



EUROPEAN COMMISSION

Brussels, 07/12/2011

C (2011) 8954

PUBLIC VERSION

WORKING LANGUAGE

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Subject: SA. 32118 - Finland – The scheme on general guidelines on investment aid to vessels for the purpose of improving environmental protection

1. PROCEDURE

1. By electronic notification of 1st July 2011 the Finish authorities notified, in accordance with Article 108(3) of the TFEU, a State aid scheme to support investment in vessels with the aim to improve environmental protection.
2. On 5 July 2011 and on 11 July 2011 the Commission requested additional information. The Finnish authorities submitted the additional information on 7 July 2011, 13 July 2011, 22 September 2011 and 29 September 2011.

2. DETAILED DESCRIPTION OF THE GENERAL SCHEME

2.1. Objective of the scheme

3. The main objective of the notified scheme is to encourage shipping companies to adopt environmentally friendly technologies and to include investments improving environmental protection in their future vessel building programmes.
4. To this aim Finland adopted a Government Decree setting up conditions of a general scheme to support investment aids to vessels for the purpose of improving environmental protection¹.

2.2. Background

2.2.1. Sulphur emissions from ships; Sulphur Emission Control Area

5. Emissions from shipping due to the combustion of marine fuels with high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter,

¹ Government Decree on the General Guidelines on Investment Aid to Vessels for the Purpose of Improving Environmental Protection of 11 November 2010 setting the legal basis for the scheme at hand.

Ulkoministeri Erkki TUOMIOJA
Merikasarmi
PL 176,
FIN - 00023 Helsinki

harming human health, damaging the environment, public and private property and cultural heritage and contributing to acidification.

6. Due to the particular contribution of shipping emissions to the acidification problems in northern Europe, the International Maritime Organization (IMO) had designated the Baltic Sea, the English Channel and North Sea as so-called Sulphur Emission Control Areas or SECAs in the EU.

2.2.2. Review of the implementation of Directive 1999/32/EC

7. The scheme that the Finnish authorities intend to put in place aims at promoting investments to decrease level of emissions in connection to the Commission proposal to amend the Directive 1999/32/EC on the sulphur content of certain liquid fuels. The new directive has not yet been adopted².
8. The proposed amendments consist on transposing the revised IMO rules³ into EU legislation and provides for stricter sulphur limits for fuel used by ships inside the area known as SECA⁴ region of northern Europe⁵.

2.3. Detailed description of the scheme

2.3.1. National legal basis

9. The funds will be paid on the basis of the Government Decree on the General Guidelines on Investments Aid to Vessels for the Purpose of Improving Environmental Protection of 11 November 2010 (946/2010/12 November 2010). The Decree entered into force on 12 November 2010, and will remain in force until 31 December 2014.

2.3.2. Eligible costs

10. The scheme provides for aid to purchase of a new vessel. The eligible costs are defined in accordance with the provisions of the Environmental guidelines as the extra investment costs necessary for reaching a higher level of environmental protection than the level required by European Union standards, or, in the absence of such standards, as costs that are necessary for reaching a higher level of environmental protection than the level required by national legislation.
11. Furthermore, in line with the provisions of the Environmental guidelines, eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment for environmental protection and arising during the first five years of the life of the investment concerned. This means that such operating benefits must be deducted and such operating costs may be added to the extra investment costs. According to Finland, if the shipowner is acquiring a ship which would cost EUR 10 million, and for

² The Commission proposal for new directive was adopted on 15 July 2011, COM 2011/439

³ Annex VI to the MARPOL convention.

⁴ Sulphur Emission Control Area which includes English Channel, North Sea, and Baltic Sea.

⁵ These new higher standards will be applicable to all ships (not only to new vessels but also retroactively to old vessels).

environmental reasons an extra investments is of EUR 5 million net of any operating costs and benefits, the maximum aid amount would be the percentage from EUR 5 million. The eligible costs that constitute the "extra investments" will be verified by VTT Technical Research Centre of Finland or similar independent research institute alongside with an estimate issued by an independent expert on the benefits and costs relating to the extra environmental investment.

2.3.3. Beneficiaries

12. According to the provisions of the scheme, aid may be granted to an enterprise registered in Finland engaged in shipping operations. The funding will be available on a non discriminatory basis to any vessels operator registered in Finland in shipping operation. The scheme does not provide for any particular technology.

2.3.4. Budget and scheme duration

13. The overall budget of the scheme is EUR 120 million for the period 2012 to 2014 (i.e. EUR 30 million annually). This budget is subject to approval by the Finnish Government and the Parliament of Finland.

2.3.5. Aid intensity

14. In line with the provision of the Environmental guidelines, aid granted by virtue of the present scheme may total a maximum of 50 per cent to large enterprises, 60 per cent to medium-sized enterprises and 70 per cent to small enterprises of extra investments included in the vessel project⁶. The maximum aid rate may be increased if the project meets the definition of eco-innovation as defined by the above said guidelines.
15. As regards the period between the date of adoption of the proposed new standards and the date of entering into force, investments for the acquisition of new vessels that go beyond the adopted standards could benefit from the provisions of section 3.1.3 of the Environmental Guidelines (aid for early adaptation to future Community standards) for the part of the investments needed to comply with these new standards. During this period, the part of the additional investment necessary to go beyond the new standards could benefit from the aid intensities mentioned in point 14 above. However, the Finnish authorities have confirmed that they do not wish to make use of the provisions of section 3.1.3 of the Environmental Guidelines. Therefore, during the period between the date of adoption of the proposed new standards and the date of entering into force aid will only be paid for the part of investment necessary to go beyond the new adopted standards up to the aid intensities mentioned in point 14 above.
16. In accordance with the scheme conditions, the aid amount may not exceed EUR 30 million per vessel.

2.3.6. Other scheme conditions

17. Aid may be granted to a project:
 - for which binding agreement on the ordering of a new vessel has not been concluded;

⁶ The maximum aid defined in the Environmental guidelines will be observed.

- the aid recipient is considered to have the prerequisites for continuous profitable operations;
 - it can be assumed that the project will be implemented within three years of submitting the application;
 - the project meets the criteria referred to in the environmental guidelines.
18. In addition, aid can not be granted, if the Commission has in another aid case (for the same beneficiary) decided on the recovery of aid referred to in Article 107(1) of the Treaty of the Functioning of the European Union (TFUE) and pursuant to this, the applicant has been issued a recovery order referred to in section 1 of the Act on the application of certain European Community regulations concerning state aid (300/2001) that the applicant has not followed within four months of the Commission's decision.
 19. The aid decision is conditional on the Commission's approval of the aid scheme and, where applicable⁷, of the individual aid grants under the scheme.

2.3.7. *Procedure of granting the aid*

20. Aid applications are to be submitted to the Ministry of Transport and Communication in Finland.
21. The application must include an opinion, issued to the applicant by VTT Technical Research Centre of Finland or similar independent research institute, which states that the project is aimed at a new vessel project meeting the criteria for the granting of aid and that the extra investment costs incurred by the project for the benefit of environmental protection comply with the definition and criteria for eligible costs established in the Decree, as summarized in recitals 10-11.
22. The application must include the applicant's own estimate along with an estimate issued by an independent expert on the benefits and costs relating to the extra environmental investment and covering a period of five years from the date of delivery or entry into service of the vessel.
23. The opinion to be submitted with the application must also include a statement of the issuer of the opinion declaring that the issuer is impartial and independent in relation to the applicant.
24. Applications received during each calendar month are processed and decided upon together.
25. In the event that there are several applications and that the budget that the authority reserved for this purpose proves insufficient to approve all applications, attention must be paid in the examination of applications to those projects that result in the most considerable increase in the level of environmental protection.
26. A decision on the granting of aid is made by the Ministry of Transport and Communications. The Ministry of Transport and Communications requests an opinion on the application's eligibility for aid from the Finnish Transport Safety Agency. In its

⁷ I.e. where the aid amount per undertaking exceeds EUR 7,500,000,

decision, the Ministry of Transport and Communications may set more specific conditions and limitations for the granting and use of aid.

27. Aid will be paid after the vessel has been delivered to the aid recipient and the vessel has been entered in the Register of Merchant Vessels upon application by the aid recipient (Act on Enhancing the Competitiveness of Ships engaged in Sea Transport 1277/2007), however no earlier than 2012.
28. The aid recipient must notify to the Ministry of Transport and Communications of any changes in the information that the granting of aid is based on. Payment of aid may, by virtue of decision of the Ministry of Transport and Communications, be cancelled if there has been a change in the basis for granting the aid after the decision was made.

3. LEGAL ASSESSMENT

3.1. Existence of aid

29. By virtue of Article 107(1) of the TFUE “*any aid granted by a Member State 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 Member States, be incompatible with the common market.*”
30. Therefore, in order to determine whether the scheme at stake contains state aid elements within the meaning of Article 107(1) of the TFUE, it must be established 1) whether the measures confer an economic advantage to the undertakings concerned, 2) whether this advantage has been financed through State resources, 3) whether this advantage distorts or threatens to distort competition and, finally, 4) whether the measures affect trade between Member States.
31. The Commission considers that the notified scheme allows ship operators to be relieved, by means of State resources⁸, of a part of the costs which they would normally have to bear themselves. Consequently, the financial support from the State strengthens the position of these enterprises in relation to their competitors in the EU and therefore, has potentially distorting effects on competition. In view of the fact that the scheme concerns a sector where undertakings from any Member State can operate, the aid is likely to affect trade between Member States.
32. In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 107(1) of the TFUE with respect to ship operators.

3.2. Compatibility of the aid scheme

33. The objective of the aid is environmental protection since the aid aims at reducing emissions of sulphur into the atmosphere produced by shipping operations.

⁸ As the payments are made from the budget of the central government, the involvement of State resources is undeniable.

34. The rules the Commission applies in the assessment of compatibility of environmental aid are summarised in the "Community guidelines on State aid for environmental protection" (hereinafter the "Environmental Guidelines")⁹.
35. According to the Environmental Guidelines, transport is responsible for a large share of overall greenhouse gas emissions (approximately 30%), as well as for local pollution by dust, particulates, NO_x and SO_x. Therefore, it is important to encourage clean modes of transport, both in order to fight global climate change and in order to reduce local pollution, in particular in cities. It is particularly important in this context to encourage the acquisition of clean transport vehicles, including clean ships¹⁰.
36. In the present case, the purpose of the scheme is to encourage shipping companies to invest in making vessels more environmentally friendly.
37. The objective is, in particular, to encourage shipping companies to adopt systems enabling them to decrease sulphur emissions in relation to current standards set up in Directive 1999/32/EC on the sulphur content of certain liquid fuels.
38. On 15 July 2011, the Commission adopted a proposal for more stringent standards as of 2015. The new standards have not yet been adopted. The aid scheme will promote attainment of the new sulphur limits even before the requirements enter into force. It is envisaged in the framework of the current scheme that the investments to be subsidized will go even beyond the standards to be adopted.
39. In line with section 3.1.1 of the Environmental Guidelines, the current aid scheme supports only investments which go beyond EU standards. The compatibility with the internal market has therefore to be assessed in view of the general rules set out in paragraphs 73 to 84 of the Environmental Guidelines¹¹. The eligible costs are calculated as the additional costs of a new more environmentally friendly vessel compared to vessel using standard propulsion. Therefore, in accordance with paragraphs 81(b) of the Environmental Guidelines, the eligible costs consist of the additional investment necessary to achieve a higher level of environmental protection than the undertaking would achieve in the absence of any environmental aid. The operating costs and benefits related to the extra investment will be taken into account in line with the provisions of paragraph 82 of the Environmental guidelines.
40. In the event that the new standards are adopted but have not yet entered into force, aid for the acquisition of vessels could be declared compatible if it satisfies the conditions of Chapter 3.1.3 (Aid for early adaptation to future standards), paragraphs 87 and 88 of the Environmental Guidelines. Nevertheless, aid to early adaptation has not been envisaged in the framework of the current scheme notified by Finland and examined in the present decision. Thus, if aid under the scheme is granted after adoption of the new standards, the eligible costs will be exclusively those of the investments needed to exceed the new standards adopted but not yet in force.
41. The Commission notes furthermore that the scheme is open to all operators in a non-discriminatory way.

⁹ OJ C82, 1.4.2008, p.1.

¹⁰ Paragraph 44 of the Environmental Guidelines.

¹¹ Paragraph 85 of the Environmental Guidelines.

42. In view of the above the Commission concludes that, in line with paragraph 77 of the Environmental Guidelines, the present scheme mechanism will ensure that the aid will be limited to the minimum needed to meet the environmental protection measure sought.
43. The aid scheme has an incentive effect (section 3.2 of the Environmental Guidelines) as it will incentivize vessel operators to invest in more environmentally friendly technologies and to implement investments that go beyond the current EU standards on sulphur emissions for vessels, the aid will help to incentivise vessels operators to replace their vessels by more environmentally friendly vessels producing less emissions. The purpose is as well to promote practical experience of the actual effects of emission limits on shipping companies. The Commission also notes that the applications must be submitted before the applicant concludes a binding agreement on the ordering of a new vessel so that the project cannot start prior to the aid application to the national authorities according to paragraph 143 of the Environmental Guidelines.
44. The Commission notes that every project will necessitate an opinion, issued to the applicant by VTT Technical Research Centre of Finland or similar independent research institute alongside with an estimate issued by an independent expert on the benefits and costs relating to the extra environmental investment and covering a period of five years from the date of delivery or entry into service of the vessel.
45. The Commission is thus of the opinion that the thorough verification of the counterfactual situation¹² and the eligible costs as presented by the aid applicant will be done and no aid will be granted with respect to the investment projects which would be profitable without aid (paragraph 146 of the Environmental guidelines).
46. The Commission takes note that the Finnish authorities comply with their obligations regarding reporting and transparency and undertook to submit annual reports in accordance with section 7.1 of the Environmental Guidelines.
47. The Commission takes also note of the provision of Section 1 (point 2) of the Government Decree (see Chapter 2.3.1 above) that states the obligation to notify to the Commission separately every project above EUR 7,5 million in accordance with Section 5 of the Environmental guidelines.
48. In view of the above considerations, the Commission considers the conditions set up in the Environmental Guidelines to be met.
49. The Commission thus finds that the State aid scheme in question is compatible with the internal market because it leads to increased environmental protection without adversely affecting trading conditions to an extent contrary to the common interest.
50. Therefore the Commission considers the aid scheme compatible on the basis of the Environmental Guidelines.

3.3. Conclusion

51. It can thus be concluded that the aid scheme is compatible with Article 107 (3) (c) TFEU.

¹² The cost of a technically comparable investment that provides a lower degree of environmental protection.

4. DECISION

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
B-1049 Brussels

Fax No: +0032 (0) 2 2961242

Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-President