



EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.46380 (2016/N) – Poland – Introduction of the income tax exemption for seafarers

Dear Sir,

1. PROCEDURE

- (1) On 6 September 2016, Poland notified the Commission of the planned introduction of income tax exemption scheme for seafarers. The case was registered in the register of notified aid under number SA.46380 (2016/N).
- (2) The Commission considered the notification incomplete and therefore, by letters dated 25 October 2016 and 8 February 2017, requested additional information. By letters dated 27 December 2016 and 22 February 2017, Poland provided the requested information.
- (3) Between April 2017 and October 2018 the Commission sought clarification on further issues, in particular on the eligible vessels including the flagging requirement. On 12 December 2017, the Commission services and the Polish authorities had a meeting to discuss the scheme.
- (4) By email dated 9 November 2018, the Commission proposed Poland to re-classify the case to the register of pre-notified cases. Poland agreed to this proposal by email dated 23 November 2018. The Commission transferred the case to the register of pre-notified cases on the same day.

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- (5) By letter dated 21 October 2019, Poland informed the Commission that it intends to extend the scheme's scope to EU/EEA flagged seagoing vessels and asked to transfer the case to the register of notified aid. The Commission transferred back the case to the register of notified aid on the same day.

2. DESCRIPTION

2.1. Objective of the scheme

- (6) The scheme concerns an income tax exemption for seafarers working on EU or EEA-flagged ships. Its aim is to increase the competitiveness of shipping-companies operating EU or EEA-flagged ships compared with operators of ships flying a flag of convenience. Reducing maritime labour costs related to EU/EEA-flagged ships is intended to help counter the adverse trend towards deregistration of ships from the Polish shipping register towards flags of convenience and hence to address the fierce global competition brought about by low-tax countries.

2.2. Eligibility criteria and beneficiaries

- (7) Eligibility is to be confined to seafarers who are citizens of EU/EEA Member States and who work on EU/EEA-flagged seagoing vessels carrying freight or passengers in international shipping for at least 183 days per tax year and are liable to pay income tax in Poland.
- (8) International shipping is defined as sea voyages between:
- Polish ports and foreign ports, including between Polish ports, provided that voyages between Polish ports are part of sea voyages to foreign ports, or
 - Polish ports and destinations lying outside Poland's sea border,
 - foreign ports,
 - destinations lying outside Poland's sea border,
 - Foreign ports and destinations lying outside Poland's sea border.
- (9) In order to benefit from the tax exemption, seafarers must submit a certificate to the tax authorities showing that they worked for a shipping company who is eligible for aid under the notified aid scheme. The shipping company must provide seafarers with a certificate showing, among others, the number of days they worked on an EU/EEA-flagged seagoing vessel carrying freight or passengers in international shipping.
- (10) The following are to be excluded from the application of the scheme
- (a) Tugs which spend less than 50% of their actual working time each year carrying freight or passengers by sea,
 - (b) Dredgers which spend less than 50% of their actual working time each year carrying out maritime transport,

- (c) Operators whose activities are limited to chartering vessels for a specific period of time or a specific voyage.

Seafarers working on such vessels will not be able to benefit from the scheme.

2.3 Duration of the scheme and budget

- (11) The scheme will enter into force after its approval by the Commission on 1 January 2020 and will remain in force for ten years until 31 December 2029.
- (12) The amount of aid granted under the scheme is estimated at around PLN 435 000 (around EUR 104 000¹) per year and PLN 4.35 million (i.e. EUR 1.04 million) over the period of ten years.

2.4 National legal basis

- (13) The notified measure is to be implemented through the following legal instruments:
 - (a) Maritime Labour Act of 5th August 2015, Articles 85, 118 and 132²,
 - (b) Act of 9 August 2019 amending the Personal Income Tax Act, Articles 1 and 2³.

3. ASSESSMENT

3.1. Existence of State Aid

- (14) According to Article 107(1) TFEU, “save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far it affects trade between Member States, be incompatible with the common market”.
- (15) The notified measure involves State aid within the meaning of Article 107(1) TFEU since the income tax exemption reduces the costs that shipping companies bear with respect to seafarers employed on eligible vessels, and thus constitutes a selective advantage granted to specific companies. This advantage is financed through State resources, i.e. the government’s budget, and it is imputable to Poland since it is enacted through legislation. The measure is also liable to distort competition and affect trade within the liberalised European shipping market.

3.2 Compatibility assessment

3.2.1 Legal Basis

- (16) 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 internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

¹ Exchange rate applied PLN 1 = EUR 4.20.

² Journal of Laws 2018, item 616.

³ Journal of Laws 2019, item 1834.

- (17) The Commission has issued guidelines for the application of Article 107(3)(c) TFEU with regard to State aid to maritime transport (hereinafter: "Maritime Guidelines")⁴. Aid in favour of the maritime sector must therefore be examined in the light of these guidelines.

3.2.2. Objectives of the scheme

- (18) The Maritime Guidelines provide in section 2.2 that State aid schemes may be introduced in order to support the Community maritime interest, in particular with the aim of:

- 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.

- (19) Furthermore, the Maritime Guidelines provide in section 3.2 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,

- (20) The Commission notes that the objective of the scheme as described in recital 6 is in line with the objectives of the Maritime Guidelines. The income tax exemption for seafarers aims at reducing the costs of employing Community seafarers towards levels existing outside the EU. By doing so, the scheme encourages flagging and reflagging to Member States' registers from low-tax countries and thus promotes employment of EU/EEA Member States' seafarers. Enhanced employment of Community seafarers will furthermore contribute to consolidating the maritime cluster and contributing to ensuring the competitiveness of the eligible shipping companies against the fierce global competition.

3.2.3. Relief from labour-related costs

- (21) Section 3.2 of the Maritime Guidelines allows for the following reductions of employment costs:

- reduced rates of income tax for Community seafarers on board vessels registered in a Member State, and/or
- reduced rates of contributions for the social protection of Community seafarers employed on board vessels registered in a Member State.

⁴ Commission Communication C (2004) 43 – Community Guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3.

- (22) As described in recital 6, the scheme comprises a total exemption from the obligation to pay personal income tax. This exemption is in line with the Maritime Guidelines.

3.2.4. Eligible seafarers – General rule

- (23) Under the Maritime Guidelines, reductions of labour-related costs can be applied in relation to Community seafarers, 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."
- (24) The notified scheme covers seafarers being citizens of EU/EEA Member States which are subject to income tax in Poland. In line with the objective to maintain and improve maritime know-how and protect and promote employment for European seafarers as set out in recital 18 third indent, the Commission considers that this scope which is limited to seafarers who are citizens of an EU or EEA Member States is in line with the Maritime Guidelines.

3.2.5. Eligible seafarers – Towage and dredging vessels/activities

- (25) Pursuant to section 3.2, subsection 5, of the Maritime Guidelines, for the maritime part of towage and dredging activities (maritime transport of materials), aid in favour of the employment of Community seafarers may be granted only if it relates to seafarers 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.
- (26) As described in recital 10, the scheme applies only to seafarers employed on tugboats and dredgers carrying out maritime transport for more than 50% of their operational time. The Commission therefore considers that the scheme is in line with the Maritime Guidelines.

3.2.6. Eligible vessels

- (27) According to section 2 subparagraph 3 only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. These activities are defined as transport of goods and persons by sea between ports or between ports and offshore installations. The notified scheme applies only to seafarers employed on seagoing vessels carrying freight or passengers. Thus, the eligible vessels under the scheme are in line with the requirements of the Maritime Guidelines.

3.2.7. Absence of national flagging requirement

- (28) A national flagging requirement according to which the benefits of a scheme providing relief from labour-related costs are conditional on national flagging infringe internal market rules⁵ in a manner indissolubly linked to the assessment

⁵ In particular the free movement of workers and services as set out in Articles 45 and 49 TFEU.

of the compatibility of that aid measure.⁶ Such requirements therefore preclude the authorisation of the notified aid measure as compatible aid.

- (29) The Commission positively notes that the scheme applies, on an equal basis, to seafarers employed on vessels registered in any EU/EEA Member State. For this reason, the Commission considers that the conditions of the Maritime Guidelines on EU/EEA flagging are satisfied.

3.2.8. Aid cumulation / aid ceiling

- (30) 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.
- (31) According to information provided by Poland, the maritime sector in Poland can currently benefit only from the aid in the form of tonnage taxation. The Commission notes that the additional aid in the form of income tax exemption to seafarers cannot result in the total aid to shipping companies exceeding the full exemption from such taxes. Therefore, the Commission considers that the requirements relating to aid cumulation / aid ceiling are fulfilled.

3.2.9. Duration

- (32) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration.⁷ The notified scheme will remain in force for ten years from the approval by the Commission. The Commission notes that this duration is in line with previously approved State aid schemes in the maritime sector.

3.2.10. Conclusion

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

4. CONCLUSION

- (34) 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.

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

⁶ See judgment in Case C-598/17 *A-Fonds* EU:C:2019:352.

⁷ Case C-67/09 *P Nuova Agricast* EU:C:2010:607, para. 80.

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

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President