



**European Commission**  
**Directorate General for Energy and Transport**

# **The 2004 Guidelines on State aid to maritime transport**

**and their recent application by the Commission**

*European Dredging Association General  
Assembly*

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## Why is operating aid to maritime transport allowed?

- One of the few exceptions where operating aid is permitted as compatible with the common market
  - ⇒ the general rule is that operating aid should be duly justified, limited in time and progressively reduced
- The special situation of the Community maritime sector:
  - ✓ globally mobile sector, facing fierce international competition
  - ✓ more favourable fiscal conditions in third countries attracting Community companies
  - ✓ maritime professions are threatened in Europe
  - ✓ there is also a risk of relocation of onshore jobs
  - ⇒ The EU needs to offer attractive conditions, while ensuring that European businesses active in the maritime cluster comply with Community social, safety and environmental standards





## Objectives enshrined in the Guidelines

- Improving safety and environmental performance of maritime transport
- Encouraging re-flagging to Member States' registers
- Contributing to the consolidation of the Community maritime cluster and maintaining an overall competitive fleet on world markets
- Improving maritime know-how
- Protecting and promoting employment for seafarers from the EU Member States
- Promoting short sea shipping





## Policy Context

- The Commission recently confirmed that the special regime of State aid to maritime transport should be maintained and, where appropriate, further improved  
*(Commission Communication (2009) on Strategic goals and recommendations for the EU's maritime transport policy until 2018)*
- The State aid regime should further allow:
  - ✓ measures to support greener shipping efforts
  - ✓ technological innovation
  - ✓ improving the possibilities for careers and professional development for seafarers from the EU Member States, and
  - ✓ reinforcing the link between State aid and employment of EU citizens in maritime clusters





## What is State aid?

- Article 87(1) of the EC Treaty:  
4 conditions:
    - ✓ Measure financed by State resources and imputable to the State
    - ✓ The measure should confer an advantage to a certain undertaking
    - ✓ The measure should be selective
    - ✓ The measure should distort competition and affect intra-community trade
  - General tax measures covering the whole economy, including maritime transport, do not constitute State aid.
  - However, tonnage tax, lowering labour-related costs, crew relief, etc. involve State aid
- ⇒ A need for notification





## Fiscal measures : tonnage tax

- What is tonnage tax?
- Replaces corporate tax with an amount of tax linked directly to the total tonnage of the operated by a company fleet
- How is it calculated?
  - a) On the basis of a “notional profit”
    - fixed per 100 net tons (NT)
    - the national corporate tax rate is then charged on the “notional profit”

ex.: Slovenian tonnage tax

Net tonnage	Euro/day per 100 net tons
up to 1000 net tons	0.90
from 1001 to 10,000 net tons	0.67
from 10,001 to 25,000 net tons	0.40
over 25,001 net tons	0.20

### Example:

a fleet with 2 ships of 20 000 tons each  
notional profit:

Up to 1000 NT  $10 \times 0.9 = 9$

From 1001 to 10000NT  $89.99 \times 0.67 = 60.3$

From 10001 to 20000NT  $99.99 \times 0.4 = 40$

$109.3 \times 365 \text{ days} = 39894.5$  each  $\times 2$  ships

$= 79789 \times 21\% \text{ corporate tax (SL 2009)}$

$= \text{€}16755.69$

b) On the basis of a lump sum without applying afterwards a corporate tax rate – applied by Norway, planned by Cyprus

⇒ The Guidelines stipulate that the Commission will approve only those new tonnage tax schemes which provide for similar taxation levels to the existing ones



## Tonnage tax: different rate for big vessels

- The levels of notional profit are very similar throughout the EU,
- Exceptions: the Netherlands (N 457/08, adopted on 10 March 2009) and Belgium (C 20/03, adopted in 2004) - an extra lower rate for large tonnage ships

BE	ships with more than 40 000 NT	€ 0,05 per 100 NT
NL	ships with more than 50 000 NT	€0,5 per 100 NT

- Provided the following two conditions are fulfilled:
  - ✓ The big vessel is new, i.e. has been recently acquired, or
  - ✓ The big vessel has been registered under the flag of a third country during the five years preceding entry into the Community tonnage tax scheme





## Tonnage tax: flag link

- The 2004 Maritime Guidelines provide for a “soft” flag link

Ship owners may not benefit from the tonnage tax for further non-EU flagged tonnage that they operate if:

- ✓ the share of their fleet tonnage under Community flags has decreased since January 2004;
- ✓ this share is already below 60 % of their total fleet tonnage; and
- ✓ the global EU tonnage eligible for tax relief in the Member State concerned has decreased over the last three years.

- 4 Member States have a strict flag-link requirement: Italy, Finland, Estonia and Poland







## Tonnage tax: ring fencing measures (1)

- Based on the provisions of the Guidelines:
  - ✓ the fiscal advantages should be restricted to shipping activities only
  - ✓ when companies are engaged in other commercial activities, “spill-over” into non-shipping activities should be avoided
- Aims:
  - ✓ to avoid distortion of competition in other sectors
  - ✓ to prevent tax evasion within a Member State and between Member States
- Separation of accounting and proper allocation of costs between eligible and non-eligible activities
- All or nothing option
  - ✓ a shipowner should decide whether to opt for the tonnage tax with respect to its whole fleet
  - ✓ if a group of maritime companies – the whole group should opt for the tonnage tax
  - ✓ companies cannot enter retroactively in the tonnage tax scheme
  - ✓ the group of companies should stay in the tonnage tax scheme for the whole period of its validity (10 years)





## Tonnage tax: ring fencing measures (2)

- Verification of intra-group transactions based on the arm's length principle
  - ✓ transactions between tonnage tax activities and non-tonnage tax activities of a company should be carried out at market rates
  - ✓ the same applies to transactions between affiliates within a group, irrespective of whether these transactions are international or within one Member State
- The Danish case C 5/2007 (adopted in June 2009)
  - ✓ The Commission did not authorise the removal of the monitoring of commercial transactions between companies subject to tonnage tax and their affiliates in other EU/EEA countries
- The Commission found that the measure:
  - ✓ is detrimental to other Member States' tax systems;
  - ✓ leads to unequal treatment in terms of obligation to provide information and records, between beneficiaries having only national affiliates not eligible for tonnage tax and beneficiaries having also foreign affiliates
  - ✓ would thus create an unjustified distortion of competition between companies which have foreign affiliates, and others which do not





## Tonnage tax: eligibility

- **Qualifying companies**

- companies engaged in international transport by seagoing ships

- **Eligible activities**

- a) **Core activities** - “core” maritime transport – transport of goods and passengers by sea, including rescue ships

- b) **Ancillary activities** – closely linked to maritime transport

- onboard activities such as selling goods (beverages and food) for onboard consumption, operation of onboard bars, cinemas and restaurants

- onshore activities such as selling tickets for passengers, reserving onboard space for goods, embarking/disembarking passengers, loading/unloading cargo, including the moving of containers within a port immediately before or after the voyage

- **Activities non-eligible as such**

- ✓ brokerage for third parties

- ✓ cable laying, pipe-laying, survey ships

- ✓ dredging and towage

- ✓ recreation and sports (also cruises)

- ✓ telecommunications and research

- ✓ fishing and fish factoring vessels

- ✓ vessels used for military purposes

- ✓ catering (floating hotels or restaurants) and gambling





## Tonnage tax: other eligible activities – towage, dredging and cable laying activities

- **Tugboats and dredgers**

- ✓ eligible as long as at least 50% of their operational time for a year constitutes maritime transport and only in respect of these maritime transport activities
- ✓ towage in ports and when assisting a self-propelled vessel to reach a port do not constitute maritime transport
- ✓ dredgers which operate only in ports, are excluded





## Tonnage tax

### Cable laying and dredging activities (1)

- **Decision DK C 22/2007 (adopted in January 2009) on cable laying and dredging**
  - ✓ Activities of the dredgers eligible for state aid (constitute maritime transport):
    - sailing between the port and the extraction site;
    - sailing between places of extraction;
    - sailing between the place of extraction and the place where the extracted materials are to be unloaded, including the unloading itself;
    - unloading of extracted material;
    - sailing between the place of unloading and the port;
    - sailing to provide assistance at the request of public authorities in connection with clearing up after oil spills, etc.
  - ✓ Activities of the dredgers not eligible for state aid (do not constitute maritime transport):
    - sailing at place of extraction;
    - extraction;
    - dredging





## Tonnage tax

### Cable laying and dredging activities (2)

- **The case of cable laying activities according to Decision C22/2007**

- ✓ The application of the Guidelines is extended to cable laying activities, which even though do not constitute maritime transport are associated by analogy with it for the purpose of reducing labour-related costs

- ✓ Similarities between cable-laying, dredging and maritime transport:

- same level of qualification for seafarers under same labour-law and social framework
- sea-going vessels under same technical and safety controls
- same risk of relocation of on-shore activities
- also facing fierce competition at a global market





## Chartering of vessels

- **Not covered by the Maritime Guidelines**
- **The Commission's practice has established some rules**
  - ✓ bareboat charterers – assimilated to shipowners, fully eligible for tonnage tax
  - ✓ time and voyage charterers, and chartering by means of a contract of affreightment are eligible as long as the tonnage of such chartered-in vessels does not go below 25% (3:1) or 20 % (4:1) of the tonnage of vessels owned or chartered-in on bare-boat conditions of the same company
- **Both Ireland and Denmark wanted an extension to 10:1 (cases C 2/2008 on IRL and C 58/2007 on DK)**
  - ✓ The Commission authorised it provided that: *each of the chartered-in vessels operated by a given tonnage tax company satisfies at least one of the following conditions:*
    - (a) the chartered-in vessel is registered in a Community or EEA maritime register;
    - (b) the crew management and technical management of the chartered-in vessel are carried out on the territory of the Community or the EEA.
  - ⇒ Thus the chartered vessels should contribute to at least one of the objectives of the Guidelines:  
either i) encouraging (re-)flagging or ii) consolidating the Community maritime cluster





## Tonnage tax

### Eligibility of ship management activities

- **Ship management activities**

- ✓ covered by the **2004 Guidelines**, but limited to “full” ship managers:

- carrying out simultaneously crew management and technical management of vessels

- assuming from the shipowner all the duties and responsibilities imposed by the ISM code

- ✓ exclusion of commercial management as well as technical and crew management when carried out separately







## Shipmanagement activities

- **First step towards reform:** Case N 457/2008 (adopted on 10 March 2009) the Commission approved the amendment in the Dutch tonnage tax, which reduced the tonnage tax base for full ship managers by **75%** compared to shipowners.
- The Commission considered that:
  - ✓ ship management companies contribute to maintaining and improving maritime know-how and protecting employment of seafarers
  - ✓ they ensure that on-shore and off-shore activities ancillary to maritime transport are maintained in the EU
  - ✓ outsourcing of ship management should not be fiscally penalised with respect to in-house ship management, especially since the ship managers' profits are much lower than the ones of the ship owners
  - ✓ outsourcing management activities is a global trend and it should be further encouraged by the Community in order to boost the global competitiveness of the Community's fleet





## New Shipmanagement Guidelines (1)

- Adopted on 11 June 2009, in force as from 12 June 2009
- Modify the Maritime Guidelines
- Scope:
  - ✓ commercial management is excluded at this stage
  - ✓ managers carrying out jointly or separately crew and technical management
  - ✓ only crew and technical management activities are covered since:
    - they are core maritime activity normally provided in-house
    - they contribute to the objectives of the Maritime Guidelines (“efficient, secure and environment friendly transport” and “consolidation of the maritime cluster”)
- The benefit for ship management companies: their tonnage tax base should be **25 %** of what is applied to a shipowner for the same ship or tonnage





## New Shipmanagement Guidelines (2)

- Eligibility conditions applicable to both technical and crew managers
  - ✓ contribution to the Community economy and employment - activities carried out from the Community and mainly (at least 51 %) Community nationals are employed
  - ✓ economic link – at least 2/3 of the tonnage of the managed ships is managed from the Community, the remaining maximum 1/3 managed outside is not eligible
  - ✓ compliance with international and community standards – especially on safety, security, training and certification of seafarers, environmental performance and on-board working conditions
  - ✓ flag requirement - benchmark OJ publication
- Requirements for crew managers
  - ✓ training of seafarers – compliance with the STCW convention, as amended
  - ✓ social conditions – early compliance with the Maritime Labour Convention, 2006





## Other possible State aid measures

- **Covering labour-related costs:**
  - ✓ reduced rates (or adequate reimbursement) of contributions for the social protection of Community seafarers employed on board ships registered in a Member State
  - ✓ reduced rates (or adequate reimbursement) of income tax for Community seafarers
  - ✓ open to dredgers and tugboats registered in the Community and carrying out maritime transport for at least 50% of their operational time
- **crew relief** - covering costs of repatriation of Community seafarers working on Community ships
- **training** - Community seafarers or cadets onboard Community (and exceptionally non-Community) ship
- **investment aid, regional aid, restructuring aid, public service obligations, aid to short sea shipping**
- **Ceiling** – the overall amount of state aid granted should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers – Member States are requested to provide such information, verified by the Commission for each new State aid measure





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*Thank you for your attention*

