



EUROPEAN COMMISSION

Brussels, 13.04.2015

C (2015) 2457 final

PUBLIC VERSION

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Subject: State aid – SA.38085 (2013/N) – Italy – Prolongation of the tonnage tax scheme

Sir,

1. PROCEDURE

- (1) By letter dated 23 December 2013, the Italian authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter ‘TFEU’), of their intention to prolong by 10 years the existing tonnage tax scheme.
- (2) The Commission regarded the notification as incomplete and therefore requested additional information by letters of 18 March, 23 June and 7 October 2014, and 21 January 2015.
- (3) In response to the Commission’s requests, the Italian authorities provided additional information by letters of 25 April, 25 July and 19 November 2014, and of 11 February 2015.

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2. DESCRIPTION OF THE EXISTING SCHEME

- (4) The Commission approved the existing tonnage tax scheme by decision of 20.10.2004¹. The present description summarises the essential provisions of the existing scheme. That description takes into account additional information which the Italian authorities provided in the present notification procedure, and also certain additional commitments made by the Italian authorities, to adapt the scheme to the Commission's evolving decisional practice in the area of State aid for maritime transport.

2.1. Objectives of the scheme; beneficiaries

- (5) The objective of the Italian tonnage tax scheme is to preserve the shipping sector in Italy, to maintain jobs and maritime expertise. The scheme is a system for settling profit tax liability. Eligible undertakings may opt for a tax calculated on the net tonnage of the fleet that they operate (tonnage tax) instead of being taxed on the actual profits of their maritime transport activities under the standard Italian profit tax system.
- (6) The scheme *inter alia* aims to encourage Italian ship-owners to repatriate ships sailing under flags of convenience and to maintain or develop maritime activities in Italy, such as the strategic and commercial management of vessels.
- (7) Only legal entities which are liable to corporate tax in Italy and are engaged in international maritime transport by ship, or in an activity assimilated thereto, may opt for that alternative system. Eligible undertakings, vessels and activities are described further below.

2.2. Evaluation of the scheme

- (8) According to statistical data provided by the Italian authorities, the tonnage of the Italian merchant fleet increased by more than 70% since the introduction of the tonnage tax system. Employment of EU/EEA seafarers more than doubled on board vessels benefiting from the Italian tonnage tax scheme.
- (9) According to the Italian authorities, available data indicate that the scheme contributed to revitalising both the Italian merchant fleet and the national maritime cluster. On that basis, the Italian authorities deem it essential to extend the duration of the scheme.

2.3. Legal basis, implementing provisions

- (10) Italy introduced the scheme in 2005, on the basis of Legislative decree 344 of 12 December 2003.

¹ Commission decision of 20.10.2004 in State aid N 114/2004 – Italy, *Regime d'imposizione forfetaria sulla base del tonnellaggio per il trasporto marittimo*, OJ C 136 of 3.6.2005, p.41.

- (11) The Ministerial decree of 23 June 2005 "Implementing provisions for the scheme for determining the basis of assessment for the taxation of shipping companies, set out in Articles 155 to 161 of the Income Tax Code (tonnage tax)" provided additional clarifications.

2.4. Budget

- (12) Estimated foregone annual tax revenues amounted to EUR 20 million per year.²

2.5. Duration of the scheme

- (13) The approved duration of the scheme was 10 years.³

2.6. Eligibility criteria

- (14) The following activities are eligible for tonnage taxation:

- carriage of goods;
- carriage of passengers;
- rescue at sea, towing at sea when it constitutes transport service, carriage and installation of offshore facilities and marine assistance on the high seas.⁴

- (15) Towing and similar operations can be eligible for tonnage taxation if it meets the conditions for this sector as provided in the Maritime Guidelines.⁵

- (16) The tonnage tax scheme is also applicable to time/voyage chartered vessels carrying out eligible activities, independently of the flag the vessel concerned is flying, provided that the tonnage of such vessels does not exceed 50 % of all the beneficiary's vessels under tonnage taxation.

- (17) Revenues from chartering out ships on a 'bareboat' basis ('bareboat chartering out')⁶ are not eligible for aid under the tonnage tax scheme. Pursuant to Article 157 (1) and (2) of the Legislative decree 344 of 12.12.2003:

- The tonnage tax option may not be exercised where more than half of the ships used are bare-boat chartered out for a time superior to 50 of the effective navigation days of each vessel during the fiscal year.⁷

² Recital (22) of the Decision in N 114/2004.

³ Recital (23) of the Decision in N 114/2004.

⁴ Recital (14) of the Decision in N 114/2004.

⁵ Recital (18) of the Decision in N 114/2004.

⁶ Renting ships out without a crew and provision of technical management.

⁷ Recital (13) first alinea of the Decision in N 114/2004.

- Tonnage tax does not apply to income from vessels generated on days when chartered out on bare-boat basis.
- (18) Ancillary activities directly related complementary and concurrent to the above mentioned eligible activities continue to be covered by the tonnage tax scheme⁸.
- (19) Dredging is not eligible for aid under the tonnage tax scheme⁹.
- (20) Ships that are not safety-certified for international navigation, warships, ships operated non-commercially by the State, fishing vessels and pleasure craft are ineligible for tonnage taxation.
- (21) The Italian authorities monitor compliance with the scheme's eligibility provisions on the basis of the following data, to be provided by each beneficiary for its entire tonnage taxed fleet: vessel name, registration number in the ship register, postcode of the home port of registration of the vessel, type of use of the vessel, the code of the foreign country in which the chartered vessel is registered in cases of chartered-in vessels, tonnage of the vessel, days of use.
- (22) Shareholders of shipping companies do not benefit from any additional tax advantages. As regards the tax treatment of dividends paid and capital gains/losses made as a result of the sale of shares held by shareholders in companies subject to the tonnage tax scheme, the normal tax rules apply.
- (23) Beneficiary undertakings have to irrevocably opt into the tonnage taxation for at least 10 years.¹⁰ If an undertaking loses the right to tonnage taxation, that undertaking cannot re-enter the scheme before the end of the 10-year period¹¹. In the future the Italian authorities intend to tighten this rule even further, by setting at 5 years the minimum period which must elapse between exiting the tonnage tax scheme and being able to enter it again; this would apply to cases where the grounds for exiting the scheme occur from the sixth year onwards.
- (24) All other provisions including anti-abuse measures¹² will remain unchanged. As regards the requirement that eligible ships must be registered in the international shipping register of Italy ('flag-link rule')¹³, the Italian authorities have committed to amend the existing provisions in order to allow ships registered in EU/EEA States to benefit of the tax tonnage regime¹⁴.

⁸ Recitals (15) and (17) of the Decision in N 114/2004.

⁹ Recital (18) of the Decision in N 114/2004.

¹⁰ Recital (24) of the Decision in N 114/2004.

¹¹ Recital (25) of the Decision in N 114/2004.

¹² Recitals (26)-(32) of the Decision in N 114/2004.

¹³ Recital (20) of the Decision in N 114/2004.

¹⁴ Following the Commission's services initiative EU-Pilot 7060/14/TAXU.

2.7. Tonnage tax base and tonnage tax calculation

(25) The tonnage tax base will be calculated on the basis of the formula hereunder¹⁵

Table 1

Tax base calculated based on net tonnage			
0-1000 NT	1001-10,000 NT	10,001-25,000 NT	>25,000 NT
€0.90 per 100 NT	€0.70 per 100 NT	€0.40 per 100 NT	€ 0.20 per 100 NT

- (26) Days when a vessel is out of service due to maintenance, standard or extraordinary repairs, refitting or conversion, are not counted; neither are days when a vessel is temporarily laid up. At the same time, no charge is deductible from the calculated tonnage tax base.
- (27) The tonnage tax due is subsequently calculated by multiplying the tonnage tax base with the applicable corporate income tax rate¹⁶.

2.8. Specific rules on transition from the profit taxation to the tonnage taxation system

- (28) The existing scheme provided for the following rules with respect to capital gains or losses related to ships transferred into the tonnage tax scheme: In the case of cession (transfer) for money of one or more ships subject to tonnage taxation, the tax base includes also capital gains and losses. However, if the sale concerns a ship the beneficiary already owned prior to the entry into the tonnage tax, the difference between the sale proceeds, net of directly imputable costs, and the remaining tax value as at the entry into the tonnage tax system will be taxed according to the standard corporate income tax rules.¹⁷
- (29) In the future, in order to establish tax liabilities when a ship is sold, the Italian authorities will also compare the ‘normal value’ of the ship at the moment of the entry into the tonnage tax scheme with the tax value at the date of entry into the tonnage tax scheme.
- (30) Pursuant to Article 9(3) of the Italian law on Income tax, ‘normal value’ is defined as *‘the average price or consideration for goods and services of the same or a similar nature, in conditions of free competition and at the same stage of marketing at the time and place at which the goods or services were acquired or supplied and, failing that, at the nearest time and place. To establish the normal value, reference shall be made where possible to the price or charge lists of the supplier of the goods or services and, failing that, to the market lists and price lists of the chambers of*

¹⁵ Recital (10) of the Decision in N 114/2004.

¹⁶ The Corporate income Tax (IRES) in Italy is currently 27.50%

¹⁷ Recital (19) of the Decision in N 114/2004.

commerce and to listings of professional rates, taking account of customary discounts. For goods and services subject to price regulation, reference shall be made to the provisions in force.'

- (31) Only the tonnage tax sums paid by the tonnage tax beneficiary for the ship in question can be taken into account to reduce tax liability.
- (32) Independently of the real sales price, the taxable amount cannot be lower than the net tax liability calculated in line with the approach described above.
- (33) If a beneficiary exits the tonnage tax scheme or if one of its vessels does no longer meet the scheme's requirements, the corresponding fiscal values will be the same as they would have been if the tonnage tax option had not been exercised.¹⁸

2.9. Cumulation and aid ceiling

- (34) Aid from the existing scheme can only be cumulated with other aid up to the ceiling allowed under section 11 of the Community guidelines on State aid to maritime transport.¹⁹
- (35) At present, there are no direct aid schemes in favour of Italian ship-owning companies.
- (36) As regards ships acquired before the entry into the tonnage taxation, corporate tax liabilities will be duly established by the tax authorities at the moment of the entry into the tonnage tax system; alleviations with respect to such liabilities, if any, will be taken into account for the permitted aid ceiling.
- (37) The Italian authorities therefore claim that the total aid²⁰ for the benefit of shipping companies does not provide any higher benefit than the full exemption from taxes and social contributions of shipping companies and seafarers would represent.
- (38) In any case, as already specified in the decision approving the existing scheme, the Italian authorities will verify that no tonnage tax beneficiary receives, through different support measures, aid in excess of the aid ceiling as specified in Chapter 11 of the Maritime Guidelines.
- (39) The Italian authorities provided a commitment to suspend the payment of the notified aid if it is established that a beneficiary of the aid still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

¹⁸ Article 8(1) in combination with (2) of the Ministerial Decree of 23 June 2005.

¹⁹ Recital (37) of the Decision in N 114/2004.

²⁰ Except for aid for training aid, restructuring aid, aid related to public service obligations and start-up aid for new short sea shipping services.

3. AMENDMENTS TO THE EXISTING SCHEME

- (40) New duration: The Italian authorities intend to prolong the scheme by 10 years, until 31.12.2023 inclusive.
- (41) New budget: Estimated annual foregone tax revenue amounts to EUR 13.5 million; total estimated foregone tax revenue amount to EUR 135 million over the scheme's 10-year duration.
- (42) The Italian authorities intend to tighten the rules of the aid scheme, by setting at 5 years the minimum period which must pass between exiting the tonnage tax scheme and being able to re-enter it. Similarly, Italy will tighten the rules concerning the taxation of the capital gains related to ships acquired before the entry into the tonnage tax scheme.²¹ Also, the flag-link rule will be extended to ships registered in EU/EEA-States.

4. ASSESSMENT OF THE AID

4.1. Existence of aid under Article 107(1) of the TFEU

- (43) The Commission maintains the reasoning set out in its previous decision on the existing scheme, which concluded that the measure constitutes State aid within the meaning of Article 87 (1) [now 107 (1)] of the TFEU.²²

4.2. Assessment of the notified aid measure

- (44) The existing scheme was approved on the basis of the Guidelines on State aid to maritime transport²³ (hereinafter "the Maritime Guidelines"). The objective of the scheme, namely to preserve the shipping sector in Italy, to maintain jobs and maritime expertise, by taxing eligible undertakings on the basis of the net tonnage of the fleet that they operate, remains unchanged.
- (45) The Maritime Guidelines are still in force. Hence, the compatibility of the prolonged scheme has to be assessed on the basis of the Maritime Guidelines.

²¹ See section 2.8 of the present Decision.

²² Recital (40) of the Decision in N 114/2004. With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical.

²³ OJ C 13, 17.1.2004, p. 3.

- (46) The Commission notes that, on the one hand, the notified prolongation and budget increase, as well as the tightening of the re-entry criterion²⁴, do not alter the previous assessment of the compatibility of the scheme with the internal market.
- (47) On the other hand, the Commission has in its recent case practice developed criteria that ensure that only activities that are in line with the objectives and eligibility conditions of the Maritime Guidelines are covered by tonnage tax schemes, and that the total support level of the shipping companies does not exceed the limit imposed in Section 11 of the Maritime Guidelines.
- (48) Therefore, the Commission assessed the notified scheme's rules applicable to bare-boat chartering out, time/voyage chartering as well as treatment of tax liabilities upon transition from regular corporate taxation to tonnage taxation.

4.2.1. Eligible activities

- (49) As described above in recital (14)), rescue at sea, towing at sea when it constitutes transport service, carriage and installation of offshore facilities and marine assistance on the high seas are activities eligible for tonnage taxation. The Commission assesses below whether such activities can be eligible for tonnage taxation in direct application of the Maritime Guidelines. In the negative, the Commission assesses whether such activities can be considered eligible for tonnage taxation directly under Article 107(3)(c) TFEU in application of the Maritime Guidelines *by analogy*.

Towing at sea

- (50) Pursuant to Point 3.1.1 of the Maritime Guidelines, towing and similar operations are eligible for tonnage taxation provided that more than 50 % of the towage activity effectively carried out by a tug during a given year constitutes maritime transport. Waiting time may be proportionally assimilated to that part of total activity effectively carried out by a tug which constitutes 'maritime transport'. Towage activities which are carried out *inter alia* in ports, or which consist in assisting a self-propelled vessel to reach port do not constitute maritime transport. In the present case, support under the scheme will be awarded if the abovementioned conditions are fulfilled and only for the maritime-transport part of towing. Under these conditions, towing at sea is an eligible activity in accordance with the Maritime Guidelines.

Carriage and installation of offshore facilities

- (51) The definition of 'maritime transport' set out in Art. 1 (4) of Regulation 4055/86²⁵ and Art. 2 (1) of Regulation 3577/92²⁶, and referred to in Section 2, third paragraph, of the

²⁴ After leaving the tonnage tax the former beneficiary company can re-enter the tonnage taxation only after 5 years.

²⁵ Regulation (EEC) No 4055/86 of 22.12.1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31.12.1986, p. 1.

Maritime Guidelines, includes the carriage of passengers or goods by sea between ports, but also between a port and an off-shore installation or structure. On that basis, the carriage and installation of offshore facilities can be considered an eligible activity under the present aid scheme in accordance with the Maritime Guidelines.

Rescue at sea and marine assistance on the high seas

- (52) The Commission notes, firstly, that Art. 155 (1) of the Income Tax Code stipulates that only taxable income arising out of the use of vessels in international traffic (*reddito imponibile derivante dall'utilizzo in traffico internazionale delle navi*) is eligible for tonnage taxation, and secondly, that the implementing rules set out in Ministerial Decree of 23 June 2005 expressly stipulate that rescue must be at sea and assistance on high sea. Moreover, it cannot be excluded that part of the activities of such vessels, such as the transportation of rescued persons, salvaged goods, rescue/assistance personnel, corresponding equipment, and the towing of vessels at sea, could constitute maritime transport to the extent that it involves the carriage of passengers or goods by sea between ports or between a port and an off-shore installation or structure.
- (53) However, the main activity of rescue and marine assistance vessels does not constitute maritime transport. Therefore, such activities cannot be eligible under the present scheme in direct application of the Maritime Guidelines.
- (54) Nevertheless, rescue at sea and marine assistance on the high seas could be eligible for tonnage taxation directly under Article 107(3)(c) TFEU in application of the Maritime Guidelines *by analogy*, provided that such activities share a sufficient number of characteristics comparable with maritime transport. Specifically, the Maritime Guidelines can be applied by analogy to vessels that do not perform maritime transport, provided that the market where they operate is open to international competition and there is a high risk of de-flagging and relocation.²⁷
- (55) First, vessels that provide rescue at sea and marine assistance on the high seas require qualified seafarers, with qualifications comparable to those working on board traditional maritime transport vessels. Second, such vessels are sea-going vessels and they are obliged to undergo technical and safety controls comparable to those of vessels dedicated to maritime transport. Finally, there is a risk that companies carrying out rescue at sea and marine assistance on the high seas could relocate their on-shore activities outside the EU for the purpose of finding more accommodating fiscal climates and subsequently re-flag their vessels under flags of third countries. In this

²⁶ Regulation (EEC) No 3577/92 of 7.12.1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364 of 12.12.1992, p.7.

²⁷ See in that regard, (for cable-laying vessels) Decision of 27.04.2010 in State aid N 714/2009 – Netherlands, *Intégration des transports de la pose de câbles, pose de canalisations, navires de grues et navires de recherche sous le régime de la "tonnage tax"*, OJ C/158/2010; and (for vessels providing cable-laying, pipeline-laying, research or crane services) Decision of 13.01.2009 in State aid C 22/2007 – Denmark, *Danish Tonnage Tax - Cable Laying Vessels*, OJ L/119/2009.

context, the Commission acknowledges that these companies operate in a global market.

- (56) Consequently, the Commission recognises that these activities are subject to a legal environment in the labour, technical and safety fields comparable to that of EU maritime transport. Similarly, qualified and trained seafarers are necessary as is the case in maritime transport. Finally, the challenges that they face in terms of global competition and relocation of on-shore activities are similar to those of EU maritime transport. These features are reflected in the general objectives of the guidelines.
- (57) In view of the above, even though the Commission considers that the activities of vessels that provide rescue at sea and marine assistance on the high seas do not fall within the definition of maritime transport as laid-down in the relevant Regulations referred to in the Maritime Guidelines, it considers that these activities may benefit from the same type of aid as maritime transport. Therefore, Section 3.1 of the Guidelines (possibility to replace the normal corporate tax system by a tonnage tax system) can be applied to these activities by analogy.

4.2.2. Rules on revenue from bare-boat chartering out

- (58) The Commission notes that the Italian legislation excludes revenues from bare-boat chartering from the scope of the tonnage tax scheme.
- (59) The Commission has already decided that mere ship lessors cannot be deemed to provide maritime transport services in the sense of the Maritime Guidelines, and therefore cannot benefit from a tonnage tax regime. The Commission only allowed limited flexibility in favour of genuine shipping companies which charter out their vessels on a bare-boat basis in the context of temporary over-capacity²⁸.
- (60) Given the above, the outright exclusion of bare-boat chartering out is in line with the Maritime Guidelines.

4.2.3. Rules applicable to revenues from chartering in with crew (time/voyage chartering)

- (61) Time charterers, voyage charterers and similar operators providing transport services with ships chartered from other companies with crew are providers of maritime transport services and thus are normally eligible for tonnage tax aid. However, the Commission re-iterates the position it has taken in previous decisions,²⁹ which is that such undertakings can only benefit from tonnage taxation if they contribute to an

²⁸ Decision of 20.12.2011 in State aid SA.30515 – N 448/2010 – Finland, Amendments to the tonnage taxation aid scheme, OJ C 220 of 25.7.2012, p.1; decision of 29.6.2011 in State aid case SA.21233 C/2011(ex NN/2011, ex CP137/2006) – Spain, OJ C 276 of 21.9.2011, p.5.

²⁹ Decision of 25.2.2009 in State aid C 2/08 (ex N 572/07), on the amendment to the maritime tonnage tax system which Ireland is planning to implement, OJ L 228 of 1.9.2009, p.20; decision of 4.2.2015 in State aid SA.14551 (2013/C) (ex 2012/MC) – France, Régime d'imposition forfaitaire sur la base du tonnage en faveur de compagnies de transport maritime, not yet published in the OJ.

objective of the Maritime Guidelines, notably the flagging or re-flagging to Member States' registers or maintaining and improving EU maritime know-how.

- (62) The Commission has accepted that limiting the share of time/voyage chartered fleet to 80% of the beneficiary's total fleet ensures that the beneficiary contributes to aforementioned objectives, as sufficient crew and technical management skills would be maintained in the EU.³⁰
- (63) Under the notified scheme, the share of time/voyage chartered fleet is limited to 50%. Hence, the scheme ensures sufficient contribution to the objective of the preservation of EU maritime know-how.

4.2.4. Transitional rules between the corporate income taxation and tonnage tax scheme

- (64) As established in recent Commission decisions³¹, capital gains related to previously over-depreciated ships entering the tonnage tax system cannot be covered by the tonnage tax system and should be considered as a separate State aid measure.
- (65) Therefore, whenever a ship is brought into the tonnage taxation, any related tax liability³² should be established and any relief measures with respect to this tax liability must remain within the aid ceiling pursuant to Section 11 of the Maritime Guidelines.
- (66) Under the notified scheme, specific rules apply to the treatment of tax liabilities upon transition from one tax system to another, as described in point 2.8 above. The Commission finds that these rules provide sufficient safeguard against any undue aid through the favourable taxation of tax liabilities arising from previous over-depreciation under regular corporate tax rules.

5. CONCLUSION

- (67) Having regard to the analysis set out above, the Commission concludes that the scheme under examination is in line with the Maritime Guidelines.

6. DECISION

³⁰ Decision of 25.2.2009 in State aid C 2/08 (ex N 572/07), on the amendment to the maritime tonnage tax system which Ireland is planning to implement, OJ L 228 of 1.9.2009, p.20.

³¹ Decision of 20.12.2011 in State aid SA.30515 – N 448/2010 – Finland, Amendments to the tonnage taxation aid scheme, OJ C 220 of 25.7.2012, p.1; decision of 29.6.2011 in State aid case SA.21233 C/2011(ex NN/2011, ex CP137/2006) – Spain, OJ C 276 of 21.9.2011, p.5.

³² Difference between the market value and the tax value as at the entry into the tonnage taxation

- (68) The Commission regrets that Italy put the prolonged tonnage tax scheme into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
- (69) However, the Commission has decided, on the basis of the foregoing assessment, not to raise objections to the notified aid scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the TFEU.
- (70) The Commission reminds Italy to submit annual reports on the application of the scheme.
- (71) The Commission further reminds Italy to inform the Commission pursuant to Article 108(3) of the TFEU on all plans to alter this aid scheme with the exception of the amendments committed by the Italian authorities, enumerated above.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline, Italy will be deemed to agree to the publication of the full text of this letter. If Italy wishes certain information to be covered by the obligation of professional secrecy, please indicate the relevant parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004, to the following address:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42
Stateaidgreffe@ec.europa.eu

Yours faithfully,
For the Commission

Margrethe Vestager
Member of the Commission