



EUROPEAN COMMISSION

Brussels, 23.XI.2005

C(2005)4409 final

Subject: State aid N 311/2005 – Ireland
Refund of Employers' Social security contributions in respect of seafarers on certain vessels

Sir,

1. PROCEDURE

- (1) By letter dated 16 June 2005 (registered in the Secretariat General of the Commission under reference SG(2005) A/5856 on 22 June 2005), the Irish Authorities notified the Commission, in accordance with Article 88(3) of the Treaty, of their intention to put in place a state aid scheme in favour of maritime transport companies established in Ireland.
- (2) In a letter dated 19 August 2005 (ref D(2005) 118010) the Commission requested clarifications on certain aspects of the measure. In a letter dated 28 September 2005 (registered on 3 October 2005 (ref DG TREN A/24720)) the Irish authorities provided the Commission services with the requested information.

2. DETAILED DESCRIPTION OF THE AID

- (3) State aid scheme N 311/05 involves the reintroduction by the Irish authorities of a scheme for the refund of Pay Related Social Insurance (PRSI) social security contributions to employers in respect of the employment of seafarers on certain ships. The previous Employers' PRSI Refund Scheme (N231/99) was approved by the Commission on 6 September 1999 and the decision not to raise any objections to the measure was communicated to the Irish Authorities on the same day (ref. SG (99) D 36257). The previously authorised PRSI refund scheme ran from 6 April 1999 to 31 December 2003 when it came to an end.

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- (4) The role of PRSI has been defined as “*to provide an income support system to cover insured workers for a variety of life contingencies for which they would otherwise find it difficult, if not impossible, to provide on an individual basis*”. PRSI contributions are collected from employers, employees, the self employed and voluntary contributors and these are paid into the Social Insurance fund. This Fund finances the payment of social insurance based benefits and pensions. PRSI contributions are earmarked for social insurance benefits and are not generally used for purposes other than the payment of benefits. In general terms the same rates of PRSI contributions are payable in respect of all employments across the range of sectors of the economy. Workers between the ages of 16 and 65 years are compulsorily insured under the social welfare system.
- (5) With few exceptions all employees whether in full or part time employment are liable to pay PRSI contributions based on their weekly earnings. Both employers and employees pay contributions that are calculated as a percentage of the employee’s earnings. The contributions are collected through the income tax collection system and recorded in a central records system.
- (6) The main employment contribution class is Class A; this applies to those employed in industrial, commercial and service-type employment and well as certain public servants and covers approximately 76.5% of the insured population. Class A is the PRSI class applicable to commercial shipping and its employees. The current Class A PRSI rate for employers is either 8.5% or 10.75% of employee wages depending on the level of wages.
- (7) The Irish Government intends (subject to prior Commission authorisation) to reintroduce this refund mechanism in the form in which it previously operated to run from 1 January 2004 to 31 December 2010. This will mean a refund of all employers’ PRSI contributions collected in respect of qualifying seafarers.
- (8) To be eligible for the employers’ PRSI refund scheme, the employer must be the owner or operator of a qualifying ship and employ qualifying seafarers. A qualifying ship is defined as
- a seagoing vessel,
 - registered in the register of an EU Member State,
 - is not less than 100 tons gross tonnage and is self propelled.
 - A seagoing vessel does not include a fishing vessel nor does it include tugs or dredging vessels which do not carry out their activities at sea¹.
- (9) With regard to qualifying seafarers, these must be “Community Seafarers” as defined in the maritime transport State aid guidelines² being either

¹ In line with *Commission Communication C(2004) 43 – Community guidelines on state aid to maritime transport* (OJ C13/3 17.1.2004)

² Section 3.2 thereof

- Community/EEA citizens, in the case of seafarers working on board vessels (including ro-ro ferries³) providing scheduled passenger services between ports of the Community,
 - all seafarers liable to taxation and/or social security contributions in a Member State, in all other cases.
- (10) The employer can only claim a refund in respect of PRSI contributions certified as qualifying by the Mercantile Marine Office of the Department of Communications Marine and Natural Resources.
- (11) The objective of the notified measure as set out by the Irish authorities are
- To make the recruitment or maintenance in employment of Irish tax and social security liable seafarers more attractive to Irish ship operators, thereby maintaining/increasing the number of EU seafarers on Irish flagged vessels.
 - To make the Irish flag more competitive, thereby promoting employment, maintaining vessels under the Irish flag and attracting non-Irish ship-owners to locate in Ireland.
 - To “level the playing pitch” vis-à-vis low labour competitors, thereby enhancing competitiveness of Irish ship operators.
 - To increase the pool of maritime expertise in Ireland, thereby stimulating an increase in marine-based activities and in the development and exploitation of the extensive offshore and coastal marine resource.
- (12) It is expected that the notified measure will cost less than €4 million per annum over its lifetime; this is based on the take up level of the measure between 1997 and 2003. By the time the previous measure came to an end in late 2003 it applied to approximately 1300 seafarers.

Tax Year	Cost of scheme
1996/97	€ 2,567,851.26
1997/98	€ 2,624,492.62
1998/99	€ 2,412,550.20
1999/2000	€ 2,671,574.94
2000/01	€ 2,835,095.65
2001 ⁴	€ 2,463,162.77
2002	€ 3,123,526.87
2003	€ 3,147,309.00

³ See Article 2(a) of Council Directive 1999/35/EC on a system of mandatory surveys of the safe operation of regular ro-ro ferries and high speed passenger craft services OJ L138/1 1.6.1999

⁴ In 2001 the tax year was aligned with the calendar year by means of Statutory Instrument No. 654 of 2001 Social Welfare (Transitional Arrangements) (Alignment of Income Tax Year with Calendar Year) Regulations 2001

- (13) At the time of notification (June 2005) it was expected that the scheme would continue to apply to approximately 1300 seafarers employed by some 10 employers. However, following proposals published on 19 September 2005 by the largest employer of potentially eligible seafarers (Irish Ferries) to introduce a voluntary redundancy scheme for 543 of its seagoing employees, the cost of the scheme and the number of eligible seafarers may be considerably less than initially thought. It will however be some time before it becomes fully clear how many Irish Ferries seafarers will remain in the PRSI system should the company proceed to implement its redundancy proposals.
- (14) In its scope and application the notified measure is practically identical in every respect with the previously authorised measure. The new notification merely reintroduces the measure for an additional time period (2004-2010).

3. ASSESSMENT OF THE AID

3.1. Existence of aid under Article 87(1) of the EC Treaty

- (15) By virtue of Article 87(1) of the EC Treaty “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.”
- (16) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it.
- (17) In this context the decision of the Irish authorities to propose a refund of the Employers’ contributions of Pay Related Social Insurance in respect of qualifying seafarers constitutes a refund of State resources to certain undertakings the cost of which is borne by the State.
- (18) Moreover the measure involved affects inter-state trade and distorts or threatens to distort competition inside this market as it is directed at only certain maritime transport undertakings which are in competition with other Community maritime undertakings.

3.2. Legal basis for the assessment

- (19) It is therefore necessary to examine this measure in the light of Articles 87 paragraphs (2) and (3) of the EC treaty which provide for exemptions to the general rule of incompatibility set out in Article 87(1).
- (20) The exemptions in Article 87(2) of the EC Treaty do not apply in the present case because the aid measure does not have a social character and is not granted to individual consumers, nor does it make good the damage caused by natural disasters or exceptional occurrences nor are they granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

- (21) Further exemptions to the general prohibition on State aid are set out in Article 87(3).
- (22) The exemptions in Articles 87(3)(a), 87(3)(b) and 87(3)(d) do not apply in this case because the aid does not promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment, it does not promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a Member State nor does it promote culture and heritage conservation.
- (23) Therefore only the exemption provided for in Article 87(3)(c) may apply. Article 87(3)(c) provides that state aid can be authorised where it is granted to promote the development of certain economic sectors and where this aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (24) In this respect, the applicable community framework for deciding on compatibility are the previously referred to Community guidelines on State aid to maritime transport⁵, hereinafter referred to as “the Guidelines”.

3.3. Compatibility of the aid

- (25) With respect to the taxation of income of seafarers the guidelines provide⁶:
- “the following action on employment costs should be allowed for EC shipping:*
- reduced rates of contributions for the social protection of EC seafarers employed on board ships registered in a Member State,*
 - reduced rates of income tax for EC seafarers on board ships registered in a Member State.*
- (26) The Guidelines go on to clarify *“For internal fiscal reasons some Member States prefer not to apply reduced rates as mentioned above, but instead may reimburse ship-owners - partially or wholly - for the costs arising from these levies. Such an approach may generally be considered equivalent to the reduced-rate system as described above, provided that there is a clear link to these levies, no element of overcompensation, and that the system is transparent and not open to abuse”*.
- (27) As a result of the preceding analysis, it is clear that the Employers’ PRSI refund mechanism is a fiscal measure designed to preserve maritime employment and know-how in Ireland, to preserve the Irish maritime transport fleet as well as to preserve significant employment of EC seafarers on board the EU flagged fleet. As such it is in line with Community policy in this regard.
- (28) The previous measure had been found to be compatible with the 1997 Guidelines on State aid to Maritime Transport⁷. The previous (1997) guidelines allowed for income tax and social security reductions for all seafarers working on board

⁵ OJ C13/3 of 17.1.2004

⁶ Section 3.2 thereof

⁷ OJ C 205 of 5.7.1997

vessels registered in a Member State and subject to tax and or social security contributions in a Member State. However, since then it has become clear that pressure by international competition on European ship-owners is very strong in the case of international freight transport, while it is lighter in the case of intra-Community scheduled passenger transport. Boosting the competitiveness of European shipping industry is therefore a prior objective of aid in the former case. Preventing Member States from granting tax relief to all seafarers in this case would have very negative effects on the competitiveness of European ship-owners, which could be encouraged to flag-out. At the same time it has been noticed that employment of European citizens is significant, in percentage terms and in numbers, in intra-Community scheduled passenger transport. It is for this reason a distinction has been introduced in the 2004 guidelines as between scheduled passenger services between ports in the Community and other shipping.

- (29) The current notification has been drafted in such a way as to take into consideration the clarifications set out in the 2004 guidelines especially with regard to the requirements of flag link of the vessel, the distinction as between scheduled intra-community passenger services and other shipping and the issue of dredging/tug-boat operations which appear in the 2004 guidelines.
- (30) The refund mechanism will therefore only apply to those companies which fall within the Irish PRSI net and who employ qualifying seafarers working on qualifying ships carrying on qualified activities - maritime transport or dredging/tug boat operation on the high sea - (in respect of tugs only if more than 50% of the towage activity carried out during a given year constitutes maritime transport as defined by the 2004 guidelines or in respect of dredgers if more than 50% of their annual operational time involves the transport at deep sea of extracted materials). The employers will only be refunded in respect of those contributions for those seafarers certified as qualified by the Mercantile Marine Office and they will only be refunded contributions already collected and paid over to the State. The aid will take the form of the refund of social contributions already paid to the State through the tax system. There is therefore a clear link between the levy and the aid. Once the ship-operating company and the seafarer are both eligible the refund is provided for by the law although the ship-operating company has to apply for the refund, the system is therefore transparent. The refund is designed to reduce the employers' social contribution to zero by refunding contributions already paid and no more, therefore no over-compensation is possible.
- (31) For these reasons the reintroduction by Ireland of its scheme to refund Employers' PRSI for certain seafarers on certain vessels can be found to be in conformity with the Community guidelines on State aid to maritime transport.

4. DECISION

- (32) The Commission has therefore decided to consider the amendment to the fiscal scheme to be compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty.

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Fax No: ++ 32 2 296 41 04

Yours faithfully,
For the Commission

Jacques Barrot
Vice-President