



EUROPEAN COMMISSION

Brussels, 8.7.2026  
C(2026) 4670 final

PUBLIC VERSION

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**Subject: State Aid SA.62692 (2026/N) – Poland  
Reintroduction of Polish tonnage tax scheme**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 22 April 2026, following pre-notification contacts <sup>(1)</sup>, Poland notified the reintroduction of a tonnage tax aid scheme for maritime transport (“the measure” or “the notified scheme”), in accordance with Article 108(3) TFEU. The measure had been originally approved by Commission decision of 18 December 2009 <sup>(2)</sup> for a duration of 10 years.

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<sup>(1)</sup> By letters of 5 August and 24 November 2021, 14 March and 6 November 2023, 22 April, 8 July, and 21 October 2024, 6 January, 16 January, and 14 February 2025, the Commission sent requests for additional information, to which the Polish authorities replied on 7 September 2021, 2 June 2022, 16 June 2023, 26 February, 3 June, 22 August, and 20 November 2024, and 23 January, and 26 February 2025, respectively. A technical meeting took place on 16 May 2023. Following the notification, the Commission sent requests for additional information by letters of 5 May and 15 June 2026, to which the Polish authorities replied on 25 May and on 18 June 2026, respectively.

<sup>(2)</sup> Commission decision of 18 December 2009 related to the introduction of a tonnage tax scheme in favour of international maritime transport in Poland C 34/07 (ex N 93/2006) (SA.20527), OJ L 90, 10.4.2010, p. 15.

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- (2) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 <sup>(3)</sup> and to have this decision adopted and notified in English.

## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **2.1. Objectives of the notified scheme**

- (3) According to the Polish authorities, the objective of the notified scheme is to restore the competitiveness of Polish operators of EU/EEA-flagged vessels, who are at a disadvantage when competing with vessels registered in third countries. This is especially the case since some of these third countries do not comply with social and safety standards in force at international level, while EU/EEA vessels must comply, *inter alia*, with environmental, safety and labour standards.
- (4) The notified scheme also seeks to encourage the return of the fleet of vessels registered in third countries to the EU/EEA, thereby halting the structural decline of EU/EEA registers and the EU/EEA fleet, as well as contributing to the development of maritime transport in the EU. It also aims to improve the economy of the EU/EEA as a whole, as measures to maintain the competitiveness of the EU/EEA fleet also have an impact on land-based investments of related maritime industries and on the whole maritime cluster. As such, the measure will contribute to avoiding the relocation of maritime transport companies and encourage the return of vessels flagged in third country registers to EU/EEA flags, thus improving employment in the EU and promoting the respect of European standards in terms of safety, efficiency, on-board working conditions, and respect for the environment.

### **2.2. National legal basis**

- (5) The Polish authorities notified to the Commission a draft legal basis containing amendments to the Tonnage Tax Act of 24 August 2006 (“the Tonnage Tax Act”), which will be adopted by Poland following the notification of the Commission decision approving the measure.

### **2.3. Budget and duration**

- (6) The Polish authorities have confirmed that the notified scheme would be implemented for a duration of 10 years, starting from 1 January of the year following the date of the notification of the Commission decision approving the measure.
- (7) The overall estimated budget of the notified scheme is PLN 68 750 000 (approximately EUR 16 239 518 <sup>(4)</sup>).

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<sup>(3)</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>(4)</sup> Exchange rate: PLN 1 = EUR 0.23621, taken in June 2026 from [https://commission.europa.eu/funding-and-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://commission.europa.eu/funding-and-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en).

## **2.4. Description of the notified scheme**

- (8) Under the notified scheme, a maritime transport undertaking that incurs an income tax obligation in Poland will have the possibility, as an alternative to the normal corporate income taxation system applicable in Poland, to opt for tonnage taxation.
- (9) The peculiarity of the notified scheme compared to normal corporate income taxation is the way in which taxable income (i.e., the tax base) is determined. While under normal corporate income taxation the annual profit of the company represents the tax base (with possible deductions), under the notified scheme the tax base is computed on the basis of the net tonnage of a company's fleet, with the tax base ratios (see recital (32)) established based on the net tonnage of each vessel of that fleet.
- (10) Opting for such a scheme thus permits maritime transport undertakings to anticipate the amount of corporate tax they will be liable to pay, since the tax would depend on the tonnage of the fleet operated, irrespective of actual profits made (as opposed to the normal corporate income tax regime).
- (11) Furthermore, assuming that an undertaking active in maritime transport is profitable, a tonnage tax scheme would usually lead to significant reductions in the amount of corporate tax paid, as profits are usually taxed at higher rates <sup>(5)</sup>. Maritime transport undertakings, under such a scheme, thus generally benefit from a more advantageous regime of taxation for their activities since the tonnage tax is applied irrespective of their actual profits.

### *2.4.1. Scope*

#### **2.4.1.1. Eligible undertakings**

- (12) Shipowners and charterers <sup>(6)</sup> who either (i) have their place of residence or registered office in Poland, or (ii) conduct their commercial and strategic management activities in Poland, or (iii) conduct their maritime transport activities in Poland, can opt in for the notified scheme for a period of at least five years <sup>(7)</sup>.
- (13) Ship management companies who conduct their activities from any EU/EEA Member State can also opt in for the notified scheme for a period of at least five years (see section 2.4.5) <sup>(8)</sup>.
- (14) Under the planned amendments to the Tonnage Tax Act, the tax relief granted under the tonnage tax scheme may not be cumulated with any aid attributed pursuant to the Guidelines on State aid for rescuing and restructuring non-financial

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<sup>(5)</sup> This may not always be the case: a loss-making undertaking having opted for the tonnage taxation will still have to pay some amount of tax, while under normal corporate taxation it could be liable to zero tax.

<sup>(6)</sup> Under Article 2 of the draft legal basis, eligible charterers are bareboat charterers, time-charterers, and voyage charterers.

<sup>(7)</sup> If a shipping company opts into the scheme from a date on which the remaining duration of the scheme is less than five years (see recital (5)), the shipping company may opt into the scheme for the remaining duration of the scheme.

<sup>(8)</sup> If a ship management company opts into the scheme from a date on which the remaining duration of the scheme is less than five years (see recital (5)), the shipping company may opt into the scheme for the remaining duration of the scheme.

undertakings in difficulty <sup>(9)</sup>, if the effect of the tonnage tax has not been taken into account in the decision attributing the restructuring aid. Undertakings in difficulty <sup>(10)</sup> are also not eligible for aid under the notified scheme. Furthermore, undertakings that are subject to a State aid recovery procedure based on a Commission decision are not eligible for the notified scheme, pursuant to Article 25 of the Act of 30 April 2004 on proceedings in matters concerning State aid. Moreover, under Polish law, a shipping company must also repay any State aid amount that was unduly granted <sup>(11)</sup>.

#### 2.4.1.2. Eligible vessels

- (15) Generally, vessels operating maritime transport activities are eligible to benefit from the notified scheme. Furthermore, cable vessels, floating cranes, vessels used for high-seas rescue, ships used for laying pipelines, research vessels, as well as ships for servicing offshore installations and vessels used for the construction and operation of offshore installations, are also eligible under the notified scheme.
- (16) In the case of vessels used for the carriage of goods by sea with dredging activity, Article 3(1)(1) of the draft legal basis requires that more than 50 % of their operating time actually performed during the year be used for the activity of maritime transport in order for the vessels to be eligible under the notified scheme in respect of such transport activities.
- (17) As regards towing vessels, Article 3(1)(1) of the draft legal basis stipulates that towing vessels are eligible under the notified scheme if more than 50 % of their operating time actually performed during the year constitutes maritime transport (meaning that less than 50 % of their operating time is dedicated to activities carried out in ports and for the assistance of a self-propelled vessel to reach a port).
- (18) Article 3(1)(1) of the draft legal basis states that dredging and towing vessels covered by the notified scheme are only eligible if they are flagged in an EU/EEA Member State.
- (19) All vessels must be over 100 gross tonnage to be eligible for tonnage taxation.
- (20) Vessels that are intended for fishing or sport will not be eligible under the notified scheme.

#### 2.4.1.3. Eligible activities and revenues

##### *Revenues from vessels' activities*

- (21) Only revenues from maritime transport activities are eligible under the notified scheme. These activities are listed under Article 3 of the draft legal basis:
  - (a) The carriage of goods by sea (maritime transport of goods).

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<sup>(9)</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1 ("the R&R Guidelines").

<sup>(10)</sup> As defined in the R&R Guidelines.

<sup>(11)</sup> In this context, State aid is deemed to have been 'unduly granted' if (i) it was granted on the basis of false or misleading documents, or (ii) the aid was granted despite the beneficiary not having been entitled to it.

- (b) The carriage of persons by sea (maritime transport of persons).
  - (c) Rescue at sea, towing and dredging activities at sea provided that they meet the relevant eligibility criteria (see recital (101) onward).
  - (d) Support of offshore activities <sup>(12)</sup>, cable-laying in the seabed, or pipeline-laying on the seabed, as well as crane vessels, and research vessels.
- (22) Ancillary activities listed in Article 3 of the draft legal basis are also eligible, if they do not constitute more than 50 % of a given vessel's income:
- (a) Leasing of containers needed for the carriage of goods on a vessel eligible for tonnage tax under the notified scheme, provided that it is not carried out for third parties.
  - (b) Loading and unloading, including handling of cargo carried on board a vessel eligible for tonnage tax under the notified scheme, provided that it is not carried out for third parties.
  - (c) The operation of passenger terminals in connection with shipping activities subject to tonnage tax.
  - (d) Sale of goods or services on board passenger ships and passenger-carrying cargo ships for consumption on board.
  - (e) Operation of bureaux de change on board passenger ships and passenger-carrying cargo ships.
  - (f) The carriage of passengers or cargo otherwise than on board a qualifying ship under tonnage tax operated by a qualifying owner or a qualifying charterer <sup>(13)</sup>, where:
    - i. there is a single contract with the customer for a journey which includes a voyage on the qualifying ship under tonnage tax; and
    - ii. the transport for the remainder of the journey is purchased or obtained by the qualifying owner or the qualifying charterer by provision which would have been made as between independent enterprises.
  - (g) Sale of travel packages under a single contract, if part of the service consists in travel by sea on a vessel subject to tonnage tax, and the remaining part takes place on land and the value of the land part reflects the market price and does not exceed half of the price paid by the customer under the single contract.
  - (h) Provision of brokerage services for vessels used by the company eligible for tonnage tax under the notified scheme, excluding commercial management.

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<sup>(12)</sup> See recital (14).

<sup>(13)</sup> Excluding transport of passengers as part of tourist services, which instead falls under the category described in recital (21)(g),

- (23) All other non-eligible revenues (including non-eligible activities carried out by towing and dredging vessels) will be subject to the standard corporate income tax rate. For the purposes of compliance with the notified scheme, an entity must have the necessary accounting records to enable it to determine the direct or indirect income and costs of the basic, ancillary, and ineligible activities for each of the vessels covered by it and the assets used for its operation.
- (24) Finally, the Polish authorities have confirmed that shareholders of shipping companies do not benefit from any additional tax advantages under the notified scheme. Thus, as regards the tax treatment of dividends paid and capital gains/losses made as a result of the sale of shares in companies subject to the scheme, the normal tax rules apply.
- (25) The Polish authorities explained that the notified scheme does not by itself, or by the conditions attached to it or by its financing method, constitute a non-severable violation of Union law. They also submitted that the application of the measure is without prejudice to the application of Directive 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union <sup>(14)</sup>.

#### 2.4.1.4. Flag link requirement

- (26) According to Article 3 of the draft legal basis, the notified scheme may also apply to vessels flying a non-EU/EEA flag, provided that at least 60 % of the net tonnage of the vessels operated by an undertaking fly an EU/EEA flag. However, an undertaking may also enter the notified scheme if at least 25 % of the net tonnage it operates fly an EU/EEA flag, provided that it undertakes to comply with the minimum 60 % requirement within five years of the calendar year in which it submitted a declaration to opt in to the tonnage tax scheme.
- (27) Failure to comply with the condition referred to in the first sentence of recital (26) will result in the loss of the benefit of the notified scheme for the additional vessels which gave rise to the decrease in net tonnage of vessels flying an EU/EEA flag below 60 %.
- (28) Moreover, a shipping company may only opt for tonnage tax if it carries out its activity from the territory of an EU/EEA Member State, and more than 50 % of its staff performing the principal or ancillary activities of the shipping company are EU/EEA nationals <sup>(15)</sup>.

#### 2.4.2. Time and voyage charter-in

- (29) According to Article 3 of the draft legal basis, under the notified scheme, an undertaking chartering vessels for its own use (whether time- or voyage-chartering) will be eligible to benefit from the notified scheme for the revenues originating from these vessels if it meets the requirements in recitals (26) and (27).

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<sup>(14)</sup> OJ L 328, 22.12.2022, p. 1.

<sup>(15)</sup> Excluding seafarers on seagoing vessels.

#### 2.4.3. Bareboat charter-out

- (30) Article 3 of the draft legal basis also states that the revenues from chartering-out bareboat vessels will be eligible under the notified scheme only if the following three cumulative conditions are met:
- (a) At least 50 % of the tonnage-taxed fleet is operated by the tonnage tax beneficiary; and
  - (b) The temporary excess capacity is related to the beneficiary's own shipping services; and
  - (c) The duration of the bareboat chartering-out contract is limited to a maximum of three years.
- (31) These three conditions do not apply in case of intra-group bareboat chartering.

#### 2.4.4. Level of tonnage tax

- (32) According to Article 5 of the draft legal basis, the daily tax base is calculated as described in Table 1 below for each vessel. The daily tonnage tax rate indicated is multiplied by the vessel's corresponding net tonnage in each bracket to determine the daily tax base, to which the standard corporate income tax rate in Poland will then be applied <sup>(16)</sup> in order to determine the amount of tax to be paid (i.e. the tax load) <sup>(17)</sup>.

*Table 1: Daily tax rates in the notified scheme*

| Net registered tonnage (tons)       | Daily amount per 100 tons (EUR)       |
|-------------------------------------|---------------------------------------|
| Between 0 and 1 000 <sup>(18)</sup> | The equivalent of EUR 0.55 per 100 NT |
| Between 1 001 and 10 000            | The equivalent of EUR 0.4 per 100 NT  |
| Between 10 001 and 30 000           | The equivalent of EUR 0.26 per 100 NT |
| Between 30 001 and 50 000           | The equivalent of EUR 0.24 per 100 NT |
| Above 50 000                        | The equivalent of EUR 0.2 per 100 NT  |

- (33) Under the notified scheme, those days in which an eligible vessel is actually withdrawn from operation as a result of armed robbery within the meaning of the Maritime Labour Convention of the International Labour Organization, or as a result of piracy within the meaning of Article 101 of the United Nations Convention on the Law of the Sea, may be deducted for the purpose of these calculations.
- (34) Furthermore, the notified scheme includes a possible reduction of 40 % of the tonnage tax base for vessels fuelled exclusively by alternative fuels within the meaning of Article 2(11) of the Act of 11 January 2018 on electromobility and alternative fuels.

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<sup>(16)</sup> I.e. 19%.

<sup>(17)</sup> For vessels used for pipeline laying, cable laying, research vessels, floating cranes, as well as vessels used for the construction and operation of offshore installations, the amount due is 130% of the tax load calculated on this basis.

<sup>(18)</sup> Vessels that are over 100 gross tonnage (and thus eligible under the scheme) but below 100 net tonnage are equated to vessels of 100 net tonnage for the purposes of calculating the amount of tax due under the scheme.

- (35) The Polish authorities explain that under the notified scheme, a reduction to zero of the amounts of tax owed by a beneficiary is not possible.
- (36) All revenues from non-eligible activities will be taxed according to the general rules on corporate income taxation, including revenues from non-eligible activities carried out by dredgers and towing vessels.
- (37) Furthermore, the Polish authorities have confirmed that any tax liabilities accrued before the application of the notified scheme must be settled, thus prohibiting the application of the notified scheme in regard to a tax period during which the notified scheme was not applicable to a beneficiary.

#### 2.4.5. *Ship management*

- (38) Under Article 2 of the draft legal basis, ship management activities in the form of technical management or crew management as defined in the Communication from the Commission providing guidance on State aid to ship management companies <sup>(19)</sup> may also be eligible for tonnage taxation.
- (39) This shall be the case provided that the following conditions are complied with: (i) the company conducts its ship management activities from any EU/EEA Member State, (ii) more than 50 % of the persons employed <sup>(20)</sup> by it performing those activities are EU/EEA nationals, (iii) at least 60 % of the net tonnage of the vessels operated or managed by the undertaking fly an EU/EEA flag, or at least 25 % of the net tonnage it operates flies an EU/EEA flag, provided that the beneficiary undertakes to comply with the minimum 60 % requirement within five years of the submission of its declaration of preference for tonnage taxation.
- (40) The Polish authorities have explained that eligible companies are equally required to respect all further requirements of Sections 5 and 6 of the Shipmanagement Communication.
- (41) Pursuant to Article 4 of the draft legal basis, the taxable amount for ship management companies shall amount to 30 % of the tax basis calculated according to section 2.4.4 where the company performs only technical management or crew management, and shall amount to 50 % of the tax basis calculated according to section 2.4.4 where the company performs technical and crew management jointly.

#### 2.4.6. *Ring-fencing measures, cumulation and reporting*

- (42) Pursuant to the draft legal basis, undertakings that have opted for tonnage taxation are obliged to keep separate accounts for eligible and non-eligible revenues under the notified scheme, for each eligible vessel. They must also keep separate accounts for their revenues from core maritime activities and for their revenues from ancillary activities.
- (43) Furthermore, those undertakings must annually provide the Polish authorities with a detailed report for each vessel (including the identification of the vessel, its flag, and its tonnage) as well as documents justifying that all the requirements under

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<sup>(19)</sup> Communication from the Commission providing guidance on State aid to shipmanagement companies, OJ C 132, 11.6.2009, p.6 (“the Shipmanagement Communication”).

<sup>(20)</sup> Excluding seafarers on seagoing vessels.

international and EU/EEA standards on safety, reliability, environmental performance and on-board working conditions are met.

- (44) Moreover, the Polish authorities have explained that the cumulation rules laid down in section 11 of the Community guidelines on State aid to maritime transport <sup>(21)</sup> (“the Maritime Guidelines”) will be respected and that the beneficiaries of the notified scheme will not obtain, in total, a higher benefit than the full exemption from taxes and social contributions of shipping activities and seafarers.
- (45) Finally, the Polish authorities confirm that they will provide the Commission with reports on the application of the notified scheme, as required by section 12 of the Maritime Guidelines.
- (46) Under Article 8 of the Tonnage Tax Act, revenues from the sale of an eligible vessel by a tonnage tax company will go out of the perimeter of tonnage tax revenues and be taxed at a flat rate of 15 % where they are not fully used within three years for the purchase, repair, modernisation or adaptation of another vessel.

### **3. ASSESSMENT**

#### **3.1. Existence of aid**

- (47) 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*”.
- (48) 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:
  - (a) it has to be imputable to the Member State and granted out of State resources;
  - (b) it has to confer an economic advantage on undertakings;
  - (c) the advantage has to be selective; and
  - (d) the measure has to distort or threaten to distort competition and affect trade between Member States.
- (49) In this respect, the Commission notes that the notified scheme will provide undertakings commercially active in the field of maritime transport with the possibility to opt for an advantageous taxation compared to other companies taxable in Poland, thereby conferring them an economic advantage.
- (50) Moreover, the Commission considers that Poland will forego fiscal revenues and that, therefore, the notified scheme involves a transfer of State resources. Moreover, since the notified scheme will be implemented through a national law, it is imputable to Poland.

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<sup>(21)</sup> OJ C 13, 17.1.2004, p.3.

(51) Moreover, the notified scheme is selective since:

- i. undertakings established in Poland, including beneficiaries of the notified scheme, are normally subject to corporate income tax, which is calculated as a percentage of their profits (“the tax base”, to which adjustments can be made). In Poland, the normal rate of corporate income tax is 19%, which constitutes the reference framework against which the notified scheme must be analysed. In light of the corporate income tax objective <sup>(22)</sup>, all undertakings, including those engaged in maritime transport activities, are in a comparable factual and legal situation;
- ii. in the context of this reference framework, the tonnage tax, by modifying the tax base calculation (from the actual profit to a fixed number based on the tonnage operated), changes the way the amount of corporate tax to be paid by eligible companies active in the maritime transport sector is calculated. By generally decreasing the amount of corporate tax that eligible undertakings are liable to pay, the tonnage tax scheme confers an advantage on these eligible undertakings over non-eligible undertakings. The tonnage tax thus constitutes a derogation from the reference framework mentioned above, since it differentiates between undertakings that are, as regards the objectives of the reference framework, in a comparable legal and factual situation; and
- iii. there is no justification apparent, invoked by Poland, or justified by the nature, logic, or objective of the fiscal reference framework for this derogation to the normal corporate income tax. The notified scheme indeed aims to develop maritime transport activities, while the reference framework’s objective is to tax the revenues obtained by undertakings in Poland.

(52) Finally, in view of other possible means of transport and the global scale of maritime transport, the tonnage tax scheme is liable to distort competition and affect trade within the liberalised EU maritime transport market.

(53) It follows that the notified scheme entails State aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

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

(54) As explained in recital (5), the Polish authorities have committed that the notified scheme will enter into force only after the notification of the Commission’s decision approving the notified scheme. Therefore, the Polish authorities have respected their obligation under Article 108(3) TFEU.

### **3.3. Compatibility of the notified scheme with the internal market**

(55) Since the notified scheme 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 Article 107(3)(c) TFEU.

(56) Pursuant to this provision, the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or*

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<sup>(22)</sup> I.e. to provide revenues to the government by taxing the benefits of undertakings.

*of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.*

- (57) Thus, in order to be considered compatible with the internal market under that provision, the aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas (positive condition), and the second, being that it must not adversely affect trading conditions to an extent contrary to the common interest (negative condition) <sup>(23)</sup>.
- (58) In the present case, the notified scheme concerns the maritime transport sector. Accordingly, its compatibility with the two conditions mentioned above will be examined in the light of the Maritime Guidelines and, more specifically, its point 3.1 on the “*fiscal treatment of shipowning companies*”, which provides for the possibility of implementing a special tax treatment for EU ship-owners and ship-managers based on tonnage operated rather than actual profits made. The Shipmanagement Communication is also relevant to assess specifically the aid provided to ship managing activities.

3.3.1. *Positive condition: the notified scheme facilitates the development of an economic activity*

3.3.1.1. Identification of the economic activity which is being facilitated by the measure and objectives it aims to fulfil

- (59) In order to be declared compatible with the internal market under Article 107(3)(c) TFEU, the aid in question must contribute to the development of an economic activity <sup>(24)</sup>. Section 2.2. of the Maritime Guidelines also provides a number of objectives that State aid to the maritime transport sector must aim at.
- (60) The Polish authorities have explained that by implementing a different calculation of the corporate tax base, the notified scheme will provide the possibility of decreasing the amount of tax to be paid by undertakings engaged in maritime transport activities and will therefore contribute to the development of this activity in the Union by incentivising the return to the EU/EEA fleet of vessels registered in third countries (recital (4)). Therefore, the notified scheme contributes to the development of this economic activity.
- (61) More specifically, the Commission also notes, as per the explanations of the Polish authorities, that the notified scheme will help attain the general objectives of the Maritime Guidelines (see section 2.2. thereof):
- (a) to improve a safe, efficient, secure and environment friendly maritime transport, by encouraging maritime transport undertakings to flag their vessels in a Member State’s register which necessarily require the respect of international and Union standards in those areas. When a derogation from the flag-link is permitted, the respect of the same standards is

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<sup>(23)</sup> Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

<sup>(24)</sup> Judgment of the Court of justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 20 and 24.

required for the concerned vessel(s). This is also in line with section 5.3 of the Shipmanagement Communication;

- (b) to encourage the flagging or re-flagging to Member States' registers, by providing a tax environment in line with what third countries may offer (recital (4));
  - (c) to contribute to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets, through the spillover effects from the maritime transport activities on land-based maritime industries;
  - (d) to maintain and improve maritime know-how and protecting and promoting employment for European seafarers, by encouraging the presence in the EU/EEA of companies active in maritime transport.
- (62) The Commission therefore considers that the notified scheme facilitates the development of certain economic activities, as required by Article 107(3)(c) TFEU, and is in line with the objectives laid down by the Maritime Guidelines.

#### 3.3.1.2. Incentive effect of the notified measure

- (63) An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would not otherwise occur without the aid <sup>(25)</sup>.
- (64) As section 3.1. of the Maritime Guidelines recalls, *“many third countries have developed significant shipping registers, sometimes supported by an efficient international services infrastructure, attracting shipowners through a fiscal climate which is considerably milder than within Member States. The low-tax environment has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation. It should be emphasised that there are no effective international rules at present to curb such 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”*.
- (65) This situation described in 2004 is still present today, with the difference that many EU Member States have now also introduced tonnage tax schemes in order to partly align themselves to the more advantageous fiscal conditions offered by third countries' registers.
- (66) Thus, in the absence of a tonnage tax scheme, the risk is the continuation of *“the structural decline of Community registers”* <sup>(26)</sup> and the continuation of the flagging of vessels in third countries' registers, as well as the relocation of the management operations of vessels in those same third countries. This would result in a loss of employment and maritime know-how in the EU/EEA, as well as in an overall

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<sup>(25)</sup> Judgment of the Court of justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 20 and 24.

<sup>(26)</sup> See section 1(c) of the Maritime Guidelines.

reduced compliance of the world fleet with international and EU/EEA standards as regards labour, safety and environmental protection.

- (67) As such, tonnage tax schemes have in the past proven to successfully halt the decline of EU/EEA registers and reach the objectives set by the Maritime Guidelines. In particular, the Commission noted that “*Member States which have introduced aid measures, particularly in the form of tax relief, have obtained re-registration under the national flag of a significant volume of tonnage in all the registers taken together*” <sup>(27)</sup>.
- (68) According to the explanations of the Polish authorities, the notified scheme will incentivise shipowners liable to pay taxes in Poland to either (re-)flag their ships in an EU/EEA register, or to prevent them from relocating their operations to a third country (recital (4)).
- (69) In light of the above, the Commission considers that the notified scheme has an incentive effect.

#### 3.3.1.3. Absence of breach of relevant provisions or general principles of Union law

- (70) State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a contravention of provisions or general principles of Union law <sup>(28)</sup>.
- (71) In particular, national flagging restrictions according to which the benefits of a tonnage tax scheme are restricted to a certain level of national flagging (as opposed to EU/EEA flagging) infringe internal market rules. Therefore, such national flagging restrictions cannot be approved.
- (72) The Polish authorities have confirmed that the notified scheme does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law (recital (25)). The Commission notes that the notified scheme contains no discriminatory provisions between vessels flagged in any EU/EEA Member States as it applies to vessels flying all EU/EEA flags subject to taxation in Poland (recital (8)) <sup>(29)</sup>. Therefore, the Commission concludes that the notified scheme does not constitute a non-severable violation of Union law.
- (73) In light of the above, the Commission concludes that the notified scheme does not infringe relevant Union law.

#### 3.3.1.4. Conclusion on the assessment of the positive condition

- (74) The Commission therefore concludes that the notified scheme facilitates the development of an economic activity pursuant to the requirements set out in Article 107(3)(c) TFEU and in the Maritime Guidelines.

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<sup>(27)</sup> See section 1(a) of the Maritime Guidelines.

<sup>(28)</sup> Judgment of the Court of justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 44, judgment of the Court of justice of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50 and 51.

<sup>(29)</sup> The Commission also notes that Poland explained that the application of the notified measure is without prejudice to the application of Directive 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, p. 1 (see recital (24)).

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

3.3.2.1. Positive effects of the notified scheme

- (75) The notified scheme is designed in such a way as to support the economic development of the EU/EEA maritime transport sector by promoting the competitiveness of the European fleet on the world maritime transport markets, in particular vis à vis non-EU/EEA, third country flags. By offering an easily predictable and (usually) lower corporate income tax, the notified scheme will support undertakings engaged in maritime transport by lowering the amount of taxes they have to pay, therefore enabling their further development and incentivising investments in such activities in the Union.
- (76) The notified scheme also favours the flagging of vessels to an EU/EEA flag, which in turn improves the general maritime transport by making it safer, more efficient, more secure and more environment friendly. Even when a derogation to the flag-link is possible, the notified scheme ensures that the relevant standards in terms of safety, reliability, environmental performance, and on-board working conditions are complied with. It also helps maintaining and improving maritime know-how and protecting and promoting employment for European seafarers working for maritime transport undertakings.
- (77) The notified scheme is also expected to have positive macro-economic returns on the corresponding maritime cluster, as it will contribute to the development of activities related to maritime transport (recital (4)).
- (78) Additionally, the promotion of the EU/EEA maritime transport sector is expected to have positive effects regarding employment in the Union as a whole (recital (4)). Indeed, the Maritime Guidelines (section 3.1, fifth paragraph) state that measures such as tonnage tax schemes “*have been shown to safeguard high quality employment in the on-shore maritime sector, such as management directly related to shipping and also in associated activities (insurance, brokerage and finance)*”. There is thus a spillover beneficial effect of tonnage tax schemes on related activities that are part of the maritime cluster, like on-shore employment and investments in fixed assets.

3.3.2.2. Necessity of the notified scheme

- (79) The Union maritime transport market fails to deliver an effective result as regards the objectives laid down in the Maritime Guidelines, section 2.2, in the absence of State aid measures. 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*”. This situation, which has not changed over the past years, is constitutive of a market failure.

- (80) State aid in the form of the implementation of a tonnage tax system is thus necessary to lower the tax-related costs of eligible undertakings and enable them to cope effectively with this international competition <sup>(30)</sup>.
- (81) The notified scheme aims at creating fairer competition for undertakings engaged in maritime transport liable to tonnage tax in Poland, while closely respecting the conditions for such an intervention laid down in the Maritime Guidelines.
- (82) Therefore, the Commission concludes that the notified scheme is necessary to remedy the identified market failure.

#### 3.3.2.3. Appropriateness of the notified scheme

- (83) The notified tonnage tax scheme is an appropriate measure to reach the objectives laid down in the Maritime Guidelines. In particular, tax relief measures (such as tonnage tax regimes) are foreseen by the Maritime Guidelines as aid measures that improve the fiscal climate for ship owning companies and allow fairer competition with flags of convenience. Moreover, administrative or regulatory measures could not incentivise as effectively the (re-)flagging of the vessels in the EU/EEA. The Maritime Guidelines state in that regard that “*these types of fiscal [tonnage tax] incentives can generally be endorsed*” <sup>(31)</sup>.
- (84) In order to be considered appropriate under the Maritime Guidelines, a tonnage tax scheme has to fulfil a number of conditions laid down in section 3.1. thereof. These conditions make sure that the objective of reinforcing the EU/EEA fleet is completed, by requiring a flag-link to an EU/EEA register and the presence of the managing undertaking in the EU/EEA. Finally, they ensure the safety, efficiency, security and environment-friendliness of the sector by requiring the respect of relevant international and Union standards.

##### 3.3.2.3.1. Ensuring the development of the EU/EEA registered fleet

###### 3.3.2.3.1.1. Eligible undertakings

- (85) According to section 3.1 of the Maritime Guidelines and sections 5.1 and 5.2 of the Shipmanagement Communication, the benefit of a tonnage tax scheme requires the shipowner or ship manager to be established within an EU/EEA Member State’s territory and liable to corporate tax, provided that the strategic and commercial management of its fleet is carried out from within the EU/EEA territory.
- (86) As explained in recital (8), a maritime transport undertaking that incurs an income tax obligation in Poland will have the option, as an alternative to the ordinary corporate income taxation for the transport of goods and passengers by sea, to opt into the tonnage tax regime instead.
- (87) As regards the notified scheme, the Commission notes that, with regard to both technical and crew managers, the additional requirements set out in sections 5 and 6 of the Shipmanagement Communication are fulfilled (see recital (40)). The notified scheme also requires undertakings having opted for the tonnage tax scheme to provide annually documentary justification of their compliance with EU/EEA

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<sup>(30)</sup> See in particular section 1 of the Maritime Guidelines.

<sup>(31)</sup> Section 3.1. of the Maritime Guidelines.

standards on safety, reliability, environmental performance, and on-board working conditions (recital (43)).

- (88) The scope of eligible undertakings under the notified scheme is thus in line with the Maritime Guidelines, the Shipmanagement Communication and the Commission's case practice, ensuring that the notified scheme is appropriate to fulfil the objectives of (i) contributing to the consolidation of the maritime cluster established in the Member States and (ii) maintaining and improving maritime know-how in the EU and EEA.

#### 3.3.2.3.1.2. Flag-link requirement

- (89) In line with section 3.1 of the Maritime Guidelines, and in order to attain the objective of encouraging the flagging or re-flagging to Member States' registers laid down in section 2.2 of the same guidelines, beneficiaries must have a certain share of their fleet under EU/EEA flags. If the share of EU/EEA-flagged vessels of the entrant's fleet is above 60 %, there is no obligation for the beneficiary, as long as the share remains above 60 %. If this share is less than 60 %, beneficiaries must maintain or increase the share, and if the tonnage share falls below this level no further tax relief for additional non-EU/EEA-flagged vessels may be granted. The Commission's case-practice also requires tonnage tax schemes to provide for a minimum level of EU/EEA-flagging in each fleet when entering the notified scheme <sup>(32)</sup>.
- (90) The Commission notes that the notified scheme provides for a minimum 25 % proportion of EU/EEA-flagged vessels for an undertaking entering the notified scheme (recital (26)). Moreover, an undertaking must increase this proportion to 60 % within five years to remain eligible for the notified scheme.
- (91) Failure to comply with those conditions will lead to the loss of the application of the tonnage tax scheme for the additional non-EU/EEA-flagged vessel(s) giving rise to the increase above 40 % of the proportion of such vessels. If the failure to comply with the 60 % proportion instead results from the departure of EU/EEA-flagged vessels, the absence of the vessel(s) is taken into account from the date when it was first included in the notified scheme.
- (92) In the light of these requirements, the Commission is satisfied with the 25 % of tonnage under EU/EEA flag requirement, which is such as to complete the objective of (re-)flagging vessels in EU/EEA registers. The Commission further notes that this level is in line with previously approved schemes <sup>(33)</sup>.
- (93) The Commission is thus satisfied that the flag-link requirements are in line with the Maritime Guidelines as well as its case practice, thus allowing the notified scheme

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<sup>(32)</sup> Commission decision of 6 April 2018 in case SA.48929 (2018/N), Tonnage tax and Seafarer Scheme, OJ C/339/2018, 21.9.2018, recital (74). For example, this entry level may be placed at one vessel (Commission decision of 16 December 2019 in case SA.51809, OJ C/187/2020, 05.6.2020, recitals (140) and (141)) or at 20 % (Commission decision of 18 August 2016 in case SA.43642, OJ C/341/2016, 16.9.2016, recitals (103) and (107)).

<sup>(33)</sup> See for example Commission decision of 24 May 2024 in case SA.106028 (2023/N), Gipuzkoa tonnage tax scheme, OJ C/2024/4349, 5.7.2024, recitals (86) to (88), Commission decision of 6 April 2018 in case SA.48929 (2018/N), Tonnage tax and seafarer scheme, OJ C/339/2018, 21.9.2018 recital (74), Commission decision of 16 December 2019 in case SA.51809, OJ C/187/2020, 5.6.2020, recitals (140) and (141), Commission decision of 18 August 2016 in case SA.43642, OJ C/341/2016, 16.9.2016, recitals (103) and (107).

to fulfil its objective regarding the development of the EU/EEA-flagged maritime fleet and the development of the European maritime cluster.

3.3.2.3.2. Ensuring the development of a safer, secure, efficient and more environment-friendly maritime transport fleet

- (94) Under section 3.1. of the Maritime Guidelines, any vessel flying the flag of a country which is not a Member State of the EU or of the EEA must abide by the same international and Union standards regarding reliability, environmental performance, and on-board working conditions. Concerned undertakings must provide annual reports demonstrating these standards are complied with.
- (95) The notified scheme requires that those vessels comply with the relevant standards and provide documents justifying that all the requirements under international and EU/EEA standards on safety, reliability, environmental performance, and on-board working conditions are met (recital (43)).
- (96) Failure to comply with this requirement will result in the obligation to pay the amounts which should have been paid under the general corporate income tax system, for the ongoing tax period, as well as for all previous tax periods when the notified scheme was applied.
- (97) The Commission therefore concludes that the notified scheme complies with the requirements of the Maritime Guidelines in this regard and is thus appropriate in fulfilling the objective of ensuring the development of a safer, secure, efficient and more environment-friendly maritime transport fleet.
- (98) Subsequently, the Commission concludes that the tonnage tax scheme assessed is appropriate to fulfil the objectives laid down in the Maritime Guidelines.

3.3.2.4. Proportionality of the notified scheme

- (99) Aid is considered proportionate if the amount is limited to the minimum necessary and the potential distortions of competition are minimised. Under section 3.1. of the Maritime Guidelines, a tonnage tax scheme must respect certain conditions limiting the aid and ensuring the distortions of competition are limited: (i) it can only apply to fleets meeting certain requirements to fulfil the objectives of the notified scheme in terms of flag-link requirement and respect of safety, labour-conditions and environment standards; (ii) it must be limited to maritime transport activities, to the exclusion of leasing or investment activities, and apply only to eligible vessels; and (iii) the aid amount must be established in line with the Maritime Guidelines, respecting the aid ceiling provided by the same Guidelines, and must not provide additional aid for early tax depreciations.
- (100) Regarding condition (i), the Commission recalls its assessment from section 3.3.2.3 above and is thus satisfied that it is complied with by the notified scheme. Conditions (ii) and (iii) are assessed in the following sections.

#### 3.3.2.4.1. Limiting the notified scheme to revenues from maritime transport activities

##### 3.3.2.4.1.1. Eligible vessels

- (101) The Maritime Guidelines only apply to maritime transport activities. Maritime transport is defined as the transport of goods and persons by sea between ports, as well as between a port and an offshore installation/structure <sup>(34)</sup>. Activities which are not maritime transport, such as the activities carried out by fishing boats, exploitation of construction sites, and inland transport of containers, do not fall under the Maritime Guidelines. Towage and dredging vessels can be eligible only if they are registered in an EU/EEA Member State and only in so far as at least 50 % of their operating time actually performed during the year constitutes maritime transport.
- (102) In the present case, the Commission notes that vessels carrying out maritime transport activities are eligible to the tonnage tax under the notified scheme (recital (15)). The Commission also notes that only towage and dredging vessels that are registered in an EU/EEA Member State are eligible under the notified scheme, and only in so far as at least 50 % of their operating time actually performed during the year constitutes maritime transport (recital (16) and (17)).
- (103) Furthermore, cable vessels, floating cranes, vessels used for high-seas rescue, ships used for laying pipelines, research vessels, as well as ships for servicing offshore installations and vessels used for the construction and operation of offshore installations, are also eligible under the scheme (see recital (15)).
- (104) In that regard, it should be noted that certain activities, even if they do not fall within the definition of maritime transport contained in the Maritime Guidelines, can be subject by analogy with maritime transport to the provisions of the Maritime Guidelines. This is inter alia the case for operation of vessels specialised in servicing off-shore activities, including carrying personnel, material and equipment or performing installation and maintenance activities (e.g. cable laying, pipe-laying, research and crane vessels) or vessels providing rescue at sea and maritime assistance, provided that they require similarly qualified staff and are similarly exposed to international competition.
- (105) The Polish authorities explained that the activities of the said vessels are comparable to maritime transport activities in terms of know-how, manning, technical and safety controls and international competition. Furthermore, these vessels are sea-going vessels subject to technical and safety control comparable to those applicable to vessels operating maritime transport and, finally, they are subject to international competition.
- (106) In light of the above and considering the previous case practice of the Commission in this regard <sup>(35)</sup>, the Commission concludes that the scope of eligible vessels is in line with the Maritime Guidelines.

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<sup>(34)</sup> Section 2 of the Maritime Guidelines.

<sup>(35)</sup> Commission decision of 6 April 2018 in case SA.48929 (2018/N), Tonnage tax and seafarer scheme, OJ C/2018/339, 21.9.2018, recitals (21), (53) and (54), Commission decision of 11 October 2018 in case SA.45300 (2016/N), Amendment to the Danish tonnage tax scheme, OJ C/2019/090, 8.3.2019, recitals (29) to (33) and (63) to (72), Commission decision of 26 July 2019 in case SA.51263 (2019/N), Prolongation of the Dutch tonnage tax scheme for ship managers, large vessels

#### 3.3.2.4.1.2. Eligible revenues

##### *Core and ancillary revenues*

- (107) As regards the core and ancillary revenues that can be covered by tonnage tax, the Commission's decision-making practice <sup>(36)</sup> distinguishes between:
- (a) Core revenues from maritime transport activities: core revenues are revenues from ticket sales or fees for cargo transportation and, in case of passenger transportation, letting of cabins in the context of maritime voyage and sale of food and drinks for immediate consumption on board. These revenues are directly eligible for a tonnage taxation scheme;
  - (b) Non-core (ancillary) revenues from maritime activities: other types of revenues which are frequently provided on board (especially in passenger transport) and which do not threaten to excessively distort competition with land-based providers, who are taxed according to the general rules of taxation. Examples of ancillary services are *inter alia* the rental of advertising billboards on-board, the sale of goods and the provision of services customarily offered on passenger ships, the renting out of ship premises to shop and service operators, and the intermediation in provision of local excursions. These revenues are eligible only insofar as they do not exceed 50 % of the total gross eligible revenues from the operation of a given vessel.
  - (c) Contracts that are non-customary and unrelated to maritime transport, such as acquisition of cars, livestock, property, are ineligible revenues (neither as core nor as ancillary revenues).
- (108) The Commission concludes that the notified scheme, which exhaustively lists the eligible core and ancillary activities (recitals (21) and (22)), is in line with the requirements listed above. The Commission also concludes, in the light of the exhaustive list provided by the Polish authorities, that the activities listed in recital (21) would correspond to typical genuine core maritime transport activities, and the activities listed in recital (22) would correspond to typical ancillary activities.
- (109) Moreover, in relation to these requirements, the Commission notes that, as explained in recital (22), only revenues generated by maritime transport activities (core revenues) and revenues derived from activities ancillary to maritime transport (non-core revenues), up to a maximum of 50 % of the total income generated by maritime transport activities of each eligible vessel, can benefit from the tonnage tax scheme.

##### *Revenues from towage and dredging vessels*

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and service vessels, OJ C/2019/277, 16.8.2019, recitals (21), (22) and (77) to (83), Commission decision of 16 December 2019 in case SA.51809 (2019/N), Prolongation of the Cyprus tonnage tax and seafarer scheme, OJ C/2020/187, recitals (108) to (112).

<sup>(36)</sup> Commission decision of 16 December 2019 in case SA.53469 (2019/N), State aid in favour of maritime transport, OJ C/144/2020, 30.4.2020, p.1, recitals (37) and (38), Commission decision of 6 April 2018 in case SA.48929 (2018/N), Tonnage tax and Seafarer Scheme, OJ C/339/2018, 21.9.2018, recitals (17) to (20).

- (110) According to section 3.1. of the Maritime Guidelines, revenues from dredging and towing vessels are eligible only in respect of the maritime transport activities carried out by the said vessels.
- (111) Under the notified scheme, non-eligible revenues from all vessels will be subject to normal corporate income tax (recital (23)). In that regard, the notified scheme respects the Maritime Guidelines.

*Absence of prohibited deductions*

- (112) According to section 3.1. of the Maritime Guidelines, “*tonnage tax will be payable irrespective of the company's actual profit or losses*”. This provision prohibits any type of loss-deduction mechanism or any full tonnage tax exemption, even on a temporary basis.
- (113) According to the notified scheme, tonnage tax to be paid will be calculated on the basis of calendar days and does not contain any full tonnage tax exemption (recital (35)). The Commission thus concludes that the conditions laid down in the Maritime Guidelines in this regard are complied with.

3.3.2.4.1.3. Ring-fencing measures

- (114) In order to enable the individual monitoring of revenues, expenses and losses from eligible and non-eligible activities and vessels, the companies opting for the tonnage tax scheme are required to separate accounts accordingly.
- (115) The Commission notes that according to the information submitted by the Polish authorities, any undertaking opting for the notified scheme must have the necessary accounting records to enable it to determine the direct or indirect income and expenditure relating to each of the vessels covered by the notified scheme and the assets assigned to its operation; the accounting practices put in place must also permit the undertakings to differentiate, for each vessel, between core, ancillary and non-eligible activities (recital (42)).
- (116) The Commission is thus satisfied that the notified scheme is in line with the Maritime Guidelines in this respect.

3.3.2.4.1.4. Time and voyage charter-in

- (117) Time and voyage charterers are providers of maritime transport services and are normally covered by the Maritime Guidelines. However, such companies may only benefit from tonnage taxation if they contribute to an objective of the Maritime Guidelines, notably the promotion of the use of EU/EEA flags, the preservation of EU/EEA know-how, or a combination of the two.
- (118) Under the Commission’s decisional practice, this is the case if one of the following conditions is fulfilled <sup>(37)</sup>: (i) in addition to time/voyage chartered vessels equipped and manned by other companies, the tonnage tax beneficiary has in its fleet also vessels for which it ensures crew and technical management and provided such vessels constitute at least 20 % of the total tonnage taxed fleet; or (ii) the share of the vessels that are both non-EU/EEA-flagged and time/voyage chartered does not

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<sup>(37)</sup> See for example Commission decision of 16 December 2019 in case SA.53469 (2019/N), State aid in favour of maritime transport, OJ C/144/2020, 30.4.2020, p.1, recital (90).

exceed 75 % of the beneficiary's fleet under tonnage tax; or (iii) at least 25 % of the beneficiary's entire fleet is EU/EEA-flagged.

- (119) The notified scheme plans that time- and voyage- chartering are eligible if at least 25 % of the beneficiary's entire fleet is EU/EEA-flagged (recital(29)).
- (120) The notified scheme is therefore proportionate and in line with the Commission's case practice in this respect.

#### 3.3.2.4.1.5. Bareboat charter-out ("BBO")

- (121) In principle, BBO is not a maritime transport activity, but rather a leasing activity, as the main risk for the transport rests with the lessee and not the lessor. Unfair competition to the detriment of genuine leasing companies which do not benefit from tonnage tax, but which come under the normal corporate tax, has to be avoided. Therefore, BBO activities may only be allowed for tonnage tax to address a situation of temporary (maximum three years) overcapacity.
- (122) In order to be eligible for tonnage taxation, the Commission has considered in its decisional practice <sup>(38)</sup> that:
  - (a) BBO contracts must be restricted to a maximum period of three years;
  - (b) temporary excess capacity must be related to the beneficiary's own shipping services, i.e. excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation; and
  - (c) at least 50 % of the tonnage taxed fleet must still be operated by the tonnage tax beneficiary. EU/EEA intra-group BBO transactions are eligible without any limitations.
- (123) Intra-group bareboat charter activities are always eligible without restrictions, since the beneficiary as a group performs maritime transport through an intra-group leasing structure.
- (124) In the present case, the Commission notes that BBO activities are eligible subject to the three above-mentioned conditions, with intra-group BBO activities being always eligible.
- (125) The notified scheme is thus proportionate and in line with the Commission's case practice in this respect since aid to BBO may be provided only if is based on short term contracts, while there are limitation in terms of operation of the fleet and excess capacity requirements.

#### 3.3.2.4.1.6. Fiscal treatment of capital gains and dividends related to shares in shipping companies as well as maritime intermediaries

- (126) As set out in section 3.1 of the Maritime Guidelines, the fiscal advantages must be restricted to shipping activities and normal tax levels should be preserved for the remuneration of shareholders and directors. Therefore, income related to dividends paid by shipping companies and capital gains arising from the sale of shares in

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<sup>(38)</sup> Commission decision of 16 December 2019 in case SA.53469 (2019/N), State aid in favour of maritime transport, OJ C/144/2020, 30.4.2020, p.1, recital (94).

shipping companies does not constitute income arising from shipping activities, but rather income arising for the shareholders from their investment activities. There is no compatibility basis which would justify preferential tax treatment of income from such investment activities.

- (127) The notified scheme does not provide for a preferential treatment for capital gains and dividends related to shares in shipping companies (recital (24)), and it is thus in line with the Maritime Guidelines in this respect.
- (128) The Commission concludes that the notified scheme is limited to genuine maritime transport activities and as such is proportionate to attain the objectives of the Maritime Guidelines in the least distortive way.

#### 3.3.2.4.2. Level of tonnage tax

- (129) According to section 3.1 of the Maritime Guidelines, “*the Commission will only approve schemes giving rise to a tax-load for the same tonnage fairly in line with the schemes already approved*”.
- (130) Table 2 provides an overview of annual tax loads<sup>(39)</sup> in tonnage tax schemes previously approved by the Commission and the notified scheme.

*Table 2: Annual tax loads in schemes previously approved by the Commission and under the notified scheme*

| Ship net tonnage<br>(in tons) | Annual tax load (EUR) |                       |                         |                        |                        |                          |
|-------------------------------|-----------------------|-----------------------|-------------------------|------------------------|------------------------|--------------------------|
|                               | Poland                | Malta <sup>(40)</sup> | Croatia <sup>(41)</sup> | Cyprus <sup>(42)</sup> | Greece <sup>(43)</sup> | Slovenia <sup>(44)</sup> |
| 1 000                         | <b>381</b>            | 1 000                 | 361                     | 365                    | 626                    | 624                      |
| 10 000                        | <b>2 878</b>          | 3 580                 | 3 135                   | 3 157                  | 6 262                  | 4 805                    |
| 20 000                        | <b>4 681</b>          | 4 880                 | 5 144                   | 5 165                  | 12 003                 | 7 579                    |
| 25 000                        | <b>5 583</b>          | 5 330                 | 6 149                   | 6 169                  | 14 612                 | 8 965                    |
| 40 000                        | <b>8 149</b>          | 6 480                 | 8 058                   | 8 085                  | 22 440                 | 11 046                   |
| 50 000                        | <b>9 813</b>          | 7 180                 | 8 795                   | 8 815                  | 24 789                 | 12 433                   |
| 80 000                        | <b>13 974</b>         | 8 680                 | 11 005                  | 11 005                 | 31 384                 | 16 593                   |

Source: Commission calculations

- (131) Based on the above, the Commission observes that the tax loads resulting from the notified scheme, albeit relatively low, can be considered fairly in line with tonnage tax schemes previously approved by the Commission. The notified scheme is thus in line with the Maritime Guidelines and the Commission’s case practice in this

<sup>(39)</sup> The tax load is the annual amount that would be paid for each ship entering the notified scheme. It is calculated as follows: [(daily tax-rate) x (vessel’s tonnage) for each tonnage bracket] x (365 days) x (19% corporate tax rate applicable in Poland). The level of tonnage tax of the notified scheme is described in detail in recitals (30) to (35).

<sup>(40)</sup> Commission decision of 19 December 2017 in case SA.33829 (2012/C), OJ L/176/2019, 1.7.2019.

<sup>(41)</sup> Commission decision of 1 April 2015 in case SA.37912 (2013/N), OJ C/168/2020, 15.5.2020.

<sup>(42)</sup> Commission decision of 16 December 2019 in case SA.51809 (2019/N), OJ C/187/2020, 5.6.2020.

<sup>(43)</sup> Commission decisions of 18 December 2015, 6 November 2024, and 25 November 2024 in case SA.33828 (2012/E, 2011/CP).

<sup>(44)</sup> Commission decision of 10 December 2018 in case SA.48949 (2018/N-2), OJ C/40/2019, 1.2.2019.

respect. As the notified scheme provides for a fiscal regime in line with other Member States, it does not result in a disproportionate distortion of competition on the internal market and between Member States. It can consequently be considered proportionate.

- (132) The Commission also notes that the specific tonnage tax rates applied to each vessel, albeit relatively low, can be considered in line with previously approved schemes, as Table 3 shows. In that regard, the Commission also notes that these rates are identical to the rates approved in the Commission decision of 18 December 2009 <sup>(45)</sup>.

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<sup>(45)</sup> See recitals (11) to (13) of the Commission decision of 18 December 2009 related to the introduction of a tonnage tax scheme in favour of international maritime transport in Poland C 34/07 (ex N 93/2006) (SA.20527), OJ L 90, 10.4.2010, p. 15.

*Table 3: Tonnage tax rates in schemes previously approved by the Commission and under the notified scheme*

| <b>Tonnage<br/>(net tons)</b> | <b>PL</b>                   | <b>NL <sup>(46)</sup></b> | <b>ES <sup>(47)</sup></b> | <b>IE <sup>(48)</sup></b> | <b>FI <sup>(49)</sup></b> | <b>FR <sup>(50)</sup></b> | <b>BE <sup>(51)</sup></b> | <b>LT <sup>(52)</sup></b> | <b>PT <sup>(53)</sup></b> | <b>EE <sup>(54)</sup></b> |
|-------------------------------|-----------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| Up to 1 000                   | <b>0.55</b>                 | 0.91                      | 0.9                       | 1                         | 0.9                       | 0.93                      | 1                         | 0.93                      | 0.75                      | 0.84                      |
| 1 001 – 10 000                | <b>0.4</b>                  | 0.68                      | 0.7                       | 0.75                      | 0.7                       | 0.71                      | 0.6                       | 0.67                      | 0.6                       | 0.62                      |
| 10 001 – 25 000               | <b>0.26</b>                 | 0.45                      | 0.4                       | 0.5                       | 0.5                       | 0.47                      | 0.4                       | 0.43                      | 0.4                       | 0.40                      |
| 25 001 – 40 000               | <b>0.24 <sup>(55)</sup></b> | 0.23                      | 0.2                       | 0.25                      | 0.2                       | 0.24                      | 0.2                       | 0.27                      | 0.2                       | 0.20                      |
| 40 001 – 50 000               | <b>0.24</b>                 | 0.23                      | 0.2                       | 0.25                      | 0.2                       | 0.24                      | 0.05                      | 0.27                      | 0.2                       | 0.20                      |
| Over 50 000                   | <b>0.2</b>                  | 0.05                      | 0.2                       | 0.25                      | 0.2                       | 0.24                      | 0.05                      | 0.27                      | 0.2                       | 0.20                      |

- (133) As regards the possible reduction of 40 % of the tonnage tax base for vessels fuelled exclusively by alternative fuels within the meaning of Article 2(11) of the Act of 11 January 2018 on electromobility and alternative fuels (recital (34)), the Commission notes that such reductions are only allowed in case the objective goes beyond what is already required by EU law and are justified in light of the objectives of the Maritime Guidelines. Considering that the 40 % reduction applies only to vessels fuelled “exclusively” by alternative fuels, the Commission understands that this reduction will be conditional to ships going beyond the relevant EU environmental standards. Furthermore, considering that the Maritime Guidelines have as their objective, *inter alia*, “improving a safe, efficient, secure and environment friendly maritime transport”, the Commission is satisfied that these conditions are fulfilled.
- (134) Furthermore, as regards the taxation rates applicable to ship management companies, the Commission notes that these amount to 30 % of the tax basis calculated according to section 2.4.4 where the company performs only technical management or crew management, and to 50 % of the tax basis calculated according to section 2.4.4 where the company performs technical and crew management jointly. These taxation rates are therefore in compliance with section 7 of the Shipmanagement Communication, which states that: “*The Commission, therefore, requires that a percentage of no less than 25 % is applied under ship management tonnage tax schemes*”.

<sup>(46)</sup> Commission decision of 26 July 2019 in case SA.51263, OJ C 277, 16.8.2019.

<sup>(47)</sup> Commission decision of 27 February 2002 in case SA.16148, OJ C 38, 12.2.2004.

<sup>(48)</sup> Commission decision of 11 December 2002 in case SA.14131, OJ C 15, 22.1.2003.

<sup>(49)</sup> Commission decision of 20 December 2011 in case SA.30515, OJ C 220, 25.7.2012.

<sup>(50)</sup> Commission decision of 13 May 2003 in case SA.14551, OJ C 38, 12.2.2004.

<sup>(51)</sup> Commission decision of 6 November 2017 in case SA.41330, OJ C 3, 5.1.2018.

<sup>(52)</sup> Commission decision of 24 April 2017 in case SA.45764, OJ C 219, 7.7.2017.

<sup>(53)</sup> Commission decision of 6 April 2018 in case SA.48929, OJ C 339, 21.9.2018.

<sup>(54)</sup> Commission decision of 16 December 2019 in case SA.53469, OJ C 144, 30.4.2020.

<sup>(55)</sup> 0.26 between 25 001 and 30 000, see Table 1.

#### 3.3.2.4.3. Aid cumulation / aid ceiling

- (135) In line with section 11 of the Maritime Guidelines, a reduction to zero of corporate taxation of shipping activities is the maximum level of aid which may be permitted.
- (136) The Polish authorities have explained that under the notified scheme, a reduction such as the one mentioned in the previous recital is not possible (see recital (35)).
- (137) The notified scheme also includes a provision preventing the tax relief granted under the tonnage tax system from being cumulated with aid granted pursuant to the R&R Guidelines, if the effect of the tonnage tax has not been taken into account in the decision attributing the restructuring aid. Unless the latter condition is met, undertakings in difficulty cannot benefit from the notified scheme (recital (14)).
- (138) In that respect, the notified scheme is thus in line with the Maritime Guidelines and can be considered proportionate to its objectives.

#### 3.3.2.4.4. Tax liability when opting-in to the tonnage tax scheme

- (139) Under the Commission's decisional practice <sup>(56)</sup>, when opting-in to the tonnage tax scheme, tax liabilities have to be settled, as they would otherwise constitute a separate State aid measure that would be acceptable only within the limits of the aid ceiling fixed in the Maritime Guidelines. Such hidden tax liabilities are determined as the difference between the market value and the tax value of the ship (which may have been over-depreciated) at the moment of entry into the tonnage taxation system.
- (140) As explained in recital (37), the Polish authorities have confirmed that any tax liabilities accrued before the application of the notified scheme must be settled, thus prohibiting the application of the notified scheme in regard to a tax period during which the notified scheme was not applicable to a beneficiary.
- (141) The Commission is thus satisfied that the notified scheme effectively prevents potential early over-depreciation of vessels entering the tonnage tax scheme to constitute an additional aid which could have the potential to exceed the aid ceiling fixed in the Maritime Guidelines.
- (142) In light of the above, the Commission considers the notified scheme to be in line with its decisional practice in this respect, and thus proportionate.

#### 3.3.2.5. Transparency: duration, evaluation and reporting

- (143) According to the relevant case law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration <sup>(57)</sup>. In this respect, the Commission notes that the Polish authorities have introduced in the draft legal basis a provision ensuring that the validity of the notified scheme is limited to a period of 10 years, starting from 1 January of the year after the notification of the Commission's decision approving the notified scheme (recital (6)).

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<sup>(56)</sup> *Inter alia*, Commission decision of 16 December 2019 in case SA.53469, OJ C/144/2020, 30.4.2020, recital (118).

<sup>(57)</sup> Judgment of the Court of justice of 14 October 2010, *Nuova Agricast and Cofra v Commission*, C-67/09 P, EU:C:2010:607, paragraph 80.

- (144) Pursuant to section 12 of the Maritime Guidelines, Member States must communicate to the Commission an assessment of the effects of the scheme during their sixth year of implementation. They must also provide a report to the Commission when a derogation from the flag-link rule has been approved every three years.
- (145) The Polish authorities confirmed that they will comply with the aforementioned obligations. In order to provide this information, undertakings having applied for the tonnage tax scheme must provide annually to the Polish authorities a detailed report for each vessel (including the identification of the vessel, its flag, and its tonnage) as well as documents justifying that all the requirements under international and EU/EEA standards on safety, reliability, environmental performance and on-board working conditions are met. Therefore, the notified scheme is in line with the Maritime Guidelines in that regard.

#### 3.3.2.6. Negative effects on competition and trade

- (146) The Commission notes that the notified scheme could be susceptible to distort competition between European shipping companies by reducing the tax-related costs of eligible undertakings opting for this scheme, while competing undertakings not benefiting from similar measures must bear those fiscal costs themselves. In particular, maritime transport companies who incur an income tax obligation in Poland may receive a competitive advantage compared to maritime transport companies registered in other EU/EEA Member States.

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

- (147) The negative effects on competition and trade (section 3.3.2.6) must be weighed against the positive effects of the notified scheme (described in section 3.3.2.1).
- (148) The notified scheme supports the development of the maritime transport activity in Poland, of the European maritime sector, the (re)flagging of vessels to EU/EEA flags and promotes the employment of skilled European seafarers and the respect of European safety, working-condition, efficiency, and environmental standards.
- (149) The Commission also recalls that the notified scheme is necessary, appropriate and proportionate in accordance with the Maritime Guidelines (sections 3.3.2.2 to 3.3.2.4). Moreover, the notified scheme applies to all eligible vessels flying an EU/EEA flag. All eligible undertakings liable to taxation in Poland will be allowed to opt in for the notified scheme, notwithstanding the country of origin of the company.
- (150) Further, the effect on the internal market will be limited by the fact that most of the Member States with an active maritime transport industry, have already implemented a similar tonnage tax scheme. The potential distortion of competition will therefore be limited.
- (151) Thus, the negative effects on competition, if any, would be very limited. The notified scheme therefore does not distort competition to an extent contrary to the common interest.

- (152) In the light of the foregoing, the Commission considers that the positive impact of the notified scheme on the development of the economic activity in question outweighs the potential negative effects on competition and trade.
- (153) Therefore, the Commission concludes that the notified scheme is in line with the objective of Article 107(3), point (c), TFEU, as it facilitates the development of maritime transport, without affecting trading conditions to an extent contrary to the common interest.
- (154) Based on the foregoing, the Commission considers that the notified scheme constitutes State aid compatible with the internal market pursuant to Article 107(3), point (c), TFEU, since it meets the requirements of the Maritime Guidelines.

#### **4. CONCLUSION**

The Commission has decided not to raise objections to the notified scheme on the ground that this scheme is compatible with the internal market pursuant to Article 107(3), point (c), of the Treaty on the Functioning of the European Union.

Yours faithfully,

*For the Commission*

Teresa RIBERA  
*Executive Vice-President*