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PUBLIC VERSION

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Subject: State aid SA.44732 (2016/N) – Germany. Prolongation of the existing aid scheme 'Reduction of the wage tax payable on seafarers' wages – Act to amend the Personal Income Tax Act to increase the non-levying of seafarers' wage tax (*Gesetz zur Änderung des Einkommensteuergesetzes zur Erhöhung des Lohnsteuereinhalts in der Seeschifffahrt*)

Dear Sir,

1. PROCEDURE

- (1) By letter dated 2 March 2016, registered at the Commission on the same date, the German authorities notified, pursuant to Article 108 (3) of the Treaty on the Functioning of the European Union (hereinafter “the Treaty”), the prolongation by five years of the existing State aid scheme approved by Commission decision of 11 December 1998¹ in State aid case N396/1998 with a new budget for the extended duration and an increase in the non-levying of wage tax for seafarers from 40% to 100%.
- (2) Following the adoption of the Community guidelines on State aid to maritime transport in January 2004² (hereinafter “the guidelines”) Germany accepted the appropriate measures proposed by the Commission³ so as to comply with the new

¹ The Commission had approved the scheme on 11.12.1998 by Commission decision in State aid N 396/1998, OJ C 29/13 of 4.2.1999.

² Community guidelines on State aid to maritime transport (2004/C 13/03), OJ C 13, 17.1.2004, p. 3.

³ Community guidelines on State aid to maritime transport (2004/C 13/03), point 13, OJ C 13, 17.1.2004, p. 3.

Seiner Exzellenz Herrn Dr. Frank-Walter STEINMEIER
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guidelines as foreseen in chapter 13 of the guidelines. Germany confirmed to amend the existing schemes relating to state aid covered by the guidelines on 2 March 2004.

2. DESCRIPTION OF THE EXISTING AID SCHEME

2.1. Objectives

- (3) The objective of the scheme is to support the maritime employment and to improve the competitiveness of the German maritime sector.
- (4) Since the approval of the existing scheme in 1998 employers who operate their own or chartered merchant ships could deduct and retain 40% of the total amount of wage tax notifiable and payable for crew members continuously employed for more than 183 days on such ships.

2.2. National Legal Basis

- (5) The scheme's funding provisions are set forth in the 'Maritime Shipping Amendment Act' (Schiffahrtsanpassungsgesetz) of 1998.⁴

2.3. Beneficiaries

- (6) Beneficiaries of the measure are employers who operate their own or bare-boat chartered merchant ships. The merchant ships must be registered in a German register of ships, fly the German flag and be used to carry people or goods between German and foreign ports or between foreign ports or between a port and an offshore structure (international services).
- (7) This also applies where ships equivalent to ocean-going ships are used, during the financial year, predominantly outside German territorial waters for towing, rescuing of persons and vessels at high sea or exploring the seabed. The non-levying of wage tax applies to the captain and all crew members, including service personnel, all of whom must be in possession of a discharge book and be Community seafarers.

2.4. Duration and budget

- (8) The existing scheme was notified by Germany in 1998 for unlimited duration. According to the annual reports submitted by Germany the annual budget amounts up to EUR 25 million.

3. NOTIFIED AMENDMENT TO THE EXISTING SCHEME

- (9) The notified measure foresees the possibility for employers to deduct and retain now up to 100% of the total amount of wage tax notifiable and payable for crew members. This increase from 40% to 100% is notified for the duration of 5 years.
- (10) Due to the increase of the non-levying of wage tax of seafarers, the annual budget will be increased by EUR 50 million per year and thus amounting to a new annual budget of EUR 75 million.

⁴ Schiffahrtsanpassungsgesetz vom 9. September 1998 (BGBl I S. 2860, 2864)

- (11) In addition the former condition that crew members have to be continuously employed for more than 183 days on the ship in order to enjoy the non-levying of wage tax is removed.
- (12) According to the German authorities, the maritime sector (*maritime Wirtschaft*) has not yet overcome the effects of the global financial and economic crisis. The German authorities emphasized that this would in particular apply to the German maritime sector, which would be characterised by mid-sized enterprises. This sector suffers from the increased international competition and significant additional costs for ships under German flag in recent years. As a consequence the German merchant fleet and in particular the number of ships under German flags has significantly reduced. The existing scheme of non-levying of wage tax for seafarers was not enough to compensate the competitive disadvantages ships under German flag face with regard to labour costs. Therefore, giving higher incentives to qualify and employ young German and European seafarers at maritime locations have to be introduced.
- (13) The prolonged scheme's funding provisions have been set forth in the 'Act to amend the Personal Income Tax Act to increase the non-levying of seafarers' wage tax'⁵ (Gesetz zur Änderung des Einkommensteuergesetzes zur Erhöhung des Lohnsteuereinhalts in der Seeschifffahrt vom 29.1.2016.)
- (14) The German authorities declared that apart from the above described alterations to the scheme, no further material alterations had been made.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid pursuant Article 107 (1) of the Treaty

- (15) According to Article 107(1) TFEU, "Save as otherwise provided in this 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 internal market".
- (16) The notified measures involve State aid within the meaning of Article 107(1) TFEU since the reduction of taxation for seafarers reduces the costs that ship-owners should bear with respect to seafarers employed by them and therefore constitute an advantage granted to specific companies. This advantage is financed through State resources (government's budget) and may distort competition and affect trade in the European shipping market, which is a fully liberalised market.
- (17) The Commission maintains the reasoning set out in chapter 3.1. of its previous decision in State aid case N 396/1998, which concluded that the measure constitutes State aid within the meaning of Article 87 (1) [now Article 107 (1)] of the Treaty.

⁵ Gesetz zur Änderung des Einkommensteuergesetzes zur Erhöhung des Lohnsteuereinhalts in der Seeschifffahrt vom 29.1.2016, (BGBl I S. 2860, 2864) , Bundesgesetzblatt Teil I 2016 Nr. 10, 07.03.2016 S. 310.

4.2. Obligation to notify the aid to the Commission

- (18) By notifying this measure before implementing it, the German authorities have fulfilled their obligations under Article 108(3) of the Treaty.

4.3. Compatibility of the aid with the Internal Market

4.3.1 Legal basis

- (19) Under 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 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 exemption.
- (20) The Commission has issued guidelines for the application of Article 107(3) (c) TFEU with regard to State aid to maritime transport (hereinafter referred to as the "Maritime guidelines")⁶. Aid in favour of the maritime sector must be examined in the light of these guidelines.

4.3.2. Compliance with the rules of the Guidelines concerning labour-related costs

- (21) The notified alteration to the scheme consists of an increase of the budget, an increase of the non-levying of wage tax of seafarers from 40% to 100% for the duration of 5 years and a facilitation of funding criteria (the former condition that crew member have to be continuously employed for more than 183 days on the ship in order to enjoy the non-levying of wage tax is removed). Apart from aforesaid amendments, the aid scheme's implementing rules will remain unchanged in substance.
- (22) The non-levying of wage tax for crew relief aims to reduce the costs of employing Community seafarers. It also improves working conditions for on-board seafarers and encourages flagging under Member States' registers. It is therefore in line with the objectives of the Guidelines as stated in Section 2.2 thereof.
- (23) For this reason, Section 3.2 of the Maritime guidelines explicitly allows reductions in, or exemption from, the payment of income tax for Community seafarers employed on board ships registered in a Member State. The Maritime guidelines allow Member States to grant this type of aid also for the maritime part of towage and dredging activities (maritime transport of materials), but only if the aid relates to Community seafarers working on board seagoing, self-propelled tugs and dredgers, registered in a Member State, carrying out maritime transport at sea for at least 50 % of their operational time.
- (24) The Maritime guidelines require that aid measure with respect to employment of Community seafarers shall not result in the labour costs falling below net wages of the Community seafarers⁷.

⁶ Commission Communication C (2004) 43 – Community Guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3.

⁷ See Guidelines, Section 11, Paragraph 2: "A reduction to zero of taxation and social charges for seafarers and a reduction of corporate taxation of shipping activities such as is described in point 3.1 (penultimate paragraph) is the maximum level of aid which may be permitted."

- (25) The Maritime guidelines define the Community seafarers as
- Community/EEA citizens, in the case of seafarers working on board vessels (including ro-ro ferries) 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.
- (26) As the measures notified by Germany are limited to personal income tax payments with respect to the wages of seafarers, they will not lead to the labour costs falling below net wages of seafarers.
- (27) As required by the Maritime guidelines, the measure is limited to Community seafarers: the subsidy scheme is limited to seafarers who are liable to taxation and/or social security contributions in Germany. The scheme covers merchant ships, i.e. passenger and cargo ships. In addition, as far as passenger transport services within the EU are concerned, only the costs related to seafarers who are EEA nationals are eligible.
- (28) The Commission also notes that the conditions stipulated by the Maritime guidelines for eligibility of towing/dredging vessels have been respected. Only the EU flagged vessels will benefit (the scheme as such is limited to ships flagged in Germany) and only provided they perform maritime transport operations more than 50% of operating time. The aid will be limited to maritime transport activities performed by these vessels.

Transport to and from offshore facilities

- (29) The definition of ‘maritime transport’ set out in Art. 1 (4) of Regulation 4055/86⁸ and Art. 2 (1) of Regulation 3577/92⁹, and referred to in Section 2, third paragraph, of the 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 transport to and from offshore facilities can be considered an eligible activity under the present aid scheme in accordance with the Maritime Guidelines.

Rescue at high sea

- (30) The Commission notes that the aid scheme also applies to ships equivalent to ocean-going ships which are used, during the financial year, predominantly outside German territorial waters for towing and rescuing of persons and vessels at high sea. 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.

⁸ 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.

⁹ 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.

- (31) 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.
- (32) Nevertheless, rescue at high sea could be eligible for non-levying of wage tax of seafarers 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.¹⁰
- (33) First, vessels that provide rescue at high sea 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 high sea 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 context, the Commission acknowledges that these companies operate in a global market.
- (34) 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.
- (35) In view of the above, even though the Commission considers that the activities of vessels that provide rescue at high sea 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 3.2 of the Guidelines (possibility to reduce rates of income tax for Community seafarers) can be applied to these activities by analogy.

Exploration of the seabed

- (36) The Commission notes that the aid scheme also applies to ships equivalent to ocean-going ships which are used, during the financial year, predominantly outside German territorial waters for the exploration of the seabed. Regarding vessels for the

¹⁰ 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; and Decision of 13.04.2015 in State aid SA.38085 (2013/N) – Italy, *Prolongation of the tonnage tax scheme*.

exploration of the seabed, the Commission notes that only part of the activities of such vessels constitutes maritime transport. Indeed such vessels carry goods and/or passengers from a port to the place(s) of exploration and back to the same or another port/installation, when the exploration is finished.

- (37) However, their main activity, i.e. the exploration itself, does not constitute maritime transport. Therefore, such activities cannot be eligible under the present scheme in direct application of the Maritime Guidelines.
- (38) Nevertheless, vessels to explore the seabed could be eligible for non-levying of wage tax of seafarers 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.¹¹
- (39) The Commission concludes that the activities of vessels to explore the seabed require qualified seafarers, with qualifications comparable to those working on board traditional maritime transport vessels.
- (40) The Commission further notes that the seafarers on these vessels are governed by the same labour law as the one applicable to seafarers on board vessels carrying out only maritime transport.
- (41) The Commission also recognises that vessels to explore the seabed are all sea-going vessels and they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.
- (42) The Commission agrees that, similarly to maritime transport companies, there is a risk that the companies carrying out exploration of the seabed 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 context, the Commission acknowledges these companies operate in a global market.
- (43) Consequently, the Commission recognises that these activities are subject to the same legal environment in the labour, technical and safety fields as 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.
- (44) In view of the above, even though the Commission considers that the activities of vessels that explore the seabed do not fall within the definition of maritime transport as laid-down in the relevant Regulations referred to in the Maritime Guidelines, it

See in that regard, Commission Decision C 22/2007 (ex N 43/2007) as regards the extension the dredging and cable-laying activities of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers in Denmark, adopted on 13.01.2009, OJ L 119, 14.5.2009, p. 23, see, in particular, paras 65-72 thereof; and Decision of 28.04.2010, State aid N 714/2009 – The Netherlands, extension of the tonnage tax scheme to cable layers, pipeline layers, research vessels and crane vessels.

considers that these activities may benefit from the same type of aid as maritime transport. Therefore, Section 3.2 of the Guidelines (possibility to reduce rates of income tax for Community seafarers) can be applied to these activities by analogy.

- (45) Thus, the Commission concludes that the conditions of Section 3.2 of Maritime guidelines have been respected for all beneficiaries of the scheme.
- (46) Pursuant to Section 11 of the Guidelines, total aid in the form of relief of fiscal and/or social contributions, crew relief, direct aid for investment and regional aid should not exceed the total amount of taxes and social contributions collected from shipping companies and seafarers (the 'ceiling' to aid). The German authorities have confirmed that the aid ceiling fixed in Section 11 of the Maritime Guidelines will be respected, i.e. the ceiling of 100% (a reduction to zero of taxation as stipulated in the second paragraph of Section 11).
- (47) With regard to the former condition that crew member have to be continuously employed for more than 183 days on the ship in order to enjoy the non-levying of wage tax, the Commission notes that this former condition is not listed as a condition of the Maritime guidelines for the compatibility of aid and has therefore no impact on this assessment.
- (48) The Commission therefore concludes that the notified scheme, which concerns a loss of revenue, an increase of the non-levying of wage tax of seafarers from 40% to 100% for the duration of 5 years and a facilitation of funding criteria, is in conformity with Section 3.2 and 11 of the Maritime Guidelines.

5. DECISION

- (49) The Commission concludes that the notified scheme is therefore an aid compatible with the internal market on the basis of Article 107(3) (c) TFEU. The Commission therefore raises no objections to the aid scheme intended to be implemented by Germany.
- (50) The Commission reminds the German authorities that, in accordance with Article 108 (3) of the Treaty, all plans to refinance, alter or change the aid scheme have to be notified to the Commission.
- (51) As the German authorities have confirmed that neither the notification nor the supplementing submissions contain confidential information which should not be disclosed to third parties, the Commission will publish the full text of the letter in the authentic language on the Internet site:

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

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission