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SENSITIVE* : *COMP Operations*

**Subject: State aid – SA.56475 (2020/N) – Belgium
Extension of the Belgian seafarer scheme to include certain vessels**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 14 February 2020, following pre-notification contacts, the Belgian authorities notified¹ the Commission, in accordance with Article 108(3), of the Treaty on the Functioning of the European Union (hereinafter ‘TFEU’), of their intention to extend the existing Belgian seafarer scheme for the reduction of social security contributions of seafarers (“the existing scheme”) to include seafarers working on certain service vessels (“the extension” or “the notified scheme”).
- (2) The Commission approved the existing scheme by decision of 24 February 1997². Prolongations of the existing scheme were approved by the Commission in 1999³, 2000⁴, 2007⁵, and the last prolongation until 31 December 2022 was approved in 2015⁶.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

¹ The notification was submitted by the Region of Flanders, Department of Employment and Social Economy.

² Commission decision of 24.02.1997 in case NN 98/97.

³ Commission decision of 23 June 1999 in case NN 35/99.

⁴ Commission decision in case NN 132/2000 (ex-N 813/A/99).

⁵ Commission decision in cases NN 132/2000 and NN 73/2003, OJ C 238 of 10.10.2007, p. 1.

⁶ Commission decision of 14.09.2015 in SA.38336 (2015/NN) – Belgique, Prolongation du Régime d’exemption des cotisations sociales des marins employés dans le secteur du transport maritime et du dragage maritime, C(2015) 6309 final, OJ C 403 of 4.12.2015.

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- (3) By letter of 28 February 2020, after an analysis of the notification documents, the Commission considered the notification to be incomplete and requested the Belgian authorities to provide additional information on the notified scheme.
- (4) On 6 March 2020, the Belgian authorities submitted additional information in response to the request from the Commission's services.
- (5) For reasons of urgency, the Belgian authorities have exceptionally accepted that the decision be adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. The scope of the existing scheme

- (6) The Belgian authorities explained that the existing scheme consists in a reduction of labour-related costs, more in particular a reduction of social security contributions for seafarers employed on self-propelled vessels registered in a Member State of the European Economic Area (EEA). The scheme is applicable to self-propelled vessels specialized in maritime transport of goods and passengers, as well as for towage and dredging activities.
- (7) Pursuant to the existing scheme, the total social contributions for employees (amounting to 14,52% on the total wage) are reduced to 14,52% of the difference between the total wage and the capped wage as applied within the pension scheme. The total social contributions for employers (amounting to 27,35%) are reduced by 27,29%.
- (8) The Belgian authorities explained that the reduction as concerns social contributions for employees is not a reduction of the percentage of the contributions that the employer has to pay but a reduction of the basic amount on which social contributions have to be paid. In fact, the total of this reduction is 14,52% calculated on the wage of the seafarer which is capped at the amount as laid down in the pension scheme and which was applied in the year preceding that in which the exemption is applied.
- (9) The Belgian authorities submitted that the reduction of the social contributions is dependent on the following variables:
 - The amount of days each employee (seafarer) works at sea;
 - The total sum of wages for the days an employee (seafarer) works at sea; and
 - The percentage of exemptions on the social contributions of employers and employees.
- (10) The Belgian authorities in this regard provided a table explaining how the relevant exemptions may be calculated for each seafarer:

Table 1

- Number of sailing days	180 sailing days				
- Gross wage	€82.170,03				
	Contribution for employers		Contribution for employees		Total
	% of the wages	In euro	% of the wages	In euro	In euro
Contributions without exemption	27,35	22.465,29	14,52	11.931,09	34.396,37
Contributions with exemption	0,06	49,30	14,52 ⁷	3.818,95	3.868,25
Total exemptions	27,29	22.415,98	0	8.112,14	30.528,12

(11) The Belgian authorities also indicated that in the absence of the existing scheme other social contribution regimes would apply, more in particular (i) the target group reduction for low-educated employees, (ii) the target group reduction for elderly people, and (iii) the target group reduction for first recruitments. The Belgian authorities noted that these social contributions regimes would only cover a part of the eligible seafarers.

2.2. The envisaged extension of the scheme

(12) The Belgian authorities submitted that the envisaged extension which is the subject of the notification is aimed at applying the special system of reduction of social security contributions to cover seafarers on board sea-going vessels specialized in other activities than maritime transport of goods and passengers, namely seafarers working on board the following off-shore service vessels:

- Rock-dumping vessels, whose main activities involve the targeted dumping of rocks to stabilize the seabed or to cover pipes and cables;
- Pipeline and cable-laying vessels, whose main activities involve the laying, inspection or repairing of pipelines and cables on the seabed⁸;
- Vessels for raising, repairing and dismantling windmills and other off-shore installations⁹, whose main activities consist of:
 - transporting parts to windfarm construction sites; building, maintenance or dismantling of wind turbines;
 - activities involving construction, repairing and dismantling of other offshore installations.
- Research vessels, whose main activities involve the exploration of the seabed and ocean environments in order to evaluate the feasibility of offshore constructions;

⁷ As explained in recital (8) the reduction is not a reduction of the percentage but rather of the basic amount on which social contributions have to be paid.

⁸ With regard to this category of vessels, the Belgian authorities confirmed that it covers the same category of vessels as approved by the Commission in case SA.51325 (2018/N-2) – Denmark Extension of the Danish International Register of Shipping regime, Commission decision C(2019) 1594 final of 22.02.2019, recital (68) fourth indent, C 101, 15 March 2019.

⁹ Ibid, footnote [8], Commission decision C(2019) 1594 final of 22.02.2019, recital (68), third indent.

- Accommodation vessels¹⁰, whose main activities include the housing of personnel, the storage of spare parts, equipment of instruments necessary for offshore-sites.
- (13) The Belgian authorities confirmed that the notified scheme does not affect the substance of the existing scheme but is merely an extension of its scope. The Belgian authorities stressed that the new categories of vessels are also self-propelled and conduct transport on the sea. Their characteristics are therefore similar to ships specialized in transport by sea.
- (14) The aid measures (i.e. the reduction or different application of the social security contributions) are granted on an individual basis based on individual employment on each sea-going vessel. Each employer must notify the National Social Security Office (“ONSS”) of wages’ amounts, working hours and the International Maritime Organization (IMO) number.¹¹ Any vessel for which a ship-owner wishes to submit a social security declaration shall be notified in advance to the ONSS. On this basis, the ONSS will examine the activities carried out by the ship and whether the owner of the ship is eligible for the support measures. If vessels are not eligible the ship-owner’s application for the aid measures will be rejected when the social security declaration is submitted by the ship-owner.
- (15) Concerning technical, labour and safety standards, the Belgian authorities explained that the above-mentioned categories of vessels in recital (12) are identical to other vessels carrying out maritime transport activities. In particular, offshore support vessels have to comply with the Maritime Labour Convention (“MLC”)¹², both on technical (e.g. accommodation) and social aspects (e.g. social security, labour rights).
- (16) With regard to the crew on board these vessels, the Belgian authorities explained that same requirements apply as those applicable to other vessels carrying out traditional maritime transport activities. In particular, the same IMO conventions are applied and crewmembers need to have the same Standard of Training of Certification and Watchkeeping (STCW) certificate. In addition, the standard training of crewmembers is identical to those on merchant vessels. Crewmembers are thereby expected to follow additional training programs for the type of vessels on which they are being employed. In addition, according to Article 11 of the Law on the safety of vessels¹³ a ship is defined as every vessel involved in a profitable activity. Based on this law, all vessels (including the vessels for which extension is sought) need to comply with the technical and social standards laid down in the main International Conventions, namely SOLAS, MLC, STCW and Load Lines Convention. With regard to environmental standards, all ships need to comply with the Marpol Convention¹⁴.

¹⁰ *Ibid*, footnote [8], Commission decision C(2019) 1594 final of 22.02.2019, recital (68), sixth indent.

¹¹ The IMO number is an identification number for ships that remains the same over the lifetime of a ship.

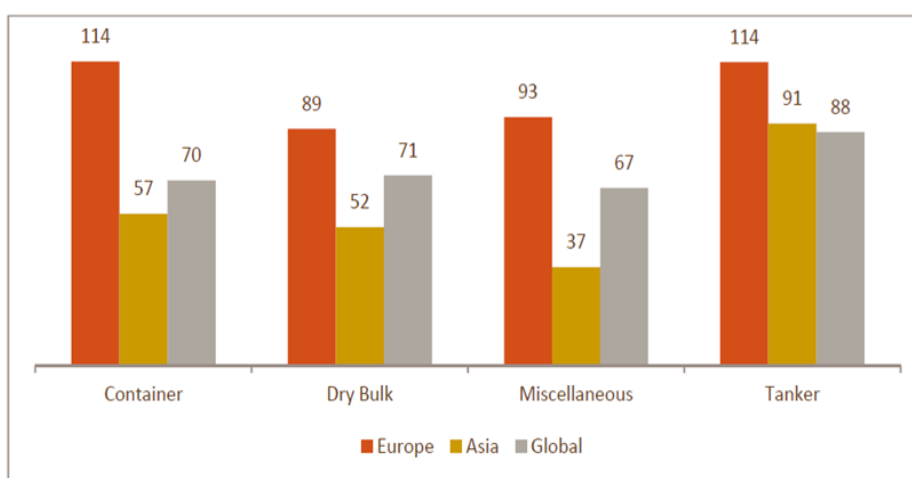
¹² The 2006 Maritime Labour Convention of the International Labour Organization.

¹³ Belgian Law on safety of vessels, available at the following link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1972060530&table_name=wet

¹⁴ International Convention for the Prevention of Pollution from Ships (MARPOL), adopted on 2 November 1973 at IMO.

- (17) As concerns international competition, the Belgian authorities underlined that the sector of offshore services is of critical importance to the EU shipping industry. It is expected that the demand for offshore projects will grow even more in the future. European ship owners face an increasing amount of international competition from ship owners based in non-EU countries. In particular, non-EU countries are taking measures to attract new companies by making use of financial and non-financial incentives. This also implies that EU-based ship owners face challenges to enter new markets. In addition, because European ship owners want to meet and promote the European standards concerning technical requirements, environmental requirements and labour rights, they are faced with additional costs. A relevant example is provided by the differences in labour costs between European and Asian companies, which is shown in the following graph¹⁵:

Figure 2.14 Cost of personnel per FTE broken down per transport segment and region (€ '000)



- (18) The Belgian authorities in this regard noted that not only the wages but also labour taxes and social security costs tend to be higher for the employees of companies that are based in Europe¹⁶.
- (19) The Belgian authorities also provided the results of an analysis carried out using a vast database consisting of 1311 offshore construction vessels located globally in order to understand overall flag and ownership trends. The analysis of the data revealed that 314 of the 1311 vessels operated under an EU flag, meaning 23% of the total number of vessels which were analysed. The majority of vessels operated under South East or Far Eastern flags, in particular Chinese, Russian and Korean flags. Most of these vessels are owned by Chinese and Korean companies.
- (20) Furthermore, the Belgian authorities highlighted that taking into account (i) the fact that non-EU ship-owners are becoming increasingly active in offshore services, (ii) the more favourable taxation regimes in non-EU countries, (iii) the (semi)-closed markets that privilege national ship-owners and (iv) the European regulatory standards that entail high labour costs, there is a real risk that European

¹⁵ *Study on the Analysis and Evolution of International and EU Shipping, maritime insight, Department of Transport and Regional Economics of the University of Antwerp, final report September 2015.*

¹⁶ *Ibid, footnote [15], p. 141.*

ship owners will eventually flag-out to non-EU countries or relocate, as also shown by a study provided by the Belgian authorities¹⁷.

- (21) Therefore, according to Belgium, in order to create a level playing field for European companies as well as to promote flying an EU flag it is necessary that the EU takes the required measures. The possibility for European players to reduce their labour related costs is in this sense an important incentive. This is because while standards as concerns labour and social protection are high they go together with high costs for European ship owners.
- (22) Belgium considers that the above context of international competition as well as the risk of flagging out applies to all the concerned categories of vessels. These vessels are all related to the part of the maritime supply chain which is related to installation and operation. In fact, transporting turbines to offshore locations, erecting, installing and maintaining such turbines throughout their service lives and dismantling them requires highly specialized maritime assets ranging from crane barges and tugs to jack-up vessels, crew boats, floaters and fast service vessels.
- (23) The Belgian authorities stressed that the last two categories of vessels (see list at recital (12) above) and the activities that they carry out are a necessary part of comprehensive and long-term off-shore constructions at sea (e.g. construction of wind energy facilities) that are normally undertaken at a considerable distance from the shore. In such cases, stationing a ship in the proximity of the construction site seems necessary in order to provide accommodation, storage space, training facilities, etc.
- (24) The Belgian authorities also provided information on rock dumping vessels, or “subsea rock installation vessels”. They explained that these vessels are involved in offshore construction work and conduct transport activities whereby they transport rocks to the offshore construction site. In addition, these vessels are used to position these rocks on pipelines and other subsea structures. Therefore, these vessels are similar to cable and pipe-laying vessels as concerns the type of activities (the transportation of pipes and cables to the offshore construction site and cable- and pipe-laying at the construction site). The Belgian authorities confirmed that also for these vessels the same social, environmental and safety standards are applicable.
- (25) As concerns international competition, these vessels are active in the same subsector as other vessels that are involved in offshore construction work (i.e. vessels specialized in laying cables and pipes on the seabed or vessels specialized in performing heavy lifting activities at sea). Hence, these vessels are important for a sector that faces increasing international competition.
- (26) Moreover, since these vessels are closely related to other types off vessels that are involved in construction work, the same risks apply. Therefore, there is a risk that these vessels are manned with seafarers from outside the EU or that the involved companies will flag out or relocate their activities. In the absence of adequate measures, there is also little chance that these types of vessels will reflag in the

¹⁷ *Corporate taxation in the global offshore shipping industry, PWC study of October 2014, available at: <https://www.pwc.com/gx/en/transportation-logistics/pdf/pwc-offshore-shipping.pdf>*

EU or that seafarers will fall under a social system that provides them with high levels of protection.

- (27) The Belgian authorities explained that the proposed amendments will involve changes in the following rules:
- Employer contributions for companies active in the merchant shipping and towage sector ('Werkgeversbijdragen voor ondernemingen die behoren tot de koopvaardijsector en de zeesleepvaartsector')¹⁸, pursuant to the *Besluit van de Vlaamse Regering ('BVR') of 13 November 2015*; and
 - Employee contributions for companies active in the merchant shipping sector ('Werknemersbijdragen voor ondernemingen die behoren tot de koopvaardijsector'), pursuant to the *BVR of 23 September 2016*.
- (28) Finally, the Belgian authorities confirmed that the rules applicable to employer contributions in the dredging sector (*BVR of 13 November 2015*), employee contributions in the dredging sector (*Royal Decree of 13 January 2014*) and employee contributions in the towage sector (*Royal Decree of 13 January 2014*) will remain unaffected.

2.3. Objectives of the scheme

- (29) The Belgian authorities indicated that the objectives of the notified scheme are in line with the objectives of the existing scheme as approved in 2015, in particular incentivizing Belgian and European ship-owners to (re)flag their vessels to EU registers as well preserving the EU maritime cluster, improve maritime know-how and protect European seafarers.
- (30) The Belgian authorities underlined that the notified scheme is of importance to compete with non-EU countries who take a very liberal approach concerning taxation and security regulation. In this regard, they pointed to certain studies¹⁹ which highlight the importance of State aid schemes for countries with a restrictive approach²⁰, emphasizing that shipping companies in these (restrictive) countries run a real risk of losing business to competitors located in more liberal jurisdictions, and that this could have consequences for the local (and European) shipping industries.
- (31) In addition, the notified scheme would oblige employers to maintain a certain employment level by stimulating the development of the maritime transport sector and maintaining their vessels under an EU flag.
- (32) The Belgian authorities also noted that another reason for extending the scheme is related to the importance of maintaining Europe's key role in the maritime sector. In this sense, the Belgian authorities mentioned the fact that EU shipbuilders cannot compete with countries like China when it comes to building relatively simple ships, and specialize in smaller sectors such as offshore support vessels,

¹⁸ While the title of the legal basis includes reference to the towage sector the amendments introduced by the notified scheme do not concern neither towage nor dredging activities.

¹⁹ *Ibid*, study from PWC at footnote [17] and Study from the University of Antwerp at footnote [15], p. 118.

²⁰ This is the case, according to the Belgian authorities, for the Flemish region.

which require a more qualified workforce. Hence, in order to increase the share of vessels under EU flags it is important to support the highly specialized offshore sector within Europe.

2.4. Aid impact and volume

- (33) The Belgian authorities provided information concerning the envisaged impact of the notified scheme after its introduction.
- (34) In this regard, the estimated impact in terms of foregone social security contributions would be approximately of 3,66 EUR million each year.
- (35) The Belgian authorities also added that after a period of four years the amounts of foregone revenues expected as a result of the extension would raise to 9,77 EUR million per year. This increase would be justified by investments in the new vessels.
- (36) In addition, the Belgian authorities indicated that the notified scheme would at the moment concern 120 EEA seafarers.
- (37) The Belgian authorities estimated the number of beneficiary shipping companies in a range between 11 and 50 undertakings, and indicated that notified scheme would mostly benefit large companies.

2.5. Legal basis

- (38) The Belgian authorities indicated that the legal basis of the scheme is the Decree of the Flemish Government of 13 November 2015 exempting certain employers' social security contributions for undertakings in the merchant shipping and the towage sector as well as the Decree of the Flemish Government of 23 September 2016 exempting certain employees' contributions to undertakings in the commercial sector and amending Article 1 of the above-mentioned Decree of the Flemish Government of 13 November 2015 and Article 14a(1) of the Royal Decree of 16 May 2003 implementing Chapter 7 of the Title IV of the Programme Act of 24 December 2002 (I) on the harmonisation and simplification of social security relief schemes.

2.6. Duration

- (39) The Belgian authorities indicated that the notified scheme will enter into force on 1 July 2020, subject to authorization from the European Commission, and will end on 31 December 2022, when also the existing scheme will end.

3. ASSESSMENT OF THE AID

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

- (40) 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".

- (41) 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.
- (42) In this respect, the Commission notes that Belgium accepts the State aid qualification under Article 107(1) TFEU of the notified measure.
- (43) The reduction of social security contributions in respect of qualifying seafarers constitutes foregone State revenues and thus involves State resources. Moreover, since the measure is implemented through national legislation, it is imputable to Belgium. As far as employers' contributions are concerned, the measure grants a direct advantage to the shipping companies hiring these seafarers as they benefit from lower labour costs and they are partly relieved from a charge that they would normally have to pay to the State. As far as employees' contributions are concerned, the measure grants at least an indirect advantage to the shipping companies hiring these seafarers in terms of attracting the best employees. Those advantages are selective since they are not available to companies not benefiting from the scheme in other sectors of the economy, which are however 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.
- (44) It follows that the measure involves State aid in the sense of Article 107(1) TFEU.

3.2. Legality of the aid

- (45) The Belgian authorities clarified that the obligation to notify the extension to the European Commission needs to be fulfilled before adopting the new decree amending the existing scheme. Only after the Commission's approval the government can give their definitive approval to the new legislation. Hence, without the Commission's approval, the notified scheme cannot enter into force.
- (46) The Belgian authorities indicated that the notified scheme will therefore enter into force on 1 July 2020 subject to previous authorization of the Commission.
- (47) The Commission takes note of the commitment of the Belgian authorities to respect the standstill obligation laid down in Article 108(3) TFEU and not to enforce the regime until the Commission adopts a decision authorising the notified measures.

3.3. Compatibility of the aid

- (48) 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.
- (49) The Commission has issued Guidelines for the application of Article 107(3)(c) TFEU with regard to State aid to maritime transport (the Maritime Guidelines). Aid in favour of the maritime sector must therefore be examined in the light of these Guidelines.
- (50) The existing scheme was prolonged in September 2015, when the Commission found that it was in line with the Maritime Guidelines.
- (51) The Maritime Guidelines are still in force. Hence, the compatibility of the notified scheme with the internal market has to be assessed on the basis of the Maritime Guidelines. The Commission must in particular assess whether the extended scope of the scheme, i.e. the extension to certain categories of vessels, remains within the objectives of the Maritime Guidelines.

3.3.1. Objectives in the common interest

- (52) The Maritime Guidelines provide that State aid schemes in relation to labour-related costs for seafarers may be introduced in order to support the Community maritime interest, in particular with the aim of:
- reducing fiscal and other costs and burdens borne by Community ship-owners and Community seafarers towards levels in line with world norms, directly stimulating the development of the maritime transport sector and employment, rather than providing general financial assistance;
 - encouraging the flagging or re-flagging to Member States' registers;
 - contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets; and
 - maintaining and improving maritime know-how and protecting and promoting employment for European seafarers.
- (53) The Commission notes that the objectives of the notified scheme as described in section 2.3 above are in line with the objectives set out by the Maritime Guidelines. The scheme aims at guaranteeing economic conditions in order to maintain the competitiveness of the European shipping sector, attract investments and achieve economic growth, increase the EEA's maritime fleet and create skilled maritime employment in the EEA.
- (54) The notified scheme, thus, is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

3.3.2. *Scope of the scheme*

- (55) 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.
- (56) As described in sections 2.1 and 2.2 above, the notified scheme concerns a reduction in social security contributions related to seafarers employed on certain categories of offshore vessels. This type of labour-cost reduction is contemplated in the Maritime Guidelines.
- (57) The extension, thus, is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

3.3.3. *Eligible seafarers*

- (58) 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."*
- (59) The Belgian authorities confirmed that the notified scheme will only apply to Community seafarers working on board vessels registered in a Member State.
- (60) The Belgian authorities also explained that the scheme will be applied on an individual basis, i.e. for each individual seafarer employed on a vessel. In particular, each employer has to report the wages, the working hours and the IMO number of the vessel to the technical and administrative operator of the scheme, the *Rijksdienst voor Sociale Zekerheid*.
- (61) Based on the IMO number of the vessel it is then verified whether employment is carried out on a vessel which is registered in a Member State of the EU, the identity of the seafarer and under which flag the vessel sails.
- (62) In light of the information provided from the Belgian authorities, the Commission concludes that the notified scheme applies to Community seafarers in the sense of the Maritime Guidelines.

3.3.4. *Eligible vessels*

- (63) Only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. Maritime transport activities are defined in Regulation (EEC) No

4055/86²¹ and in Regulation (EEC) No 3577/92²² as the "transport of goods and persons by sea" between ports or between ports and an off-shore installation.

- (64) Eligible vessels must therefore be engaged in transport of passengers or freight (shipping activities) between various destinations by sea-going vessels and other activities directly related thereto.
- (65) The Commission has also decided that certain activities, even if they do not fall or only partially fall within the definition of maritime transport, can, by analogy, be subject to the provisions of the Maritime Guidelines under the direct application of Art. 107(3)(c) TFEU, provided that they share three important common characteristics with vessels that perform maritime transport. First, the companies must operate in a global market and face similar challenges, in terms of global competition and relocation of on-shore activities, to those of the EU maritime transport sector. Second, the activities of the relevant vessels must be subject to the same legal environment as EU maritime transport in the fields of labour protection, technical requirements and safety. The activities must require qualified and trained seafarers, with similar qualifications as those working on board traditional maritime transport vessels. Seafarers on board those types of vessels should be governed by the same labour law and social framework as other seafarers working on other vessels. Third, the vessels must be seagoing vessels and they must be obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.²³

The extended scope covering off-shore vessels

- (66) The Belgian authorities provided a description of the main activities of the off-shore vessels envisaged to be admitted to the scheme as detailed above in section 2.2.
- (67) The Belgian authorities also indicated that some of these vessels, namely pipeline and cable-laying vessels, vessels for raising, repairing and dismantling windmills and other offshore installations as well as accommodation vessels, are the same

²¹ Regulation (EEC) No 4055/86 of 22.12.1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31.12.1986, p.1.

²² Regulation (EEC) No 3577/92 of 7.12.1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364 of 12.12.1992, p.7.

²³ Decisional practice in respect of the eligibility of certain non-maritime transport activities under the Maritime Guidelines: Commission decision of 13 April 2015 in case SA.38085 (2013/N) concerning the prolongation of the Italian tonnage tax scheme (including its application to vessels providing rescue at sea and marine assistance on the high seas), recital 54, OJ C 406, 4.11.2016, p. 1; Commission decision of 13 January 2009 in case SA C 22/2007 as regards the extension to dredging and cable-laying activities of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers in Denmark, recitals 65-72, OJ L 119, 15.5.2009, p. 23; Commission decision of 27 April 2010 in case SA. N 714/2009, The Netherlands – Extension of the tonnage tax scheme to cable layers, pipeline layers, research vessels and crane vessels, recitals 37 to 46, OJ C 158, 18.6.2010, p. 2; Commission decision of 12 October 2018 on SA.45300 Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels); Commission decision of 6 April 2018 on SA.48929, Portuguese Tonnage Tax and Seafarer Scheme, OJ C 339, 21.9.2018, p. 5.

type of vessels as those that the Commission already approved in its decision-making practice²⁴.

- (68) With regard to rock-dumping vessels, the Belgian authorities explained (see above recital (24)) that these vessels can be assimilated to pipeline and cable-layers. The vessels are involved in offshore construction work and also conduct transport activities whereby they transport rocks to the offshore construction site. In addition, these vessels are used to position rocks on pipelines and other subsea structures.
- (69) With regard to research vessels, the Belgian authorities indicated that these vessels explore the seabed and are useful for evaluating the feasibility of offshore infrastructures. This type of vessels has already been subject to the Commission's decision-making practice²⁵.
- (70) The Commission notes that the definition of 'maritime transport' set out in Article 1(4) of Regulation 4055/86 and Article 2(1) of Regulation 3577/92, and referred to in Section 2, third paragraph, of the Maritime Guidelines, includes the transport of passengers or goods by sea between ports, but also between a port and an offshore installation or structure. On that basis, the transport of parts to offshore facilities can be considered an eligible activity under the present aid scheme in accordance with the Maritime Guidelines.
- (71) However, the aforementioned categories of vessels do not perform solely or predominantly maritime transport in the sense of the Maritime Guidelines. Therefore, the activities of such vessels cannot be eligible under the present scheme in direct application of the Maritime Guidelines. Nevertheless, the Maritime Guidelines may be applied by analogy to the activities of those vessels.
- (72) In that respect, on the basis of the information provided by Belgian authorities the Commission considers that the off-shore vessels concerned by the extension in all cases require qualified seafarers, with qualifications comparable to those working on board traditional maritime transport vessels and are subject to the same labour and social standards. These vessels are all sea-going vessels and they are obliged to undergo technical and safety controls comparable to those of vessels dedicated to maritime transport.
- (73) Consequently, the Commission acknowledges that the vessels subject to the extension, and thereby the activities they carry out, are subject to a legal

²⁴ See, *inter alia*, Commission decisions in SA.51325 (2018/N-2) – Denmark Extension of the Danish International Register of Shipping regime, C(2019) 1594 final of 22.02.2019; Commission decision in State aid C22/07 (ex 43/07), Denmark - extension to dredging and cable-laying activities of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers, 13.01.2009, 2009/380/EC; Commission decision of 1 April 2015 in State aid – SA.37912 (2013/N) – Croatia, Introduction of a tonnage tax scheme in favour of international maritime transport, C(2015) 2153 final, OJ C 142, 22.4.2016; Commission Decision in N714/2009 of 27 April 2010 – The Netherlands – Extension of the tonnage tax scheme to cable layers, pipeline layers, research vessels and crane vessels (case SA.30110); Commission decision SA. 48929 (2018/N) - Portugal Tonnage Tax and Seafarer Scheme, C(2018) 2018 final, 6.4.2018, OJ C 339, 21.9.2018, p. 5.

²⁵ *Ibid*, footnote [23], in particular N714/2009 of 27 April 2010, as recently confirmed in SA.51263 (2019/N) – Netherlands Prolongation of the Dutch tonnage tax scheme for ship managers, large vessels and service vessels, C(2019)5516 final of 26.07.2019; and Commission decision SA. 48929 (2018/N) - Portugal Tonnage Tax and Seafarer Scheme, C(2018) 2018 final, 6.4.2018, OJ C 339, 21.9.2018, p. 5.

environment in the labour, technical and safety fields comparable to that of maritime transport. Similarly, qualified and trained seafarers are necessary as is the case for standard maritime transport.

- (74) In addition, section 3.1, 1st paragraph, of the Maritime Guidelines suggests that the fiscal climate in many third countries is considerably milder than within Member States, which has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation. The information provided by the Belgian authorities suggests that offshore service activities are exposed to global competitive pressure, and that companies are facing a real risk of losing business to competitors located in more liberal jurisdictions.
- (75) The Commission therefore considers there is a risk that shipping companies carrying out offshore service activities with those vessels relocate their on-shore activities outside the EU/EEA for the purpose of finding more accommodating fiscal climates and subsequently re-flag their vessels under flags of third countries. In this context, the Commission acknowledges that these companies operate in a global competitive market. The challenges that these activities face in terms of global competition and relocation of on-shore activities are therefore similar to those of EU maritime transport.
- (76) For the above reasons, the Commission considers that the notified scheme will have an incentive effect on beneficiaries to maintain their vessels under EEA flags or to (re-)flag their vessels to an EEA flag and to contribute to the development of the EEA maritime sector.
- (77) In view of the above, the Commission considers that the vessels at stake may benefit from the same type of aid as maritime transport. Therefore, the relevant section of the Maritime Guidelines can be applied by analogy also for those vessels that are not strictly engaged in maritime transport activities pursuant to the Guidelines.

Registration in a Member State

- (78) Section 3.2 of the Maritime Guidelines provides that employment costs should be allowed for Community shipping provided they apply to Community seafarers employed on board ships registered in a Member State.
- (79) The Belgian authorities confirmed that the notified scheme will only apply to vessels registered in the EEA.
- (80) For these reasons, Section 3.2 of the Maritime Guidelines is complied with.

3.3.5. National flagging restrictions

- (81) National flagging restrictions, according to which the benefits of the seafarer scheme are conditional on a certain level of national (and not EEA) flagging, infringe internal market rules in a manner indissolubly linked to the assessment of the compatibility of similarly limited aid measures.
- (82) The Belgian authorities confirmed that the notified scheme does not discriminate between EEA flags.

- (83) For this reason, the Commission considers that the conditions of the Maritime Guidelines on EEA flagging are complied with.

3.3.6. *Aid cumulation / aid ceiling*

- (84) 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.
- (85) The Belgian authorities explained the functioning of the scheme, as explained in section 2.1 above, Since the benefits only constitute a reduction in social contributions that have to be paid, such benefits cannot be higher than a full exemption from taxes and social contributions of shipping activities and seafarers.
- (86) Therefore, the Commission concludes that the requirements relating to aid cumulation / aid ceiling are fulfilled.

3.3.7. *Duration*

- (87) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration²⁶. Schemes must be subject to a regular review of their effectiveness and impact.
- (88) The seafarer scheme will therefore remain in force until 31 December 2022.
- (89) The Commission notes that such duration is in line with previously approved State aid schemes in the maritime sector.

4. CONCLUSION

- (90) Based on the foregoing, the Commission considers that the notified extension of the existing scheme fulfils all the necessary conditions of the Maritime Guidelines and is in line with the Commission's decisional practice. Therefore, the Commission concludes that the notified scheme, as assessed above, constitutes State aid pursuant to Article 107(1) TFEU which is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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.

The Commission notes that for reasons of urgency, Belgium 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.

²⁶ Case C-67/09 P Nuova Agricast EU:C:2010:607, para. 80.

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

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION