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**Subject: State aid SA.64772 (2021/N) – Denmark  
Amendments to the reimbursement scheme for dredgers**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 25 November 2021, following pre-notification contacts, the Danish authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), of their intention to amend the existing reimbursement scheme for dredgers (“the notified measure”).
- (2) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>1</sup> and to have this decision adopted and notified in English.

## 2. DESCRIPTION OF THE NOTIFIED MEASURE

### 2.1. Background

- (3) The original scheme was approved by the Commission on 13 January 2009 in case C 22/07 (ex N43/07)<sup>2</sup> after the opening of a formal investigation procedure<sup>3</sup>.

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<sup>1</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>2</sup> Commission Decision of 13 January 2009 on State aid C 22/07 (ex N 43/07) as regards the extension to dredging and cable-laying activities of the regime exempting maritime transport companies from the

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In December 2019, the Commission approved a ten-year prolongation of the original scheme subject to amendments (“the existing scheme”)<sup>4</sup>.

## 2.2. The scope of the existing scheme

- (4) As explained in recitals (6) and (7) of the decision on the existing scheme, the scheme consists of a refund for ship owners on the income taxes paid with regard to the seafarers working on board eligible dredgers.
- (5) In particular, pursuant to Section 10 of the Danish Act on the Taxation of Seafarers<sup>5</sup>, seafarers working on board eligible dredgers are taxed according to the general rules of taxation and, subsequently, ship owners are refunded the income taxes paid for their seafarers if the conditions for applying the scheme are met. Pursuant to Section 10(3) and (4) of the Danish Act on the Taxation of Seafarers, the refund to the ship owners is paid monthly or annually in an amount which, for each individual seafarer, is calculated as the 40% of the part of the contribution base that is calculated in accordance with Section 2 of the Act on labour market contributions<sup>6</sup> and is attributable to work carried out on board eligible vessels.

## 2.3. The objectives of the notified measure

- (6) As explained in recitals (13)-(16) of the December 2019 decision on the existing scheme, a considerable amount of Danish offshore activities depend to a large extent on the supply of services from dredgers. In fact, in Denmark dredging vessels play an important role in the maritime supply chain and are essential for ensuring a well-functioning maritime infrastructure to the benefit of maritime growth in accordance with the objectives of the Maritime Guidelines<sup>7</sup>. Denmark also stresses that the European maritime sector faces intense global competition and extreme cost pressure. In this respect, the objective of the scheme is to support maritime employment and improve the competitiveness of Danish and EU/EEA vessels and therefore the European maritime cluster on the whole, in order to retain activities and support the development of employment of European seafarers as well as know-how within the EU/EEA.
- (7) The Danish authorities underline that demand for seafarers has increased significantly over the past years. This resulted in increased competition on the recruitment of seafarers between ship-owners. This competitive situation makes it crucial for ship-owners to be able to offer favourable economic conditions in

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payment of the income tax and social contributions of seafarers in Denmark, OJ L 119, 14.5.2009, p. 23.

<sup>3</sup> State aid case No C 22/2007, Letter from the Commission of 10 July 2007, C (2007) 3219 final.

<sup>4</sup> Commission decision of 16 December 2019 in case SA.52069 (2021/N), OJ C 52, 14.02.2020, p.1.

<sup>5</sup> Lov om beskatning af søfolk, jf. lovbekendtgørelse nr. 131 af 7. februar 2020, som ændret ved lov nr. 1583 af 27. december 2019 (Udvidelse af sømandsfradrag til søfolk på forsknings- og havundersøgelseskibe).

<sup>6</sup> Arbejdsmarkedsbidragsloven, jf. lovbekendtgørelse nr. 121 af 7. februar 2020, som ændret ved § 5 i lov nr. 2226 af 29. December 2020.

<sup>7</sup> Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 3.

order to attract and employ the seafarers required for efficiently continuing their activities.

- (8) The Danish authorities submit that the notified measure will introduce amendments to the existing scheme which will contribute to fulfil the objectives of the Maritime Guidelines, favouring the employment of Community seafarers, supporting different maritime activities and preserving know-how in the European maritime cluster.
- (9) In addition, the notified measure will contribute to the re-flagging of vessels to EU/EEA shipping registers and will avoid flagging-out of EU/EEA-flagged vessels to third country registers.

#### **2.4. Aid impact and volume**

- (10) The Danish authorities estimate that the envisaged amendments will increase the aid granted under the existing scheme by approximately DKK 19 million (approximately EUR 2.5 million)<sup>8</sup> per year<sup>9</sup>. In 2020, the total aid granted under the scheme amounted to DKK 30 million (approximately EUR 4 million).
- (11) The Danish authorities estimate that the envisaged amendments will not impact the overall amount of eligible dredging companies. According to available data, the number of dredging companies eligible for aid under the existing scheme has been relatively constant over the years. The Danish authorities add that the aim of the notified measure is to retain these companies rather than attracting new ones.

#### **2.5. Legal basis**

- (12) The existing scheme is based on Section 10 of the Danish Act on the Taxation of Seafarers<sup>10</sup> (see recital (22) of the decision in the existing scheme).
- (13) In addition, the Danish authorities submitted a proposal to amend the Act on the Taxation of Seafarers (“the Draft Bill”), which will introduce amendments to the legal basis (see also section 2.7, recital (18)).
- (14) The Danish authorities submit that the draft law, including the relevant amendments, was introduced before Danish Parliament on 10 November 2021. According to § 3, stk. 2 of the draft law, the Danish Minister for Taxation will be empowered to put the amendments into force. The Danish authorities explain that this kind of provision is generally used to comply with the standstill obligation as the notified amendments will not enter into force until they are approved by the Commission.
- (15) The Danish authorities submit that upon the entering into force the amendments will become effective as of 1 January 2022.

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<sup>8</sup> Exchange rate DKK 1 = EUR 0.13442 of November 2021

<sup>9</sup> The budget of the existing scheme amounts to DKK 400 million (approximately EUR 54 million) over 10 years, i.e. DKK 40 million (approximately EUR 5.4 million) per year.

<sup>10</sup> The Act on the Taxation of Seafarers, Law no. 386 of 27 May 2005 as amended and published in Danish at the following website: [www.retsinformation.dk/Forms/R0710.aspx?id=16789](http://www.retsinformation.dk/Forms/R0710.aspx?id=16789)

## 2.6. Duration

- (16) The Danish authorities request an approval of the envisaged amendments starting from 1 January 2022 and lasting until 31 December 2029. By doing so, the Danish authorities would align the envisaged amendments to the expiry of the approval of the existing scheme.
- (17) The Danish authorities submit that this will allow the scheme to be re-notified as a whole to the Commission before 31 December 2029.

## 2.7. Amendments to the existing scheme

- (18) The Danish authorities envisage to introduce a number of amendments to the existing scheme:
  - Implementation of the 50% rule for dredgers;
  - An extension of the eligible maritime transport activities to internal waters; and
  - An increase of the refund rate by including social security contributions.

### *2.7.1. Implementation of the 50% rule for dredgers*

- (19) The Danish authorities submit that under the existing scheme aid to ship-owners may be granted for those dredgers whose activities consist in maritime transport for more than 50% of their annual operational time and only in respect of those maritime transport activities.
- (20) In that respect, the Danish authorities note that section 3.2 of the Maritime Guidelines does not explicitly provide for that, if eligible dredgers carry out maritime transport at sea for at least 50% of their operational time, only the maritime transport activities carried out by the dredgers are eligible for aid. Such a limitation is provided in section 3.1 of the Maritime Guidelines. Therefore, the Danish authorities wish to amend the legal basis so that ship-owners will be eligible for a reimbursement when eligible dredgers carry out maritime transport for at least 50% of their operational time.
- (21) The Danish authorities submit that such an amendment would be in line with the objectives of the Maritime Guidelines, as it will encourage the flagging or reflagging of vessels to EU/EEA registers and contribute to the consolidation of the maritime cluster established in Member States while maintaining an overall competitive fleet on world markets.
- (22) The Danish authorities add that such amendment is crucially important for the global competitiveness of dredgers, in particular to continue the supply of the services demanded for ensuring a high level of safety of navigation and for the contribution to the further advancement of other segments of the maritime sector. In fact, both the Danish and the European maritime sector face fierce competition from other seafaring nations from outside the EU/EEA offering economic

environments that are more attractive than the regular tax environment in Denmark and Europe<sup>11</sup>.

- (23) In addition, Danish ship owners can no longer match foreign offers. In particular, the Danish authorities explain, with regard to third country involvement, that the Danish dredging industry has provided information that shows the increased need for the EU maritime industry to ensure an efficient competitive framework due to increased competition in Europe from dredging activities performed by Chinese State-owned undertakings. In this respect, the European Dredging Association<sup>12</sup> provided information on recent tenders that show how Chinese State-owned undertakings are active in bidding for dredging works in the European Union, for example with regard to the following projects<sup>13</sup>:
- Deepening works in Gdansk, Poland (2021);
  - Elbe Fairway, Germany (2021/2022);
  - Coastal erosion remediation in Dobruja, Romania (2020); and
  - Polimery Police Petrochemical Complex, Poland (2020).
- (24) The Danish authorities submit that the available data show in general that a significant number of tenders for construction projects at sea are won by third country undertakings<sup>14</sup>.
- (25) For these reasons, the Danish authorities highlight that the shipping industry has expressed intentions to reflag dredging vessels elsewhere, to the detriment of the European maritime cluster, knowhow and employment of Community seafarers.
- (26) Furthermore, the Danish authorities submit that there is a different interpretation of the 50% rule across Member States. In fact, as per previous Commission practice,<sup>15</sup> it would appear that seafarers employed on board dredging vessels are eligible for a total exemption from personal income taxes provided that at least 50% of the annual activities of the vessel constitute maritime transport, whereas no stricter application of the 50% rule is apparent as concerns dredging vessels. In that respect, the Danish authorities point to section 2 of the Maritime Guidelines, which states that aid schemes should not be conducted at the expense of other Member States' economies and must be shown not to risk distortion of competition between Member States to an extent contrary to the common interest.

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<sup>11</sup> Denmark submits that according to the annual report 2018 by the European Dredging Association, it is particularly difficult for European ship owners to compete with Chinese companies that are State-owned and State-financed.

<sup>12</sup> See official website: <https://european-dredging.eu/>

<sup>13</sup> In this respect, the Danish authorities provided an annex from the European Construction Industry Federation ("Third Country State-Owned Enterprises in the European Procurement Market") which includes information on the increased presence of third country companies in European projects. The report is available at the following link: <https://soes-in-europe.eu/map.php#s2>.

<sup>14</sup> The Danish authorities refer in particular to the following source: <https://www.fiec.eu/priorities/China-Challenge>.

<sup>15</sup> In this respect, the Danish authorities refer to Commission decision C(2019) 8916 of 16 December 2019 relating to the prolongation of the Cypriot Tonnage Tax and Seafarer schemes, OJ C 187, 5.06.2020, p. 1.

### 2.7.2. Extension of eligible maritime transport activities to internal waters

- (27) The Danish authorities submit that at present maritime transport activities carried out by dredging vessels in internal waters, lakes and fjords do not qualify for aid under the existing scheme. In particular, in Danish law those activities are referred to as ‘limited maritime traffic’. Nevertheless, the Danish authorities wish to extend the qualifying activities under the existing scheme to maritime transport activities carried out in internal waters in the EU/EEA area.
- (28) In that respect, Denmark refers to Article 8 of the United Nations Convention on the Law of the Sea<sup>16</sup>. In particular, the Danish authorities indicate that in line with the definition of internal waters provided by that Convention, the notified measure would cover qualifying maritime transport activities carried out in “waters on the landward side of the baseline of the territorial sea”. The Danish authorities also add that fjords would be covered by this definition of internal waters. On the contrary, the envisaged extension would not concern maritime transport activities carried out in inland waterways<sup>17</sup>.
- (29) The Danish authorities submit that the Maritime Guidelines apply to maritime transport activities as defined in Regulation (EEC) No. 4055/86<sup>18</sup> and Regulation (EEC) No. 3577/92<sup>19</sup>, that is to say, to the transport of goods and persons by sea. In addition, the Maritime Guidelines apply in specific parts to dredging activities. The Danish authorities also note that it follows from the judgement of the Court of Justice in case C-323/03<sup>20</sup> that activities carried out in internal waters, defined in accordance with Article 8 of the United Nations Convention on the Law of the Sea as waters on the landward side of the baseline of the territorial sea, fall within the scope of maritime transport activities as set out in Regulation (EEC) No. 3577/92 and, accordingly, qualify as maritime transport at sea under the Maritime Guidelines.
- (30) The Danish authorities add that dredgers carry out various activities in internal waters, such as restoring coastlines, maintaining water depths, expanding ports etc. In this respect, they claim that it is essential to avoid unjustified restrictions that affect the level playing field in the maritime global markets. In particular, excluding internal waters from the scope of the Maritime Guidelines would reduce the competitiveness of European dredgers and could potentially lead to European ship-owners reflagging their vessels to third countries or stopping from engaging in projects in European internal waters, leaving their market shares to

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<sup>16</sup> Available at: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

<sup>17</sup> With respect to the definition of inland waterways, the Danish authorities refer to Annex 1 of the Directive (EU) No. 2016/1629 of 14 September 2016 laying down technical requirements for inland waterway vessels.

<sup>18</sup> Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31.12.1986, p. 1

<sup>19</sup> Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364, 12.12.1992, p. 7.

<sup>20</sup> Judgment of the Court (Second Chamber) of 9 March 2006, Commission v Spain, ECLI:EU:C:2006:159.

third countries, and finally causing a loss of maritime know-how and employment of European seafarers contrary to the objectives of the Maritime Guidelines.

- (31) Furthermore, the Danish authorities note that the geographical meaning of ‘sea’ should be interpreted in a broad manner, in accordance with the judgment in the case C-323/03. In fact, they explain that dredgers typically extract construction materials and sediments from dedicated areas on the sea floor within the maritime domain to either discharge them at a port or building sites ashore or to dispose it elsewhere at sea. Therefore, the majority of the dredgers’ operations occurs in the same geographical locations on the sea as traditional cargo ships.
- (32) The Danish authorities add that in Denmark there is a global market for dredging activities in internal waters, since dredgers (only) operate in open waters, bays, estuaries, fjords and inlets. Dredgers extract and transport their materials and sediments between those places. In addition, big construction projects often take place in and around internal waters and contracts in these areas are tendered out accordingly.<sup>21</sup>
- (33) Therefore, the Danish authorities conclude that extending the qualifying maritime transport activities under the existing scheme to internal waters is in accordance with the objectives of the Maritime Guidelines, as it ensures the competitiveness of the European maritime sector and prevent the potential flagging out of the European ship registers to third countries, thereby preserving the specialized maritime know-how of European maritime companies and seafarers. In fact, dredging vessels have to comply with the applicable technical standards imposed by the International Convention for the Safety of Life at Sea (SOLAS) and International Convention for the Prevention of Pollution from Ships (MARPOL).

#### *2.7.3. Increase of the refund rate by including social security contributions*

- (34) The existing scheme entails a refund to ship owners of income taxes paid on the wages of the seafarers working on board eligible dredgers. In this respect, the Danish authorities refer to section 11 of the Maritime Guidelines, which provides for that a reduction to zero of taxation and social charges for seafarers and a reduction of corporate taxation of shipping activities is the maximum level of aid which may be permitted.
- (35) Having regard to that, the Danish authorities wish to enhance the aid level by refunding those particular social security contributions paid by the ship-owners (i.e. the employers). The Danish authorities explain that the envisaged refund of social security contributions consists in an economic advantage that is conferred directly to the ship-owners. In fact, the refund will correspond to the employer’s part of the relevant social security contributions in accordance with the social security legislation in Denmark. In this respect, the Danish authorities submitted an extract of the envisaged amendment which clarifies that the ship-owners will be entitled to a refund (in the form of a direct payment) corresponding to their (i.e. the employer’s) costs of social security contributions. In this respect, the Danish authorities clarify that the refund does not include the seafarer’s (i.e. the employee’s) part of the relevant social security contributions. Therefore, the Danish authorities wish to refund social security contributions to ship owners by

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<sup>21</sup> In this respect, the Danish authorities refer to the Baltic Pipe Project, the Femern-Belt Project, the Storstrøm Bridge Project and the Hesselø Offshore Wind Farm Project.

increasing the refund rate under the existing scheme. The envisaged increase of the refund rate is calculated on the basis of the average amount of the social security contributions foreseen under Danish law for seafarers covered by Regulation No. 883/2004 on the coordination of social security systems<sup>22</sup>. Thus, a full refund of these social security contributions to ship owners may entail an increase in the refund rate under the existing scheme of around 2%.

### 3. ASSESSMENT OF THE NOTIFIED MEASURE

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

- (36) 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*”.
- (37) 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.
- (38) The Commission has come to the view, in line with its previous decision in the existing scheme, that it constitutes State aid within the meaning of Article 107(1) TFEU. In particular, the exemptions for ship-owners from income taxation and social security contributions in respect of qualifying seafarers constitute foregone State revenue and thus involve State resources. In particular, as explained in recital (34), the envisaged refund of the social security contributions constitutes direct aid to the ship-owners, as it merely concerns the part of social security contributions due by the ship-owners (i.e. the employers), and not the seafarers' (i.e. the employees) part of the relevant social security contributions. Moreover, since the existing scheme is implemented through national legislation, it is imputable to Denmark. The existing scheme also grants a selective advantage to the shipping companies hiring these seafarers as they benefit from lower labour costs in comparison to companies not benefiting from the scheme in other sectors of the economy, which are in a comparable situation. Finally, in view of other possible means of transport and the global scale of maritime transport, the seafarers' exemptions are liable to distort competition and affect trade within the liberalised European shipping market. Nothing in the notification of the measure alters that assessment.

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<sup>22</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1.



- (39) It follows that the notified measure involves State aid in the sense of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.

### **3.2. Legality of the measure**

- (40) The Danish authorities indicated that the draft law amending the existing scheme should be approved by the Danish Parliament in December 2021, while the amendments will enter into force on 1 January 2022, subject to the prior Commission's approval.
- (41) The Commission takes note of the fact that the Danish authorities commit to comply with Article 108(3) TFEU and will not enforce the notified measure before the Commission notifies a positive decision authorising it.

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

- (42) Since the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission considers that its compatibility with the internal market should be examined in the light of the provision provided for in paragraph 3(c) of that Article.
- (43) 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.
- (44) Since the notified measure concerns the maritime sector, reference should be made to the Maritime Guidelines, on the basis of which the measure has been notified. The notified measure will therefore be examined in the light of the Maritime Guidelines and more specifically its point 3.2 on 'wage costs', which provides for the possibility of reducing taxes and other costs borne by EU ship-owners and seafarers sailing on ships registered in a Member State.

#### *3.3.1. The aid must facilitate the development of an economic activity*

- (45) As stated in recital (43) of this decision, an aid measure notified on the basis of Article 107(3)(c) TFEU must aim, in order to be considered compatible with the internal market, at facilitating the development of an economic activity.
- (46) The objective of the notified measure, as described in section 2.3 above, is to ensure the conditions to support the development of the European maritime sector by maintaining the competitiveness of the European maritime industry and supporting the employment of European seafarers and the preservation of seafarers' know-how.
- (47) As indicated in Section 3.1 of the Maritime Guidelines, many third countries offer a favourable tax environment, including by offering flags of convenience and more convenient tax regimes. Without the notified measure, some ship-owners may risk re-flagging their vessels or even relocating their activities to those third countries. As submitted by the Danish authorities, the notified measure therefore makes it possible to strengthen the European flag, reduce the risk of flagging out to the flag of non-EU countries and keep seafarers' know-how within the European maritime industry.

- (48) The Commission notes that the objectives of the notified measure as described in section 2.3 above are in line with the objectives set out in the Maritime Guidelines. The notified measure 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.
- (49) The notified measure hence aims at facilitating the development of the economic activity of the European maritime sector and is therefore in line with the Maritime Guidelines.

3.3.2. *The aid may not unduly affect trading conditions to an extent contrary to the common interest*

3.3.2.1. Positive effects of the measure

3.3.2.1.1. *Benefits for the sustained economic activity*

- (50) As stated in recitals (46) and (47), the notified measure supports the economic development of the EU maritime sector by promoting the competitiveness of the European fleet on the world maritime transport markets, in particular vis à vis non-EU, third country flags.
- (51) The notified measure is also expected to have positive macro-economic returns on the corresponding maritime cluster, as it will contribute to the development of activities that are strictly related to maritime transport (see recitals (6) and (8)).

3.3.2.1.2. *Other positive effects*

- (52) The notified measure makes it possible to maintain EU employment, preserve maritime know-how and related maritime industries and, by supporting the preservation of the EU/EEA flag, maintaining a high level of safety in the sector (see recital (8)).

3.3.2.2. Limitation of the negative effects of the measure

3.3.2.2.1. *Necessity, appropriateness and proportionality of the aid*

- (53) The notified measure is necessary because the market alone fails to deliver an effective result. In this regard, the Maritime Guidelines point out in section 3.1 that *“there are no effective international rules at present to curb tax competition and few administrative, legal or technical barriers to moving a ship's registration from a Member State's register. In this context, the creation of conditions allowing fairer competition with flags of convenience seems the best way forward”*.
- (54) In this respect, State aid is an appropriate instrument to lower the labour costs of eligible undertakings and thus enable them to cope effectively with this international competition. This is why the Commission adopted the Maritime Guidelines in 2004, which recall in section 1 that *“the Commission estimates that State aid to the European shipping industry is still justified and that the approach of the 1997 Guidelines was correct. This Communication is therefore based on the same basic approach.”*

- (55) In particular, the notified measure minimises distortions of competition and trade given that it complies with the requirements set out in the Maritime Guidelines for the following reasons.

*Scope of the measure*

- (56) According to section 3.2 of the Maritime Guidelines, the following actions on labour costs are allowed for EU maritime transport:
- reduction of social security contributions for EU seafarers sailing on vessels registered in a Member State;
  - income tax reduction for EU seafarers sailing on ships registered in a Member State.
- (57) As indicated in section 2.1 above, the existing scheme concerns a reduction of the income tax normally due by employers for the seafarers employed on board eligible vessels. In addition, with the notified measure the Danish authorities plan to increase the refund rate of the existing scheme by including social security contributions. In that respect, both exemptions concerning income tax and social security contributions fall within the scope of section 3.2 of the Maritime Guidelines.
- (58) The notified measure is therefore in line with the Maritime Guidelines and the Commission's decision-making practice<sup>23</sup> in this respect.

*Eligibility of seafarers, activities and vessels*

- (59) According to section 3.2 of the Maritime Guidelines, only 'Community seafarers' employed on board vessels registered in a Member State may benefit from the scheme. EU seafarers are defined as follows:
- Union citizens, in the case of seafarers working on board vessels (including ro-ro ferries) providing scheduled passenger services between EU ports;
  - all seafarers liable to taxation and/or social security contributions in a Member State, in all other cases.
- (60) As stated in recital (47) of the decision in the existing scheme, the existing scheme applies to seafarers who work on board eligible dredgers registered in Denmark or another EU or EEA State and who are liable to pay tax in Denmark, regardless of whether they are subject to full or limited tax liability. Since those seafarers do not work on board vessels providing scheduled passenger services between EU ports, they do not need to be EU or EEA citizens in order to be considered Community seafarers. The notified measure therefore complies with the Maritime Guidelines in this respect.

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<sup>23</sup> See, *inter alia*, Commission decision of 22 June 2021 in SA.62571 (2021/N) - Prolongation of the reduction of the wage tax payable on seafarers' wages, OJ C 285, 16.07.2021, p. 1; Commission decision of 11 June 2021 in SA.59537 (2021/N) - Régime d'aides sous forme d'exonération de cotisations sociales aux employeurs de marins embarqués sur des navires à passagers exploités sur des lignes internationales, OJ C 275, 9.07.2021, p. 1.

- (61) In addition, only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. Maritime transport activities as defined in Regulation (EEC) No 4055/86 and in Regulation (EEC) No 3577/92, as “*the transport of goods and persons by sea between ports of Member States or a Member State and a third country, as well as between a port of a Member State and an off-shore installation/structure of another Member State or a third country*”.
- (62) As explained in section 2.7, with the notified measure the Danish authorities wish to extend the eligible maritime transport activities under the existing scheme to internal waters in the EU/EEA. In fact, at present the existing scheme does not apply to what under Danish law is defined as ‘limited maritime traffic’. More precisely, pursuant to the relevant provisions of Danish law dredgers operating in internal waters, lakes and fjords do not qualify for aid under the existing scheme.
- (63) In that respect, the Danish authorities clarified that the envisaged extension of the existing scheme would merely apply to internal waters (which include fjords) as defined in the judgment of the Court of Justice in case C-323/03, which in turn provides for a definition of internal waters that is in line with public international law, and more in particular with Article 8 of the United Nations Convention on the Law of the Sea.
- (64) The Commission notes in that respect that neither the Maritime Guidelines nor Regulation (EEC) 3577/92 provide for a definition of ‘sea’. However, as pointed out by the Danish authorities, the judgement in case C-323/03 provides for that Regulation (EEC) 3577/92 applies to all parts of the sea, without making any difference between territorial sea and internal waters. This is also consistent with what is set out in the Commission Communication on the interpretation of Regulation (EEC) 3577/92<sup>24</sup>, which confirms that maritime transport may also take place in internal waters, and not only in open sea<sup>25</sup>.
- (65) Moreover, as explained in recital (61), the Maritime Guidelines cross-refer with respect to the definition of maritime transport activities to Regulation (EEC) No 4055/86 and in Regulation (EEC) No 3577/92. Pursuant to those Regulations, maritime transport activities consist in the transport of goods and persons by sea between ports of Member States or a Member State and a third country / an off-shore installation and vice versa. In view of that definition, there appears to be no obstacle to considering that maritime transport activities also include activities carried out in internal waters.
- (66) In light of the above, the Commission considers that maritime transport activities may also include activities carried out in internal waters, that is activities carried out in waters on the landward side of the baseline of the territorial sea as defined

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<sup>24</sup> Communication from the Commission on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), COM/2014/0232 final.

<sup>25</sup> See section 3.1 of that Communication, which provides for that: “[...] *the distinction between the 'internal waters' and 'territorial sea' in terms of international law (United Nations Convention on the Law of the Sea of 10 December 1982, 'Montego Bay Convention')* was considered by the Court as irrelevant for the purpose of defining 'sea' under the Regulation. As a consequence, the term 'carriage by sea' should include also transport services that operate on the sea waters on the landward side of the baseline of the territorial sea ('internal waters') that States may draw in accordance with that Convention.”

in Article 8 of the United Nations Convention on the Law of the Sea. The notified measure therefore complies with the Maritime Guidelines also in this respect.

- (67) Furthermore, the Maritime Guidelines set out that for the maritime part of towage and dredging (maritime transport of materials), Community seafarers are eligible to benefit from the seafarer scheme, but only if they are “*working on board seagoing, self-propelled tugs and dredgers, registered in a Member State carrying out maritime transport at sea for at least 50% of their operational time*”.
- (68) The Danish authorities submit that since January 2020 a stricter approach has been applying to the 50% rule under the existing scheme. In practice, aid is granted to the eligible beneficiaries for those dredgers whose activities consist in maritime transport for more than 50 % of their annual operational time and only in respect of those maritime transport activities (see recital (19) of this decision).
- (69) In that respect, the Danish authorities underline how the current implementation of the 50% rule is hindering the position of Danish and European shipping companies vis à vis seafaring nations from outside the EU/EEA that offer more favourable economic environments than Europe, in particular as concerns tax conditions (see recitals (23) to (25) of this decision).
- (70) The Commission notes that such risk of flagging or re-flagging of vessels to other non-EU/EEA third countries due to the current implementation of the rule at issue is apparent from publicly available information<sup>26</sup>. In addition, the Danish authorities provided substantial information which demonstrates that foreign, non-EU based, shipping (and dredging) companies participate more and more in tender calls concerning EU-based maritime projects, including those relating to the dredging sector. This shows that pressure from third country operators in the maritime and dredging sectors is mounting and that European dredging companies are facing fierce competition from those third country operators.
- (71) The Commission also notes that the principles set out in the Maritime Guidelines should be interpreted in light of their objectives, as set out in Section 1 of those Guidelines. In that respect, the interpretation of the 50% rule as set out by the Danish authorities in their envisaged amendment is in line with the objectives of the Maritime Guidelines if it encourages the flagging or reflagging of vessels to Member States’ registers, contributes to the consolidation of the maritime cluster established in Member States, promotes an overall competitive fleet on world markets while ensuring maritime employment and safety across the EU.
- (72) As explained by the Danish authorities (see recital (21) et ss.), the relevant amendment to the 50% rule would be in line with the objectives of the Maritime Guidelines. In fact, such amendment would encourage European dredging companies to maintain their registration in a European shipping register and potentially to flag or reflag to European shipping registers. In addition, it would contribute to consolidate the Member States’ maritime cluster by supporting employment of European seafarers and promoting the European fleets on the world markets. Moreover, EU/EEA-flagged dredging vessels would also have to comply with the applicable technical and security standards imposed at EU level. This would also increase maritime safety across the EU.

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<sup>26</sup> See for instance the 2018 Annual Report of the European Dredging Association (in particular, pp. 8, 11 and 53), available at the following link: [https://european-dredging.eu/pdf/EuDA\\_18.pdf](https://european-dredging.eu/pdf/EuDA_18.pdf)

- (73) Furthermore, the Commission notes that its decisional practice as regards the implementation of the 50% rule in seafarer schemes leaves room for an interpretation such as the one envisaged by the Danish authorities with their amendment, provided that the functioning of any maritime scheme is in line with the overall objectives of the Maritime Guidelines. For these reasons, in light of the explanations provided by the Danish authorities with regard to how the relevant amendment would meet the objectives of the Maritime Guidelines, there appears to be no reason not to allow such an implementation of the 50% rule in the context of seafarer schemes.
- (74) In view of the above, the Commission considers that the notified measure complies with the Maritime Guidelines and the Commission's decision-making practice<sup>27</sup> in this respect.

#### *Registration in a Member State*

- (75) Section 3.2 of the Maritime Guidelines provides that reductions in wage costs are allowed for Union maritime transport provided that they apply to EU seafarers employed on board vessels registered in a Member State.
- (76) As set out in recital (56) of the decision in the existing scheme, the existing scheme applies to eligible dredgers registered in any EU register. The notified measure does not introduce any change in this respect.
- (77) The notified measure therefore complies with the Maritime Guidelines and the Commission's decision-making practice<sup>28</sup> in this respect.

#### *Ceiling/cumulation*

- (78) In accordance with Section 11 of the Maritime Guidelines, the total amount of aid to shipping companies, irrespective of the form of aid, must not be higher than the total exemption from taxes and social contributions for maritime activities and seafarers.
- (79) With the notified measure, the Danish authorities wish to increase the refund rate available under the existing scheme to include social security contributions (see recitals (34) to (35) of this decision). Since the refund of both the income taxes and the social contributions as regards eligible seafarers represent only a reduction in the labour costs to be normally paid by the employers for their seafarers, those benefits cannot exceed a total exemption from taxes and social contributions for maritime activities and seafarers as set out by Section 11 of the Maritime Guidelines.
- (80) Therefore, the Commission concludes that the requirements for cumulation of aid and aid ceiling set out by the Maritime Guidelines are met.

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<sup>27</sup> See, *inter alia*, Commission decision of 22 June 2021 in SA.62571 (2021/N) - Prolongation of the reduction of the wage tax payable on seafarers' wages, OJ C 285, 16.07.2021, p. 1; Commission decision of 16 December 2019 in SA.53469 (2019/N) – Estonia, State aid in favour of maritime transport, OJ C 144, 30.04.2020, p.1; Commission decision of 11 June 2021 in SA.59537 (2021/N) - Régime d'aides sous forme d'exonération de cotisations sociales aux employeurs de marins embarqués sur des navires à passagers exploités sur des lignes internationales, OJ C 275, 9.07.2021, p. 1.

<sup>28</sup> Ibidem, see footnote [27].

### *Duration*

- (81) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration<sup>29</sup>.
- (82) As explained in recitals (16) and (17) of this decision, the Danish authorities indicated that the notified measure would enter into force on 1 January 2022 and expire on 31 December 2029.
- (83) The Commission notes that this duration is in line with previously authorised State aid schemes in the maritime sector. Therefore, the notified measure complies with the Commission's practice in this respect<sup>30</sup>.

### *Conclusion*

- (84) As a conclusion, the Commission considers that the notified measure minimises distortions of competition and trade given that the aid does not exceed the amount of eligible exemption from income taxes and social security contributions (recital (79)). As a result, the amount of aid is limited to the minimum necessary to carry out the aided activity.

#### *3.3.2.2.2. Remaining distortions of trading conditions that cannot be avoided*

- (85) At the same time, the Commission notes that the notified measure may distort competition between European shipping companies by reducing the costs of eligible undertakings, while competing undertakings not benefiting from similar measures must bear those costs themselves.
- (86) However, the notified measure is limited to the minimum necessary in accordance with the Maritime Guidelines (see recitals (79) and (84) of this decision). The distortion of competition will therefore be limited.

#### *3.3.2.2.3. Balancing the positive effects of the aid against the negative effect on the internal market*

- (87) As explained in the above recitals, the distortive effects of the notified measure on competition and trade will be limited.
- (88) The limited negative effects on competition and trade must be weighed against the significant positive effects of the notified measure described in paragraph 3.3.2.1. In particular, the notified measure supports the development of the European maritime sector, the flagging to EU/EEA flags, promotes the employment of European seafarers, stimulates maritime know-how and ensures safety in the European maritime industry.
- (89) In the light of the foregoing, the Commission considers that the positive impact of the notified measure on the development of the economic activity in question

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<sup>29</sup> Judgment in case C-67/09 P *Nuova Agricast* EU:C:2010:607, paragraph 80.

<sup>30</sup> See, *inter alia*, Commission decision of 16 December 2019 in SA.52069 (2019/N) Prolongation of the Danish seafarer regime for dredgers, OJ C 52, 14.02.2020, p.1; Commission decision of 16 December 2019 in SA.51809 (2019/N) Prolongation of the Cyprus Tonnage Tax and Seafarer Scheme, OJ C 187, 5.06.2020, p. 1.

outweighs the potential negative effects on competition and trade. The notified measure therefore does not distort competition to an extent contrary to the common interest.

#### **4. CONCLUSION**

- (90) Based on the foregoing, the Commission considers that the notified measure constitutes State aid compatible with the internal market.

#### **5. 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.

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Margrethe VESTAGER  
Executive Vice-President

