UK perspective but the fact that British shipowners are not returning their ships to the UK in return for
State Aid is somewhat perverse given stated aim of SAG. Although the UK flag has benefited from the introduction of a Tonnage Tax in terms of the number of vessels registered under the UK flag, the number of UK and EEA seafarers working on those ships has declined. At the present time, out of the 19,585 seafarers employed on UK Tonnage Tax vessels, only 8,232 or 42% of officers and ratings work on UK flagged vessels. Out of that figure, only 32% of officers and 31% of ratings are UK or EEA nationality. The increase in the number of young people being trained (around 1000 per annum) since the inception of the Tonnage Tax scheme in 2000 applies only to officers, although it is clear that this has led to jobs for a number of British seafarers in that time.

However, the ETF contend that many more jobs could and should have been created through the UK Tonnage Tax scheme. We also note with concern the recent comments from the UK Shipping Minister that the UK government ‘has no intention of touching the Tonnage Tax whatsoever.’

The German administration for maritime transport – Bundesamt für Seeschifffahrt und Hydrographie (http://www.bsh.de/) provides statistics of registered ships under the German flag. The most recent statistics demonstrate that while from 2003 onwards (2003 maritime pact for state aid in maritime shipping and maritime cluster) till the peak of the economic crisis the re-registration under the German flag was visible – even though not very high – during the uptake in early 2011 till March 2012 shipowners have flagged out again or are on the bareboat charter register on a temporary basis, so that the registration levels are mostly back to the state of before 2003. More than 84% of German shipowners use a flag of convenience today. For the German example it can be said that the re-flagging as Commissioner Neil Kinnock expected in his statement in 1998 – at least 50% in 2002 has not been fulfilled, rather to the contrary the flagging out became much more forward.

The reason for this development is due to a change in the German income tax code (EStG) §5a concerning the determination of turnover of shipping fleets for international transport – which states that shipowners are allowed to demand for tonnage tax for the entire fleet. The only precondition is that shipowners need to register a preponderant amount under the German register. However this does not reply to the original objectives of the SAGs namely increase also employment levels of EU seafarers. The level of employment will also not likely improve if German shipowners of ships with over 8000 BRZ do not have to employ more than 5 EU seafarers (law was changed in 2004 from 7 to 5). The German government recognised in a statement in 2006 that the reforms were not directly linked with the EU SAGs. The ETF concludes that the German government never really identified with the objectives of the SAG and did not follow the intentions of the Commission.

In conclusion the ETF remarks that the EU fleet as a whole has at best remained flat or even decreased again once economic benefits went up after the economic downturn. Nevertheless, one success of SAG and intentions of re-flagging can certainly be seen in the raise of the number of trainees and the investment of training and promotion of the profession. If state aid would be stronger reinforce the link to training, investment in training and retention of young trainees, and then a long term success of re-flagging could be seen.

(g) employment by EU and non-EU registered shipowners on board of both EU and non-EU citizens;
The findings of the ETF Recruitment & Training Project Report will surely help here but overall it is decreasing and will decline further as the ageing population of EU seafarer’s reaches retirement. For example, the average age of a UK and NL officer is now close to 50 and around 75%. Our belief is that it is typical of UK ratings are over 40 years of age. An independent study in 2011 of state support for maritime training in the UK also forecast that, without government intervention, by 2021 there will be net deficits in the maritime sector of 3,500 deck and engineer officers at sea and 800 in at sea and ashore ratings by 2021.

A comprehensive analysis of the EU seafarers’ employment situation (both officers and ratings) is a difficult task, due to both the fact that only a small proportion of figures on employment in European shipping is available and due to the complex reality of the shipping industry (i.e. the flag state and the nationality of the beneficial owner could differ). Data on employment could be gathered from national shipowners associations or from national statistical offices and trade unions or shipping registers. Such diversity of sources cannot guarantee standardisation of data, which adds to the complexity of painting an accurate picture of the seafaring workforce. This factor has been recognized by the Task Force on Maritime Employment and Competitiveness.

In addition, statistics on the employment of seafarers are usually assembled by state agencies such as maritime administrations and only give a count of the number of citizens employed as seafarers. This data is not usually collected at sufficiently regular intervals to allow the production of time series and thus identify overall global employment trends. There are also significant gaps in the data collated by government, for example, the UK government do not collect figures for the number of UK ratings in training roles. Although national data assemblies are generally too narrow in scope they are important reference points because national labour markets still exist even if only in particular niches, or as ‘sub-contractors’ to the global market. The range and accuracy of national employment statistics for seafarers could easily be substantially improved in order get an accurate picture of the employment situation.

A study carried out for the Commission DG Move in 2011 on seafarers employments demonstrates this problem very well. At least the author warns readers to refrain from comparison of the data for a longer time span as the method of collection is unknown.

In conclusion, ETF highly recommends to adopt rules/guidelines on the collection of data regarding employment and to agree on one system of keeping statistics to make data comparable. In this regard the ETF study on training and recruitment gave the following advice:

Comparable EU data should be a made available on:
- Numbers annually entering and exiting officer and ratings training, so that it can be determined if sufficient numbers of seafarers will be entering the labour market in the future, and whether trained seafarers are successfully finding seafaring employment;
- Number of STCW certificates issued by grade annually, differentiating between EU candidates, EU domiciled and foreign candidates, as this indicates the supply of seafarers available in the labour market;
- Biennial sample census of crewing patterns aboard EU flagged and EU-owned but not EU flagged ships, including numbers of employed seafarers by age, rank and nationality, wage costs by age, rank and nationality. This would help establish the demand in the labour market – for EU domiciled seafarers as well as other nationalities;
Cohort studies of career progression in selected EU states, as this will give insight into whether and where career bottlenecks occur, and how the seafaring labour market interacts with related labour markets in the cluster.

(h) employment by EU and non-EU registered shipowners on shore of both EU and non-EU citizens; and

See answer for (g)

(i) employment of EU and non-EU citizens in maritime clusters

As regards the above questions, please provide relevant data which is in your possession or point to sources where such data and related information could be found.

See answer (g). Maritime clusters are under severe jeopardy if there are insufficient seafarers entering the shipping career.

B.1.2 To what extent these developments could be attributed to State aid measures as opposed to other exogenous factors? Please specify and provide relevant data, if available.

It can be noted that a general investment in the education system and training will increase further possibilities for the maritime cluster industries. In Germany for example training is financed to 100% which continues to increase the attractiveness to flag vessels under the German flag to be able to register as training vessel and to benefit from a young labour force. This is however not solely an effect that can be linked to state aid measures. Yet, it should be noted that training financing can also be linked to state aid measures in some other Member States for ex. UK. Member States have created highly different state aid regimes and it is often very difficult to compare effects and impact as it depends on the overall structure of maritime and shipping industries, seafarer traditions and economic development of the respective states.

The recent acknowledgement that the maintenance and development of the EU maritime cluster is, in turn, dependent upon the health and vitality of the EU seagoing workforce, is further ammunition to press for more explicit linkage of tax relief schemes to the employment of EU seafarers. Indeed, protecting the employment of those at sea now has to be seen as a priority so that Europeans will stand a good chance of preserving their maritime know-how, which is an integral part of Europe’s competitive edge.

B.1.3 How have maritime companies’ business models evolved since the adoption of the Maritime Guidelines? Please describe the main differences, if any, between the business models of European based shipowners and non-European ones?

The maritime companies’ business models have mainly evolved towards more inequality: big sized container and bulk vessels are detained by a small amount of leading business often global players. Consequently the highly unequal market share
increases the pressure on market operators that are smaller and dispose of smaller vessels (paper, Notteboom and Wang, 2011, ECONSHIP conference). The same can be noted with regard to equality of access to finance and loans.

Regarding employment and staffing on board ship management companies and shipowners seem to be often under the same roof. Multinational companies operate as groups and often include a crew management company which provides all services concerning hiring, payroll management, training etc.

For the ETF it is not clear to what extent ship management companies - who keep a token presence in the EU maritime cluster but offshore most of their activity - will still be able to claim tonnage tax. Some clarity is needed with regard to whether any qualifying rule will be applied to ensure that ship management companies maintain a significant presence within the EU maritime cluster. Further clarity is required, as well, from the Commission in so far as the pertinence of new rules on State aid to ship management companies is concerned when the SAG are in the process of being reviewed.

**B.1.4 Which are, in your view, the factors determining European shipowners’ choice of the country where they flag their ships and the country where they pay their taxes? Do you expect that these factors will change in the future?**

(a) to which extent the choice is determined by State aid aspects?

(b) to what extent the choice is determined by other factors (for example, better, quicker and/or cheaper administrative services, favourable labour law or the way it is implemented, etc. Please substantiate your view with concrete data and examples.

(c) which countries are considered the best in the EU/in the world for ship-flagging and paying taxes and why?

The ETF observes that, whilst state aids has supported the development of vessel ownership by EU shipping companies and has helped them expand their operational control, the link between these developments and particular EU flags has not strengthened.

For the ETF it seems that the choice for shipowners is made dependant on the tax regime in general and not simply state aid. This needs to be changed. The SAG recognises that shipowner companies make use of the preferential system - to have only part of their vessels flagged with a Community flag while maintaining vessels under FOCs – keeping separate accounts. Furthermore the SAG underline that the Member State would have to write extensive explanations if it would apply its favourable tax regime only to a company that has registered all vessels under a Community flag. The ETF advocates that rules should be designed in such a way so that they are not ambiguous and establish a clear long term effect. Shipowners should contribute substantially to the economic activity, employing a minimum percentage of EU workers and have its effective operational seat in the EU in order to benefit from tax relief measures. The example shows that the currently a significant high level of know-how is still in Europe and companies make great use of the European education infrastructure.
It could be concluded that state aid or investment should benefit for education centres alone, investing in the education of the young or life-long learning of experienced workers. This skilled workforce could then only be employed by the shipowners if the above mentioned criteria are fulfilled and if vessels fly under a Community flag. This would increase the European maritime cluster attractiveness.

The provision of State Aids is critical in the choice of flag but so is stability in the state aid regime. The UK model is illustrative in that regard. However it is complex and some shipowners clearly get very comfortable in FOC and second register regimes. Also look at the Singapore model - the governments is very flexible and provides a very supportive regime. If we allow our European shipping and related marine industries to decline, Europe will end up relying on the East and China in particular.

B.1.5 *What are the legal, technical or administrative barriers to registering a ship or to moving the head offices of a company from one country to another?*

There are few meaningful barriers to shipowners moving their ships and offices to other countries outside the EU. This should be taken into consideration and EU administration should demonstrate support to companies that move their head offices back to the EU. This is why we need to regulate the internal shipping market within the EU27. The creation of a market that has to play to European standards employing Europeans - a European Jones Act could be an envisioned solution.

B.1.6 *To what extent did the Maritime Guidelines contribute to / hamper this evolution?*

B.1.7 *What characteristics are making the maritime sector unique from the perspective of State aid control? Please provide a list of substantive sectoral State aid rules which you judge necessary in view of these characteristics? Please clarify which aspects of the maritime transport sector could be satisfactorily addressed by horizontal State aid rules. Please be as specific as possible in your reply indicating also the expected economic, social and environmental impact of the sectoral rules.*

B.2. Objectives of the Maritime Guidelines and current challenges for the maritime sector

The general objectives of the Maritime Guidelines are contained in Section 2.2 thereof.

B.2.1 *Which are, in your view, the likely developments and where do you see the major challenges for the maritime sector in the short (during the next year) and medium term (in the next 3 years) future. Do you see possible implications regarding the Maritime Guidelines?*

The ETF fears a continued drift eastwards, a rise of Chinese shipping dominance, decline of European maritime skills and resulting – the decline of the maritime cluster. This will severely effect the European economy and of key Member States such as Denmark, Greece, NL and UK.
In the future tonnage taxes could have training obligations and the UK system might provide some inspiration in this regard; and the Dutch system could also provide some inspiration as far as when it comes to offer a job guarantee. Tax regimes should make a link to the company’s seat no matter under which flag its vessels fly. The SAGs should make a clear link to a minimum percentage of EU nationals in maritime training and employment, at officer and rating level.

**B.2.2 Do you consider that the Maritime Guidelines laid down the basis for a satisfactory State aid policy in the maritime sector today?**

The ETF considers that the last review arguably weakened the central aims of the SAG by adding additional objectives to those we consider the core (growth EU flagged vessels and jobs for EU seafarers).

**B.2.3 Do you consider that the objectives indicated in the Maritime Guidelines are still valid? Should they be modified and, if yes, how? Do you consider that they should be ranked and weighted and, if yes, in what way? Please provide justification of your opinion and be specific as possible, providing data and narrative explanations.**

The ETF finds that SAG should be modified but by having in view the core aims of jobs and fleet growth must be emphasised. It is EU jobs that are important to the survival of the EU shipping industry and the European maritime cluster.

Furthermore the ETF warns the Commission against the risks and consequences of a lack of harmonised and uniform system of application of the Guidelines in EU Member States. As mentioned earlier in this paper, the national discretion as to how provisions of the State Aid guidelines are applied today with no requirements or specific obligations on Member States, led, in certain cases, to unfair competition practices between different EU registers. The ETF firmly condemns Member States using tonnage tax and, in general, more favourable fiscal incentives as a means to attract shipowners to their register and triggering, in this way, intra EU fiscal competition. It further calls on the Commission to review this system by setting out a certain harmonisation in applying the Guidelines at national level and a guarantee, in this way, that Member States will not undermine each other by competing on taxes and duties.

**B.2.4 Which are in your opinion the market failures present in (or, more generally, the objectives of common interest related to) the maritime transport industry, which have been successfully addressed by the current State aid measures and which are the ones that have not been addressed successfully? In the latter case, do you find insufficient the general provisions of the Guidelines or their implementation by Member States? What is in your view the most effective way to address the market failures present in the maritime transport industry?**

The ETF finds that the market has failed to deliver growth in EU seafarers' jobs and training as the maritime skills base continues to grow older and will eventual die off completely. Some progress has been noticed (UK is an example with around 1000 cadets per annum now being trained but this is less than half the number needed to maintain the skills base at current levels and excludes ratings).
Best way to resolve the market failure to regulate the demand for EU seafarers. Supply side measures have not had a big enough impact, unless Member States utilise to the fullest extent the funding permissible under SAG. If state aid is not extended to make employment and training of EU seafarers cheaper than the competition then the only solution is to regulate demand.

B.2.5 Do you think that there are positive or negative externalities associated with flagging-in vessels under EU flags? Please explain. How important are they? Please substantiate with data, if available.

It can be noted that re-flagging could lead to higher labour costs. This effect could be avoided if for ex the SAG would consider to link re-flagging with training and retention of employment, consequently the costs would only appear as a cost of fiscal nature and not be a real cost.

B.2.6 Do you consider that State aid measures are necessary to allow Member States to impose stricter requirements on the industry as regards working conditions and environmental aspects without prompting delocalization?

The ETF finds that state aid measures are necessary to allow Member States to impose stricter requirements on the industry as regards working conditions without prompting delocalization. If the demand for EU seafarers is regulated without providing incentives, the ship-owners will consequently "delocalise" i.e. flag out and move their business eastwards.

B.3. Application of the Maritime Guidelines

Information requested from public authorities

Did you grant State aid under the Maritime Guidelines since 2004? If yes:
B.3.1 Please indicate the total amount of aid (in million €) granted by your authorities (region/Member State) between 2004 and December 2011, on a yearly basis, under the Guidelines. Please specify the aid amounts under each specific provision of the Guidelines, and, if possible, distinguish whether the aid was given under an approved State aid scheme or as individual aid:

- Fiscal aid in the form of tonnage tax and other fiscal measures
- Coverage of labour related costs for seafarers – reduction/exemption from social contributions and reduction/exemption from income tax
- Crew relief aid
- Investment aid
- Regional aid
- Training aid
- Restructuring aid
- Aid for short sea shipping
- Compensations paid for imposed Public Service Obligations and signed Public Service Contracts

B.3.2 Please indicate the total number of beneficiaries that received aid under the Guidelines during the period indicated above. Please distinguish, if the beneficiaries were (a) shipowners or (b) any other entities.

Information requested from public authorities and enterprises

B.3.3 In general terms, what is your experience with the application of the Guidelines? Do you consider that the guidelines have had an impact on the EU flag (preventing out-flagging to third countries) and on EU employment of seafarers or various types of investments (training, communication on board, etc.)? Please provide relevant data, if available.
B.3.4 What are the positive/negative impacts of this aid? When answering the questions (a) to (h) below, please be as specific as possible, providing concrete data and narrative detailed explanations, please try to quantify each impact.

(a) What impact does it have on the global economic position of the EU maritime industry (in terms of market share, turnover, size and capacity of controlled and/or registered fleet, etc.)?

(b) Does it have an impact on employment levels in the shipping industry, for example in terms of numbers and quality of overall jobs created or lost?

(c) What is the impact on jobs created for seafarers in general and seafarers with EU/EEA nationality, in particular?

(d) What is the impact on jobs created in the on-shore maritime activities of shipping companies?

(e) What is the impact on jobs created in the maritime cluster as a whole?

(f) Does it promote better qualifications of workers, better environmental conditions/products?

(g) Does it have positive or negative direct or indirect effects on other aspects of Member States' economic activity (regional, wider maritime cluster, etc.)?

B.3.5 Do you consider that the Guidelines should be revised in light of the developments in the industry? Alternatively, do you consider the Guidelines (i) should not be modified or (ii) should be abolished so that the general rules on State aid should apply? Which other actions do you consider appropriate?

B.3.6 In case you consider that the Maritime Guidelines should be revised, what changes, in terms of structure and substantive points, on the one hand, and other minor points, on the other hand, would you recommend and why?

B.4. Aid granted to maritime transport companies under other State aid instruments - information requested from public authorities

Companies carrying out maritime transport are eligible for aid under the horizontal State aid instruments.

B.4.1 If public authorities in your Member State have granted State aid for shipping companies under State aid instruments other than the Maritime Guidelines:

(a) Please indicate the total amount of aid (in million €) granted for shipping companies under horizontal State aid instruments, specifying the legal basis and objective, between 2004 –December 2011, on a yearly basis.

(b) Please indicate the percentage of aid granted respectively for shipping companies under the Maritime Guidelines and under horizontal State aid
instruments, specifying the legal basis, between 2004 –December 2011, on a yearly basis.

B.5. Undue distortion of competition within the EU

B.5.1 Do you consider that there are competition distortions in the EU maritime industry related to misinterpretation/wrong application of the Guidelines or the Commission's decisions? Please substantiate your view with concrete examples and data.

Yes. The ETF can provide 2 examples:
1. Denmark

Section 10 of Act No. 408 of 23 June 1988 which sets up the Danish Shipping Register (DIS) has also the negative consequences of prohibiting workers employed on ships sailing under the Danish flag but who are not residents of Denmark from being represented in collective bargaining, if they so wish, by Danish trade unions even if they are members. As part of aid measures to the Danish shipping industry, the DIS system introduced tax relief in respect of companies employing non-residents seafarers. Consequently, Danish DIS laws also prevent EU non-domiciled seafarers to benefit from the same wages conditions afforded to Danish seafarers.

Impacts on Danish trade unions:
- Restrict Danish Trade unions’ scope of negotiable issues by excluding them from their bargaining power for seafarers working on DIS ships under the Danish flag who are not Danish residents,
- Prevent non-Danish resident’s seafarers from freely choosing the organization they wish to represent their interests in the collective bargaining process.
- Allow social dumping. Results in respect of wages and other working conditions are driven to the bottom and,
- Create high level of unemployment amongst Danish seafarers, in particular ratings.

2. Germany

The German federal government - in the process of implementing this Guideline into German national law - simply ignored the basic principle of flagging and insisted only on registration in a German shipping register. Hence § 5a of the Income Tax Act solely stipulates: “that ships predominantly registered in a domestic shipping register during the fiscal year shall receive state aid”.

In the meantime, however, the entire world has come to know that a listing in a German shipping register is by no means attached to sailing under German flag. This is due to the fact that the German law of the flag allows shipowners to flag out ships registered in the German shipping register by means of bareboat charter. Politics have permitted this exemption clause to become the rule. Shipowners leave their FOC ships in the German register in order to continue raking in state aid. This leads to nearly paradisiacal conditions for shipowners: they engage Asian shipyards to construct their ships, bring them under flags of convenience, crew them entirely with Asian seafarers, and – on top of everything – collect state aid unparalleled for capital in European comparison.

B.5.2 How do you appreciate the potential scope for subsidy races among Member States?

B.5.3 Are there any national provisions in the EU within the remits of the Guidelines (such as tonnage tax and reductions or exemptions from social protection contributions and from income tax) which render a particular
As each Member State has introduced a state aid programme such as tonnage tax, or net wage system etc shipowners claim it is more advantageous than the one before. However, what is clear is that state aid is very competitive and you cannot as a Member State think the job is done when you introduce state aid measures. It should be noted that UK and NL shipowners have consistently argued that government must stay vigilant and be prepared to adjust the schemes put in place and enhance support.

It should be noted as mentioned under question 5.1 that the German example is of particularly advantageous by its application of tonnage tax regime to the bareboat charter register because it does not link bareboat charter to any of the SAG Guidelines such as increasing job opportunities for European seafarers or training obligations. This is a counterproductive example and permits to shipping companies “cherry picking” systems.

The ETF finds that if a national State aid scheme is more advantageous than others then it should be clearly linked to the objectives of SAG and contribute effectively to the attractiveness of operating business in EU States with EU workers.

B.6. Scope of the Maritime Guidelines and eligible activities

B.6.1 Do you consider that the inclusion in the scope of the Maritime Guidelines of tugboats and dredgers is appropriate? If yes, is the 50 % rule adequate? Should the percentage be increased or decreased? What are the current national rules/administrative practices with respect to such types of vessels?

B.6.2 Do you consider that the inclusion in the scope of the Maritime Guidelines of cable layers, pipeline layers and research vessels is appropriate? If yes, should a similar to the 50 % rule applied to tugboats and dredgers be introduced? What are the current national rules/administrative practices with respect to such types of vessels?

B.6.3 Do you consider that other activities carried out at sea should be also eligible for State aid under the Maritime Guideline, such as, but not limited to derrick barges, cable repair vessels, diving support vessels, oil well stimulation vessels, pilot vessels, survey vessels, hydrographical surveying and construction in a marine environment, vessels providing offshore services, mobile platforms, etc.? If yes, should a similar 50 % rule as to the one for tugboats and dredgers be applied? What are the current national rules/administrative practices with respect to such types of vessels?

B.6.4 In your view, should cruise services be eligible for State aid under the Maritime Guidelines? To what extent national laws/administrative practices already now allow granting aid with respect to cruise ship operation? To what extent the activities on-board such ships (casino, spa, etc.)

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6 This vessel, similar to crane vessel, is used for offshore drilling platform construction and is suitable for work in rough seas.

7 Pilot vessels are used for ensuring boarding of pilots on bigger ships.
entertaining services, hotel services while staying in ports, etc.) are ancillary to the transportation of passengers or constitute the main revenues of such ships? To what extent such services are billed separately and to what extent they are priced as a package together? To what extent the personnel on board and on shore in this industry comply with qualifications requirements identical or similar to "typical" maritime transport? Does the industry face competitiveness constraints from outside the EU?

**B.6.5** In your opinion, should ancillary activities related to transportation of cargo and passengers be eligible for State aid under the Maritime Guidelines? If yes, what types of activities? Do you find the Commission’s differentiation established so far between eligible and non-eligible activities adequate? What should be the definition of ancillary activities for the purpose of the application of the Maritime Guidelines?

**B.6.6** Do you consider that it would be appropriate to include in the maritime guidelines provisions allowing for State aid to reimburse shipowners for the costs related to the use by seafarers for their own purpose of internet facilities on board the ship with the aim of improving living conditions on board?

The ETF would in general support reimbursements relating to internet facilities and any other provision that improves seafarers’ welfare and the quality of life on board and help attract the future officers and ratings. In this regard it should as well be noted that ships are still being built without sufficient cabins to carry trainees. The ETF would like to request from the Commission to launch a study in this regard concerning all sorts of provision that could improve living conditions on board and create a more attractive environment for seafarers in order to share best practices. Furthermore, ways for the improvement of on board internet, including the management of such technologies, to ensure their reasonable use on board should be identified. Finally, if these options would be included in the future it should also be guaranteed that they clearly benefit the employment of European seafarers.

**B.6.7** Do you have any other comments concerning the scope of the Maritime Guidelines?

In Germany and Italy, national SAG includes cruise ships.

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8 The eligibility of activities on board passenger vessels has been limited to the consumption on board of goods and services inherent in a voyage at sea as well as revenues derived from the rent of advertising billboards on board. On this basis, the Commission refused to consider profits derived from gambling, casinos, the sale of luxury goods and excursions for passengers as eligible. Similarly, the following profits have been considered as eligible for tonnage tax: renting out of containers, self-handling of cargo or costs of handling loading and unloading of cargo, storage and customs clearance, operation of ticketing facilities and passenger terminals, and operation of office facilities in relation to shipping activities subject to tonnage tax. Finally, for both freight and passenger transport shipowners’ revenues from bank accounts, insurance and currency hedging have been accepted as eligible for tonnage tax.
The ETF seriously questions the definition of “Community seafarers” used by the European Commission.

According to the guidelines, Community seafarers are defined as:
- Community/EEA citizens, in the case of seafarers working on board vessels providing scheduled passenger services between ports of the Community,
- All seafarers liable to taxation and/or social security contributions in a Member State, in all other cases.

The ETF is opposed to this definition whose application in a national context has led to abuses and is still at the core of controversial disputes. This is particularly relevant for those shipping companies becoming eligible for tax exemptions by employing non domiciled seafarers at cheaper wage rates, who, at the same time, were considered as Community seafarers on the basis of the Commission’s definition.

Only nationals residing on a permanent basis in a particular Member State should be regarded as Community seafarers.

Therefore, the ETF calls on the Commission to open a formal investigation on who should be characterised properly as a “bona fide” Community seafarer and what should be the right percentage of requirement EU citizen employment.

The ETF considers that the introduction of the wider concept of “employment in the maritime cluster” instead of “employment of EU seafarers” is to the detriment of the latter, thus indicating that the Commission is not willing to create the conditions to revert the decline in the number of EU seafarers. The ETF recognises that the maintenance of the wider maritime cluster depends on the vitality of an EU seafaring workforce and on the preservation of an EU seafaring know-how. It is indeed in the interest of European shipowners to employ Europeans to ensure the maintenance of the clusters. The survival of the maritime industry as a whole is at risk if the knowledge of experienced seafarers is not capitalised from sea to land. In addition, it is well known in the maritime industry that seagoing skills and experience are essential in many shore-based positions and cannot be substantiated by training ashore.

C. TONNAGE TAX AND OTHER FISCAL MEASURES

Section 3.1 of the Maritime Guidelines deals with fiscal treatment of shipowners. In particular, they give as examples the following fiscal measures which constitute aid, which could be compatible under certain conditions: (i) tonnage tax, (ii) accelerated depreciation on investment in ships or (iii) 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.

C.1.1 Do you consider that these fiscal measures are still necessary? Are they equally necessary for freight and passenger transportation? Please justify your reply on each of the three fiscal measures.

C.1.2 As a public authority, have you ever applied and do you still apply such measures?

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9 The system of replacing the normal corporate tax system by a tonnage tax so that the shipowner pays an amount of tax linked directly to the tonnage operated and irrespective of the company's actual profits or losses.
C.1.3 As a company, have you ever benefited from such measures? If yes, what was the duration, amount of aid, types of beneficiaries, level of tax applied and eligible activities?

C.1.4 Do you consider that the tax advantages granted to shipowners facilitate the development of certain economic activities within the meaning of Article 107(3)(c) of the Treaty? If yes, to what extent?

C.1.5 Can you provide evidence of the changes provoked by the introduction of the measures in a particular Member State (or by subsequent amendments of these measures)?

C.1.6 In your view, would it be appropriate to establish some kind of conditionality between employment of EU/EEA seafarers and eligibility for tonnage tax? Please justify your reply on the basis of concrete data, examples and detailed narrative.

The ETF disagrees with the Commission when it says that the Community Guidelines for State aid for maritime transport have contributed to generating jobs for European seafarers. The ETF believes that the Guidelines had little impact, if any, on the employment of European seafarers and in any case, the results in terms of employment are definitely falling short of the ETF expectations.

The increase in employment of EU nationals as officers might be linked to the return of some tonnage to EU flags. What is more, the rise might also be linked to officers from acceding countries showing up in the data for the first time. As SAG did not provide any mechanisms to secure the employment of EU seafarers, shipowners enjoyed the freedom to employ the cheapest workforce on board; sometimes exclusively from non EU countries, and, at the same time, to benefit from tax reliefs. The ETF recalls that the Guidelines intended to “directly stimulate the development of the sector and employment, rather than provide general financial assistance”.

For that reason, the ETF calls on the Commission to seriously address the downwards trend in the number of EU seafarers by simultaneously promoting quality jobs for Europeans in the sector and secure the future of European seafarers, both officers and ratings. State aids have been agreed not only to favour the competitive capacity of the European maritime industry: they should equally enable and promote the maintenance of a European seafaring know how and employment.

Flag requirement

The ETF observes that, whilst State aid has supported the development of vessel ownership by EU shipping companies and has helped them expand their operational control, the link between these developments and particular EU flags has not
strengthened. The flag is increasingly irrelevant as all major flags have to live up to the four pillars of shipping regulation (SOLAS; MARPOL; MLC2006; STCW10). The ETF proposes that the Commission establishes a requirement that all EU flag regulations need to establish a clear link to training and training investment.

C.1.8 If not, do you think that the flag requirement should be stricter or more flexible?

C.1.9 As a public authority, how do you verify at a company/group level compliance with this requirement?

C.1.10 Do you think that besides of the flag requirement there should be other eligibility conditions to benefit from the tonnage tax? What could these conditions be? For example, should eligibility for tonnage tax be subject to availability of space for cadets (berths for cadets onboard)? Please justify your reply on the basis of concrete data, examples and detailed narrative.

The ETF supports the idea of a mandatory requirement to train and/or provide training berths.

On top of that, the guidelines should aim at delivering higher level of training for EU seafarers. One way in which EU ratings may maintain or attract competitive advantage is through additional skills training. This should be supported by the guidelines throughout the ratings career in the same way as is being framed for officers.

Eligibility of chartering activities

Regarding chartering in with crew, the Commission has stated in its decisions that it will not accept under tonnage tax companies whose entire fleet consists of ships chartered in with crew from other companies. However, it has been accepted that no more than 80% of the company's fleet under TT consists of ships that could be chartered in with crew from third parties. Going up to 90% is also possible, but under strict conditions.

C.1.11 Do you consider that the chartering in with crew activities meet one or more of the objectives of the Guidelines? To what extent a high cap for chartering in with crew (80%) is justifiable?

The high cap should range between 60 – 80%. On balance the ETF would require that chartered in vessels be crewed with a minimum number of EU seafarers.

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10 See e.g. § 19 of Commission decision in case C2/2008 – Tonnage tax modifications – Ireland.

11 According to Article 2 of Commission decision in case C 2/08 – TT modifications – Ireland, the following conditions should be met: each of the chartered-in vessels operated by a given tonnage tax company shall satisfy at least one of the following conditions: (a) the chartered-in vessel is registered in a Community or EEA maritime register; or (b) the crew management and technical management of the chartered-in vessel are carried out on the territory of the Community or the EEA.
As a public authority, how do you check compliance with the conditions described above? Have you met any administrative difficulties in applying them? In particular, how do you apply the 80% and 90% rules in connection with the requirement that at least 60% of the fleet should be flagged in the EU/EEA?

Regarding bareboat chartering in (i.e. chartering in without crew), the Commission’s constant practice is that such ships are assimilated to owned ships, as the shipowner fully operates them and assumes all legal responsibilities (insurance, liabilities, etc.).

Do you agree that bareboat chartered in ships should be assimilated to owned ships? Please justify your reply.

Yes.

Chartering out with crew

Do you consider that in such activities, crews maintain and develop essential skills which they can later on use in on shore activities, thus contributing to the development of maritime know-how and the maritime cluster in the EU/EEA?

The ETF finds that this would only be the case if training requirements are fulfilled and would benefit to all crew members and if training courses provide for high standards and a higher qualification effect.

Do the shipowners ensure commercial management of their ships?

In general this is the case however this requirement maybe about to be weakened in the UK. There should be a link to the EU for ships availing of State aid but ETF is not suggesting that this link be about the flag for the reasons stated above. Perhaps the EUROS2 is the answer but it would need to be voluntary and any restriction on State aids phased in over time.

As a public authority, have you applied tonnage tax scheme to such types of activities and if yes, under what conditions? Please provide a copy of the relevant national legislation.

Bareboat chartering out

What conditions should be introduced in order to ensure that such activities are eligible only in case of temporary overcapacity? What should be time-limitations (not to cover structural overcapacity)? Should there be a cap in terms of percentage of tonnage under TT?

All conditions applied to the nationally registered fleet should apply as well to bareboat chartering and that not only in the case of temporary overcapacity. Bareboat chartering should be limited in time. The possibility to make use of bareboat chartering should be
delimited by a cap of percentage of tonnage. In addition there should be a percentage applied concerning the use of EU crew and training requirements during that time period must be maintained.

<table>
<thead>
<tr>
<th>C.1.18 As a public authority, have you applied a tonnage tax scheme to such types of activities? If yes, under what conditions? Could you also provide the relevant national legal provisions on bare-boat chartering out?</th>
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<tr>
<th>C.1.19 Should there be any additional safeguards in this respect besides from the condition that bareboat chartering out should only be allowed for short term overcapacity or, on the contrary, should there be more flexibility in this respect?</th>
</tr>
</thead>
</table>

There should not be more flexibility for bareboat charters in terms of tax relief. On the contrary, if shipping companies opt for bareboat chartering then the general budget for state aid should be reduced accordingly.

Eligibility of revenues from pooling

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<th>C.1.20 As a public authority, have you ever applied tonnage tax to pool managers and if yes, under what conditions?</th>
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<tr>
<th>C.1.21 Do you consider that if pooled ships fly an EU/EEA flag or have their crew and technical management carried out on the territory of the EU/EEA, this is sufficient to include the revenues of the pool manager of these ships as eligible for tonnage tax?</th>
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<tr>
<th>C.1.22 In your view, should there be a requirement that pool managers should also own and fully operate (ensure commercial, technical and crew management of the ship) a certain number or percentage of the ships it manages in order to be eligible for tonnage tax? If yes, what should be the number/percentage of those ships? Please justify your reply by means of data and detailed narrative.</th>
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</table>

Eligibility of capital gains from shipping-related assets under TT; treatment of capital gains related to earlier over-depreciated ships and other assets - information requested from public authorities

<table>
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<tr>
<th>C.1.23 To what extent and under what conditions should the capital gains from shipping-related assets be covered by TT and why? Is there differentiation</th>
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Shipping pools are defined as “joint ventures between shipowners to pool vessels of similar types, with central administration, which are marketed as a single entity, negotiating voyage/time charter parties and contracts of affreightment, where the revenues are pooled and distributed to owners”. Murray, K (1994), Shipping Pools and EC Competition Law; A Guide for the Shipping Industry. London, 2-4 March.
in the rules for assets bought before and after company's/ship's entry into TT?

C.1.24 Are there any transitional measures applied by your authorities when companies switch from corporate tax into tonnage tax, in particular when they have accumulated so-called hidden tax liabilities before switching to the tonnage tax scheme (for instance because they have been using accelerated depreciation or other tax advantages in the context of corporate tax)? If yes, please explain in details these measures.

C.1.25 Do the present national rules provide for the differentiation in rules for assets bought before and after entry into TT?

C.1.26 Please provide copies of the relevant legislation governing the above issues and explain in details the applicable procedure.

Application of ring-fencing measures – information requested from public authorities

Ring-fencing measures applied in the context of tonnage tax aim at preventing "cherry picking" by the tonnage tax companies (for example, by choosing a particular period of paying tonnage tax when it is most beneficial) or the artificial creation of tax credits (for example, from over-depreciation) or tax evasion through distorted intra-group transactions.

C.1.27 Please describe the ring-fencing measures, if any, applied by your authorities with reference to their legal basis and provide a copy of the legal text(s) where such measures are contained.

C.1.28 In your view are these ring-fencing measures sufficient to prevent spill over of State aid from eligible to non-eligible activities? Please justify your reply.

C.1.29 Do you face any administrative difficulties in applying these measures?

C.1.30 What sanctions do you apply to prevent abuses of the TT system?

D. LABOUR RELATED COSTS

Section 3.2 of the Maritime Guidelines provides for two measures: (i) reduced rates of contributions for the social protection of EU seafarers employed on board EU registered ships; and (ii) reduced rates of income tax for EU seafarers on board EU registered ships.

D.1.1 Do you consider that the two measures described above are still necessary? Please justify your reply for each of the two measures.

On the basis of Section 3.1, subparagraph 19 of the Maritime Guidelines, the Commission has accepted in its decision-making practice the following features in a number of tonnage tax schemes:
(i) verification of commercial transactions across the ring fence, based on the arm length’s principle;
(ii) rules on the fair sharing of the cost of capital expenditure between eligible and non eligible activities;
(iii) rules on the fair allocation of revenues between eligible and non eligible activities; (iv) an all-or-nothing option for maritime groups for a lock-in period of ten years.
D.1.2 In your view are the eligibility conditions for seafarers and ships (to be registered in the EU) contained in this section sufficient and ensure compliance with the objectives of the Maritime Guidelines?

The ETF finds eligibility criteria are not sufficient, especially when taking into account a possible bareboat charter register where ships do not need to comply with the objectives of SAG.

The ETF seriously questions the definition of “Community seafarers” used by the European Commission. According to the guidelines, Community seafarers are defined as:
- Community/EEA citizens, in the case of seafarers working on board vessels providing scheduled passenger services between ports of the Community,
- All seafarers liable to taxation and/or social security contributions in a Member State, in all other cases.

The ETF is opposed to this definition whose application in a national context has led to abuses and is still at the core of controversial disputes, on the application of domestic employment and equality legislation on vessels working in the territorial waters of an EU Member State, for example. This is particularly relevant for those shipping companies becoming eligible for tax exemptions by employing non domiciled seafarers at cheaper wage rates, who, at the same time, were considered as Community seafarers on the basis of the Commission’s definition.

Only nationals residing on a permanent basis in a particular Member State should be regarded as Community seafarers.

Therefore, the ETF calls on the Commission to open a formal investigation on who should be characterised properly as a “bona fide” Community seafarer and what should be the right percentage of requirement EU citizen employment.

D.1.3 Have you applied (in case of a public authority) or benefited from (in case of a company) aid to employment on the basis of the General Block Exemption Regulation (GBER)? If yes, what was the amount of the aid, types of beneficiaries and eligible activities?

D.1.4 In your view to what extent this measure contributes to the employment of seafarers and, in particular, of EU seafarers and/or to increasing the competitiveness of European shipowners? Please justify your reply with the support of data, examples and narrative explanation.

It’s worth noting that the employment of EU seafarers on EU flagged vessels has significantly declined since 2004. Despite the myth peddled by industry, there are ample seafarers in EU Member States to work on EU flagged vessels. While the ETF believes SAG have been designed to promote EU registers, shipowners tax relief schemes have been, in most cases, implemented regardless of the flag. The so called “flag blind” regime has been justified on the argument that shipping is a global industry and that any “distortions” to the market or additional costs will see a rapid move away from EU registers. Moreover, the success of the tonnage tax in returning some vessels is often used as a justification that state aid is doing just fine and needs no further amendment. What is overlooked here is the steady decrease in the number of EU seafarers, the

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ageing of the officer and ratings workforce and the “double dividend” that many ship owners are extracting from the tonnage tax in the way it is currently constituted in a number of countries.

Additionally, under Title 3 of SAG, it is said that a shipping company can benefit from state aids even if its fleet operates under flags other than Community ones (and so even FOC), provided that the shipowner commit to increase or at least maintain the share of its Community fleet at the time of entry of the tonnage tax. The ETF asks the Commission to clarify to what extent, through this provision, FOCs can enjoy the same fiscal incentives as EU flags. While encouraging the Commission to ban SAG for FOCs, especially when they do not respect Community standards on employment and working conditions, the ETF requests the Commission to clarify what is, under these guidelines, the acceptable percentage of FOC flagged vessels controlled by the same shipping operator benefiting from SAG regime and to inquire over the infringements of SAG perpetrated by some Member States.

**D.1.5** Do you believe that State aid measures should be targeted at a particular labour-force category (e.g. highly qualified officers)?

The ETF welcomes State aid aimed at enhancing and updating EU officers skills during their career but would argue that such aid should apply to all categories of EU seafarers, including ratings.

**E. CREW RELIEF**

Chapter 4 of the Maritime Guidelines provides for payment or reimbursement by the Member State of the costs of repatriation of EU seafarers working on board EU registered ships (crew relief).

**E.1.1** In view of the fact that this provision has been hardly used, do you consider that it is still necessary? Would you agree if it is removed from the text? Please justify your reply.

The ETF can provide for one experience: in the UK the crew relief cost scheme has been scrapped. It was not widely used and the budget of some £2.3 million was always underutilised.

**F. TRAINING AID**

Chapter 7 of the Maritime Guidelines allows for training aid for seafarers in addition to Article 39 of the GBER.15

**F.1.1** Can you please provide a list of cases in which Art 39 (2) GBER, Art 4(6) Training Aid BER and/or Chapter 7 of the Maritime Guidelines were applied to maritime training aid, and the estimated aid amounts?

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**F.1.2 In your opinion, is this provision of the Maritime Guidelines still necessary or do you consider that the GBER rules would suffice?**

The ETF finds that both forms of training aid are still necessary to ensure a large investment in training structures and its quality.

**F.1.3 If it is kept, would you consider that modifications are necessary?**

The ETF considers that where companies are involved in training with some form of subsidy, there should be a guarantee of employment at the end of the period with the company in question. This assertion too gathers additional force if we consider the consequences of either not attracting sufficient good quality recruits into the seagoing sector, or, if trained personnel are allowed to drift away into other more attractive jobs. The Commission and other key players have latterly recognised the need to boost the attractiveness of employment opportunities in the maritime sector. As a consequence, the need to provide some employment security for those embarking on training to join the sector must be a priority. State aids and tonnage tax in particular could be made conditional upon such a guarantee. The Commission must propose a better system of incentives aimed at encouraging EU employment in the maritime sector while increasing training practices/opportunities in any event.

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**G. SHORT SEA SHIPPING**

Chapter 10 of the Maritime Guidelines allows for start-up aid to new or improved short sea shipping\(^\text{16}\) services under certain conditions.

**G.1.1 In view of the fact that this provision has been used only once, do you consider that it is still necessary? Would you agree if it is removed? Please justify your reply.**

**G.1.2 Do you consider that Member States should have the possibility to grant start up aid to short sea shipping or Motorways of the Sea services, even when these services have not and will not apply for EU funding under the Marco Polo II programme or the TEN-T? Please justify your reply providing data on identified market failures.**

**G.1.3 Motorways of the Sea represent the maritime dimension of the trans-European Transport Networks. According to the present regime\(^\text{17}\), Member States are allowed to grant to Motorways of the Sea services complementary State aid of higher intensity and longer duration than**

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\(^\text{16}\) This is 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”.

\(^\text{17}\) In compliance with the Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea (2008/C 317/08 of 12.12.2008).
otherwise provided in the Maritime Guidelines. Do you consider that this possibility should be maintained or modified in the future?

G.1.4 Do you consider that short sea shipping routes to non-EU countries should be eligible for start-up aid in certain cases, such as for routes towards outermost regions?

H. APPLICATION OF THE AID CEILING – INFORMATION REQUESTED FROM PUBLIC AUTHORITIES

Chapter 11 of the Maritime Guidelines sets a general ceiling to the aid that can be granted under chapters 3 to 6 of the Guidelines

H.1.1 Do you consider that the aid ceiling is appropriate?

H.1.2 Should the aid ceiling be defined in a different way? What would be your suggestions for such an aid ceiling?

H.1.3 Please provide copy of the applicable national rules in respect to the control of the aid ceiling.

H.1.4 Please provide details how you calculate the ceiling. Inter alia, please explain how do you apply aid ceiling in case of investment aid measures: do you count the whole amount of aid in the year when the asset is acquired or you spread the aid amount over the life-time of the asset? How do you treat for aid ceiling purposes (if at all) relief measures related to previously over-depreciated ships being transferred to TT (in particular relief measures related to hidden tax liabilities stemming from the previous over-depreciation)? Why? What treatment would you propose for the above types of measures (including the calculation aspect) in the context of possible clarification of rules in the context of the review of the Guidelines?

H.1.5 Do you calculate the aid ceiling at individual company level (or a group level if the whole group is eligible for tonnage tax) or at whole industry level?

H.1.6 To what extent is the aid ceiling fixed by the Guidelines is used in practice in your Member State (i.e. is the maximum aid intensity granted or less)?

H.1.7 What types of administrative difficulties do you face in applying the ceiling?

H.1.8 What other types of clarifications, if any, you deem necessary regarding the application of the aid ceiling?

I. NOTIFICATION AND REPORTING OBLIGATIONS – ASSESSMENT REQUESTED FROM PUBLIC AUTHORITIES

Chapter 12 of the Maritime Guidelines sets out specific notification and reporting obligations:
I.1.1 What is your experience in complying with these provisions?

I.1.2 In your view, are there alternative measures for ensuring compliance with the provisions of the Maritime Guidelines?