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**Subject: State aid – SA.51325 (2018/N-2) – Denmark
Extension of the Danish International Register of Shipping regime**

Sir,

1. PROCEDURE

- (1) By electronic notification of 3 December 2018, following pre-notification contacts, the Danish authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter ‘TFEU’), of their intention to extend the existing Danish International Register of Shipping regime (“the DIS scheme”) to include seafarers working on certain specialized vessels (“the measure”).
- (2) The Danish authorities attached to this notification a document containing commitments (“the commitments”) to amend the existing DIS scheme (with regard to the definition of “Community seafarers” and the duration of the scheme) to ensure compliance with the Maritime Guidelines and the decisional practice of the Commission.
- (3) On 17 January 2019, following discussions with the Commission services, the Danish authorities agreed to extend the deadline of the period within which the Commission is required to adopt a decision by two months until 4 April 2019.
- (4) On 6 February 2019, the Danish authorities submitted a commitment letter to amend the relevant provisions of the DIS scheme, notably with regard to the flag-link, to address the concerns previously expressed by the Commission.

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2. DESCRIPTION OF THE MEASURE

2.1. The scope of the DIS regime and fundamentals of its operation

- (5) The DIS regime was introduced in 1988 to improve the international competitiveness of the Danish merchant fleet and to prevent the transfer of Danish ships to other flags outside the EU/EEA.
- (6) The DIS regime consists of an exemption for ship owners from the payment of income tax of their seafarers working on board ships registered in the *Dansk Internationalt Skibsregister* (the "DIS register") when the ships are used for the commercial transport of passengers or goods carried out between various destinations. The tax exemption is taken into account when the wages are set. Thus, the tax benefit accrues to the shipping company and not to the individual seafarers.
- (7) On 13 November 2002 the Commission approved the initial scheme, for an unlimited duration¹.
- (8) On 21 January 2005, the Danish authorities informed the Commission that they accepted the appropriate measures proposed by the Commission in the new Community Guidelines on State aid to maritime transport published in January 2004² (*the Maritime Guidelines*). By letter of 18 May 2005 towards the Danish authorities, the Directorate General for Transport recorded that finding.
- (9) By letter of 15 January 2007, the Danish authorities notified the Commission of an amendment of the DIS regime, extending its application to dredging and cable-laying activities. The Commission approved the extension on 13 January 2009³ and, in line with its practice of no longer approving open-ended State aid schemes, limited the duration of the extension to ten years subject to re-notification at the expiry of the ten-year period.
- (10) All Danish merchant ships active in maritime transport with a gross tonnage of at least 20 must be registered in a Danish register, either the DIS register or the ordinary Danish Register of Shipping ("DAS" or "Danish Register of Shipping"). The DIS register differs from the DAS Register because it offers ship owners the possibility to employ third-country seafarers on the basis of their national wage conditions, whereas third country nationals employed on board DAS-registered vessels are paid on Danish terms.
- (11) For a ship to be covered by the DIS regime certain conditions must be fulfilled. In particular, the vessels have to be registered in the DIS register; they must have a gross tonnage of at least 20 and must be used for the commercial carriage of passengers or goods, as a tugboat or salvage vessel or as a cable layer.

¹ Commission decision of 13.11.2002 in State aid NN 116/1998 – Denmark, *Fiscal measures applicable to seafarers on board Danish vessels*, OJ C 028, 31.1.2004, p. 2-4.

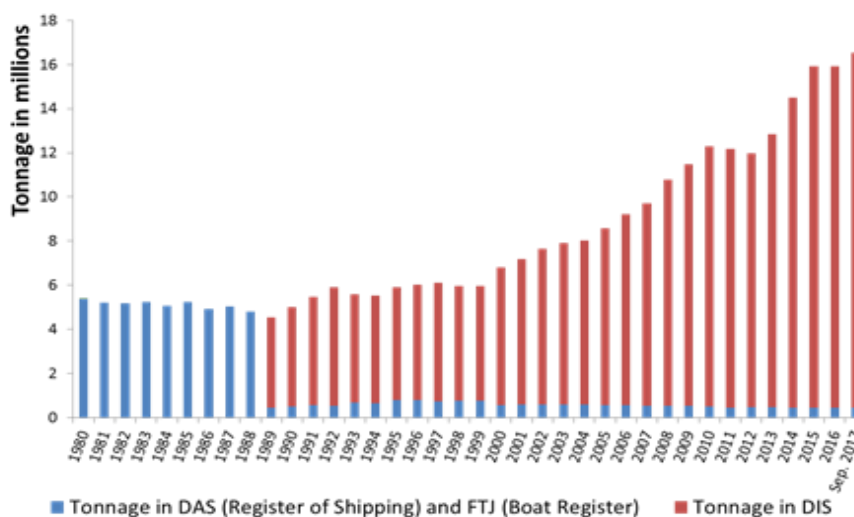
² OJ C 13, 17.1.2004, p. 3.

³ Commission decision of 13 January 2009 in State aid C22/2007, *extension to 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*, OJ L119, 14.05.2009, p. 23.

Furthermore, it is a condition that the vessels are used for the same purposes that can be covered by the tonnage tax scheme, under the Danish Tonnage Tax Act.⁴

- (12) In the absence of the DIS regime, the general rules on income taxation in Denmark would be applicable to the seafarers. However, seafarers working on board vessels falling under the ordinary shipping register (DAS) or vessels registered in another EU/EEA Member State who fulfil the conditions in the Danish tax deduction scheme for seafarers are entitled to a deduction of an amount of DKK 56,900 (or DKK 105,000 if they work on board a ship that has a gross tonnage of at least 500) from their annual taxable income before calculation of their income tax⁵.
- (13) The table below summarizes the contribution of the DIS regime, since its introduction, to the attraction and maintaining of vessels in the Danish Registers, ensuring the strength of the EU as a leading shipping region in terms of maritime know-how and seafarers' employment:

Development in Danish-flagged tonnage



2.2. The envisaged extension of the DIS scheme and its rationale

- (14) With the notified extension, the Danish authorities intend to bring under the DIS scheme a number of activities that are related to maritime transport and are typically carried out by specialized vessels operating in the off-shore sector. The notified measure concerns the same activities covered by the extension of the Danish Tonnage Tax scheme, which was already approved by the Commission in its decision of 12 October 2018 in case SA.45300⁶.

⁴ Consolidated Act. No. 834 of 29 August 2005.

⁵ This scheme was originally approved with Commission decision of 13.11.2002 in State aid NN 116/1998, then modified in 2012 by Commission Decision of 21.03.2012 in SA.33651 *Increase of Existing Tax Deduction for Seafarers*, OJ C142, 22.5.2012, p. 1, and finally prolonged in 2018 by Commission decision of 17.05.2018 in State aid SA.46852, C(2018) 3164 final.

⁶ Commission decision of 12.10.2018 on SA.45300 Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels).

- (15) The envisaged extension has the objective of creating improved competitive conditions for the Danish shipping sector in the global market, which is characterized by increasing competition. In particular, the aim is to make Danish and EU/EEA-flagged offshore ships able to face competition from major seafaring hubs (e.g. Singapore), while sustaining growth and creation of employment and know-how in the maritime sector.
- (16) The competition from several non-EU/EEA shipping States may result in the risk that the specialized vessels will re-flag outside the EU or will never be flagged in the EU. This would potentially lead to negative consequences for European employment with a view on maintaining its acquired know-how and competencies in the offshore maritime sector.
- (17) Common of these specialized vessels is that they are not exclusively used for the commercial transport of goods and passengers. In any event, the specialized vessels for which the envisaged extension is sought are not used to provide scheduled passenger services between ports of the Community. Therefore, they may not always fulfil the conditions in the initial DIS scheme. In this regard, the Danish authorities consider that those activities that could not be considered to be covered by the definition of maritime transport in the Maritime Guidelines could still fall, by analogy, within the application of Article 107(3)(c) TFEU on aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (18) Thus, together with the scheme for seafarers on dredgers and cable-layers, which were already included in the DIS scheme following the amendment approved by the Commission in 2009 (see recital 9 above), the notified extension applies to seafarers working on board vessels used for activities other than those carried out by the vessels covered by the initial DIS regime. More in particular, the extension comprises the activities of the following types of vessels:
- guard vessels;
 - supply vessels;
 - offshore construction vessels, wind farm service vessels and offshore service vessels;
 - pipeline-layers and cable-laying vessels;
 - ice management vessels;
 - accommodation and support vessels.
- (19) In relation to these categories of vessels the Danish authorities provided further explanations with regard to their use and practical application for the offshore sector.
- (20) Guard and supply vessels are reported to share many common activities and perform tasks related to offshore sites. These may include cable laying, ROV⁷

⁷ Remotely Operated Vehicles.

activity, anchor handling, diving support and environmental clean-up activities. In particular, guard vessels perform all types of activities that are often related to offshore works, such as security and salvage services, as well as environmental protection services⁸; while supply vessels perform all types of activities involving supply services at sea, such as transport of supplies, security and salvage services, anchor handling services as well as environmental protection services.

- (21) With regard to offshore construction and off-shore service vessels, the DIS regime is planned to be extended to vessels that are used for construction, repair and dismantling of oil installations, wind farms or other offshore installations at sea. Offshore construction vessels, vessels for the construction of offshore wind energy facilities and wind farm service vessels are said to be normally used to carry and transport building parts (e.g. wings, towers) to the building site as an integral part of the construction process. Wind farm service vessels are also used for dismantling wind turbines. As far as construction, repair and dismantling of installations at sea are concerned, the DIS regime also applies in Danish territorial waters or continental shelf area. In this regard, the DIS regime applies to a larger geographical area than the tonnage tax regime, which only applies outside the Danish territorial waters and continental shelf area. The Danish authorities underline that the reason for this choice is that of preventing groups with both construction and oil extraction companies from transferring income from hydrocarbon taxation to tonnage taxation. The Danish authorities explain that the same risk does not exist with regard to the DIS regime.
- (22) As regards cable-layers and pipeline layers, the DIS regime would be extended to vessels used for the inspection and repair of pipelines or cables on the seabed and digging in connection with such activities. It is important to note that the DIS regime was extended to cable layers in 2009 with Commission decision of 13 January 2009 (C 22/2007) for a period of 10 years. Therefore, the existing DIS regime already covers seafarers working on board cable-layers. Pursuant to the 2009 modification, it is a condition for cable-layers within the EU/EEA that at least 50% of the vessel's activities measured in nautical miles constitute maritime transport and that the vessel is registered in an EU/EEA Member State. With the notified extension of the DIS regime it would no longer be a condition for the application of the regime to cable-layers that at least 50% of the vessel's total business measured in nautical miles during an income year constitutes maritime transport. The activities covered by the extension will also partly include cable or pipeline activities involving maritime transport with cable drums or pipelines.
- (23) Ice management vessels are normally used for all types of activities involving ice management at sea except towage. Ice management vessels deal with the escorting of vessels through icy waters and the protection of drilling units in arctic waters against icebergs.
- (24) Accommodation and support vessels (also called "*offshore hotel ships*") involve temporary accommodation for crew members, temporary storage of spare parts, equipment, or temporary use as workshop facilities in connection with offshore

⁸ The Danish authorities explained that both guard and supply vessels have little current activity within environmental protection. One of these activities is to reduce the damage of oil spill in case of environmental accidents, in which case authorities can commission these vessels at the same competitive rates of non-Danish vessels.

works. These vessels are necessarily characterized by being part of the overall offshore works to which they are related, as the construction of wind energy facilities, repairs, and drilling rigs, often takes place at sea at a considerable distance from the shore.

- (25) The Danish authorities stressed in their notification that all above-listed specialized vessels share a significant number of characteristics with vessels carrying out maritime transport:
- 1) these vessels' activities require qualified seafarers with corresponding professional qualifications; also, the same labour law applies as for seafarers on board vessels dedicated to maritime transport activities;
 - 2) these vessels are sea-going and subject to the same operational and safety requirements as vessels carrying out maritime transport;
 - 3) there is an equal risk that these vessels will be re-flagged outside the EU/EEA or never be flagged in the EU/EEA, with a potential adverse impact in a longer term perspective on employment of the offshore sector in the EU/EEA.

2.3. Aid impact and volume

- (26) In the absence of the DIS regime seafarers would be subject to the general rules of income taxation. The Danish authorities submit that it is at this stage difficult to provide an exact number of seafarers who would be affected by the extension, although the number of specialized vessels subject to Danish taxation is limited⁹.
- (27) The Danish authorities estimated the annual tax exemption in DKK 130.000.000, and DKK 1.300.000.000 for a ten-year period. Denmark estimates that with the concerned extension around 400 seafarers that are currently subject to the general income taxation will potentially enter the DIS regime, while around 50 seafarers will transfer from the tax deduction scheme for seafarers¹⁰ to the DIS scheme. This would initially result in an annual loss of tax revenue of DKK 60.000.000¹¹.
- (28) Employment forecasts resulting from the extension of the DIS regime to the specialized vessels are expected to be fully reached after a period of six years, meaning that the overall annual tax expenditure from 2024 onwards will be of DKK 130.000.000. For a ten-year period with a full employment effect the figure will be of DKK 1.300.000.000¹².
- (29) Finally, the Danish authorities estimate the number of beneficiary shipping companies between 50 and 100.

⁹ The Danish authorities estimated this number in approximately 100 vessels, although they clarified that the number is subject to a high degree of uncertainty.

¹⁰ See fn[5].

¹¹ Approx. EUR 8 million.

¹² These assumptions were presented in the comment for the Law Proposal 174 of 28 February 2018 (available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=198681>).

2.4. Legal basis, implementing provisions

- (30) The initial DIS register was introduced by Law n. 408 of 1 July 1988 and entered into force on 23 August 1988. In connection with the introduction of the DIS register the DIS regime was introduced by Law no. 364 of 1 July 1988.
- (31) The legal basis of the notified scheme, extending the DIS scheme to seafarers working on certain specialized vessels is Law n. 359 of 29 April 2018.¹³ This Law contains a standstill clause, which makes the granting of the aid subject to the authorisation of the Commission. In addition, the Danish authorities will amend the law to reflect the commitments (see recitals 2-4 above) taken by Denmark by the end of 2019.

2.5. Duration

- (32) The initial scheme was approved by the Commission in 2002 for an unlimited duration¹⁴. The Danish authorities agreed to limit the duration of the DIS scheme as well as the notified envisaged extension to a 10-year period following its entry into force. In this regard, they argued that such a period is decisive for the ability of maintaining and attracting tonnage to the register and to realize the objectives of the Maritime Guidelines, such as improving the maritime know-how and protecting and promoting employment for European seafarers. The notified scheme will enter into force on the date of notification of the present Decision, subject to legal act from the Danish Minister of Taxation, and will expire in ten years from such date.

2.6. EEA flag-link requirement

- (33) In order to be covered by both the initial DIS regime and the extension of the DIS regime to specialized vessels it is a condition that vessels are registered in the Danish International Register of Shipping¹⁵. In this regard, the Commission noted that seafarer schemes must not discriminate between EU or EEA flags and cannot be limited to national-flagged vessels. It is a condition that qualifying seafarers working on all EU or EEA-flagged vessels are eligible.
- (34) The Danish authorities committed to extend the DIS regime to seafarers employed on boards qualifying vessels flying any EU/EEA flag¹⁶.

¹³ Bill adopted by the Danish Parliament on 26 April 2018 (available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=200931>).

¹⁴ Point 47 of Commission decision of 13.11.2002 in State aid NN 116/1998 – Denmark, Fiscal measures applicable to seafarers on board Danish vessels; confirmed in Section 6.3 of Commission decision of 13 January 2009 in C22/2007.

¹⁵ Exception is made for cable layers, tugboats, salvage vessels and dredgers.

¹⁶ By letter of 6 February 2019 the Danish authorities committed to amend the DIS regime by allowing shipping companies with qualifying vessels that are registered in other EU/EEA registers, provided they fly an EU/EEA flag, to benefit from the DIS regime.

2.7. Social, safety and environmental standards

- (35) Sea-going ships sailing under Danish flag must meet all relevant international requirements with regard to safety and working conditions, including the International Convention for the Safety of Life at Sea (SOLAS), the Load Lines Convention, the International Convention for the Prevention of Pollution from Ships (MARPOL), the Maritime Labour Convention (MLC) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).
- (36) In addition, Denmark has a number of special national requirements regarding the working environment.
- (37) Danish requirements do not apply to ships sailing under foreign flag. Such ships are subject to flag state control by the relevant country. However, when sailing in Danish waters or calling into Danish ports, ships under foreign flag are subject to Danish port state control in accordance with the Paris Memorandum of Understanding and the existing EU Directive on port state control.

3. ASSESSMENT OF THE AID

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

- (38) According to Article 107(1) 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"*.
- (39) It follows that, in order for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following four cumulative conditions have to be met:
- It has to be imputable to the Member State and granted out of State resources.
 - It has to confer an economic advantage on undertakings.
 - The advantage has to be selective.
 - The measure has to distort or threaten to distort competition and affect trade between Member States.
- (40) In this respect, the Commission first of all notes that Denmark accepts the State aid qualification under Article 107(1) TFEU of the notified measure.
- (41) The exemption from income taxation in respect of qualifying seafarers constitutes foregone State revenue and thus involves State resources. Moreover, since the measure is implemented through national legislation, it is imputable to Denmark. The measure also grants a selective advantage to the shipping companies hiring these seafarers as they benefit from lower labour costs in comparison to companies not benefiting from the scheme in other sectors of the economy, which are in a comparable situation. Finally, in view of other possible means of transport and the global scale of maritime transport, the seafarers' exemptions are

liable to distort competition and affect trade within the liberalised European shipping market.

- (42) It follows that the measure involves State aid in the sense of Article 107(1) TFEU.

3.2. Legality of the aid

- (43) The Commission takes note of the commitment of the Danish authorities to respect the standstill obligation laid down in Article 108(3) TFEU and not to grant the aid until the Commission reaches a decision authorising the notified measure described in recital (1) above. Therefore, with respect to that measure, the Danish authorities have complied with the requirement of Article 108(3) TFEU.

3.3. Compatibility of the aid

- (44) 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.
- (45) 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). Aid in favour of the maritime sector must therefore be examined in the light of these Guidelines.
- (46) The initial scheme was approved in 2002 and then amended in 2005 with the intention to reflect the changes introduced on the basis of the Maritime Guidelines¹⁷. The objective of the scheme, as described in Section 2.2 above, remains unchanged.
- (47) The Maritime Guidelines are still in force. Hence, the compatibility of the extended scheme with the internal market has to be assessed on the basis of an assessment thereof. The Commission must in particular assess whether the extended scope of the scheme remains within the objectives of the Maritime Guidelines.
- (48) In general, in respect of the scheme's provisions that continue to apply, in particular the activities constituting maritime transport activities in the strict sense and the towage activities, the Commission's previous assessment of the compatibility of the scheme with the internal market remains unaltered. However, the definition of eligible seafarers on vessels transporting passengers between ports of the Union was not in line with the requirement of EEA citizenship in the Maritime Guidelines. In this respect, the Commission positively notes the commitment of the Danish authorities on the definition of eligible seafarers for the purposes of the DIS regime. Moreover, the case-law has made clear that the Commission cannot approve aid schemes with unlimited duration. In this respect, the Commission also positively notes the commitment of the

¹⁷ On 21 January 2005, the Danish authorities informed the Commission that they accepted the appropriate measures proposed by the Commission in the Maritime Guidelines. By letter of 18 May 2005 towards the Danish authorities, the Directorate General for Transport recorded that finding.

Danish authorities on the duration of the existing DIS regime (see recitals (61) and (89) below). Those two commitments ensure the alignment of the scheme with the compatibility requirements of the Maritime Guidelines and of the case-law.

- (49) In addition, the Commission positively notes the commitment from the Danish authorities concerning the extension of the benefits of the DIS regime to shipping companies with qualifying vessels flying any EU/EEA flag. All shipping companies having vessels flying an EU/EEA flag will, following the commitments, benefit from the DIS regime as long as they fulfil the same legal obligations as shipping companies with vessels flying the Danish flag with regard to the other conditions for the application of the DIS regime, such as the activities that are carried out, reporting obligations, and liability¹⁸. This commitment also ensures the alignment of the scheme with the Maritime Guidelines and the relevant case-law.

3.3.1. Objectives in the common interest

- (50) The Maritime Guidelines provide that State aid schemes in relation to labour-related costs for seafarers may be introduced in order to support the Community maritime interest, in particular with the aim of:
- reducing fiscal and other costs and burdens borne by Community ship-owners and Community seafarers towards levels in line with world norms, directly stimulating the development of the maritime transport sector and employment, rather than providing general financial assistance;
 - encouraging the flagging or re-flagging to Member States' registers;
 - contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets; and
 - maintaining and improving maritime know-how and protecting and promoting employment for European seafarers.
- (51) The Commission notes that the objectives of the notified scheme as described in section 2.2 above are in line with the objectives set out by the Maritime Guidelines. The scheme aims at guaranteeing economic conditions in order to maintain the competitiveness of the European shipping sector, attract investments and achieve economic growth, increase the EEA's maritime fleet and create skilled maritime employment in the EEA.
- (52) The extension of the seafarer scheme, thus, is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

3.3.2. Scope of the scheme

- (53) Seafarer schemes in the sense of the Maritime Guidelines may concern either:

¹⁸ See in particular Section 5 of Act. No. 2005/-05-27 No. 386 concerning the taxation of seafarers.

- reduced rates (or a (partial) reimbursement) of income tax for Community seafarers on board vessels registered in a Member State, and/or
 - reduced rates (or a (partial) reimbursement) of contributions for the social protection of Community seafarers employed on board vessels registered in a Member State.
- (54) As described in section 2.1 above, the seafarer scheme concerns a total exemption for ship-owners from the obligation to pay personal income tax of their seafarers. This type of exemption is contemplated in the Maritime Guidelines.
- (55) The seafarer scheme, thus, is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

3.3.3. *Eligible seafarers*

- (56) Only Community seafarers, employed on board vessels registered in a Member State, are eligible to benefit from the seafarer scheme. Under the Maritime Guidelines, Community seafarers are defined 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."*
- (57) The Maritime Guidelines explain the reasons for this distinction by clarifying that while the previous 1997 Guidelines allowed reductions for all seafarers working on board vessels registered in a Member State and subject to tax and or social security contributions in a Member State, the 2004 Maritime Guidelines introduced a distinction between scheduled passenger services and other services. This was due to the fact 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.
- (58) The Danish authorities provided clarifications as to the eligibility of seafarers under the DIS scheme. In particular, the current definition provided for in the Danish law in the case of seafarers working on board vessels providing scheduled passenger services between ports of the Community clarifies that the benefits apply to persons who are nationals or residents of an EU or EEA Member State; on the other hand, in all other cases the benefits covered by the DIS regime apply to persons who are liable to tax in Denmark.
- (59) The Danish authorities clarified how the extension of the DIS regime to specialized vessels does not concern seafarers working on board vessels providing scheduled passenger services between ports of the Community. As such, the Commission accepts the definition of eligible seafarers under the envisaged extension.
- (60) However, the Commission also notes how the current definition of eligible seafarers under the existing DIS regime does not comply with the Maritime Guidelines. As explained in Section 3.2, paragraph 3, of the Maritime Guidelines,

the distinction between eligible seafarers for passenger services on the one hand and other services on the other hand introduced by the 2004 Maritime Guidelines was supported by several reasons, including the need to limit tax alleviations to the least number of cases (e.g. to freight transport, in light of the fierce international competition for EC carriers, which would have been harmed by tightened rules), as opposed to the previous 1997 Maritime Guidelines, the need to safeguard employment of EU/EEA nationals following a significant decline in the share during the years preceding the adoption of the Maritime Guidelines, while at the same time guaranteeing higher standards of safety (e.g. by means of better training and knowledge of EU languages).

- (61) In view of the foregoing, the Danish authorities committed to amend their law to limit the application of the existing DIS regime, in the case of seafarers working on board vessels providing scheduled passenger transport between ports of the Union, to seafarers who are EU/EEA citizens, in order to comply with the definition provided for by the Maritime Guidelines. The Commission considers this amendment, as implemented, to be compatible with the Maritime Guidelines. Therefore, in light of such commitment and its related law amendment, which the Danish authorities plan to do at the latest by December 2019, with a view of entering into force on 1 January 2020, the DIS regime concerning seafarers working on board vessels providing scheduled passenger transport between ports of the Union can be deemed compatible aid.
- (62) In addition, following the clarifications provided by the Danish authorities, the Commission concludes that the extension of the DIS regime to specialized vessels already applies to Community seafarers in the sense of the Maritime Guidelines.

3.3.4. Eligible seafarers – Towage and dredging vessels / activities

- (63) For the maritime part of towage and dredging (maritime transport of materials), Community seafarers are eligible to benefit from the Seafarer scheme only if they are working on board seagoing self-propelled tugboats and dredgers, which are registered in a Member State, carrying out maritime transport at sea for at least 50% of their operational time¹⁹.
- (64) The Danish authorities confirmed that the notified extension of the DIS regime does not cover any towage or dredging activity.

3.3.5. Eligible vessels

- (65) Only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. Maritime transport activities are defined in Regulation (EEC) No 4055/86²⁰ and in Regulation (EEC) No 3577/92²¹ as the "*transport of goods and persons by sea*" between ports or between ports and an off-shore installation.

¹⁹ Pursuant to section 3.1, para 14 of the Guidelines, towage is covered by the scope of the Guidelines provided more than 50 % of the towage activity effectively carried out by a tug during a given year constitutes maritime transport.

²⁰ 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 of 31.12.1986, p. 1.

- (66) Eligible vessels must therefore be engaged in transport of passengers or freight (shipping activities) between various destinations by sea-going vessels and other activities directly related thereto.
- (67) The Commission has also decided that certain activities, even if they do not fall, or only partially fall, within the definition of maritime transport, can, by analogy with maritime transport, be subject to the provisions of the Maritime Guidelines.

The extended scope covering off-shore vessels

- (68) The Danish authorities provided detailed descriptions of the main activities of the off-shore vessels envisaged to be admitted to the scheme as detailed above in section 3.1. On this basis, the Commission concludes the following:

- Guard vessels: such vessels keep guard at sea and perform tasks primarily related to off-shore-sites such as security and rescue services, but they also engage in activities relating to environmental clean-up activities.
- Supply vessels: such vessels also provide a wide range of activities which are typically related to off-shore-sites, such as assistance and support, transport of supplies, security and salvage services, anchor handling services as well as environmental protection activities.
- Off-shore construction and off-shore service vessels: the main activities of these vessels consist of transporting parts (wings, towers etc.) to windfarm construction sites, transporting other building parts, maintenance or dismantling of wind turbines, wind farms or other off-shore installations at sea (e.g. wave-breaking installations and other coast protection measures).
- Pipeline-layers and cable-laying vessels: their activities involve the laying, inspection and repairing of pipelines and cables on the seabed as well as digging in connection with these activities. Some of these activities are already covered by the existing DIS regime.
- Ice management vessels: the main activities comprise the escorting of vessels through icy waters, the protection of e.g. drilling units in arctic waters against floating icebergs and ice-breaking.
- Accommodation and support vessels: the main activities include the housing of personnel, the storage of spare parts, equipment or instruments necessary for off-shore-sites. Such vessels and their services are a necessary part of comprehensive and long-term off-shore constructions to which they are related (e.g. of wind energy facilities, repairs of drilling rigs), at a considerable distance from the shore.

- (69) The Commission notes that only a part of the above-described main activities constitutes maritime transport in the strict sense.

- (70) With regard to cable-layers, the Commission has often clarified in its recent decision-making practice that their activities may be considered, by analogy,

²¹ 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.

eligible under the Maritime Guidelines²². In that recent practice, the Commission no longer requires that at least 50% of the cable-layer's total business measured in nautical miles during an income year constitutes maritime transport, since it has found that cable-layers generally operate at sea under circumstances analogous to those of eligible maritime transport vessels.

(71) When assessing whether new vessel types can benefit from a seafarer scheme, the Commission considers whether there is a risk that the companies operating the relevant vessels could relocate their on-shore activities outside the EU for the purpose of finding more accommodating fiscal climates and subsequently re-flag those vessels under flags of third countries. The Commission may consider applying by analogy the Maritime Guidelines to companies operating vessels not involved in maritime transport in the strict sense if the following conditions are fulfilled:

- i. the companies must operate in a global market and face similar challenges, in terms of global competition and relocation of on-shore activities, to those of the EU maritime transport sector;
- ii. the activities of the relevant vessels must be subject to the same legal environment as EU maritime transport in the fields of labour protection, technical requirements and safety. The activities must require qualified and trained seafarers, with similar qualifications as those working on board traditional maritime transport vessels. Seafarers on board those types of vessels should be governed by the same labour law and social framework as other seafarers;
- iii. the vessels must be seagoing vessels and they must be obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.²³

(72) In that respect, the Commission on the basis of the information provided by Denmark concludes that:

- off-shore vessels concerned by the amendment require qualified seafarers, with qualifications comparable to those working on board traditional

²² Commission decision of 1 April 2015 in State aid – SA.37912 (2013/N) – *Croatia, Introduction of a tonnage tax scheme in favour of international maritime transport*, C(2015) 2153 final, OJ C 142, 22.4.2016, p. 6; Commission decision of 6 April 2018 in State Aid SA. 48929 (2018/N) - *Portugal Tonnage Tax and Seafarer Scheme*, C(2018) 2018 final, OJ C 339, 21.9.2018, p. 5.

²³ Decisional practice in respect of the eligibility of certain non-maritime transport activities under the Maritime Guidelines: Commission decision of 13 April 2015 in case SA.38085 (2013/N) concerning the *prolongation of the Italian tonnage tax scheme* (including its application to vessels providing rescue at sea and marine assistance on the high seas), recital 54, OJ C 406, 4.11.2016, p. 1; Commission decision of 13 January 2009 in case SA C 22/2007 as regards the *extension to 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*, recitals 65-72, OJ L 119, 15.5.2009, p. 23; Commission decision of 27 April 2010 in case SA. N 714/2009, *The Netherlands – Extension of the tonnage tax scheme to cable layers, pipeline layers, research vessels and crane vessels*, recitals 37 to 46, OJ C 158, 18.6.2010, p. 2; Commission decision of 12 October 2018 on SA.45300 *Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels)*, not yet published; Commission decision of 6 April 2018 on SA.48929, *Portuguese Tonnage Tax and Seafarer Scheme*, OJ C 339, 21.9.2018, p. 5.

maritime transport vessels and are subject to the same labour and social standards;

- 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.

- (73) Consequently, the Commission acknowledges that the activities at stake are subject to a legal environment in the labour, technical and safety fields comparable to that of maritime transport. Similarly, qualified and trained seafarers are necessary as is the case of maritime transport.
- (74) 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. A report provided by the Danish authorities suggests that off-shore service activities are exposed to global competitive pressure, and that companies are facing a real risk of losing business to competitors located in more liberal jurisdictions²⁴.
- (75) The Commission therefore considers there is a risk that shipping companies carrying out off-shore service activities with those vessels relocate their on-shore activities outside the EU/EEA 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. The challenges that these activities face in terms of global competition and relocation of on-shore activities are therefore similar to those of EU maritime transport.
- (76) For the above reasons, the Commission has no doubts that the scheme will have an incentive effect on beneficiaries to maintain or flag their vessels in the EEA and to contribute to the development of the EEA maritime sector.
- (77) In view of the above, the Commission considers that the activities at stake may benefit from the same type of aid as maritime transport. Therefore, the relevant section of the Maritime Guidelines can be applied to these activities by analogy.

Registration in a Member State

- (78) In addition, section 3.2 of the Maritime Guidelines provides that employment costs should be allowed for Community shipping provided they apply to Community seafarers employed on board ships registered in a Member State.
- (79) The Danish authorities confirmed that the extension of the DIS regime, in view of the commitment of 6 February 2019 (see recital 4 above), will apply to vessels registered in the DIS or other European registers.
- (80) For these reasons, Section 3.2 of the Maritime Guidelines is also complied with.

²⁴ PricewaterhouseCoopers, Corporate taxation in the global off-shore shipping industry, p. 8 and 10, <http://www.pwc.com/gx/en/transportation-logistics/pdf/pwc-off-shore-shipping.pdf>.

3.3.6. National flagging restrictions

- (81) National flagging restrictions, according to which the benefits of the seafarer scheme are conditional on a certain level of national (and not EEA) flagging, infringe internal market rules.
- (82) The Danish authorities committed to extend the benefits of the DIS regime to shipping companies with qualifying vessels registered in other EU/EEA registers, provided they fly an EU/EEA flag. For this reason, the Commission considers that the conditions of the Maritime Guidelines on EEA flagging are complied with.

3.3.7. Aid cumulation / aid ceiling

- (83) In line with Chapter 11 of the Maritime aid Guidelines, the total aid for the benefit of shipping companies, independently of the form of the aid, should not provide a higher benefit than the full exemption from taxes and social contributions of shipping activities and seafarers.
- (84) The Danish authorities confirmed that companies opting for the DIS regime do not qualify for any other tax benefits or incentives that are similar to those provided by the regime and cannot obtain benefits exceeding the full exemption from taxes.
- (85) Therefore, the Commission concludes that the requirements relating to aid cumulation / aid ceiling are fulfilled.

3.3.8. Duration

- (86) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration²⁵. Schemes must be subject to a regular review of their effectiveness and impact.
- (87) The Danish authorities have taken note that, in line with the case-law, the duration of the scheme cannot be open-ended and must be limited to a maximum 10-year period, for the reasons set out above in Section 2.5.
- (88) The seafarer scheme will therefore remain in force for ten years from its entering into force. The Danish authorities committed to re-notify the measure at the end of the ten-year period, should they wish to prolong the validity of the scheme.
- (89) In addition, the Danish authorities committed to limit the duration of the existing DIS scheme, originally open-ended, to ten years, to bring it in line with the case-law.
- (90) The Commission notes that such duration is in line with previously approved State aid schemes in the maritime sector.

4. CONCLUSION

- (91) Based on the foregoing, the Commission considers that the seafarer scheme fulfils all the necessary criteria under the Maritime Guidelines and its decisional

²⁵ Case C-67/09 P *Nuova Agricast* EU:C:2010:607, para. 80.

practice. The Commission concludes that the seafarer scheme, as assessed above, constitute State aid pursuant to Article 107(1) TFEU which is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

5. DECISION

(92) 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.

The Commission notes that for reasons of urgency, Denmark exceptionally accepts the adoption and notification of the decision in English.

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Your request should be sent electronically to the following address:

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B-1049 Brussels
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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission