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Subject: State Aid SA.46852 (2016/N) – Prolongation of Increase of Tax Deduction Scheme for Seafarers – Denmark

Sir,

1. PROCEDURE

- (1) On 18 November 2016, the Danish authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), of a prolongation of an aid scheme on the increase of income tax deductions for seafarers approved by the Commission on 21 March 2012 in case SA. 33651 (2011/N)¹ ("*the existing scheme*").
- (2) The scheme for which prolongation is sought is based on the scheme "Fiscal measures applicable to seafarers on board Danish ships" which was approved by the Commission on 13 November 2002 in case NN 116/1998² ("*the 2002 scheme*"). The 2002 scheme provides for income tax exemptions and income tax deductions for seafarers employed on board ships registered in the Danish International Ship Register ("*the DIS Register*") and the Danish Register for Shipping ("*the DAS Register*")³.
- (3) In its decision on the existing scheme the Commission approved an increase of the allowable tax deduction for certain seafarers compared to the 2002 scheme.

¹ OJ C 142 of 22 May 2012, p. 3.

² OJ C 28 of 31 January 2004, p. 2.

³ See in particular recitals 18 and 20 of the original scheme.

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2. DESCRIPTION OF THE AID

2.1. Objective of the aid

- (4) The objective of the existing scheme remains unaltered. The main objective is to further enhance European seafarers' employment possibilities and ensure their international competitiveness in the global maritime transport labour market (see also recital 11 of the decision approving the existing scheme).

2.2. National legal basis

- (5) The national legal basis of the scheme is section 3, subsection 1 of the Act on Taxation of Seafarers as amended by Act no. 622 of 14 June 2011.

2.3. Form of the aid, and eligible seafarers

- (6) All Danish ships⁴ active in maritime transport with a gross tonnage of at least 20 must be registered in a Danish register, either in the DIS register or in the DAS register. Under certain conditions also foreign owned ships may be registered in either of the two registries.
- (7) The DIS register differs from the DAS Register mainly by offering ship-owners the possibility to employ seafarers from third countries on the basis of international competitive terms and not based on national standards. Furthermore one of the main benefits of having a ship registered in DIS as opposed to DAS is that it allows access to the DIS tax regime if the other conditions in the regime are met.
- (8) The 2002 scheme allows seafarers to deduct from their annual taxable income an amount of DKK 56,900 before the calculation of income tax. The 2002 scheme applies to any seafarer (both Danish and foreign tax residents) working aboard ships registered in DAS, with a gross tonnage of at least 20, carrying out maritime transport, and to seafarers who are Danish tax residents working aboard ships registered in the European Economic Area, with a gross tonnage of at least 20, carrying out maritime transport.
- (9) The existing scheme for which prolongation is sought increased the allowable tax deduction for such seafarers from DKK 56,900 to DKK 105,000 provided they work on board a ship that has a gross tonnage of 500 or more. The amount of the tax deduction under the prolonged scheme will remain unaltered.
- (10) According to the Danish authorities the minimum threshold of 500 gross tonnes is due to the fact that international competition amongst labour force applies mainly to seafarers working aboard cargo ships above this capacity.
- (11) The Danish authorities have confirmed that the existing scheme is not restricted to seafarers employed on board Danish-flagged vessels.

⁴ A ship is considered Danish if the owner is Danish, i.e. a Danish national or a legal entity established pursuant to Danish law or registered as Danish company in Denmark.

2.4. Duration and budget

- (12) The prolongation is sought for a duration from 1 January 2017 to 31 December 2021.
- (13) The annual budget of the scheme maintaining the increase of the tax deduction compared to the 2002 scheme from DKK 56,900 to DKK 105,000 is estimated to remain approximately DKK 3 million, with a total overall budget for the proposed further five years of the scheme of 15 million DKK. This budget estimate is based on an increase in tax deduction of DKK 48,100 and a net value of this type of tax deduction of approximately one third, giving a tax saving of approximately DKK 16,000. This amount is multiplied by the number of eligible seafarers which are estimated to 180-200.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (14) In its decisions on the 2002 scheme and on the existing scheme the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) TFEU since the tax deductions reduce the costs that ship-owners bear and therefore constitute a selective advantage. The fiscal measures imply foregone revenues for the Danish government and hence are financed through State resources. The measure is also imputable to Denmark and it is liable to distort competition and affect trade by strengthening the competitive position of the beneficiaries in the European shipping sector, which is exposed to fierce international competition. Nothing in the notification of the present scheme alters that assessment.⁵

3.2. Compatibility

3.2.1. Legal basis

- (15) 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.
- (16) 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")⁶. 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

- (17) In the decision on the existing scheme the Commission found the scheme compatible with the internal market under Article 107(3)(c) TFEU and the Maritime Guidelines (see recitals 19 to 24).

⁵ See recitals 21 -37 of the 2002 scheme and recital 17 of the existing scheme.

⁶ Community Guidelines on State aid to maritime transport, OJ C 13 of 17 January 2004, p. 3.

- (18) The prolongation of the scheme does not alter this prior conclusion that the existing scheme can be found to be in conformity with the Guidelines.

3.2.3. *Conclusion*

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

4. DECISION

- (20) The Commission has accordingly decided not to raise objections to the aid 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