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PUBLIC VERSION

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**Subject: State Aid SA.45258 (2016/N) – Germany  
Prolongation and amendment of the scheme on the reduction of non-  
wage labour costs in maritime shipping**

Sir,

#### **1. PROCEDURE**

- (1) On 28 April 2016, the German authorities notified to the Commission the prolongation and amendment of an aid scheme on the reduction of social contributions for seafarers in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU").
- (2) The Commission approved the original scheme on 17 November 2006<sup>1</sup> until end 2009. By Commission decision of 24 September 2010 the original scheme was prolonged until 31 December 2012<sup>2</sup>. By Commission decision of 18 February 2013, the scheme (the "2013 scheme") was further prolonged until 31 December 2017<sup>3</sup>.
- (3) On 27 June 2016 and on 19 September 2016 the Commission requested further information from Germany, which was provided on 19 July 2016 and on 29 September 2016, respectively.

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<sup>1</sup> NN 63/2006 (ex N 609/2006), OJ C 90, 25.4.2007.

<sup>2</sup> N 358/2010, OJ C 286, 22.10.2010, p 1.

<sup>3</sup> SA.35684 (2012/N), OJ C 44, 6.2.2015, p.1.

Seiner Exzellenz Herrn Dr .Frank-Walter Steinmeier  
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## **2. DESCRIPTION OF THE SCHEME**

### **2.1. Objective of the aid**

- (4) The aim of the 2013 scheme remains unaltered<sup>4</sup>. The scheme aims at increasing the competitiveness of German internationally operating shipping companies. In addition, it shall be ensured that jobs for German and EEA seafarers are secured.

### **2.2. National legal basis**

- (5) The national legal basis of the scheme are the Guidelines on the reduction of non-wage labour costs in maritime shipping of 23.03.2016 and sections 23 and 44 of the Federal Budget Code and 48 to 49a of the law on administrative procedures.

### **2.3. Amendments to the scheme**

- (6) The German authorities have widened the scope of the aid scheme as follows:

#### **Eligible seafarers**

- (7) According to recital 7 of the 2013 scheme seafarers for the purpose of the scheme are persons which are permanently employed on board a ship for whom the shipping company is required to discharge the income tax and pay the employer's contributions to social security in Germany and who are nationals of one of the EU Member States, Iceland, Liechtenstein, Norway or Switzerland.
- (8) The requirement that for a seafarer to be eligible the shipping company must be liable not only for social security contributions but also to discharge income tax is abandoned. The present scheme will therefore be applicable to all seafarers which are permanently employed on board a ship for whom the shipping company is required to pay the employer's contributions to social security in Germany and who are nationals of one of the EU Member States, Iceland, Liechtenstein, Norway or Switzerland. For the purposes of this scheme trainees are not considered seafarers.

#### **Eligible vessels**

- (9) Under the 2013 scheme support was restricted to seafarers on board of vessels registered in a German ship registry and flying the German flag<sup>5</sup>. In order to include all seafarers which come under the obligation to contribute to the German social security system<sup>6</sup> the present scheme will apply to seafarers employed on vessels registered in Germany which fly the flag of a Member State of the EU, Iceland, Liechtenstein, Norway or Switzerland.

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<sup>4</sup> See in particular recitals 4 to 11 of the 2013 scheme.

<sup>5</sup> See recital 8 of the 2013 scheme.

<sup>6</sup> The obligation to contribute to the German social security system applies in principle to seafarers which are nationals of an EEA Member State or Switzerland who are employed on board of German registered and flagged vessels and, based on Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, to seafarers on vessels registered in Germany and flying the flag of an EEA Member State or Switzerland.

- (10) Germany estimates that the extension of the scope to seafarers on EEA flagged vessels might lead to an increase of the total aid amount of 10%.
- (11) The definition of vessels has not been altered. Vessels for the purposes of the scheme are therefore i) vessels deployed for the commercial international maritime transport of goods and passengers, ii) cable-laying ships, dredgers and tugboats provided more than 50% of the work actually carried out by each vessel within the authorisation period constitutes international maritime transport.
- (12) For the purposes of the present scheme the definition of international maritime transport remains the same as set out in recital 9 of the 2013 scheme.

#### **Form of the aid**

- (13) The aid is granted in the form of a non-repayable grant for the reduction of social security contributions and is determined per vessel on the basis of the seafarers who are covered by the scope of the present scheme. The grant is the sum of the employer's mandatory contributions to the German social security system.
- (14) The aid will cover a maximum of 50% of the social contributions, corresponding to the employer's liability for payment of those contributions. The aid may exceptionally cover 100% of the contributions regarding accident insurance, as the employer is liable to contribute 100% to the seafarer's accident insurance. Shipping companies do not receive other support for these costs.
- (15) The estimated overall budget amounts to EUR 264 million.

#### **2.4. Duration**

- (16) The scheme will enter into force the day after its publication in the official journal *Bundesanzeiger* and have a duration until 31 December 2020.

### **3. ASSESSMENT**

#### **3.1 Existence of State aid**

- (17) In its decisions of 20 November 2006, 24 September 2010 and 18 February 2013, the Commission concluded that the original scheme constitutes State aid within the meaning of Article 107(1) TFEU since the grants reduce the costs that ship-owners bear with respect to social contributions for seafarers employed by them and therefore constitute a selective advantage. This advantage is financed through the Federal budget and hence State resources are involved. The measure is also imputable to Germany and it is liable to distort competition and affect trade by strengthening the competitive position of the beneficiaries in the European shipping market, which is a fully liberalised market open to international competition. Nothing in the notification of the present scheme alters that assessment.

## 3.2 Compatibility

### 3.2.1 *Legal basis*

- (18) Pursuant to Article 107 (3)(c) TFEU aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (19) The Commission has issued guidelines for the application of Article 107(3)(c) TFEU with regard to State aid to maritime transport (the "Maritime guidelines")<sup>7</sup>. Aid in favour of the maritime sector must therefore be examined in the light of these guidelines.

### 3.2.2 *Compliance with the rules of the Maritime Guidelines concerning labour-related costs*

- (20) In the decisions mentioned in recital 2 the Commission found the scheme compatible with the internal market under Article 107(3)(c) TFEU and the Maritime guidelines.
- (21) The notification concerns the widening of the scope of the aid scheme as regards eligible vessels and seafarers. Furthermore, the aid is granted in the form of a non-repayable grant covering in principle in full the employer's liability for payment of the social contributions whilst under the 2013 scheme it was granted in the form of a fixed amount. The other elements of the scheme remain unaltered.
- (22) The Commission positively notes that the scheme is extended to seafarers employed on board of vessels under an EEA flag or the flag of Switzerland. Such extension is apt to remove potential internal market barriers to provide maritime transport services in Germany.
- (23) The Commission further positively notes that Germany has removed the requirement that in order to be eligible for the aid the seafarer must be liable to pay German income tax. Consequently, the scope of the scheme is extended to seafarers who are covered by the German social security system, but are not coming under the German income tax regime.
- (24) The German authorities have also demonstrated that the limits of financing established in section 11 of the Maritime Guidelines are complied with and that relevant records are kept in what regards the reimbursement. In line with the provisions on the aid ceiling as set out in section 11 the aid amount does not exceed the total amount of social contributions collected from shipping companies and seafarers.
- (25) For the rest, the Commission's assessment of the compatibility of the measure with the internal market as set out in the 2013 Decision remains unaltered.

### *Conclusion*

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<sup>7</sup> Commission Communication C (2004) 43 – Community Guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3.

- (26) In light of these considerations, the Commission finds that the aid scheme, as extended and prolonged, is compatible with the Maritime guidelines and consequently with Article 107(3)(c) TFEU.

#### **4. DECISION**

- (27) The Commission has accordingly decided not to raise objections to the aid scheme intended to be implemented by Germany 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.

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission