



EUROPEAN COMMISSION

Brussels, 16.12.2019  
C(2019) 8916 final

PUBLIC VERSION

This document is made available for  
information purposes only.

**Subject: State Aid SA. 51809 (2019/N) – Cyprus  
Prolongation of the Cyprus Tonnage Tax and Seafarer Scheme**

Sir,

**1. PROCEDURE**

- (1) On 29 January 2019, pre-notification contacts started between the Commission and the authorities of the Republic of Cyprus ("Cyprus") in respect of the prolongation of the existing Tonnage Tax and Seafarer Scheme earlier approved by the Commission on 24 March 2010 ("the 2010 Decision")<sup>1</sup>.
- (2) On 6 November 2019, Cyprus formally notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), the intended prolongation of its existing Tonnage Tax and Seafarer Scheme in favour of international maritime transport, registered under case number SA.51809 (2019/N).

---

<sup>1</sup> Commission Decision C(2010) 1727 final of 24 March 2010, State aid – N – 37/2010 – *Cyprus, Introduction of a tonnage tax scheme in favour of international maritime transport*, hereafter "the 2010 Decision".

Κύριος  
Νίκος ΧΡΙΣΤΟΔΟΥΛΙΔΗΣ  
Υπουργός Εξωτερικών  
Λεωφόρος Δημοσθένη Σεβέρη  
Chypre - 1447 Λευκωσία

- (3) For reasons of urgency, Cyprus has exceptionally accepted that the decision be adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURES**

### **2.1. Introduction**

- (4) Currently, the maritime transport industry can benefit from tonnage taxation and seafarers can benefit from an exemption from income tax on the basis of the Merchant Shipping (Fees and Taxing Provisions) Law of 2010 (Law 44(1)/2010)<sup>2</sup>. According its section 66.2, “This law shall be valid until 31<sup>st</sup> December 2019. The said validity period of this law may be extended by virtue of a decision of the Council of Ministers, published in the Official Gazette of the Republic, provided that the prior relevant approval of the European Commission is obtained”.
- (5) The Cyprus authorities intend to prolong the existing Tonnage Tax and Seafarer Scheme and to introduce a number of amendments foreseen in a Draft Bill entitled “Law of 2010” - the “Merchant Shipping (Fees and Taxing Provisions) (Amended) Law of 2019”. These amendments concern the definition of “Qualifying Ship”, the definition of “ancillary activities”, the eligibility conditions for BBO activities, a reduction of tonnage tax for the operation of environmentally friendly vessels and the extension of the exemption of income tax to EU/EEA seafarers. The Draft Bill foresees that it will enter into force on a date prescribed by virtue of a decision of the Council of ministers published in the Official gazette of the Republic.

### **2.2. The Cypriot maritime sector**

- (6) Currently, the Cypriot maritime transport cluster represents around 7% of Cyprus GDP and employs around 9 000 persons (representing 3 % of the total gainfully employed population).<sup>3</sup>
- (7) According to the Cypriot authorities, the Cypriot maritime transport cluster is the 11<sup>th</sup> largest Ship Registry worldwide and the 3<sup>rd</sup> within the EU with a fleet under the Cyprus flag of 1 006 vessels, of a gross tonnage of 22.5 million at the end 2017<sup>4</sup>. It is the largest third party ship management centre in the EU: 49 ship management companies operate under the tonnage tax regime in Cyprus, providing ship management services to around 3 300 ships under various flags with a net tonnage of 47 million.<sup>5</sup>
- (8) These ship management companies contribute to the employment of EU/EEA citizens in the shipping professions. They offer shore based employment to around 2 500 persons (mainly Cypriots and other EU nationals), representing

---

<sup>2</sup> Gazette of the Republic of Cyprus No. 4241, Supplement I(I), dated 14.5.2010. The law is available on the website of the Shipping Deputy Ministry: [www.shipping.gov.cy](http://www.shipping.gov.cy)

<sup>3</sup> Based on 2016 data received from the Central Bank of Cyprus and the Statistical Service of the Republic of Cyprus.

<sup>4</sup> HIS Maritime – World Fleet Statistics 2017

<sup>5</sup> Shipping Deputy Ministry data 2016.

0.84% of the total gainfully employed population.<sup>6</sup> Cyprus ship management revenues in terms of turnover corresponds to more than 5% of Cyprus GDP.<sup>7</sup>

- (9) The Cypriot authorities state that the recent discovery of hydrocarbons in the Exclusive Economic Zone (EEZ) of the Republic of Cyprus creates new prospects for the country and its economy. These new developments widen the horizons of the Cypriot shipping industry, creating relevant synergies and new prospects for the local shipping industry. Offshore exploration and production of gas and oil, as well as their transportation ashore, require the operation of specialised ships and equipment and the supply of specialised supporting services. A whole new industry is emerging in Cyprus to meet the needs of the offshore activities. Many Cyprus-based shipping companies are very keen to be involved in the new industry and some of them have already taken this step by broadening their services and activities. It is also anticipated that additional shipping companies operating in non-EU jurisdictions will relocate their offices and operations in Cyprus in order to explore the benefits of the emerging East Mediterranean offshore market.
- (10) According to the Cypriot authorities, Cyprus can develop into an important Energy Center in the Mediterranean region with new shipping and energy projects and the policy of its government includes Cyprus's future maritime transport needs for the exploitation of hydrocarbons.

### **2.3. Objectives and estimated aid impact**

- (11) With the implementation of the notified scheme, Cyprus intends to:
- boost the competitiveness of ship owners and operators (charterers and ship managers),
  - maintain and increase jobs and maritime expertise, to support the development of maritime economy,
  - encourage the employment of seafarers from EU/EEA Member States and the registration of vessels in their ship registers,
  - contribute to linking up the maritime economies of Member States whilst maintaining the overall competitiveness of the sector as well as encouraging maritime-related research and innovation.
- (12) In particular, the Cyprus Tonnage Tax and Seafarer Scheme encourages the flagging or re-flagging of ships to EU/EEA Member States' registers and promotes the maritime cluster, especially in terms of ship management services, thus helping to create a safe, efficient, secure and environmentally friendly maritime transport sector.
- (13) The maintenance and sustainability of a Cyprus registered fleet is a national priority for the Republic of Cyprus, as well as the maintenance and attraction to Cyprus of companies engaging in shipping and shipping related activities, with the aim to enhance further job creation and maritime expertise.

---

<sup>6</sup> Shipping Deputy Ministry data 2017.

<sup>7</sup> Central Bank of Cyprus, Ship Management Survey for the period January-June 2018.

- (14) As regards the impact of the Tonnage Tax Scheme, the Cypriot authorities indicate a significant increase in the number of beneficiaries since 2010 mainly due to the relocation/establishment of additional companies in Cyprus as a result of the Tonnage tax scheme as well as from the increase of the corporate tax rate in 2013. Based on data relating to the impact of the existing scheme, the Cypriot authorities estimate the foregone State revenue for the 2020-2029 period to approx. EUR 15 million per year.
- (15) As regards the financial impact of the Seafarer Scheme, the Cypriot authorities estimate the foregone State revenue for the period 2020-2029 to approx. EUR 400.000 per year.

## 2.4. National legal basis

- (16) The national legal basis is the Merchant Shipping (Fees and Taxing Provisions) Law of 2010 – Law No.44 (I) of 2010 and the notified Draft Bill entitled “the Merchant Shipping (Fees and Taxing Provisions) (Amendment) Law of 2019” that includes the amendments mentioned in recital (5).
- (17) The Cyprus authorities have stated that they intend to refer to the Law of 2010 and the notified Draft Bill together as the “Merchant Shipping (Fees and Taxing Provisions) Laws of 2010-2019” (“Merchant Shipping Laws of 2010-2019”).
- (18) The Law of 2010 was adopted by the Parliament of Cyprus on 29 April 2010 following the 2010 Decision and forms, together with its subsidiary legislation<sup>8</sup>, the legal basis for the existing Cyprus tonnage tax and seafarer scheme.

## 2.5. Tonnage Tax Scheme

### 2.5.1. Description

- (19) Under the Cypriot corporate income tax law<sup>9</sup>, every shipping company that is a tax resident in Cyprus and does not benefit from the Tonnage Tax scheme is subject to income tax in respect of its worldwide profits of its activities at the normal corporate tax rate (currently 12.5%).
- (20) Under the Tonnage Tax Scheme, a special tax regime based on the amount of tonnage operated by eligible ship owners, charterers and ship managers, applicable to eligible maritime transport activities, exempts the companies concerned from the general obligation to pay corporate income tax irrespective of the companies' actual profits or loss.

---

<sup>8</sup> The Law 44(I)/2010 is complemented by seven *Notifications* (Public Instruments P.I.):

- (i) *The Tonnage Tax (Towage and Dredging Activities) Notification of 2010 (P.I. 353/2010)*
- (ii) *The Tonnage Tax (Definition of Community Ships) Notification of 2010 (P.I. 354/2010)*
- (iii) *The Tonnage Tax (Special Provisions on the Levy and Collection) Notification of 2010 (P.I. 417/2010)*
- (iv) *The Tonnage Tax for Ship Managers (Special Provisions and Requirements) Notification of 2010 (P.I. 511/2010)*
- (v) *The Tonnage Tax (Special Provisions for the Calculation of the Community Flagged Share) Notification of 2010 (P.I. 536/2010)*
- (vi) *The Tonnage Tax (Arm's Length Principles) Notification of 2012 (P.I. 136/2012)*
- (vii) *The Taxation of Owners of Cyprus Ships Notification of 2012 (P.I. 137/2012)*

<sup>9</sup> Income Tax law of 2002 (Law 118(I)/2002) as amended.

### 2.5.2. *Eligible beneficiaries*

- (21) The Cypriot authorities distinguish three main categories of eligible beneficiaries for tonnage taxation: ship-owners, charterers and ship managers.
- (22) All eligible beneficiaries that are tax residents in Cyprus, must engage in a “Qualifying Shipping Activity” (see section 2.5.4) and own or charter or manage a “Qualifying Ship” (see section 2.5.3) as defined in section 2 of the Laws of 2010-2019.
- (23) The presentation below reflects the description provided by the Cypriot authorities for the purpose of the notification.

#### 2.5.2.1. Ship owners

##### *Qualifying owners for tonnage tax*

- (24) Ship owners qualify for tonnage tax if:
  - (1) their fleet is registered under the Cyprus flag. In this case, they are automatically subject to tonnage tax (no option is allowed).
  - (2) their fleet is registered under a EU/EEA flag. In this case, they may participate in the tonnage tax system provided they opt in advance to participate. Once they have opted, they must remain in the system for at least ten years.<sup>10</sup>
  - (3) their fleet comprises ships registered under EU/EEA and non-EU/EEA flags. In this case, they may participate in the tonnage tax system provided they have opted in advance and that they meet the additional requirement laid down in recital (25). Once they have opted, they must remain in the system for at least ten years.
- (25) The requirements that must be met by the ship owners of a fleet comprising of ships registered under EU/EEA and non - EU/EEA flags are as follows:
  - (1) at the time of opting into the tonnage tax system, at least 60% of their fleet is registered under EU/EEA flags, or
  - (2) at the time of opting into the tonnage tax system:
    - a) a share of their fleet is EU/EEA – flagged; and
    - b) this share shall remain unchanged or increase within a period of three years from the date of opting in the tonnage tax system; and

---

<sup>10</sup> When a beneficiary who has opted in for the tonnage tax system decides to terminate the application of the scheme - for any other reason than the disposal or loss of the ship -, he will be liable to pay the difference between the tax that would have been due under the standard corporate income tax regime and the tax payable under the tonnage tax regime for the whole period during which he benefitted of the tonnage tax regime. In case the amount of standard corporate income tax would be inferior to the corresponding tonnage tax, no refund will take place.

- c) the commercial and strategic management of the fleet is carried out from within Cyprus.
- (26) In the case where the ship owner fails - at company/Group level - to respect the requirement contained in recital (25)(2)b), any additional non-EU/EEA-flag ship will not qualify for tonnage taxation unless the EU/EEA-flagged share of the global tonnage of all ship owners eligible for tonnage tax in Cyprus has not decreased on average within the above reporting period (i.e. within a period of three years from the date of opting in the tonnage tax system).<sup>11</sup>
- (27) Owners allowed for tonnage tax based on the global tonnage of all ship owners participating in the tonnage tax system in Cyprus will be subject to an increase of 10% on the total amount of tonnage tax payable for their non- EU/EEA flagged fleet.
- (28) As regards non-EU/EEA ships forming part of a fleet, they can only be eligible for the tonnage tax system if they comply with relevant international standards and Community law requirements, in particular those relating to maritime security, safety, training and certification of seafarers, environmental performance and on-board working conditions.<sup>12</sup> Non-compliance with this requirement entails an investigation, the imposition of an administrative fine, possibly an audit and additional daily administrative penalty per day of non-compliance. Ultimately, the non-compliant ship owner may be excluded from the tonnage tax system.<sup>13</sup>

*Bareboat chartering out*

- (29) As from 1 January 2020, non-intra-group bareboat charter out agreements will be eligible for tonnage tax provided they meet the following conditions:
- (1) the transactions must be restricted to a maximum period of three years,
  - (2) the temporary excess capacity must be related to the beneficiary's own shipping services, i.e. excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation and,
  - (3) at least 50% of the tonnage taxed fleet must still be operated by the tonnage tax beneficiary.
- (30) These conditions will apply to ship owners entering the notified tonnage tax system as from 1 January 2020. With regard to ship owners with existing bareboat charter agreements they will not be subject to the above-mentioned conditions until the date of the expiration of their agreement or 31 December 2022, whichever takes place earlier. The Cypriot authorities have proposed this

---

<sup>11</sup> Reference to the global tonnage taken into consideration on a sectoral approach, (i.e of all such owners eligible for tonnage tax in Cyprus) is adopted in the scheme.

<sup>12</sup> This requirement is deemed as fulfilled by the owner for all his non-EU/EEA ships provided that they are classed with an inspection and survey organisation (classification society) approved by the European Union in accordance with the relevant Community legislation in force and duly certified as appropriate in accordance with the international Conventions regulating maritime safety, security and protection of the environment in force. In addition, the seafarers employed on these ships must be duly certified in accordance with the STCW 1995 Convention as amended.

<sup>13</sup> See sections 16, 54 and 57 of the Merchant Shipping Laws of 2010-2019.

transitional rule, because they consider that the imposition of the bareboat charter out conditions to existing agreements would be contrary to Article 24(3) of the Constitution of the Republic of Cyprus according to which “no tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect”.

*Level of tonnage tax for ship owners*

- (31) The annual tonnage tax rates for ship owners are as follows:

**Table 1 – Level of tonnage tax for ship owners**

Net Tonnage				
0-1,000	1,001-10,000	10,001-25,000	25,001-40,000	>40,000
EUR 36.50	EUR 31.03	EUR 20.08	EUR 12.78	EUR 7.30
per 100 NT	per 100 NT	per 100 NT	per 100 NT	per 100 NT

- (32) The new scheme notified by Cypriot authorities include a possible reduction of 30% of the tonnage tax in the case of a Cyprus or EU/EEA ship using mechanisms for the environmental preservation of the marine environment and the reduction of the effects of climate change. A government order will set out the eligibility criteria as well as the level of the reduction.
- (33) Cyprus and EU/EEA ships may also have their tonnage tax reduced by 75% in the case of lay-up or if the ships are rendered inoperative for a period of at least three months due to their judicial arrest, or by act of piracy or armed robbery, or by force majeure (see sections 11, 12 and 14 of the Merchant Shipping Laws 2010-2019).
- (34) Finally, ships registered under a non – EU/EEA flag which are part of a fleet will have their annual tonnage tax increased by 30% if the flag that they are entitled to fly appears in the Grey List of the Paris MOU on Port State Control and by 60% if the said flag appears on the Black List of the Paris MOU on Port State Control.

2.5.2.2. Charterers

*Definition of charterers*

- (35) Under the Cypriot law, a charterer is any legal person who is the charterer of any ship by virtue of a bareboat charter or demise charter or time charter or voyage charter.
- (36) More specifically, eligible charterers are those whose main and essential activity is the operation of chartered vessels owned by third parties, for the purpose of conducting maritime transport.

*Qualifying charterers for tonnage tax*

- (37) Charterers are eligible for tonnage taxation if:

- a) they operate ships registered under the Cyprus flag. They may participate in the tonnage tax system provided they opt in advance to participate. Once they have opted, they must remain in the system for at least ten years.
  - b) they operate ships registered under a EU/EEA flag. They may participate in the tonnage tax system provided they opt in advance to participate. Once they have opted, they must remain in the system for at least ten years.
  - c) they operate a fleet comprising ships registered under EU/EEA and non-EU/EEA flags. In that case, they may participate in the tonnage tax system provided they opt in advance to participate and that they meet the additional requirement laid down in recital (38). Once they have opted for the tonnage tax system, they must remain in the system for at least ten years.
- (38) The requirements that must be met by the charterers of a fleet comprising of ships registered under EU/EEA and non - EU/EEA flags are as follows:
- (1) at the time of opting into the tonnage tax system, 60% of their fleet is registered under EU/EEA flags, or
  - (2) at the time of opting into the tonnage tax system:
    - a) a share of their fleet is EU/EEA – flagged; and
    - b) this share shall remain unchanged or increase within a period of three years from the date of opting in the tonnage tax system.
- (39) In the case where a charterer fails, - at company/Group level - to respect the requirement contained in recital (38)(2)b), any additional non-EU/EEA flag ship will not be considered as qualifying ship unless the EU/EEA-flag share of the global tonnage of all charterers eligible for tonnage tax in Cyprus has not decreased on average within the above reporting period (i.e. within a period of three years from the date of opting in the tonnage tax system).<sup>14</sup>
- (40) Charterers allowed for tax relief based on the EU/EEA - flagged share of the global tonnage of charterers participating in the tonnage tax system in Cyprus, will be subject to an increase of 10% on the total amount of tonnage tax payable for their non- EU/EEA flagged fleet.
- (41) Non-EU/EEA ships that are part of a fleet can only be eligible for the tonnage tax system if they comply with relevant international standards and Community law requirements, in particular those relating to maritime security, safety, training and certification of seafarers, environmental performance and on-board working conditions. Non-compliance with this requirement entails an investigation, the imposition of an administrative fine, possibly an audit and additional daily administrative penalty per day of non-compliance. Ultimately, the non-compliant ship owner may be excluded from the tonnage tax system.<sup>15</sup>

---

<sup>14</sup> Reference to the global tonnage taken into consideration on a sectoral approach, (i.e of all such owners eligible for tonnage tax in Cyprus) is adopted in the scheme.

<sup>15</sup> See sections 16, 54 and 57 of the Merchant Shipping Laws of 2010-2019.



*Minimal share of the fleet in ownership*

- (42) Under the Cypriot Tonnage Tax Scheme, the beneficiary is required to operate at least 25% of the fleet benefitting of the tonnage tax himself.
- (43) Alternatively, the tonnage of the chartered in vessels may reach 90%, provided that every chartered-in ship is either: (i) registered in an EU/EEA register, or (ii) its crew management and its technical management are carried out from the territory of the EU/EEA.

*Level of tonnage tax for charterers*

- (44) The annual tonnage tax rates for charterers are determined with the same method and rates as those applicable for ship owners (See recital (31) and ff).
- (45) The charterers of Cyprus and EU/EEA ships benefit from the same tonnage reductions as those applicable to ship owners. The tonnage tax premium for non-EU/EEA ships is also applicable.

2.5.2.3. Ship managers

*Qualifying ship managers*

- (46) The ship managers providing crew and/or technical ship management services to ships registered under any flags are eligible for tonnage taxation.
- (47) They may participate in the tonnage tax system provided they opt in advance. In such a case, they must remain in the system for at least ten years.
- (48) Commercial management services are not eligible for tonnage taxation.

*Eligibility conditions for ship managers*

- (49) All qualifying ship managers must fulfil a number of general common conditions and of additional ones depending on the type of ship management they provide.

*General common conditions*

- (1) *Personnel of eligible ship management companies*: eligible ship management companies must have a fully fledged office in the Republic of Cyprus and employ sufficient personnel in number and qualifications.<sup>16</sup>
- (2) *Employment within the Community*: eligible ship management company must employ ashore EU/EEA citizens at such numbers that they represent at least 51% of the total number of employees.
- (3) *Economic link between the managed ships and the Community (section 5.2. of the 2009 Shipmanagement Guidelines)*: there is an economic link between the managed ships and the Community as at least two thirds of the tonnage is fully managed from the territory of a Member state).
- (4) *Compliance with international and Community standards (section 5.3. of the Shipmanagement Guidelines)*: qualifying ship managers providing crew management services and/or technical management services are

---

<sup>16</sup> See section 32 of the Merchant Shipping Laws of 2010-2019.

eligible for the tonnage tax system if all the ships and crews they manage comply with relevant international standards and Community law requirements, in particular those relating to maritime security, safety, training and certification of seafarers, environmental performance and on-board working conditions.<sup>17</sup> This requirement is deemed as fulfilled by a qualifying ship manager for all the EU/EEA ships under its management.

Non-compliance with this requirement entails, at a first stage, an immediate investigation, the imposition of an administrative fine and in case the noncompliance persists, a further audit and an additional daily fee, until full rectification. Ultimately, the non-compliant ship manager may be excluded from the tonnage tax system for the next 10 years.<sup>18</sup>

- (5) At the time of opting into the tonnage tax system, at least 60% of the fleet managed by the ship managers must be registered under EU/EEA flag.

If this is not the case:

- a) a share of their fleet is EU/EEA – flagged; and
- b) this share shall remain unchanged or increase within a period of three years from the date of opting in the tonnage tax system.

If a ship manager who has entered the tonnage tax system with a EU/EEA -flagged share below 60% fails, - at company/Group level -, to respect the requirement under recital (49)(5)b), any additional non-EU/EEA flag ship managed by the company will not be considered as qualifying ship, unless the EU/EEA-flagged share of the global tonnage of all ship managers participating in the tonnage tax system in Cyprus has not decreased on average within the above reporting period i.e. within a period of three years from the date of opting in the tonnage tax system.

Ship managers not meeting - at company/Group level - the EU/EEA flag share requirement and who take advantage of the global tonnage to include additional non-Community ships in the tonnage tax system are subject to an increase of 10% on the total amount of tonnage tax payable for their non-Community flagged fleet.

*Additional special conditions for ship managers performing crew management*

- (50) Ship managers performing crew management must comply with the requirements on the training of seafarers and the social conditions as set out in sections 6.1 and 6.2. of the 2009 Communication from the Commission providing guidance on State aid to shipmanagement companies.

---

<sup>17</sup> The requirement is deemed as fulfilled by a qualifying ship manager for all the non-Community ships under its management, provided that such ships are classed with an inspection and survey organisation (classification society) which is approved by the European Union in accordance with the relevant Community legislation in force and are duly certificated as appropriate in accordance with the international Conventions regulating maritime safety, security and protection of the environment which are in force at any time and are manned with seafarers who are duly certificated in accordance with the STCW 1995 Convention as amended.

<sup>18</sup> See sections 34, 54 and 57 of the Merchant Shipping Laws of 2010-2019.

*Additional special conditions for ship managers performing technical management*

- (51) Ship managers performing technical management must be certified under the ISM Code (Document of Compliance DOC) by the competent authority of the Flag States of the vessels under their management and must be mentioned as the management company on the relevant Safety Management Certificates (SMC) of those vessels.<sup>19</sup>

*Level of tonnage tax for ship managers*

- (52) The annual tonnage tax rates for ship managers are as follows:

**Table 2 – Level of tonnage tax for ship managers**

Net Tonnage				
0-1,000	1,001-10,000	10,001-25,000	25,001-40,000	>40,000
EUR 36.50	EUR 31.03	EUR 20.08	EUR 12.78	EUR 7.30
per 400 NT	per 400 NT	per 400 NT	per 400 NT	per 400 NT

- (53) The Cypriot authorities state that it is assumed that the tax-base of a ship manager amounts approx. to 25% of the tax-base that the ship owner earns from the operation of the ship.
- (54) Ships under non-EU/EEA flags that are part of a fleet under third party ship management will have their annual tonnage tax increased by 30% if the flag they are entitled to fly appears in the Grey list of the Paris MOU and by 60% if the flag appears on the Black list of the Paris MOU on Port State Control.

*2.5.3. Eligible vessels*

- (55) The Tonnage Tax scheme is only applicable in relation to eligible beneficiaries (see section 2.5.2) owning, chartering or managing a “qualifying ship” and engaging in eligible activities (see section 2.5.4). Under the Cypriot law<sup>20</sup>, a “Qualifying Ship” is a seagoing vessel, certified in accordance with the applicable international or national rules and regulations and, registered in the ship register of any member of the International Maritime Organisation (IMO)/International Labour Organisation (ILO).
- (56) Besides the vessels performing maritime transport activities such as cargo vessels and passengers ships, the notified law provides the following exhaustive list of eligible vessels:
- cable laying ships, pipe laying ships;

<sup>19</sup> See section 39 of the Merchant Shipping Laws of 2010-2019.

<sup>20</sup> See section 2 of the Merchant Shipping Laws of 2010-2019.

- ocean going dredgers, ocean going tugboats;
- crane vessels, self-propelled barges;
- research vessels;
- mobile off-shore drilling units (MODUS);
- off-shore support/servicing vessels engaged in petroleum and gas activities;
- multi-purpose, break-bulk and other types of support/servicing vessels;
- cruise ships;
- commercial yachts;
- rescue and marine assistance vessels;
- guard vessels for maritime security and environmental clean-up purposes;
- vessels for raising, repairing and dismantling windmills;
- ice management vessels;
- accommodation vessels for housing offshore workers at sea;
- any vessel which is engaged in the transportation of any United Nations (UN) or European Union (EU) humanitarian aid or is involved in any UN or EU humanitarian relief operations.

(57) According to the law, the Permanent Secretary of the Shipping Deputy Ministry may extend the above-mentioned list of eligible vessels. However, this requires prior notification to the European Commission and that every additional category of vessel: (i) requires similarly qualified staff; (ii) is subject to the same technical and safety controls and (iii) is subject to comparable international competition.

(58) The following ships are excluded:

- fishing and fish factory vessels;
- private yachts and vessels used primarily for sport or recreation;
- vessels constructed and used exclusively for inland waterway navigation;
- fixed offshore installations and floating storage units which are not used for maritime transport;
- non-ocean going tug boats and non-ocean going dredgers;
- stationary vessels employed for hotel and/or catering operations (floating hotels or restaurants);

- vessels employed mainly as gambling facilities and/or casinos (floating or cruising casinos);
- non-propelled barges;
- any other types of vessels which may be determined by a decision of the Permanent Secretary of the Shipping Deputy Ministry published in the Official Gazette of the Republic in compliance with the applicable Community policy-guidelines on State aid to maritime transport.

#### 2.5.4. *Eligible activities*

- (59) The Tonnage Tax Scheme is only applicable in relation to eligible activities on eligible vessels (see section 2.5.3). This means that the tax base for any other activities is calculated in accordance with the general corporate income tax rules. Eligible activities comprise the core activity of maritime transport as well as ancillary activities.
- (60) The Cypriot law defines “Qualifying activities” as any commercial business or activity that constitutes maritime transport or crew and technical management of qualifying ships.
- (61) The law also defines “maritime transport” as the carriage of goods or passengers by sea outside of the territorial sea of the Republic, between a Cyprus port and a foreign port or an off-shore facility, or between foreign ports, or off-shore facilities.
- (62) Moreover, the law defines “ancillary activities” as follows:
- (i) activities related to a qualifying ship under tonnage tax that have a substantial connection with the core maritime transport activities of a qualifying owner or charterer but which exclude commercial activities that form part of an operation of a port carried on for profit, or,
  - (ii) where the qualifying owner or charterer is a member of a group of companies, the activities related to such qualifying ship’s core maritime transport activities provided by another member of that group which is a tax resident of the Republic.
- (63) Moreover, the law further clarifies that ancillary activities are activities from which the revenue does not exceed 50% of the total income generated by maritime transport activities of each eligible ship.
- (64) Core maritime activities will comprise notably:
- Transport of goods and passengers by sea;
  - Crew and technical management of eligible vessels;
  - Towage activity and dredging activity, provided at least 50 % of the annual operations constitute maritime transport;
  - The main activities of vessels listed in recital (56) such as cable-laying.

(65) Ancillary activities will comprise notably:

- in relation to the carriage of passengers by sea, all hotel, catering, entertainment and retailing activities on board of a qualifying ship under tonnage tax provided that they are all consumed or used on board, including inter alia :
  - (a) the sale of alcoholic beverages, perfume and tobacco;
  - (b) the exchange of currencies for personal use;
  - (c) health, sport, beauty, spa and wellness services on board;
  - (d) rental of advertising facilities on board;
  - (e) renting out of ship premises to shop and service's operators;
  - (f) betting or gambling;
- the loading and unloading of cargo from a qualifying ship under tonnage tax operated by a qualifying owner or charterer, and the provision by the owner or charterer of facilities or means used exclusively for those purposes;
- the consolidation or breaking of cargo carried on a qualifying ship under tonnage tax operated by a qualifying owner or a qualifying charterer, immediately before or after the voyage, where the activity is not haulage-related;
- the temporary placement of cargo carried on a qualifying ship under tonnage tax operated by a qualifying owner or a qualifying charterer, on or at the dockside, where the activity is not part of a long-term storage operation;
- the operation of ticketing facilities and passenger terminals in connection with shipping activities subject to tonnage tax;
- the operation of office facilities in connection with shipping activities subject to tonnage tax;
- the carriage of passengers or cargo otherwise than on board a qualifying ship under tonnage tax operated by a qualifying owner or a qualifying charterer, where:
  - (a) there is a single contract with the customer for a journey which includes a voyage on the qualifying ship under tonnage tax; and
  - (b) the transport for the remainder of the journey is purchased or obtained by the qualifying owner or the qualifying charterer by provision which would have been made as between independent enterprises;
- administrative and insurance services directly related to the carriage of passengers or cargo, including under a single journey contract which includes a voyage on the qualifying ship under tonnage tax ;
- the provision of holidays, sold to the customer under a single contract, where :

- (a) part of the holiday is a voyage on a qualifying ship under tonnage tax operated by the qualifying owner or the qualifying charterer, and the remaining part may include all means of transportation of the customer to and from the ship by land or by sea or by air and may include any interim accommodation (“the land-based part”);
  - (b) the land-based part is purchased or obtained by the qualifying owner or the qualifying charterer under arm’s length conditions;
- the rental or provision to customers (i.e. to shippers) of containers for goods to be carried on a qualifying ship under tonnage tax operated by the qualifying owner or the qualifying charterer;
  - the rental or provision of containers to a qualifying owner or a qualifying charterer by an entity member of the same group, in relation to goods to be carried on a qualifying ship under tonnage tax operated by the qualifying owner or the qualifying charterer, provided that in all cases the entity member of the group of companies is a tax resident of the Republic;
  - the provision of excursions for passengers of a qualifying ship under tonnage tax operated by the qualifying owner or the qualifying charterer, where any cabin for the passenger remains available for exclusive use.

#### 2.5.5. *Eligible revenue for each eligible vessel*

- (66) Revenue eligible for the calculation of the tax base under the Tonnage Tax Scheme is in principle the revenue generated by core maritime transport activities (see recital (64)) and ancillary activities (see recital (65)), provided that the revenue from the latter does not exceed 50% of the total income generated by maritime transport activities of each eligible ship (see recital (63)).

#### 2.5.6. *Duration*

- (67) The notified Tonnage Tax Scheme will apply to tax periods that begin on or after 1 January 2020 and will remain in force for ten years. The Cypriot authorities will re-notify the scheme to the Commission before the end of the ten-year period.

#### 2.5.7. *Cumulation of Aid – Aid ceiling*

- (68) The Cypriot authorities have explained that, in line with Chapter 11 of the Maritime Guidelines, the aid is limited to the total amount of taxes coming from maritime transport activities. This means that the aid granted under the Tonnage Tax Scheme cannot be cumulated with other aid or de minimis aid received from other local, regional or national authorities for the same eligible costs.

#### 2.5.8. *Preferential fiscal treatment of capital gains and dividends related to shares in shipping companies as well as maritime intermediaries.*

- (69) According to the Cypriot authorities, the Tonnage Tax Scheme does not grant shipping companies any preferential treatment as compared to other companies in other sectors in relation to the taxation of capital gains and dividends. They have explained that under the general taxation rules in Cyprus neither (i) capital gains generated by the sale of ships or any movable operating assets of any company, nor (ii) capital gains generated by the sale of shares in companies, nor (iii) profit

dividends paid to shareholders of companies, are subject to any form of income taxation in Cyprus (i.e. independently from the sector concerned).

#### 2.5.9. *Tax liabilities when opting-in to the tonnage tax scheme*

- (70) The Cypriot authorities have explained that there is no system of accelerated depreciation of ships in Cyprus. The Income Tax Law of 2002 as amended, and the relevant policy practice and administrative practice determine that depreciation on new vessels is applied with a fixed rate (8%) and depreciation on used vessels is determined in accordance with the remaining useful economic life of the vessel on the basis of its class certificate.

### 2.6. **Seafarer Scheme**

- (71) Under the notified Seafarer Scheme,<sup>21</sup> Cyprus will apply a zero rate income tax for crew members of qualifying Cyprus and EU/EEA ships engaged in a qualifying activity. In the absence of the Seafarer Scheme, the eligible seafarers would be subject to tax in accordance with the provisions of Income tax law (Law 118(I)/2002 as amended).

#### 2.6.1. *Scope of the scheme*

- (72) The notified Seafarer Scheme foresees that no tax will be charged on the income or other related benefits from the employment of eligible seafarers who are liable to income tax in Cyprus and who are employed on board of an EU/EEA eligible vessel engaged in maritime transport. No exemption/reduced rates for social contributions is foreseen.
- (73) The law defines the eligible seafarers as:
- (a) the seafarers who are citizens of a Member State in the case they are employed on-board of vessels (including ro-ro ferries) providing scheduled passenger services between ports of Member State;
  - (b) all seafarers who are citizens of a Member State or a non-Member State in all other cases.

- (74) The scheme applies only to seafarers employed on eligible vessels (see section 2.5.3) engaged in eligible activities (see section 2.5.4).

#### 2.6.2. *Duration*

- (75) The Seafarer Scheme has a limited duration of ten years as it is dealt with in parallel to the Tonnage Tax Scheme within the context of the Law of 2010.
- (76) It will apply to tax periods beginning on or after 1 January 2020 and remain in force for ten years. Any eventual prolongation of the notified scheme will be re-notified to the Commission before the end of the ten-year period. Any eventual substantial modification during the ten-year period will be brought to the attention of the Commission to assess whether it needs to be notified.

---

<sup>21</sup> See section 55 of the Merchant Shipping Laws of 2010-2019.



### 2.6.3. *Aid cumulation/Aid ceiling*

- (77) The beneficiaries of the Seafarer Scheme do not benefit from other aid measures than the income tax exemption and will not therefore obtain a higher benefit than the full exemption from income tax.

## 3. ASSESSMENT OF THE TONNAGE TAX SCHEME

### 3.1. Existence of aid

- (78) The Commission maintains its State aid assessment in recitals 60-67 of the Decision of 2010, which concluded that the scheme under examination constitutes State aid within the meaning of Article 107(1) TFEU.
- (79) 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".
- (80) 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.
- (81) In this respect, the Commission first notes that Cyprus accepts the State aid qualification under Article 107(1) TFEU of the notified measure.
- (82) Furthermore, the Tonnage Tax Scheme will provide companies commercially active in the field of maritime transport with the possibility to opt for an advantageous taxation compared to all other companies taxable in Cyprus. Therefore, the Commission considers that Cyprus will forego fiscal revenue and that, therefore, the Tonnage Tax Scheme involves State resources. Moreover, since the measure is implemented through national legislation, it is imputable to Cyprus. Also, the measure exonerates the commercially active companies concerned from a fiscal levy which they normally would have to pay and, thus, involves an advantage.
- (83) Moreover, the measure is selective since (i) companies normally have to pay corporate income tax (reference framework), (ii) the Tonnage Tax Scheme is specifically applicable to companies / activities in the maritime transport sector (derogation from reference framework) and (iii) there is no justification apparent or invoked by Cyprus by the nature or general scheme of the fiscal reference framework. Finally, in view of other possible means of transport and the global

scale of maritime transport, the Tonnage Tax Scheme is liable to distort competition and affects trade within the liberalised European shipping market.

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

### **3.2. Legality of the aid**

- (85) The Commission takes note of the commitment of the Cypriot authorities to respect the standstill obligation laid down in Article 108(3) TFEU and not to approve the prolongation until the Commission adopts a decision authorising the notified measure.

### **3.3. Compatibility of the aid**

- (86) 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.
- (87) The Commission has issued guidelines for the application of Article 107(3)(c) TFEU with regard to State aid to maritime transport ("Maritime Guidelines").<sup>22</sup> Some of these conditions have been refined by the Commission in its case practice to ensure that the measures are in line with the general objectives of the Maritime Guidelines. Aid in favour of the maritime sector must therefore be examined in the light of these guidelines, as interpreted in the Commission's decisional practice. The aid in favour of shipmanagement companies will also be examined in the light of the Communication of the Commission providing guidance on State aid to shipmanagement companies ("Shipmanagement Guidelines").<sup>23</sup>
- (88) The Commission considers that, taking into account the notified amendments, the notified Tonnage Tax Scheme is in line with the Maritime Guidelines and the Shipmanagement Guidelines. This conclusion is based on the following findings:

#### *3.3.1. Objectives of the scheme*

- (89) According to their Chapter 2.2, the Maritime Guidelines are intended to clarify what State aid schemes may be introduced in order to support the Union maritime interest, with the aim of: improving a safe, efficient, secure and environment friendly maritime transport, 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, maintaining and improving maritime know-how and protecting and promoting employment for European seafarers, and contributing to the promotion of new services in the field of short sea shipping following the White Paper on Community transport policy.

---

<sup>22</sup> Commission Communication C (2004) 43 – Community Guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3.

<sup>23</sup> OJ C 132, 11.6.2009, p.6-9.

- (90) The Commission notes that the objectives of the Tonnage Tax Scheme as described in section 2.3 above are in line with the objectives as described in 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.
- (91) The compatibility condition described in recital (86) is therefore fulfilled.

### 3.3.2. *Eligible beneficiaries*

#### Rule

- (92) Pursuant to the Maritime Guidelines, ship-owners and ship management companies (section 3.1 Maritime Guidelines) can benefit from taxation based on their tonnage. For ship managers additional requirements apply, and only technical and crew managers are eligible. Moreover, these two types of ship managers need to fulfil the following additional requirements as laid down in the Shipmanagement Guidelines.
- (93) With regards to ship managers, they need to fulfil the following requirements laid down in the Shipmanagement Guidelines:
- Contribution to the economy and employment within the Community – The economic link with the Community is proven by the fact that ship management is carried out in the territory of one or more Member States and that mainly Community nationals are employed in land-based activities or on ships.
  - Economic link between the managed ships and the Community – Ship management companies may benefit from State aid with respect to ships entirely managed from the territory of the Community, irrespective of whether management is provided in-house or whether it is partially or totally outsourced to one or more ship management companies.

However, since ship management companies do not have full control of their customers, the above requirement is deemed to be fulfilled if at least two thirds of the tonnage of the managed ships is managed from the territory of the Community. Tonnage in excess of that percentage which is not entirely managed from the Community is not eligible.

- Compliance with international and Community standards – Ship management companies are eligible if all the ships and crews they manage comply with international standards and Community law requirements are fulfilled, in particular those relating to security, safety, training and certification of seafarers, environmental performance and on-board working conditions.
- Flag-share requirement (flag link) – The flag-share requirement, as laid down in the eighth paragraph of section 3.1 of the Guidelines applies to ship management companies. The share of EU/EEA flags to be considered as the benchmark is that of the day on which this Communication is published in the

Official Journal of the European Union. For new companies the benchmark is to be calculated one year after the date on which they started activity.

- (94) In addition, crew managers also need to fulfil the following requirements:
- Training of seafarers – Crew managers are eligible for State aid as long as all seafarers working on-board managed ships are educated, trained and hold a certificate of competency in accordance with the Convention of the International Maritime Organisation on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), and have successfully completed training for personal safety on board ship. Moreover, crew managers are eligible if they fulfil the STCW and Community law requirements regarding responsibilities of companies.
  - Social conditions – In order to be eligible for State aid, crew managers must ensure that on all managed ships the provisions of the Maritime Labour Convention, 2006, of the International Labour Organisation (MLC), are fully implemented by the seafarer's employer, be it the ship-owner or the ship management companies. The ship management companies must ensure, in particular, that the provisions of the MLC concerning the seafarer's employment agreement, ship's loss or foundering, medical care, ship owner's liability including payment of wages in case of accident or sickness, and repatriation are properly applied. Crew managers must also ensure that the international standards regarding hours of work and hours of rest provided for by the MLC are fully complied with. Finally, in order to be eligible, crew managers must also provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard.
- (95) Ship managers providing mere commercial ship management services cannot be considered as eligible undertakings.

#### Assessment

- (96) The Commission notes that, in order to benefit from the notified Cypriot Tonnage Tax scheme, the taxpayer needs to operate ships engaged in transport of goods and passenger in international traffic by sea or engaged in other eligible activities (see recitals (64) and (65)).
- (97) The Commission has no objection as regards the type of companies, liable to corporate tax in Cyprus, which are identified as beneficiaries of the tonnage tax scheme. Indeed, the Maritime Guidelines expressly provide for ship owners to be eligible for tonnage tax<sup>24</sup>, while the Shipmanagement Guidelines extend the application of section 3.1. of the Maritime Guidelines to joint or separate crew and technical management of ships<sup>25</sup>. As far as chartered-in vessels are concerned, the conditions foreseen in the notified Tonnage Tax Scheme are discussed in section 3.3.6 below.

---

<sup>24</sup> See section 3.1., fourth paragraph of the Maritime Guidelines.

<sup>25</sup> See section 4 of the Shipmanagement Guidelines.

- (98) The Commission takes note that under the Cypriot Tonnage Tax scheme, all ship managers of eligible vessels who provide crew and/or technical management services may opt to participate in the tonnage tax system. A ship manager who provides commercial management services is not eligible for tonnage taxation.
- (99) The Commission takes note of the fact that in order to benefit from tonnage taxation, eligible ship management companies must have a fully-fledged office in Cyprus and employ sufficient personnel in number and qualifications. In addition, the ship management companies should employ ashore EU/EEA citizens representing at least 51 % of the total number of employees. Therefore, the Commission considers that the condition that the ship management companies should contribute to the EU economy and employment is fulfilled.<sup>26</sup>
- (100) Furthermore, the Tonnage Tax Scheme contains explicit requirement that there must be an economic link between the managed ships and the EU/EEA, whereby the qualifying ships must be entirely managed from the territory of the EU/EEA. This requirement will be deemed fulfilled as long as at least 2/3 of the total tonnage of the ship manager's fleet in a given fiscal year is managed from the EU/EEA, in compliance with section 5.2 of the Shipmanagement Guidelines.
- (101) The Commission is also of the opinion that the obligations, contained in the Tonnage Tax Scheme, for the ship managers to comply with all relevant international and EU standards relating to security, safety, training and certification of seafarers, environmental performance and on-board working conditions is in conformity with section 5.3 of the Shipmanagement Guidelines.
- (102) The Commission considers that the flag link requirement for ship managers, (the same as for ship owners and charterers) is in line with section 5.4 of the Shipmanagement Guidelines.
- (103) As far as the training requirements and the social conditions for crew managers contained in the tonnage tax scheme are concerned, the Commission is of the view that they fully comply with section 6 of the Shipmanagement Guidelines.
- (104) In view of the above, the Commission concludes that the requirements contained in the tonnage tax scheme in relation to the ship management companies are in line with the 2009 Shipmanagement Guidelines.

### 3.3.3. *Eligible vessels*

- (105) The vessels eligible under the tonnage tax scheme are described in section 2.5.3.

#### Rules

- (106) Only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. Maritime transport is defined as the transport of goods and persons by sea between ports, as well as between a port and an offshore installation/structure<sup>27</sup>. Vessels engaged in activities that are not maritime transport, such as the activities carried out by fishing boats, exploitation of construction sites, and inland transport of containers, are not eligible.

---

<sup>26</sup> See section 5.1 of the Shipmanagement Guidelines.

<sup>27</sup> See section 2 of the Maritime Guidelines.

- (107) In line with the Maritime Guidelines, activities carried out on towing and dredging vessels are only eligible to benefit from the tonnage tax scheme provided that at least 50% of the annual operations of the vessel's activities constitute maritime transport and only in respect of such maritime transport activities. Eligible tugboats and dredgers are only those registered in an EU/EEA State. Moreover, separate accounting for maritime transport activities and other (non-eligible) activities is required.
- (108) Furthermore, the Commission has decided that certain activities, even if they do not fall within the definition of maritime transport contained in the Maritime Guidelines, can be subject by analogy with maritime transport to the provisions of the Maritime Guidelines. This is inter alia the case for operation of vessels specialised in servicing off-shore activities, including carrying personnel, material and equipment or performing installation and maintaining activities (e.g. cable laying, pipe-laying, research and crane vessels) or vessels providing rescue at sea and maritime assistance, provided that they require similarly qualified staff and are similarly exposed to international competition.

#### Assessment

- (109) The Commission notes that the eligible vessels include vessels operating maritime transport activities such as cargo vessels and passenger ships, cruise ships and commercial yachts.
- (110) Moreover, the Cypriot authorities include vessels that can be subject by analogy with maritime transport to the provisions of the Maritime Guidelines.
- (111) These vessels include: cable laying ships;<sup>28</sup> pipe laying ships;<sup>29</sup> crane vessels;<sup>30</sup> research vessels;<sup>31</sup> self-propelled barges; mobile off-shore drilling units; off-shore support/servicing vessels engaged in petroleum and gas activities; multi-purpose, break-bulk and other types of support/servicing vessels; rescue and marine assistance vessels; guard vessels for maritime security and environmental clean-up purposes;<sup>32</sup> vessels for raising, dismantling windmills;<sup>33</sup> ice management vessels;<sup>34</sup> accommodation vessels<sup>35</sup> and vessels engaged in the transportation of UN or EU humanitarian aid.
- (112) The Cypriot authorities explained that the activities of the said vessels are comparable to maritime transport activities in terms of know-how, manning, technical and safety controls and international competition: the seafarers employed on board of such vessels are subject to the international regulatory regime regarding the qualification of seafarers, namely the International Convention on Standards of Training, Certification and Watchkeeping for

---

<sup>28</sup> Commission decision of 6 April 2018 in State aid case SA.48929 (2018/N) – Portugal Tonnage tax and Seafarer Scheme.

<sup>29</sup> op.cit.

<sup>30</sup> op.cit.

<sup>31</sup> op.cit.

<sup>32</sup> Commission decision of 12 October 2018 in State aid case SA.45300 (2016/N) – Denmark - Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels)

<sup>33</sup> op.cit.

<sup>34</sup> op.cit.

<sup>35</sup> op.cit.

Seafarers of 1978/1995 (STCW Convention) as well as the Maritime labour Convention of 2006; these vessels are sea going vessels subject to technical and safety control comparable to those applicable to vessels operating maritime transport and, finally, they are subject to international competition due to the fact that they operate worldwide.

- (113) Finally, the Commission notes that the scheme includes towage and dredging vessels for which the eligibility conditions of recital (107) are met, and are thus in line with the Maritime Guidelines.

#### Conclusion

- (114) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

#### 3.3.4. *Eligible revenue for each eligible vessel*

- (115) The Commission's decision-making practice distinguishes between:

- Core revenues from maritime transport activities: core revenues are revenues from ticket sales or fees for cargo transportation and, in case of passenger transportation, letting of cabins in the context of maritime voyage and sale of food and drinks for immediate consumption on board. These revenues are directly eligible for a tonnage taxation scheme.
- Revenues from ancillary activities, which are frequently provided on board (especially in passenger transport) and which do not threaten to excessively distort competition with land-based providers who are taxed according to the general rules of taxation. Moreover, activities are considered ancillary if their revenues do not exceed 50% of the total gross revenues from the operation of a given vessel. Examples of ancillary activities would be the rental of advertising billboards on-board; the sale of goods and the provision of services customarily offered on passenger ships, including spa, hairdresser services, gambling and other entertainment services; the renting out of ship premises to shop and services' operators, the intermediation in provision of local excursions, etc. In addition, land-based services, such as local excursions or road part transportation included in the overall service package must be bought-in either from unrelated companies or at arm's length price from the same group's entities, which are subject to usual income taxation.
- Contracts non-customary and unrelated to maritime transport: such as acquisition of cars, livestock, property, are ineligible revenues (neither as core nor as ancillary revenues).

- (116) The Commission agrees that the notified scheme which distinguishes between core and ancillary activities is in line with the requirements listed above. The Commission also agrees that, even if these are not exhaustive lists, activities listed in recital (64) would correspond to typically genuine core maritime activities and that activities listed in recital (65) would correspond to typical ancillary activities.

- (117) The Commission understands that only ancillary activities as defined in recital (115) will benefit from tonnage tax and therefore that this condition is fulfilled.

### 3.3.5. *Ring-fencing measures*

- (118) In order to enable the individual monitoring of revenues, expenses and losses from eligible and non-eligible activities and vessels, the companies opting for the Tonnage Tax Scheme are required to separate accounts accordingly.
- (119) The Commission notes that the Cypriot law<sup>36</sup> requires beneficiaries of the tonnage tax earning revenues from both eligible and non-eligible activities to organise their accounts in such a way to determine to separate accounting of the eligible and non-eligible activities.
- (120) In addition, Cyprus imposed the so called “arms’ length principle” upon beneficiaries of the tonnage taxation in respect of certain transactions to ensure that profits from non-eligible activities are not sheltered within the tonnage tax.
- (121) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

### 3.3.6. *Time and voyage charter-in*

- (122) Time and voyage charterers are providers of maritime transport services and are covered by the Maritime Guidelines. However, such companies may only benefit from tonnage taxation if they contribute to an objective of the Maritime Guidelines, notably the development of the EEA flag or the preservation of EU know-how or a combination of the two.
- (123) This is the case, for instance, if (i) in addition to time/voyage chartered vessels equipped and manned by other companies, the tonnage tax beneficiary has in its fleet also vessels for which it ensures crew and technical management and provided such vessels constitute at least 20% of the total tonnage taxed fleet; (ii) the share of the vessels that are both non-EEA and time/voyage chartered does not exceed 75% of the beneficiary's fleet under tonnage tax, or (iii) at least 25% of the beneficiary's entire fleet is EEA-flagged. In all mentioned cases, the beneficiary stays under the separate obligation to maintain/increase the share of EEA-flagged tonnage of its own fleet (owned vessels or chartered in on a bareboat basis).
- (124) Under the Cypriot Tonnage Tax Scheme (see recital (42)), maritime transport activities carried out with chartered-in vessels are eligible under the condition that the beneficiary operates at least 25% of the fleet under tonnage tax himself (crew and technical management).
- (125) Alternatively, the tonnage of the chartered-in vessels may reach 90 %, provided that every chartered-in ship is either:
  - (i) registered in an EU or EEA maritime register, or
  - (ii) its crew management and its technical management are carried out from the territory of the EU or the EEA.

---

<sup>36</sup> See section 44 of the Merchant Shipping Laws of 2010-2019.



(126) The Commission notes that the requirement of the Tonnage Tax scheme in relation to the percentage of the fleet that must be operated by the beneficiary himself (25%) is stricter than the limitation of 20% mentioned in recital (123). The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

### 3.3.7. *Bareboat charter-out (BBO)*

(127) In principle, BBO is not a maritime transport activity, but rather a leasing activity, as the main risk for the transport rests with the lessee and not the lessor. Unfair competition to the detriment of genuine leasing companies which do not benefit from tonnage tax but which come under the normal corporate tax has to be avoided. Therefore, BBO activities may only be allowed for tonnage tax to address a situation of temporary (maximum 3 years) overcapacity.

(128) In order to be eligible for tonnage taxation, the Commission has considered in its decision practice that:

- bareboat chartering out contracts must be restricted to a maximum period of three years;
- temporary excess capacity must be related to the beneficiary's own shipping services, i.e. excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation; and
- at least 50% of the tonnage taxed fleet must still be operated by the tonnage tax beneficiary. EEA intra-group BBO transactions are eligible without any limitations.

(129) Intra-group bareboat charter activities are always eligible without restrictions, since the beneficiary as a group performs maritime transport through an intra-group leasing structure.

(130) The Commission notes that as from 1 January 2020, non-intra-group bareboat charter out agreements will be eligible for tonnage tax provided they meet the conditions set out above in recital (128).

(131) These conditions will apply to ship owners entering the notified tonnage tax system as from 1 January 2020. With regard to ship owners with existing bareboat charter out agreements, they will not be subject to the above-mentioned conditions until the date of the expiration of their agreement or 31 December 2022, whichever takes place earlier.

(132) In this regard, the Commission takes note of the provisions of the Constitution of Cyprus on retrospective taxation, the significance of bareboat chartering out agreements for Cyprus as well as the limited duration of the transitional period. On that basis, and taking into account that ship owners with existing bareboat charter out agreements concluded them under the previously approved tonnage taxation scheme, the Commission does not object to the implementation of the transitional period as described above in recital (131).

(133) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

### 3.3.8. Level of Tonnage Tax

- (134) According to section 3.1 of the Maritime Guidelines *"the Commission will only approve schemes giving rise to a tax-load for the same tonnage fairly in line with the schemes already approved"*.
- (135) The Commission notes that the method of calculation of the Cyprus tonnage tax rate differs from the one applied by the majority of the Member States. Most of the Member States establish the so-called "notional profit" for the different categories of ships based on their tonnage, on which they then apply the national corporate tax. Malta also uses a method of calculation similar to the one of Cyprus.
- (136) The Commission accepts the possibility to use different methodologies for calculating the tonnage tax provided that the final tax burden for a given ship does not fall below what has been accepted by the Commission so far.
- (137) The tonnage tax rates applicable in Cyprus compared to those applicable in other Member States (in euros) are set out in the table below. The Commission notes that the level of taxation for Cyprus companies is in line with the schemes already approved.

**Table 3 - Tonnage tax rates in schemes previously approved by the Commission and the Cypriot Tonnage Tax Scheme.**

Tonnage	Cyprus	Malta	Slovenia	Netherlands	Croatia
1 – 1000	0.80	0.78	0.9	0.908	0.55
1001 – 10 000	0.68	0.22	0.67	0.681	0.47
10 001 – 20 000	0.44	0.10	0.4	0.454	0.31
20 001 – 25 000	0.44	0.07	0.4	0.454	0.31
25 001 – 40 000	0.28	0.06	0.2	0.227	0.19
40 001 – 50 000	0.16	0.05	0.2	0.227	0.11
50 001 – 80 000	0.16	0.04	0.2	0.05	0.11
80 001 >	0.16	0.04	0.2	0.05	0.11

- (138) The Cyprus scheme includes a reduction of 30% of the tonnage tax in the case of a Cyprus or EU/EEA ship using mechanisms for the environmental preservation of the marine environment and the reduction of the effects of climate change. The Commission understands that this reduction will be conditional to ships going beyond the relevant EU environmental standards.
- (139) Based on the tonnage tax rates as described above (for details see above section 2.5.2.1) and the calculations carried out by the Commission, it appears that the tonnage tax rates in Cyprus are fairly in line with what has been accepted by the

Commission so far. The Commission therefore concludes that the Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

#### *3.3.9. Flag entry level*

- (140) The objective of the Maritime Guidelines is to enhance the competitiveness of the European shipping sector and the EU/EEA flag. The Commission therefore considers desirable that Member States introduce an entry floor as regards the EU/EEA flag link for shipping companies entering the Tonnage Tax scheme.
- (141) The Commission notes that at the time of opting in to participate in the tonnage tax system, at least one ship of the fleet of the beneficiary must be EU/EEA flagged.

#### *3.3.10. National flagging restrictions*

- (142) National flagging restrictions, according to which the benefits of the Tonnage Tax Scheme are conditional on a certain level of national (and not EEA) flagging, infringe internal market rules in a manner indissolubly linked to the assessment of the compatibility of that aid measure.<sup>37</sup>
- (143) The Commission notes that the notified scheme will apply to EU/EEA flagged vessels and that there is therefore no national flagging restrictions.

#### *3.3.11. Aid cumulation /Aid ceiling*

- (144) 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.
- (145) The Commission notes that the Cypriot authorities have confirmed that the beneficiaries of the tonnage tax will not benefit from any other scheme during the relevant period and that the total amount of aid to the shipping companies will not be higher than the full exemption from taxes and social contributions of shipping activities and seafarers.
- (146) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

#### *3.3.12. Preferential fiscal treatment of capital gains and dividends related to shares in shipping companies as well as maritime intermediaries.*

- (147) As set out in section 3.1 of the Maritime Guidelines the fiscal advantages must be restricted to shipping activities and normal tax levels should be preserved for the remuneration of shareholders and directors. Therefore, income related to dividends paid by shipping companies and capital gains arising from the sale of shares in shipping companies do not constitute income arising from shipping activities, but rather income arising for the shareholders from their investment

---

<sup>37</sup> See judgment in Case C-598/17 *A-Fonds* EU:C:2019:352.

activities. There is no compatibility basis which would justify preferential tax treatment of income from such investment activities.

- (148) The Commission notes that the Cypriot Tonnage Tax Scheme does not grant shipping companies any preferential treatment as compared to other companies in other sectors in relation to the taxation of capital gains and dividends. Indeed, under the general taxation rules in Cyprus neither (i) capital gains generated by the sale of ships or any movable operating assets of any company, nor (ii) capital gains generated by the sale of shares in companies, nor (iii) profit dividends paid to shareholders of companies, are subject to any form of income taxation in Cyprus (i.e. independently from the sector concerned).
- (149) Considering the above, the Commission concludes that the Tonnage Tax Scheme regarding the taxation of dividends is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

#### *3.3.13. Tax liabilities when opting-in to the Tonnage tax scheme*

- (150) Outside the Tonnage Tax scheme, a ship may benefit from accelerated depreciation which reduces the tax base for the income tax of the related shipping company. Such accelerated depreciation does not exist under the Tonnage Tax scheme as there is no taxation based on revenues. Therefore, when opting-in to the Tonnage Tax scheme such tax liabilities would have to be settled or they would constitute a separate State aid measure which would be acceptable only within the limits of the aid ceiling fixed in the Maritime Guidelines.
- (151) The Cypriot authorities have explained that there is no system of accelerated depreciation of ships in Cyprus. The Income Tax Law of 2002 as amended, and the relevant policy practice and administrative practice determine that depreciation on new vessels is applied with a fixed rate (8%) and depreciation on used vessels is determined in accordance with the remaining useful economic life of the vessel on the basis of its class certificate.
- (152) Considering the above, the Commission considers that if a company were to opt-in to the Cypriot Tonnage Tax Scheme it would not comprise an additional State aid measure, as the Cypriot tax system does not allow any special depreciation rules for ships. The Tonnage Tax Scheme is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

#### *3.3.14. Duration & evaluation*

- (153) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration.<sup>38</sup> Schemes must be subject to a regular review of their effectiveness and impact.
- (154) The notified Tonnage Tax Scheme will remain in force for ten years from 1 January 2020 until 31 December 2029, subject to the adoption of the amendments. The present Decision is directly applicable in the Cypriot national law.

---

<sup>38</sup> Case C-67/09 P *Nuova Agricast*, EU:C:2010:607, para. 80.

- (155) The Commission notes that beneficiaries for tonnage taxation have generally the right/obligation to remain in the system for ten years. The Commission clarifies that no beneficiary can benefit from the notified scheme after 31 December 2029.
- (156) Pursuant to section 12 of the Maritime Guidelines, the Commission further notes that an evaluation of the regime will be carried out after three years as well as a further assessment every three years in the period concerned in order to verify that the flag share requirements are respected by the beneficiaries.

#### *3.3.15. Conclusion (on compatibility)*

- (157) Based on the foregoing, the Commission considers that the Tonnage Tax Scheme fulfils all the necessary criteria under the Maritime Guidelines, the Shipmanagement Guidelines and its decisional practice. Therefore, the Commission concludes that the Tonnage Tax Scheme is a State aid measure compatible with the internal market pursuant to Article 107(3)(c) TFEU.

### **4. ASSESSMENT OF THE SEAFARER SCHEME**

#### **4.1. Existence of aid**

- (158) In this respect, the Commission first of all notes that Cyprus accepts the State aid qualification under Article 107(1) TFEU of the notified measure.
- (159) The exemption from income taxation in respect of qualifying seafarers constitute foregone State revenue and thus involve State resources. Moreover, since the measure is implemented through national legislation, it is imputable to Cyprus. For the same reasons as in the case of the Tonnage Tax Scheme, the Seafarer Scheme grants a selective advantage to the shipping sector, which is liable to distort competition and affects trade within the liberalised European shipping market.
- (160) It follows that the measure involves State aid in the sense of Article 107(1) TFEU.

#### **4.2. Legality of the aid**

- (161) The Commission takes note of the commitment of the Cyprus authorities to respect the stand-still obligation laid down in Article 108(3) TFEU and not to approve the draft legislation until the Commission reaches a decision authorising the notified measure.

#### **4.3. Compatibility**

- (162) 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.
- (163) As outlined above, State aid in favour of the maritime sector must be examined in the light of the Maritime Guidelines.

#### 4.3.1. Objectives of the scheme

- (164) The 2004 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,
  - maintaining and improving maritime know-how and protecting and promoting employment for European seafarers.
- (165) The Commission notes that the objectives of the Seafarer Scheme as described in section 2.3 above are in line with the objectives as described in 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.
- (166) The Seafarer Scheme thus is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

#### 4.3.2. Scope of the scheme

- (167) Seafarer schemes in the sense of the Maritime Guidelines may concern either:
- 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.
- (168) As described in section 2.6.1 above, the Seafarer Scheme comprises a total exemption from the obligation to pay personal income tax. This exemption is in line with the requirements of the Maritime Guidelines.
- (169) The Seafarer Scheme thus is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

#### 4.3.3. Eligible seafarers – General rule

- (170) 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."*

(171) Pursuant to Cypriot law,<sup>39</sup> where vessels are providing scheduled passenger services between ports of the Community, only seafarers having the nationality of an EU/EEA Member State are eligible to benefit from the scheme. In all other cases, the exemptions apply to all seafarers to the extent they are liable to personal income taxation.

(172) The Commission therefore concludes that the Seafarer Scheme only applies to Community seafarers in the sense of the Maritime Guidelines.

#### *4.3.4. Eligible seafarers – Towage and dredging vessels / activities*

(173) 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 time.

(174) Based on the fact that exemption from both personal income taxation only apply to seafarers employed on vessels which are eligible under the Tonnage Tax Scheme (see above recital (74)), the restrictions of the Tonnage Tax Scheme as regards towage and dredging activities apply equally to the Seafarer Scheme. It follows that seafarers employed on towage and dredging vessels are eligible, provided that at least 50% of the annual operations of the vessel's activities constitute maritime transport.

#### *4.3.5. Eligible vessels*

(175) Only genuine maritime transport activities are eligible for aid under the Maritime Guidelines (see section 2.5.4).

(176) Based on the fact that exemption from personal income taxation only apply to seafarers employed on vessels which are eligible under the Tonnage Tax Scheme (see above recital (74)), the restrictions of the Tonnage Tax Scheme as regards eligible vessels apply equally to the Seafarer Scheme. It follows that the eligible vessels under the Seafarer Scheme are in line with the requirements of the Maritime Guidelines.

#### *4.3.6. National flagging restrictions*

(177) National flagging restrictions, according to which the benefits of the Seafarer scheme are conditional on a certain level of national (and not EEA) flagging,

---

<sup>39</sup> See section 55 of the Merchant Shipping Laws of 2010-2019.

infringe internal market rules in a manner indissolubly linked to the assessment of the compatibility of that aid measure.<sup>40</sup>

- (178) Pursuant to Cypriot law, the exemption from personal income taxation applies to seafarers employed on Cyprus and EU/EEA-flagged ships. For this reason, the Commission considers that there is no infringement of internal market rules in that regard and that the conditions of the Maritime Guidelines on EEA flagging are complied with.

#### 4.3.7. *Aid cumulation / aid ceiling*

- (179) 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.
- (180) In the same way as for the Tonnage Tax Scheme, the Cypriot authorities confirmed that companies opting for the Seafarer Scheme 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 income tax.
- (181) Therefore, the Commission concludes that the requirements relating to aid cumulation / aid ceiling are fulfilled.

#### 4.3.8. *Duration*

- (182) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration.<sup>41</sup> Schemes must be subject to a regular review of their effectiveness and impact.
- (183) The notified Seafarer Scheme will remain in force for ten years from 1 January 2020 until 31 December 2029, subject to the adoption of the amendments. The Commission clarifies that no beneficiary can benefit from the notified scheme after 31 December 2029.
- (184) The present Decision is directly applicable in the Cypriot national law.

#### 4.3.9. *Conclusion*

- (185) Based on the foregoing, the Commission considers that the Seafarer Scheme fulfils all the necessary criteria under the Maritime Guidelines and its decisional practice. Therefore, the Commission concludes that the Seafarer Scheme constitutes a State aid measure compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## 5. CONCLUSION

The Commission concludes that the Tonnage Tax Scheme and 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.

---

<sup>40</sup> See judgment in Case C-598/17 *A-Fonds* EU:C:2019:352.

<sup>41</sup> Case C-67/09 P *Nuova Agricast* EU:C:2010:607, para. 80.



## 6. DECISION

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, Cyprus exceptionally accepts the adoption and notification of the decision in English.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Executive Vice-President

