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**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: SA.35686 (2012/N) - Finland – Amendments to the Scheme on General Guidelines on Investment Aid to Vessels for the Purpose of Improving Environmental Protection**

**1. PROCEDURE**

1. By electronic notification of 21 December 2012 the Finnish authorities notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), amendments to an existing State aid scheme already authorised by the Commission<sup>1</sup> (hereinafter "the 2011 decision") aiming at supporting investment in vessels for the purpose of improving environmental protection.

**2. DESCRIPTION OF THE CONTEXT OF THE SCHEME**

**2.1. Background**

*2.1.1. Sulphur emissions from ships; Sulphur Emission Control Area*

2. Emissions from shipping due to the combustion of marine fuels with high sulphur content cause air pollution in the form of sulphur dioxide and particulate matter, harming human health, damaging the environment, public and private property and cultural heritage and contributing to acidification.
3. 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.

*2.1.2. Review of the implementation of Directive 1999/32/EC*

4. The scheme implemented by the Finnish authorities as well as the proposed amendments aim at promoting investments to decrease level of emissions in

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<sup>1</sup> SA. 32118 - Finland – The scheme on general guidelines on investment aid to vessels for the purpose of improving environmental protection, approved on 7 December 2011. OJ C 22, 27.1.2012, p. 4. In addition, the Finnish authorities implemented an individual aid on the basis of this scheme: SA.33382 – Finland - State aid related to environmental protection for Viking Line Ltd., adopted on 25.04.2012, OJ C 160, 6.6.2012, p. 9.

connection to the Directive amending the Directive 1999/32/EC as regards the sulphur content of marine fuels<sup>2</sup> (hereinafter "the Sulphur Directive").

5. The Sulphur Directive transposes the revised IMO rules<sup>3</sup> into EU legislation and introduces stricter sulphur limits for fuel used by ships inside the SECA region of northern Europe. The stricter sulphur limits for marine fuel in SECA (0,10 %) will be applicable as of 1 January 2015, while in sea areas outside SECA, the sulphur limits will be less strict (0,50 %) and applicable as of 1 January 2020. The new higher standards will be applicable to all ships, i.e. not only to new vessels but also to vessels already in use. All shipping companies will have to invest in cleaner technologies<sup>4</sup> in order to comply with the new standards or alternatively buy more expensive low sulphur fuel.

## **2.2. Detailed description of the notified amendments of the scheme**

### *2.2.1. Objective of the scheme*

6. The proposed amendments in the scheme do not modify the objective of the measure which is to encourage shipping companies to adopt environmentally friendly technologies and to include investments improving environmental protection in their future vessel building programmes.

### *2.2.2. National legal basis*

7. The notified changes will be introduced with amendments to be made in the legislative act governing the existing aid scheme, namely 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. No aid will be granted before the Commission's formal approval of the amendments.

### *2.2.3. Eligible costs*

8. The notified amendments introduce two additional measures in the existing aid scheme:
  - Aid for early adaptation to future EU standards for acquisition of new ships;
  - Investment aid for retrofitting operations.
9. The first measure constitutes an adaptation of the existing scheme and covers funding for the purchase of new vessels in a situation when the higher new EU standards are not yet in force but these standards have been already adopted<sup>5</sup> and

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<sup>2</sup> Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels, OJ L 327, 27.11.2012, p. 1. The directive entered into force on 17 December 2012.

<sup>3</sup> Annex VI to the MARPOL convention.

<sup>4</sup> One possible technology is the installation of exhaust gas cleaning system (scrubbers).

<sup>5</sup> The existing scheme only covered the period before adoption of any EU standards and did not provide for any funding for investments going beyond EU standards once these standards have been adopted but have not yet entered into force.

provided that the investment is implemented and finalised at least one year before the entry into force of the standard<sup>6</sup>.

10. The second measure is a new feature, which targets existing means of transport to be upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport, provided that the investment is implemented and finalised before the entry into force of the standard<sup>7</sup>.
11. The method of calculation of eligible costs for both measures remains the same as in the initial scheme. In particular, eligible costs are determined as follows:
  - a) where the cost of investing in environmental protection can be easily identified in the total investment cost<sup>8</sup>, this precise environmental protection-related cost constitutes the eligible costs;
  - b) in all other cases the extra investment costs must be established by comparing the investment with the counterfactual situation in the absence of State aid.
12. These 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 must be added to the extra investment costs.

#### *2.2.4. Aid intensity*

13. Regarding aid for early adaptation to future EU standards for acquisition of new ships, the aid intensity is limited to maximum 25 %, 20 % and 15 % for small, medium and large enterprises respectively, if the implementation and finalisation take place more than three years before the mandatory date of transposition or date of entry into force of the new EU environmental standards. Alternatively, the aid intensity is limited to maximum 20 %, 15 % and 10 % respectively depending on the size of the enterprise, if the implementation takes place between one and three years before the mandatory date of transposition or date of entry into force.
14. As far as investment aid for retrofitting operations is concerned, the maximum aid intensity allowed is 50% of the eligible costs.

#### *2.2.5. Budget, duration and beneficiaries*

15. The scope of the beneficiaries of the modified scheme remains the same as in the initial scheme. The budget of the notified amendments of the scheme is EUR 100 million for the period 2013-2014<sup>9</sup>.

#### *2.2.6. Other scheme conditions*

16. All other conditions contained in the existing scheme related to the eligibility of aid recipients, procedure of granting aid and cost verification modalities (see points 11, 17-28 of the 2011 decision) remain the same.

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<sup>6</sup> This means before 31 December 2013 for the applicable new standards for sulphur content of marine fuels as provided for in the Sulphur Directive.

<sup>7</sup> This means before 31 December 2014 for the applicable new standards for sulphur content of marine fuels as provided for in the Sulphur Directive.

<sup>8</sup> For example, in the case of retrofitting operations the eligible costs consist of the costs of the equipment to be installed, its planning and installation.

<sup>9</sup> The budget of the existing scheme is EUR 120 million for the period 2012-2014.

### **3. LEGAL ASSESSMENT**

#### **3.1. Existence of aid**

17. By virtue of Article 107(1) 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.*”
18. Therefore, in order to determine whether the scheme at stake contains state aid elements within the meaning of Article 107(1) 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.
19. The Commission considers that the notified amendments to the existing scheme do not alter the aid character of the scheme. Indeed, it allows ship operators to be relieved, by means of State resources<sup>10</sup>, 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.
20. In view of the above, the Commission considers that the notified amendments of the existing scheme constitute state aid within the meaning of Article 107(1) TFUE with respect to ship operators.

#### **3.2. Compatibility of the aid scheme**

21. The objective of the aid is environmental protection since the aid aims at reducing emissions of sulphur into the atmosphere produced by shipping operations.
22. 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 "Guidelines")<sup>11</sup>.
23. According to the Guidelines, transport is responsible for a large share of overall greenhouse gas emissions (approximately 30%), as well as for local pollution by dust, particulates, NOx and SOx. 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 ships<sup>12</sup>.
24. In the present case, the purpose of the scheme is to encourage shipping companies to invest in making vessels more environmentally friendly.

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<sup>10</sup> As the payments are made from the budget of the central government, the involvement of State resources is undeniable.

<sup>11</sup> OJ C 82, 1.4.2008, p. 1.

<sup>12</sup> See point 44 of the Guidelines.

25. 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 the Sulphur Directive.
26. The new more stringent standards were adopted on 21 November 2012 and will enter into force as of 2015. The notified amendments will thus promote attainment of the new sulphur limits before the requirements enter into force.
27. With regard **to aid for early adaptation** to future EU standards for acquisition of new ships, the relevant provisions of compatibility assessment are contained in section 3.1.3 of the Guidelines. In particular, the Commission notes that the aid intensities provided for in this measure (see point 13 above) are set in accordance with the ones allowed in point 88 of the Guidelines.
28. The Commission further notes that the eligible costs are calculated in accordance with point 89 of the Guidelines as the extra costs of investment for acquisition of new ships are the additional costs of a new more environmentally friendly vessel compared to a vessel using standard propulsion. Indeed, such new environmentally friendly vessels should, as a minimum, ensure the level of environmental protection required by the new EU standard. The operating costs and benefits related to the extra investments during the first five years of the life of this investment will be taken into account in line with the provisions of points 82 and 90 of the Guidelines.
29. As regards **aid for retrofitting operations**, the applicable provisions are contained in point 86 of Section 3.1.2 of the Guidelines, which allows for the aid intensities provided for in point 79 of the Guidelines. In this respect, the Commission notes that the notified measure is compliant with the aid intensity envisaged in this point, while setting a lower aid level, i.e. 50 % of the eligible costs for small and medium enterprises. Furthermore, the eligible costs are determined in accordance with point 81(a) of the Guidelines as they consist of the costs of the equipment to be installed, its planning and installation. In addition, in conformity with point 86 of the Guidelines, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the EU standard which were not yet in force at the date of entry into operation of the existing means of transport. The operating costs and benefits related to the extra investments during the first five years of the life of this investment will be taken into account, in line with the provisions of points 82 of the Guidelines.
30. As described in the 2011 Decision (paragraphs 21 and 44 thereof), the Commission takes note 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.
31. The Commission is thus of the opinion that the thorough verification of the counterfactual situation<sup>13</sup> and the eligible costs as presented by the aid applicant will be carried out and no aid will be granted with respect to the investment projects which would be profitable without aid (point 146 of the Guidelines).
32. The Commission notes furthermore that the scheme remains open to all operators in a non-discriminatory way.

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<sup>13</sup> The cost of a technically comparable investment that provides a lower degree of environmental protection.

33. In view of the above the Commission concludes that the present scheme will ensure that the aid will be limited to the minimum needed to meet the environmental protection objective sought.
34. The aid scheme has an incentive effect (section 3.2 of the Guidelines) as it will incentivise vessel operators to invest in more environmentally friendly technologies and to implement investments that go beyond the currently applicable 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 or to upgrade the existing vessels. In addition, no funding will be granted after the new EU standards enter into force. 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 Guidelines.
35. 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 Guidelines.
36. The Commission takes also note of the provision of Section 1 (point 2) of the Government Decree (see Chapter 2.2.2 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 Guidelines.
37. In view of the above considerations, the Commission considers the conditions set up in the Guidelines to be met.
38. 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.
39. The Commission therefore considers that the aid scheme is compatible with the internal market on the basis of the Guidelines.

### **3.3. Conclusion**

40. It can thus be concluded that the aid scheme is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

## **4. DECISION**

The Commission has accordingly decided to consider the aid to be compatible with TFEU.

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Yours faithfully,  
For the Commission

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