



EUROPEAN COMMISSION

Brussels, 18.08.2016

C(2016) 5302 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: State aid – SA.43642 (2015/N) – Sweden – Tonnage tax scheme

Sir,

1. PROCEDURE

- (1) By letter dated 19 November 2015, the Swedish authorities notified the Commission, in accordance with Article 108(3) of the TFEU, of their intention to introduce a tonnage tax scheme. In the notification letter, the Swedish authorities referred to the Community guidelines on State aid to maritime transport¹ (hereinafter 'the Maritime Guidelines') as the applicable EU legal text that would provide an explicit legal basis for the authorisation of the notified measure.
- (2) The Commission considered the notification incomplete and therefore requested additional information by letter of 19 January 2016. The Swedish authorities provided requested information by letters of 10 February 2016 and 12 February 2016.
- (3) The Commission requested further information by letter of 18 March 2016. The Swedish authorities responded by letters of: 7 April 2016, 27 April 2016 and 15 May 2016.
- (4) By letter of 15 May 2016, the Swedish authorities have provided a language waiver and agreed that the decision will be adopted in English as the authentic language.

¹ OJ C 13 of 17.1.2004, p.3.

Utrikesminister Margot WALLSTRÖM
Utrikesdepartementet
Arvfurstens palats
Gustav Adolfs torg 1
SE - 103 23 Stockholm

- (5) The Swedish authorities provided further information by letters of: 2 June 2016, 8 June 2016, 13 June 2016 and 1 August 2016.

2. DESCRIPTION OF THE NOTIFIED SCHEME

2.1. General features of the scheme

- (6) The Swedish authorities notified to the Commission the tonnage tax scheme intended to be applicable to shipping companies operating maritime transport of goods and/or passengers.
- (7) Under the proposed regime a company will pay the corporate income tax rate on an amount that is calculated based on notional profits and not the real economic results. A company's profit from qualifying shipping activities will notably be calculated by reference to the net tonnage of each of the qualifying ships which the company operates, regardless if the ship is directly owned or chartered in. If the company has other activities than qualifying shipping activities, profits from these activities will remain subject to the normal rules for calculating taxable profit.

2.2. Objectives of the scheme

- (8) The aim of the proposed tonnage tax scheme is to contribute to a competitive environment so that the number of ships in the Swedish registry, but also in other EU Member States' registries, increases. The measure is also perceived as an effective instrument to make Swedish shipping industry competitive from the international perspective. By introduction of the proposed scheme, Sweden intends to reverse the downward trend observed in the number of Swedish flagged ships in the Swedish merchant navy, observed in the last 10 years.
- (9) By increasing the number of Swedish flagged ships (and other Member States flagged ships), Sweden expects also to have positive effects regarding employment and maritime know-how. It will also be easier for the maritime students to get the essential onboard training.

2.3. Eligibility criteria

2.3.1. Companies

- (10) All taxpayers (companies and sole proprietors) who are liable to Swedish tax will be eligible to apply the proposed tonnage tax regime. To be eligible the taxpayer must also operate one or more qualifying ships (see section 3.3.2.), but ownership is not a requirement per se. Finally, it must carry out one or more qualifying shipping activities (see section 3.3.3.).

2.3.2. Ships

- (11) Qualifying ships, for the proposed tonnage tax scheme, are those ships that have a gross tonnage of at least 100 tons and are mainly used for international transport or domestic transport in another country.

- (12) Time/voyage chartered-in vessels can be eligible for the proposed Swedish tonnage tax regime if the tonnage tax beneficiary respects all conditions of the scheme (notably as regards flagging and own operations – see below).
- (13) The Swedish authorities have informed the Commission that a high global safety standard for all eligible ships and implementation of relevant international instruments regarding safety regulations as well as on-board working and living conditions is ensured by the Port State Control within the framework of the Paris Memorandum of Understanding on Port State Control².

2.3.3. Activities

- (14) For the proposed regime eligible activities are only qualifying shipping activities.
- (15) Qualifying shipping activities are defined as transport by sea of cargo and/or passengers between ports, as well as between a port and an offshore structure, on a qualifying ship (maritime transport) and activities necessary for or closely related to maritime transport. A prerequisite for such necessary or closely related activities being qualified is that the remuneration for the activities is included in the remuneration for the maritime transport. The qualifying core activities are thus maritime transport and its necessary or related activities.
- (16) Qualifying shipping activities also include (1) certain combined transport services, (2) qualifying ships chartered out with a crew, (3) qualifying ships chartered out on bareboat terms (whereby the lessee must man the ship) during temporary excess capacity (for a maximum period of three years during a ten-year period and at maximum 20% of the gross tonnage of the ships included in the qualifying shipping activities).
- (17) Activities that are necessary for or closely related to maritime transport (i.e. ancillary activities) refer to activities such as transport to and from the ship in the port area, loading and unloading of goods, embarkation and disembarkation of passengers, temporary storage of goods, ticket sales and booking of maritime transport and the running of freight and passenger terminals. The said activities are examples of activities which, by their very nature, are considered to be necessary for or closely related to maritime transport.
- (18) The proposed tonnage tax regime includes a requirement that land-based services in form of transport services outside the harbour should be purchased from another company and should be purchased at market value.
- (19) Certain activities on board ships used for maritime transport are also included in the definition of qualifying shipping activities. These on-board activities are sale of goods for consumption on board, catering on board, and rental of premises on board as well as light entertainment and other activities provided during the maritime transport.

² Implemented in the EU through the Port State Control Directive (2009/16/EC), OJ L 131, 28.5.2009, p. 57.

- (20) The Swedish authorities have informed the Commission that ancillary activities are only activities that are closely related to the maritime transport itself. The subordinate activities shall generate less revenue than the maritime transport.
- (21) The proposed regime does not include tug activities or dredging activities.
- (22) For a shipping activity to be qualified, it must be executed by a fleet of a specific nature. A shipping activity is only qualifying if at least 20% of the gross tonnage of the ships included in the activities is assigned to ships owned or chartered in on bareboat terms by the company operating the ships.
- (23) For a shipping activity to be qualified it is also required that at least 20% of the gross tonnage of the ships included in the activities is assigned to ships registered in the EU/EEA. Furthermore, the share of gross tonnage of the ships included in the activities that are registered in a register within the EU/EEA must either increase or be maintained during the fiscal year.
- (24) If at least 60% of the gross tonnage of the ships included in the activities, or in the activities within the same group, is assigned to ships registered in a register within the EU/EEA, no requirement is imposed that the gross tonnage must increase or be maintained during the fiscal year.
- (25) The flag requirements must be fulfilled every fiscal year.

2.4. Approval for Tonnage tax regime and rules on exit from the tonnage tax regime

- (26) The proposed tonnage tax regime is to be voluntary. A company that wishes to be part of the tonnage tax scheme will have to apply to the Swedish Tax Agency which, if eligibility conditions are fulfilled, will approve the company for tonnage taxation.
- (27) An approved application to be included in the tonnage tax scheme will be valid for a period of at least ten fiscal years. After a period of at least ten fiscal years with tonnage taxation a company will be allowed to exit from the regime and once again be subject to conventional taxation.
- (28) A request for exit will have to be made in advance and be received by the Tax Agency at least four years before the beginning of the last fiscal year in which tonnage taxation will take place. A company that exits from the tonnage tax regime will be prevented for a period of at least ten fiscal years from being allowed to re-join the tonnage tax regime.
- (29) During the transition to tonnage taxation, companies will in many cases have provisions, losses and accumulated accelerated depreciation, i.e. residues of the conventional taxation method.
- (30) Previous fiscal years' provisions to certain reserves for tax purposes (Sw. periodiseringsfonder, ersättningsfonder and expansionsfonder) are not to be included in the tonnage taxed activities. Such reserves will be brought back to taxation in accordance with the ordinary provisions of the Income Tax Act. The same principle will

apply to previous fiscal years' deficits. Previous fiscal years' losses will not be assigned to tonnage taxed activities (i.e. it will not be possible to set off tonnage tax liability against losses from previous years), but may, in so far as possible, be deducted within the framework of conventional taxation under existing provisions of the Income Tax Act.

- (31) Sweden applies favourable rules on depreciation of machinery and equipment. If a company maximizes the depreciations, a ship may be fully written off in five years. If the useful life of the ship is 25 years, the rapid depreciation for tax purposes will lead to a large deferred tax liability.
- (32) A company that enters the tonnage tax regime must eventually bring back the deferred tax to taxation (i.e. no part of the deferred tax will be "forgiven"). The basic rule is that the deferred tax shall be brought back to taxation when the company enters the tonnage tax regime but a company may opt for a further deferral subject to 1.67% interest rate. If so, the reserve will be brought back to taxation over the following 20 years with at least 25 % per five-year period. However, if the company has increased both the total net tonnage and the owned share of the net tonnage no amount has to be brought back to taxation for a certain five-year period and the total time frame is prolonged with five years.
- (33) The purpose of the rules on reversal of the reserve is to create an outcome (for the tax deferred before the entry into tonnage taxation) that is similar to what would have been the case (for that deferred tax) if the company had remained in the conventional corporate tax system. In the normal corporate tax system a company can obtain tax deferral by buying new equipment.
- (34) The fiscal advantages are restricted to qualifying shipping activities; hence, in cases where a company is also engaged in other commercial activities, transparent accounting is required in order to prevent "spill-over" into non-shipping activities.

2.5. Tonnage tax rates

- (35) With the notified scheme, the Swedish authorities intend to calculate, for eligible activities, the profit for tax purposes based on the ship's net tonnage. The taxable tonnage taxed profit will not consist of the surplus from commercial activities, but by a notional profit based on the net tonnage of the ships.
- (36) A company that has chosen tonnage taxation will be thus not taxed on the basis of actual income gained by qualifying shipping activities and, as a consequence, no deductions will be allowed to be made from the tonnage profit.
- (37) The tonnage profit will be calculated for each qualifying ship separately on the basis of the ship's net tonnage per net ton at a fixed amount. The fixed amount will be multiplied by the Swedish price basic amount (Prisbasbelopp) which is adjusted yearly according to changes in the Consumer Price Index (Konsumentprisindex).
- (38) The taxable tonnage profit per each 24-hour period will be equal to the sum of the amounts obtained for each qualifying ship in accordance with the following table determined based on net tonnage.

<i>Net tonnage of the ship</i>	<i>multiplied by</i>	<i>EUR per 100 net tonnage (approximately³ and per each 24-hour period started)</i>
Up to 1 000 net tonnage	0.000214% multiplied by the Swedish price basic amount ⁴	1.01 (SEK 9.52)
Between 1 001 and 10 000 net tonnage	0.000159% multiplied by the Swedish price basic amount	0.75 (SEK 7.08)
Between 10 001 and 25 000 net tonnage	0.000103% multiplied by the Swedish price basic amount	0.49 (SEK 4.58)
25 001 net tonnage and over	0.000055% multiplied by the Swedish price basic amount	0.26 (SEK 2.45)

- (39) The total tonnage profit subject to the corporate income tax rate will be the sum of the profits of all qualifying ships, which are conducting qualifying shipping activities.
- (40) As a general rule, no relief, deduction or set-off of any kind will be allowed against the total amount of the tonnage profit. Losses accrued from any period before the entry into the tonnage tax regime will not be used to reduce the total tonnage profit.
- (41) The calculated total tonnage profit will be added to the taxpayer's profits from non-qualifying shipping activities, if any, and will be taxed at the applicable corporate income tax rate⁵.
- (42) The Swedish authorities have informed the Commission that shareholders of shipping companies are subject to the general rules as regards profit and dividend taxation.

2.6. Ring – fencing measures

- (43) The proposed tonnage tax scheme is intended only to apply to qualifying ships carrying out qualifying shipping activities. Such activities would be ring-fenced to prevent a company or group of companies from bringing profits from other activities into the tonnage tax regime or relieving losses from qualifying shipping activities against profits from other activities.
- (44) If a company also has activities other than qualifying shipping activities, profits from these activities will remain subject to the normal rules for calculating taxable profits.

³ In the table, 1 EUR corresponds to 9.42 SEK.

⁴ The Swedish price basic amount is equal to 44 500 SEK (2015).

⁵ The current Swedish corporate income tax rate is 22 %.

- (45) The tonnage tax profit will be calculated irrespective of the shipping company's actual operating profit or loss from the qualifying shipping activities.

2.6.1. Special rules on mixed business activities

- (46) During the period that tonnage taxation applies, companies which operate mixed business activities will be obliged to continuously allocate income and expense items, as well as assets and liabilities, to the activities where they belong.
- (47) With respect to other income and expenses (e.g. costs for general management, accounting, marketing or IT costs) that cannot be allocated as such to a specific activity of a company with mixed business activities, Sweden has committed to allocate them pursuant to indicators that are realistic and reflect the actual circumstances. The aim is to ensure transparent and separate accounting between activities eligible for tonnage taxation and non-eligible activities. Specifically for so called "financial incomes or expenses" (e.g. interest income, dividend on shares or interest charges) that cannot be allocated as such to a specific activity of a company with mixed business activities, Sweden intends to allocate them in principle between the activities on the basis of the assets' book value, although more appropriate bases for distribution could be implemented on a case by case basis. The aim again is to ensure transparent and separate accounting between activities eligible for tonnage taxation and non-eligible activities.
- (48) Ships that are categorised as equipment in tonnage taxed activities may not at the same time be categorized as equipment in other business activities. If equipment other than ships is included and used in both tonnage taxed and conventionally taxed activities, their investment costs will have to be allocated to the tonnage tax activities.
- (49) The fiscal advantages are restricted to qualifying shipping activities; hence, in cases where a company is also engaged in other commercial activities, transparent accounting will be required in order to prevent "spill-over" into non-shipping activities.

2.6.2. Rule against thick capitalisation

- (50) The Swedish authorities have informed the Commission that the Swedish law contains a rule to prevent thick capitalisation, i.e. when a tonnage tax operation is financed to a large extent with equity. The rule will be triggered if the debt-to-equity ratio at any time during the fiscal year has been less than 50 %.
- (51) If the total capital in the operation is 100 the level of debt may not be lower than 33.33. If this is the case the company will be subject to a deemed interest income based on the excess amount. This deemed interest is calculated by multiplying the excess amount with the Swedish government borrowing rate (Sw. statslåneräntan, i.e. the interest rate that is commonly used for tax purposes).

2.6.3. Arm's length principle

- (52) Transfers of assets and liabilities between tonnage taxed activities and other activities will have to be made according to the arm's length principle.

- (53) The normal rules on exit taxation will be applied when assets are transferred from one part of the business activities that are taxed conventionally to the tonnage taxed part.
- (54) In the case of transactions between tonnage taxed activities and other activities, these will be treated as if the transfer of assets and services is made with a remuneration equal to the market value.
- (55) If a company transfers an asset without remuneration or against a remuneration below market value, this company will be subject to exit taxation. That is to say the company will be taxed as if the asset of service had been transferred against a remuneration equal to market value.

2.6.4. Groups of companies

- (56) The proposed tonnage tax scheme contains a special condition for companies included in groups. They may only be accepted for tonnage taxation if all the companies within the group that conduct or intend to conduct qualifying shipping activities apply for approval of tonnage taxation simultaneously.
- (57) Business activities other than those subject to tonnage tax will be taxed on the basis of the normal provisions of corporate taxation.
- (58) For companies included in groups, special regulations will also apply during the time they apply tonnage taxation. If a company that carries out qualifying shipping activities enters the group, it will have to apply for approval within three months. The same is the case if a company that already belongs to a group but does not carry out any qualifying shipping activities (and hence is not part of the tonnage tax system) decides to start such activities. In the event of mergers or demergers involving companies that are not approved for tonnage taxation, the same rules are proposed regarding the application for approval of tonnage taxation.
- (59) The normal rules allowing one member of a group of companies to set off its losses against the profits of another member will only apply between non-qualifying activities within the group.

2.6.5. General anti-abuse rule

- (60) The Swedish authorities informed that the Swedish tax system has a General Anti-Abuse Rule (the Tax Evasion Act, Sw. skatteflyktslagen). If this rule is triggered for a company eligible for tonnage taxation, the permission to apply the tonnage tax regime will be revoked.

2.7. Revocation

- (61) If a company no longer fulfils the conditions for the tonnage tax regime (e.g. if the requirement that at least 20% of the gross tonnage of the ships that are included in the tonnage taxed activities must be assigned to ships that are registered in the EU/EEA is not met), the approval for tonnage taxation will be revoked.

- (62) Revocation will also be carried out if the documentation obligations are not fulfilled or if the Tax Evasion Act (Sw. skatteflyktslagen) has been applied to the company approved for tonnage taxation.
- (63) In case of a withdrawal of an approval for tonnage taxation, the company cannot re-enter the tonnage tax regime for a period of at least ten fiscal years. A withdrawal fee is also charged.

2.8. Duration of the scheme and its budget

- (64) The Swedish authorities intend to introduce the tonnage tax regime as of 1 January 2017, at the earliest. The current notification concerns a 10-year period, counted from the date of the introduction of the tonnage tax regime in Sweden.
- (65) The Swedish authorities estimate that aid granted under the aid can amount to approximately SEK 45 million (EUR 4.8 million) per year.

3. ASSESSMENT OF THE AID

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

- (66) Pursuant to Article 107(1) of the TFEU, 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 internal market.
- (67) The notified tonnage tax scheme enables shipping companies to reduce the corporate income tax they would otherwise have to pay in case the company is profitable. The Commission therefore considers that the notified regime confers a selective economic fiscal advantage on undertakings active in international maritime transport.
- (68) By implementing the scheme, the Swedish authorities are foregoing tax revenues. Hence, the fiscal advantage is granted through State resources and it is imputable to the State.
- (69) Shipping activities are essentially carried out on a worldwide market. In addition, the markets for both maritime cabotage routes and maritime services are fully liberalised.⁶ Thus, services provided by shipping companies benefiting from the notified scheme are open to competition within Member States, between Member States and between Member States and third countries. Consequently, the notified scheme threatens to distort competition and could affect trade between Member States.

⁶ As from 1 January 1993: Council Regulation (EEC) No 3577/92 of 7 December 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; Council Regulation (EEC) No 4055/86 of 22 December 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.

(70) Therefore, the Commission considers that the scheme under examination constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Assessment of the notified aid measure

(71) Pursuant to Article 107(3)(c) of the TFEU, aid to facilitate the development of certain economic activities may be considered compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, and thus provides a possible basis for an exemption from the general prohibition of State aid. The Commission considers Article 107(3)(c) of the TFEU to be the appropriate legal basis applicable to the notified scheme.

(72) Specific criteria to assess the compatibility of State aid to maritime transport are set forth in the Maritime Guidelines.

(73) Section 3.1 of the Maritime Guidelines applies to the fiscal treatment of ship-owning companies and specifically mentions tonnage tax, generally defined as a system of replacing the normal corporate tax system by a tonnage tax where the ship owner pays an amount of tax linked directly to the tonnage operated, irrespective of actual profits or losses. The notified scheme described above is a tonnage tax scheme in the sense of Section 3.1, 4th paragraph, of the Maritime Guidelines.

(74) The Commission has therefore assessed the compatibility of the notified scheme with the internal market on the basis of the Maritime Guidelines.

3.2.1. Objective in the common interest

(75) Section 2.2, 1st paragraph, of the Maritime Guidelines provides for specific objectives in the Community [EU-] maritime interest that may be supported with aid schemes.

(76) Based on information provided by the Swedish authorities, the Commission finds that the scheme contributes, at least, to the following objectives in accordance with the Maritime Guidelines:

- Eligibility criteria described above in recitals (23) - (25) encourage the flagging or re-flagging to Member States' registers;
- The expected increase in the number of EU/EEA-flagged ships contribute to maintaining and improving maritime know-how as well as to protecting and promoting employment for EU/EEA seafarers;
- Increase of EU/EEA-flagged ships help improving a safe, efficient, secure and environment-friendly maritime transport.

(77) In conclusion, the scheme contributes to a number of objectives in the common interest.

3.2.2. Competition with flags of convenience; improvement of the fiscal climate for shipping companies

- (78) Section 3.1, 1st paragraph, of the Maritime Guidelines suggests that the creation of conditions allowing fairer competition with flags of convenience seems the best way forward to avert the flagging out of vessels and also corporate relocation, due to the low-tax environment in third countries.
- (79) The Swedish authorities have informed the Commission that during the past ten years, Sweden has experienced a dramatic decrease in the number of Swedish flagged ships in the Swedish merchant navy. As was described above in section 3.2, Sweden expects that improving the fiscal climate for maritime transport will increase the number of ships in the Swedish registry, but also in other EU/EEA Member States' registries, and will make Swedish shipping industry more competitive in the global market.
- (80) Against this backdrop, the Commission finds that aid through the notified scheme is needed to bring about a material improvement which the market in all probability would not deliver itself.
- (81) Section 3.1, 1st paragraph, of the Maritime Guidelines suggests that the fiscal climate in many third countries is considerably milder than within Member States, which has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation.
- (82) Given that the scheme in question is a special measure to improve the fiscal climate for ship-owning companies in Sweden, the Commission has no doubts that the scheme is the appropriate policy instrument.

3.2.3. Provision of fiscal incentives to stimulate competitiveness

- (83) Section 3.1, 5th paragraph, of the Maritime Guidelines provides for the legal presumption that, *inter alia*, a system of replacing the normal corporate tax system by a tonnage tax is a fiscal incentive to stimulate the competitiveness of the EU shipping industry.
- (84) This opinion is supported by the recent analyses in this area⁷.
- (85) The Commission has no doubts that the scheme will have an incentive effect on beneficiaries to pursue activities in the common interest.

3.2.4. Eligibility for aid

- (86) The Commission assessed whether aid under the scheme is exclusively aimed at the beneficiaries, ships and activities permitted by the Maritime Guidelines, and is limited to the necessary minimum and transparent.

⁷ See e. g. Oxford Economics study on the economic value of the EU shipping industry; <http://www.ecsa.eu/images/Studies/150220%20European%20Shipping%20Update.pdf>

3.2.4.1. Eligible activities and eligible ships

- (87) The Commission assessed whether activities eligible for aid under the scheme are 'maritime transport' activities in the sense of Section 2, 3rd paragraph, of the Maritime Guidelines, namely "*transport of goods and persons by sea*", as further specified in Section 3.1, 12 paragraph *et seq.*, of the Maritime Guidelines and as developed in the Commission's decision practice on the basis of the Maritime Guidelines.
- (88) As was described above in recital (11) only ships of a gross tonnage of at least 100 tons are admitted to the scheme. As specified in section 3.3.3, ships included in the scheme will provide transport services by sea of cargo and/or passengers between ports, as well as between a port and an offshore structure. This is in line with the Maritime Guidelines.
- (89) Ancillary activities that are included in the scheme are limited to only activities that are necessary or closely related to maritime transport. These activities, as described in recitals (15) and (17) - (20), are only eligible if they are subordinate to maritime transport and are included in the price paid for the maritime transport provided. At the same time, the revenue from ancillary activities cannot exceed the revenue from the core maritime transport activities⁸. The Commission has no objections against including the defined types of ancillary activities with the proposed limitation on revenue in the scheme. The need to include the cost of ancillary activities in the price paid for maritime transport ensures that the assessment of ancillarity takes place on a ship by ship basis.
- (90) Revenues from *bare-boat chartering out* as described above recital (16) will be allowed under the scheme, providing companies with a limited flexibility during a temporary excess of capacity (for a maximum period of three years during a ten-year period and at maximum 20% of the gross tonnage of the ships included in the qualifying shipping activities).
- (91) The Commission notes that temporary, limited bare-boat chartering is in line with the Maritime Guidelines, as the objectives in the common interest spelled out in the Maritime Guidelines "*maintaining and improving maritime know how and protecting and promoting employment for European seafarers*" and "*contributing to the consolidation of the Maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets*" are safeguarded.
- (92) The scheme also covers revenues from qualifying ships chartered out with a crew provided by the charterer. The Commission considers that this is in line with Maritime Guidelines since companies chartering companies' ships with crew provide normal maritime transport services. The only difference is that these companies do not conclude contracts with final customers but with time/voyage charter company with respect to provision of relevant transport services.

⁸ Core revenues are revenues from ticket sales or fees for cargo transportation and, in case of passenger transportation, letting of cabins in the context of maritime voyage and sale of food and drinks for immediate consumption on board

- (93) The Commission notes that tug and dredging activities are not eligible for the aid under the proposed scheme.
- (94) The Commission positively notes that Sweden is a signatory of the Paris Memorandum of Understanding which ensures a high global safety standard for all eligible ships and implementation of relevant international instruments such as safety regulations as well as on-board working and living conditions within the Port State Control.
- (95) In conclusion, eligible activities and ships are in accordance with the Maritime Guidelines.

3.2.4.2. Eligible undertakings

- (96) Section 3.1 of the Maritime Guidelines allows ship-owners operating their own ships or bare-boat chartered in ships as well, under certain conditions, time and voyage charters to benefit from fiscal aid such as tonnage taxation. As described above in section 3.3, the scheme is in line with this requirement. In particular, the benefits of tonnage taxation will be limited to providers of maritime transport services. Moreover, as described in recital (22), a shipping activity is only qualifying if at least 20% of the gross tonnage of the ships included in the activities is assigned to ships owned or chartered in on bareboat terms by the company operating the ships
- (97) The Commission notes that shareholder revenues are subject to standard tax rules as required by the Maritime Guidelines.

3.2.4.3. Tonnage tax rates

- (98) Section 3.1, penultimate paragraph, of the Maritime Guidelines stipulates that, in order to keep an equitable balance of tonnage tax rates, the Commission will only approve schemes giving rise to a tax-load for the same tonnage fairly in line with the schemes already approved.
- (99) The Commission notes that under the notified tonnage tax scheme, the rates have been set up at a level similar to the level used in other Member States operating tonnage tax regimes:

Tonnage	Taxation base under TT regimes per 100 tons per day in euro				
	SE	FI ⁹	IE ¹⁰	DK ¹¹	UK ¹²
0-1000	1,01	0,90	1,00	0,94	0,79
Between 1 001-10 000	0,75	0,70	0,75	0,67	0,59
Between 10 001-25 000	0,49	0,50	0,50	0,40	0,39
More than 25 000	0,26	0,20	0,25	0,27	0,20
CIT rates (2015)	22%	20%	12,5%	23,5%	20%

- (100) The Commission also notes that including in the analysis the differentiated rates of corporate income tax (CIT) in the Member States concerned, it can still be concluded that the ultimate level of taxation for companies under the proposed tonnage tax regime in Sweden will be similar to the ones under other Member States' tonnage tax regimes.
- (101) Therefore, the principle laid down in Chapter 3.1 of the Maritime guidelines that the Commission should approve only schemes giving rise to a tax-load for the same tonnage fairly in line with the schemes already approved is complied with.

3.2.4.4. Flag link requirement

- (102) One of the objectives of the Maritime Guidelines is that flagging or re-flagging to Member States' registers be encouraged through the aid. Accordingly, Section 3.1, 8th, 14th and 16th paragraphs, of the Maritime Guidelines require that at least part of a beneficiary undertaking's fleet flies EU/EEA flags (the 'flag-link requirement').
- (103) According to available information (described in recitals (23) - (25) above), no shipping company will enter the scheme without having a share of its fleet under EEA flags¹³. Moreover, the beneficiaries of the tonnage tax scheme will be obliged to increase or at least maintain during each fiscal year the share of gross tonnage of ships registered within the EU/EEA.
- (104) In line with Section 3.1., par. 8th of the Maritime Guidelines, the latter obligation does not apply to undertakings operating at least 60% of their tonnage under EU/EEU flags.
- (105) The Commission notes that the proposed regime does not include tug and dredging activities. Therefore, the flag requirements of the Maritime Guidelines concerning towage and dredging activities (Section 3.1., 14th and 16th paragraphs) are not applicable in this case.

⁹ Commission decision in case N 195/2002, as amended by the decision in case N 448/2010.

¹⁰ Commission decision in case N 504/2002 as amended by the decision in case C 2/2008..

¹¹ Commission decision in case N563/2001, exchange rate used: 1 EUR equal to 7.44 EUR..

¹² Commission decision in case N790/99. Exchange rate used: 1 EUR equal to 0.76 GBP.

¹³ At least 20% of the gross tonnage of the ships have to be registered in the EU/EEA.

- (106) The Commission also notes that the scheme's rules foresee that, should any beneficiary no longer fulfil the flag requirements, the approval for tonnage taxation will be revoked.
- (107) In conclusion, the scheme is in line with the flag link requirement of the Maritime Guidelines and thus will contribute to an objective in the common interest, namely the flagging or re-flagging of ships to Member States' registers.

3.2.4.5. Restriction of aid to shipping activities; avoidance of spill-over into non-shipping activities

- (108) Pursuant to Section 3.1., last paragraph, of the Maritime Guidelines, in order to facilitate the development of the shipping sector and employment in the Community interest, fiscal advantages through tonnage tax schemes must be restricted to shipping activities; any spill-over of aid into non-shipping activities must be prevented.
- (109) On the basis of information provided by the Swedish authorities on the ring-fencing measures (described above, section 3.6), and controls and sanctions (described above, section 3.7), the Commission concludes that preferential tax treatment through the scheme is restricted to eligible activities in the sense of the Maritime Guidelines.

3.2.4.6. Aid limited to the minimum; transparency

- (110) Pursuant to Section 2, 2nd paragraph, of the Maritime Guidelines, State aid must always be restricted to what is necessary to achieve its purpose and be granted in a transparent manner.
- (111) As regards restriction to the necessary minimum, Section 11, 2nd paragraph, of the Maritime Guidelines sets a maximum level of aid, in order to avoid cumulation of aid to levels which are disproportionate to the objectives of the Community common interest and could lead to a subsidy race between Member States: total aid¹⁴ for the benefit of shipping companies may not provide any benefit greater than the benefit represented by a reduction to zero of taxation and social charges for seafarers and a reduction to the level specified in Section 3.1, penultimate paragraph, of the Maritime Guidelines of corporate taxation of shipping activities.
- (112) According to information provided by the Swedish authorities, the only support measure in the maritime sector that supplements the tonnage tax system is the support scheme related to income taxation and social charges with respect to seafarers and approved by the Commission in its decision in case SA.38240¹⁵.
- (113) For the purpose of the assessment of the present tonnage tax scheme, the Commission finds that the above supplementary aid scheme does not affect compliance with the permitted aid ceiling.

¹⁴ Except for aid for training, restructuring aid, aid related to public service obligations and start-up aid for new short sea shipping services.

¹⁵ OJ C 348 of 3.10.2014, p. 17.

- (114) The Commission also notes that an additional advantage in the form of deferred tax liability linked to the rules on depreciation of machinery and equipment (described in recitals (31) - (33)), applies, in a similar way, to all companies and sectors in Sweden. Therefore, the Commission considers it does not give an additional advantage to the companies under the tonnage tax regime.
- (115) As regards transparency, the Commission finds that the mechanism of the notified tonnage tax system (Sections 3.3 above), and in particular the calculation of tax rates (Section 3.5 above), are transparent.
- (116) In conclusion, the Commission finds that the aid is limited to the minimum necessary, and is granted in a transparent manner.

3.2.5. Distortions of competition

- (117) Pursuant to Section 2, 2nd paragraph, of the Maritime Guidelines, aid schemes should not be conducted at the expense of other Member States' economies and must be shown not to risk distortion of competition between Member States to an extent contrary to the common interest.
- (118) As was demonstrated above under Section 4.2.4.3, the notified tax rates do not significantly deviate from hitherto approved rates. Available information does not suggest that the scheme encourages either the flagging out or corporate relocation from other Member States to Sweden.
- (119) In conclusion, the Commission finds that the scheme does not risk to distort competition contrary to the common interest.

4. CONCLUSION

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

5. DECISION

The Commission has accordingly decided:

- not to raise objections to the notified tonnage taxation scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

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

